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GUEST EDITOR

David K Leonard

ARTICLES BY

David K Leonard

Denis Kadima

Anna Schmidt

Titi Pitso

Felix Odhiambo Owuor

Sam Egwu

Khabele Matlosa

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e-mail: publications@eisa.org.za

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ELECTIONS AND CONFLICT IN AFRICA: AN INTRODUCTION¹

David K. Leonard

David K Leonard is Professorial Fellow in Governance, Institute of
Development Studies (UK)
e-mail: D.Leonard@ids.ac.uk

Since 1990 contested elections have again become a regular fixture of the political systems of sub-Saharan Africa. But what do they mean? In this issue of the *Journal of African Elections* we consider four important sets of African elections and the lessons that can be drawn from them, both for democracy and for best electoral practice. None of these elections was 'typical' for the continent. All were fiercely contested. Those in the Democratic Republic of Congo and Sierra Leone came after extended periods of civil war; Kenya's provoked a major outbreak of violence after the results were announced; while Nigeria's saw opposition wins at the sub-national level and loss of life around the polling itself. Each has something important to say about the meaning of elections in Africa and the challenges that arise in running them well.

DEMOCRACY VS ELECTIONS

What does democracy mean and why should it matter? From 1960 to 1990 Africa's 'one-party democrats' generally held sway, with the argument that democracy meant only the regular conduct of elections and perhaps the existence of primaries for legislative candidates of the ruling party. National unity was too precious and the dangers of ethnic violence were held to be too great for genuine contests for the presidency to be risked. Elections in this era should, most accurately, be considered to be plebiscites on the government of the day.

Only since the end of the Cold War has democracy in Africa come to mean the right to vote for the holder of executive power in multiparty elections. But even this change does not necessarily connote democracy, for such elections could be rigged or voters' choices significantly constrained. The most rigorous standards of democratic practice hold that citizens should be informed, uncoerced, and

¹ The fieldwork for the studies included in this issue of the *Journal* was conducted between August and November 2008 and was financed by the UK Department for International Development (DFID) as part of a separate study on electoral assistance. The Swiss Agency for Development and Cooperation (SDC) contributed to the printing. The views expressed are those of the authors only and do not necessarily represent those of DFID, the UK government or SDC.

effective in casting their votes – which implies the absence of election violence, parties that offer meaningful choices, well-functioning and independent media, rule through law, autonomous courts, and protection for the rights of minorities (and losers). In the articles in this issue we consider not only elections themselves but democracy (and its absence) in this larger sense.

A consistent lesson that emerges from these and other studies is that election support (be it international or domestic) is too narrow to achieve even good electoral outcomes. At a minimum, support for the electoral cycle is required and ideally the focus would be more broadly still on capacity building for the institutions that underpin democratisation.

AN INSTITUTIONAL APPROACH

Democracy is built by and results from the interaction of a significant number of the institutionalised behaviours and organisations present in a society. Some have direct roles, others indirect ones. Some are formal and openly acknowledged, others are informal and implicit. In these articles we highlight the array of institutions that have an impact on the elections, democracy and governance of our four selected countries.

A context of patronage

The first of these defining institutions is not an organisation, it is a behaviour. Political clientage is important in all of the political systems discussed in the following articles – even though it takes on distinctive features in each. Throughout Africa (and, indeed, in many other developing countries) voting is largely determined by ethnicity, kinship and neighbourhood. In rural areas, where all three tend to coincide, the result is that voting at polling-station level will generally be in favour of one particular candidate, with the decision effectively a collective one, sometimes enforced by implicit coercion. For example, Barkan, Densham & Rushton (2006, p 933) found in Kenya that the average vote for the winning candidate for Parliament in 1997 was 65 per cent, even though there was an average of 4,4 candidates. At polling-station level this pattern of local consensus would be even more obvious. Only in the major urban areas is the coincidence of family and neighbourhood broken. Although kinship and rural ties will still be influential for all but second-generation urban elites, adherence to them will not be obvious in city polling stations.

This ascriptive voting behaviour is neither atavistic nor irrational. African states provide no reliable, formal systems of social security and individuals can rely only on their kin and neighbours for assistance. This not only strengthens the

ties of ascriptive solidarity but also makes it rational for one to want state benefits to reach members of one's social group, even if one does not get them oneself – for those who receive them might be in a position to help in the future.

Not only does the above social dynamic lead voters to seek out patronage goods for their communities it also makes it relatively easy for political candidates to see whether the community around a particular polling station has been faithful to its part of the clientage bargain and has delivered – en masse – the expected votes. Visibility, and hence enforceability, make patron-client relations efficient and even more attractive (Kitshelt & Wilkenson 2007). Thus, even if achievement-oriented, policy-based political competition might produce better results for the country as a whole the individual politician, community and voter will find patron-client political ties rational. Given this analysis, the emphasis international NGOs put on the moral superiority of issue- or policy-based voting in the election education they finance in Africa seems slightly naïve and not wholly resonant with the benefits rural citizens are actually likely to be able to derive from their votes.

Politicians who fail to provide jobs, infrastructure and other elements of patronage will disappoint their electorate and be vulnerable to challenge in the next election – either from the opposition (most often in an urban area) or from another faction of the party (in most of the countryside). The temptation to be corrupt and profligate with the public purse in order to gain patronage for personally targeted distribution (with some personal wealth on the side) is overwhelming.

Of course an elected office holder could (and should) provide constituency service without being corrupt. Constituency service is a benefit provided to all individuals of a certain place or category, regardless of their personal votes. Patronage, on the other hand, is visibly targeted only to those who are supporting the politician, so that the benefit is a reward for political backing.² The boundaries between constituency service and patronage overlap, but the end points of the continuum they describe are clearly different.

Patronage is politically more efficient than constituency service and is much more prone to corruption. But this poses a dilemma for the politician if the state is overwhelmingly dependent on donor aid projects and budget assistance which could be cut off if the international community detects persistent significant corruption (as it is in the DRC and Sierra Leone). In Sierra Leone, for instance, donor sanctions for corruption led to a reduction in the funds for generating constituent benefits. It is central to a politician's re-election that visible benefits

2 The fact that patronage works best when it is a 'private good' or a community one and the damage this does to the larger 'public goods' component of most valuable public policy is well analysed in Bates (1981).

are delivered to his/ her constituents. The challenge for politicians in Sierra Leone is to learn how to do this within the boundaries of donor-defined probity – which requires that they move along the patronage-constituency service continuum towards the non-corrupt and collective end. This is appropriate, but it is not easy in these societies and is facilitated by development assistance that generates the kinds of benefits that are visible and demanded by the critical parts of the electorate.

Strong presidents

African states are weak in the face of very strong societies (Migdal 1988). As Aristide Zolberg noted 40 years ago, this makes nervous national politicians construct governmental systems that are as strong as possible – hence the long period of one-party rule on the continent and the persistence even today of very strong presidencies (Zolberg 1966).

The resulting problem is that the stakes for winning or losing State House become inordinately high. A key dimension of the violence that frequently surrounds presidential elections in Africa is the extreme concentration of authority in the presidency, with almost no checks on its power. Deconcentration of the presidency's powers can follow from a number of coordinate reforms – the creation of a prime minister with specified authority, an enhanced role for Parliament, an independent and impartial judiciary, legal limits on what civil servants can be asked to do, and devolution of authority to local-government bodies. The Democratic Republic of Congo and Kenya are prominent examples of systems that now pair a directly elected president with a prime minister elected by Parliament. In Kenya, presidential resistance to a prime ministership was one of the factors that contributed to the election violence that occurred in 2007/08 before the change was adopted in the peace settlement.

Parliaments of rural ambassadors

When patron-clientage is combined with a strong presidency the legislature becomes a collection of (largely rural) ambassadors petitioning for patronage goods they can distribute to their constituencies (or turn into personal wealth for themselves, which, in turn, can be used to make them generous 'big men' at home). For members of Parliament who operate in these circumstances deliberating on public policy, passing laws, and holding government accountable are minor activities when seen from the point of view of re-election. To some extent the same can be said of first-past-the-post (FPTP) constituency legislators everywhere. But the strength of society and the presidency in Africa makes the tendency much stronger.

It is difficult in most of Africa to produce competitive political parties based on public policy differences rather than the distribution of patronage – at least until the issues around service provision shift from their physical presence in particular constituencies to their general quality and until income from oil-rich or aid dependent states is no longer the most important source of income for the elite. An empirical example of this, from Nigeria, is the failure to take hold of the Social Democratic Party (SDP), which the late Prof Claude Ake worked so hard to base on policy positions. Similar attempts have failed in Kenya and elsewhere in most of sub-Saharan Africa.

Despite the fact that MPs receive few electoral rewards for paying attention to legislation, executive accountability and the public interest more generally, in all four of the countries examined in this issue a few MPs (perhaps because of something in their personal or professional background) *did* care about these matters and often enabled these parliaments to be more effective than the general political culture would give one a right to expect.

The electoral system: what is one trying to achieve?

In a democracy, of course, the electorate selects the executive and legislature. The behaviour and choices of the voters (as well as those competing for their favour) are shaped by the nature of the electoral system. We have a rich literature and body of empirical knowledge in political science about the impact of various electoral systems, dating, at least, from Maurice Duverger (1950). There has been a temptation to interpret this understanding in such a way as to prescribe a 'one best way' for choosing representatives democratically. These four case studies, however, demonstrate that various countries may be faced with quite dissimilar challenges and therefore need different electoral and representational systems to deal with them. Once we ask how to maximise a given value we have a body of knowledge from which we can draw a reliable answer. But we are often not giving proper attention to the fact that the questions to be asked and the values to be optimised vary according to the condition in which a country finds itself.

Our case studies provide multiple illustrations of this principle of variation. When Africa first became independent it was feared that the state would not be strong enough to resist the divisive forces of multiple, competing ethnicities. Thus prime ministers responsible to parliaments were abandoned in favour of presidents directly elected in single-party systems. Now that most of Africa has been independent for nearly half a century it is evident that secessionist movements have proved a much smaller threat than anticipated and that the real threat is the monopoly of political power of strong presidencies. Thus, prime ministers who share executive power with presidents are back in vogue. They deconcentrate

power, broaden the number of ethnic groups that can control executive authority, and strengthen parliaments by making MPs the final electors of this particular office. The problem shifted and thus so did the answer. Another type of problem concerns the ways in which elections can mitigate or exacerbate violence. In Kenya the president must not only win a plurality of the vote but at least 25 per cent of the vote in five of the country's eight provinces. These requirements mean that there can be a large premium attached to minority votes in some areas.

In three separate general elections the Kalenjin in the central Rift Valley have mobilised to attack the Kikuyu settlers living there. The Kikuyu are a minority in the Rift Valley but are the largest group in the country as a whole; their presidential candidate can be denied office by making it impossible for his supporters to win the constitutionally mandated provincial minima. If the executive is selected instead by members of Parliament elected in FPTP contests (as Kenya's prime minister now is) the motive for attacking minority voters is dramatically reduced. On the other hand, a national proportional representation (PR) system would make the likelihood of violence greater.

In the Democratic Republic of Congo the electoral system was designed to solve several urgent problems: (a) to get ethnically-based minority militias to turn from military to electoral combat; (b) to give remote local communities (which had become distanced from the state) a strong sense of being represented in the capital; (c) to find a way of distributing legislative positions proportionately when there had been no recent census; and (d) to overcome local fears that national political party elites would manipulate the system to impose unpopular MPs on local communities.

The first problem meant that an electoral system that permitted competition only among multi-region national parties would fail to bring the local militias into the civilian system. The second objective would best be met by single-member (SM) constituency FPTP elections. The third problem meant that it was hard to know before the election what the appropriate regional distribution of parliamentary seats would be, thus reliance only on SM-FPTP would be likely to be unrepresentative. The fourth and final fear meant that any PR would have to be done by open list (OL) – where people vote for individual party members and the number of MPs a party gets is determined by the total number of votes its party nominees get and the rank order of the party's candidates on its list would be determined by the votes they personally received from the electorate.

A closed list (CL) PR would have exacerbated local fears of elite manipulation. The real problems and multiple constraints facing the DRC in this first post-conflict election meant that it opted for a combination of SM-FPTP and PR-OL MPs selected at district level. The resulting system was very complicated and may need to be revised in the future. But it did achieve its most critical objectives.

The DRC illustrates in another way as well the proposition that there is no one best way. It is well known that if one wishes to increase the number of women in a legislature the best way to do this is through PR-CL, with the political parties legally required to field a certain percentage of women candidates at all levels of the list. Some international women's groups have criticised the DRC for failing to use this method in its election. The objective of these groups is legitimate and their analysis of the consequences of different electoral systems is correct. In the case of this post-conflict election, however, it seems to me that the average woman had a greater interest in the achievement of peace than she did in seeing an increase in the numbers of elite women MPs.

The point our cases make, then, is that context is hugely important and the best electoral system is one shaped to meet the key questions the context throws up rather than one that opts for a universal, 'best practice' template. A number of studies can be used in undertaking this more complex exercise (eg, Jones 1995; Lijphart 1994; Reynolds 2002; Reynolds, Reilly & Ellis 2005; Taagepera & Shugart 1989).

Election management bodies

The competent and impartial conduct of an election is fundamental to its success, of course. Elections are immensely challenging logistically and none of the countries we studied handled them perfectly. But they also create great incentives to cheat and there is substantial political pressure on the electoral management body (EMB) to tilt in favour of those in power. International assistance and unusual integrity on the part of the EMG chairs were critical to the satisfactory performance in the DRC and Sierra Leone. In Kenya an EMB chair of past integrity resisted international assistance, and cheating at the polls overwhelmed the system. In Nigeria the EMB has been widely condemned for complicity in the dishonesty and logistical failures that were evident on election day.

But EMBs do not act alone. Civil society organisations (CSOs) and non-governmental organisations (NGOs) that carry out voter education and monitor the polls on election day are also critical. And these, in turn, have come to be dependent on financial support from donor nations and the moral support of international election observation teams. In Africa the latter are not only accepted (despite their apparent affront to sovereignty) but are sought out (for the added international legitimacy they can confer). This fact both provides leverage and creates a danger. There can be times when external interests (such as dependence on Nigeria's oil) can make a country want to pull its punches on what its observers have seen on election day. Perhaps this is inevitable in some circumstances in a world of real politic but it is better for potential international observers to refuse

to participate at all than to be complicit in a report that tells less than the full truth or is overly subtle in stating it. As was evident in Nigeria, locals who have risked their lives trying to deliver democracy can feel deeply betrayed when the internationals who seemed to be encouraging them back away from being frank themselves.

Courts

Competent and independent judiciaries are also central to democracy. If court decisions are not rendered in a timely and intelligent manner or if judges see themselves largely as instruments of the executive, the laws produced by parliaments can have no effect and citizens have no protection. Such courts are also central to the resolution of the disputes elections inevitably create.

In the cases examined in this issue courts tended to render electoral decisions based on narrow technical criteria rather than substantive justice, to be so slow as to render their deliberations irrelevant, or to see themselves as instruments of the interests of the incumbent executive. A few exceptional, courageous decisions have been handed down, particularly in Nigeria, but they are rare. The absence of a genuinely independent and timely judicial process was a significant factor contributing to post-election violence in the disputed Kenyan elections. The all-too-prevalent neglect of this key institution of democracy served to weaken elections in these countries.

Security services

Elections are a valuable means of managing societal conflicts – potentially providing less violent fields for contesting differences, creating the possibility of political change without rending the fabric of society, and instituting some modest degree of accountability of the government to its citizens. But if elections are not conducted properly they can crystallise and accentuate the very conflicts they should be helping to manage. Elections as alternatives to violence in the resolution and management of societal conflicts can be realised only if they are overseen by impartial dispute resolution bodies (electoral management body and courts) and security services (police and army). Otherwise the temptation to cheat and use coercion to achieve the desired outcome escalates and may, itself, precipitate violence.

In the DRC and Sierra Leone international players were central to the achievement of security services that deterred electoral violence. In Kenya the army insisted on remaining neutral because of the experience it had gained in international peace keeping missions. But in Nigeria and Kenya police

performance was deficient – perhaps because they were more isolated from international involvement and therefore more vulnerable to politicisation.

MULTI-LEVEL, NETWORKED GOVERNANCE

International players did not merely facilitate the electoral processes in the DRC and Sierra Leone they played a central role in assuring that the elections went well. Was such a role legitimate? By the traditional standards with which we evaluate sovereignty the answer would be ‘no, states should determine their own governance procedures’.

This purist stance is, however, flawed and unrealistic. First, during their civil wars both countries had ceased to be states in any empirical sense (and thus entitled to sovereignty). Without external involvement the two states would not have been reconstituted and there would have been no elections to hold. Secondly, contemporary globalisation is not just an economic phenomenon, it is also a political one. Though the World Bank and the UN are ‘apolitical’ and proclaim their respect for sovereignty they are deeply involved in promoting governance reforms, and bilateral donors both lead and follow in this endeavour.

Whether one likes it or not the reality is that governance in all countries is determined by the complex interactions and networks of myriad actors at multiple levels – from chiefs in the villages to army colonels, to presidents, to bilateral donors, to international organisations. Perhaps the formal, national government is weaker in these interactions in Africa than it often is elsewhere, but this is a difference in degree not in kind. Today it seems far more appropriate to evaluate the effectiveness and democratic integrity of these multiple forms of influence and the networks they create rather than to challenge their existence in the name of sovereignty (Ansell 2000; Ansell & Gingrich 2003).

Thus, in our analysis of these African elections both local and international players receive prominent attention. Who was willing or able to do what, with what kind of networks emerges as central to electoral success and ultimately to democracy.

WHO BENEFITS?

A development perspective

In development theory democracy is important because it adds to the ability of people to make meaningful and informed decisions about their own lives, just as do improvements in security, health, income and education (Sen 1999; Uphoff & Ilchman 1972).

Democratic theorists tend to value the direct control over the political aspects of their destinies that elections and human rights protections give to citizens. But development specialists are often interested at least as much in the indirect benefits for people's lives that democracy might provide in the form of stability, economic development, or public services. Thus it is worth asking just what, in practice, in any given country, democracy is actually delivering and to whom? If democracy doesn't improve the aggregate choices people have in their lives as much as alternative systems of governance are believed to do citizens might choose not to have it (as seems to be happening in Russia today). And who, in specific practice, is benefiting from it – the poor, the elite, or possibly even the donors who need to make a show of it to satisfy their own electorates?

The poor

The main benefit the poor of Africa derive from 'free and fair' elections is the patronage that is directed to them in the competition for their vote. When the competition diminishes or the results are rigged the flow of patronage goods to the bottom of the system is reduced.

This is most obvious in a comparison between Kenya and Nigeria. In the latter patronage has turned into prebendalism, an intra-elite form where elections are 'delivered', not won, and the benefits of office do not get far beyond the holder. In the former, where competition for Parliament is intense, candidates spend substantial sums on direct benefits for voters and their communities.

Even where there is considerable electoral competition patronage will not deliver national economic policies that are particularly pro-poor (for patronage provides private goods at the expense of public ones) nor will it mean that government is accountable to its citizens or their representatives. But in systems in which basic rural services (such as health, education and roads) are not being supplied at even minimal standards, where rural communities are the sole locus of social welfare, and where jobs for unskilled labour are woefully short, patronage is providing considerable benefits. The side effects of corruption and elite oriented national economic policies are often deeply disappointing. But when we compare patronage-ridden competitive democracies with most of their authoritarian counterparts we do, frequently, see some benefit. Authoritarian systems can be more progressive than democracies, but it seems unwise to count on their existence or their continued performance.

The elite

Even when elections are not 'free and fair' they may be important to civilian elite bargains. This is most evident in Nigeria, where the important election results

are determined before anyone goes to the polls. Despite widespread lack of confidence in the electoral process Nigerians have demonstrated support for the idea of elections, not only as the alternative to the military in the selection and recruitment of the political leadership but also as the marker for the authority that is being granted to an office holder and the term limits on holding it. These features have been evident in Kenya as well, even in its undemocratic phase.

Peace

Elections can be instruments for both the exacerbation and the management of conflicts. If they are poorly managed, as they were in Kenya and Nigeria, they can become stimuli to violence. This makes it all the more important that they be conducted competently and with integrity.

In a number of circumstances, however, well-managed elections have advanced the cause of domestic peace after prolonged periods of civil war (Elbadawi & Sambanis 2000). This was the case in both the DRC and Sierra Leone. This is not to say that progress toward peace was automatic, much less complete; there are many steps still to be taken and many dangers remain after the elections. Critical prerequisites for these modest successes have been international players who were willing to guarantee the relative integrity of the electoral processes (so that all parties to the conflict felt that they had a fair prospect of gain) and were willing to continue after the elections to ensure that the bargains struck in the run-up are honoured.

Genuinely credible commitments to enforcing the fairness and continuity of the constitutional arrangements established in peace negotiations are fundamental to their long-term success (Lake & Rothchild 2001; Leonard & Straus 2003, chap 5). It is precisely for this reason that democracy can succeed only if powerful players are committed, not just to election cycles rather than elections, but to continued cycles until the commitments made in the peace settlement are well institutionalised.

The international community

Finally, elections help donor agencies legitimise their operations with their head offices and electorates at home. This is not just a self-serving benefit, it enables donor agencies to justify expenditure on development assistance for states that are more democratic and encourages Organisation for Economic Co-operation and Development foreign ministries to exercise diplomacy on behalf of these client states, an element that has been significant for the DRC. Once its elections had been completed satisfactorily major powers felt able to put pressure on Rwanda

to negotiate a set of measures that would remove the threat to Congo's peace posed by Rwandan militias in the eastern DRC.

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ELECTIONS AND DEMOCRATISATION IN THE DEMOCRATIC REPUBLIC OF CONGO¹

Denis Kadima, David K Leonard and Anna Schmidt

Denis Kadima is the Executive Director of EISA

e-mail: dkadima@eisa.org.za

Anna Schmidt is Research Fellow in the Governance Team

Institute of Development Studies (Sussex)

e-mail: a.schmidt@ids.ac.uk

ABSTRACT

In 2006 the Democratic Republic of Congo (DRC) held its first multiparty legislative and presidential elections in more than 40 years. Although not without flaws these elections were seen by international observers as acceptably fair. They were also designed as a major milestone on the road to peace in a country that has been torn apart by civil war. The United Nations peacekeeping mission in the Congo and the multi-donor election support that brought about these elections were both the largest and most expensive ever undertaken by the UN. The article poses two questions. One is, is democracy at hand in the DRC? The other is, have elections helped to bring peace? The answer to the first is 'Yes', but only if the term is defined narrowly to mean that multiple parties compete for power and that there is some marginal chance that the prime ministership might move to the opposition in 2011. If the question is rooted in a deeper understanding of democracy as based on the rule of law, protection for the political rights of minorities, a vigorous press, and, above all else, responsiveness of political leadership to the wishes of the citizenry, much is still lacking in the Congo. In most respects Congolese political life seems to be remarkably lacking in accountability. The answer to the second is cautiously positive. The number of warring groups in the DRC has been reduced and the elections gave President Kabila and his international interlocutors the legitimacy they needed to negotiate with Rwanda for the removal of the threat posed to the eastern DRC by General Nkunda.

¹ The primary fieldwork for this article was done in the Democratic Republic of Congo in August 2008.

INTRODUCTION

In 2006 the DRC held national and provincial elections, the first multiparty elections held in the country since 1965. The elections were a condition of the 2002 agreement that followed and largely brought to an end the wars that had engulfed the country after the collapse of the Mobutu regime in 1997, though the peace agreement did not envisage such a lengthy delay. Both domestic and international political actors saw these first democratic elections in 41 years as critical to the peace-building process and so significant that the contribution of the United Nations peacekeeping mission in the Congo (MONUC) and the multi-donor election support were the largest and most expensive ever undertaken by the UN.

Although the elections are generally held to have met their major objectives of re-establishing legitimate government in the DRC and contributing to durable peace, they were not without flaws and there are still major issues to be resolved in relation both to the next round of elections in the DRC and about the country's democratisation more generally.

Can one conclude from the elections that democracy has taken root in the DRC? Have the elections at least helped to bring peace to the Congo? And how are they likely to affect the welfare of the citizenry?

This article analyses the elections with a view both to learning from them and considering the steps that need to be taken in the future to consolidate democracy in the country. We start with an overview of the political history and socio-economic context of Congo/Zaire and then turn to an analysis of the 2006 elections themselves. We conclude by reflecting on the success of the elections, the future of democracy in the DRC, and the prospects for the country's peace. As public order is most perilous in the eastern part of the country we will pay particular attention to electoral observations from South Kivu.

COUNTRY CONTEXT

Political history

The Belgian Congo (the present-day Democratic Republic of Congo-DRC) gained its political independence on 30 June 1960. Pre-independence elections, held on 22 May 1960, ushered in a new government in the form of a coalition of the Mouvement National Congolais (MNC), the Parti Solidaire Africain (PSA) and the Centre de Regroupement Africain (CEREA), which, together, had managed to win the majority of parliamentary seats.

The leader of the MNC, Patrice Lumumba, became prime minister and the leader of the Alliance des Bakongo (ABAKO), Joseph Kasa-Vubu, became head

of state. Despite this promising transition from colonial rule to self-rule through multiparty democratic elections, democracy was short lived in the country: the only other multiparty elections in Congo were held in 1965. Instead, the embryonic democratic order was nipped in the bud following the military coup d'état of 24 November 1965, led by Lieutenant-General Joseph-Désiré Mobutu.

Supported by the Western powers and within the context of the Cold War, Mobutu established a one-party government under the Mouvement Populaire de la Révolution (MPR), characterised by a monolithic political system and heavy repression of dissidence. Numerous presidential and parliamentary elections took place during the MPR regime, but political competition was limited. While Mobutu stood unopposed in every presidential election from 1967 to the end of his regime in 1997, parliamentary elections allowed some competition between candidates within the state party. In the 1982 National Assembly elections, in particular, some independent personalities were elected. They included Etienne Tshisekedi, probably the best-known civilian opposition politician in the country. Eventually this group challenged the Mobutu regime by launching a new political party, the Union pour la Démocratie et le Progrès Social (UDPS), and began their public and organised opposition to Mobutu's dictatorship, in spite of the latter's formidable repressive machinery.

After close to a decade of internal struggle for democracy, combined with the upheavals in Eastern Europe and the end of the Cold War in the late 1980s, the Mobutu regime succumbed to domestic and international pressures and reluctantly allowed the liberalisation of political space in April 1990. However, the democratisation process stalled, as Mobutu interfered systematically with its progress, undermining the national conference (a gathering of all recognised organisations with a political agenda) by flooding it with parties that fronted for him and by repressing his opponents.

At the same time, Mobutu was accused of destabilising neighbouring countries like Rwanda, Uganda, Burundi and Angola by hosting and supporting their rebels. Ongoing internal discontent, political changes at the international level and the growing impatience of regional neighbours made it possible for Laurent Désiré Kabila's Alliance des Forces Démocratiques pour la Libération du Congo (AFDL), which was supported principally by Rwanda and Uganda, but also by Burundi, Zimbabwe, and Angola, to stage a successful war against Mobutu. The AFDL and its allies defeated Mobutu's undisciplined and poorly paid troops and entered Kinshasa in May 1997.

Soon after taking over from Mobutu, Laurent Kabila banned political parties, thereby ending the democratic transition. In the process he unleashed repression against opponents and critics of his regime. After falling out with his Rwandan backers Kabila demanded that Rwandan troops leave the country.

Rwanda reacted violently by invading the eastern DRC and later covered up the invasion by supporting the formation of the *Rassemblement Congolais pour la Démocratie* (RCD) in order to present the conflict as a civil war rather than a foreign invasion.

In addition, Uganda opened another front against the Laurent Kabila regime in the north and north-eastern parts of the country by supporting the formation of the *Mouvement de Libération du Congo* (MLC), led by Jean Pierre Bemba. Several of the armed groups that operated in the DRC were later accused of crimes against humanity, but so far Bemba alone is being tried in The Hague for atrocities committed in the DRC and the Central African Republic (CAR). In addition to various militia groups seven foreign armies fought in support of the Kabila government – Angola, Zimbabwe and Namibia, Chad and Burundi (both of which were involved briefly), and rebel movements backed by Rwanda and Uganda.

The assassination of Laurent Kabila in January 2001 and his replacement by his son, Joseph Kabila, who chose to adopt a more conciliatory approach towards his opponents, allowed for the implementation of the Lusaka Peace Accord of 2000, which provided for inter-Congolese dialogue at Sun City, South Africa, in 2002 and resulted in the signing of the Pretoria Accord. Transitional institutions (government, National Assembly and Senate) were installed.

In the newly devised 1+4 power-sharing system Kabila retained the presidency, assisted by four vice-presidents, namely, Jean-Pierre Bemba (MLC), Azarias Ruberwa (RCD) and Yerodia Ndombasi (Kabila government). Against all odds the little known Arthur Zahidi secured the fourth vice-presidential post, which was reserved for the civilian political opposition, ousting well-known opposition political figures like Etienne Tshisekedi of the UDPS and Antoine Gizenga of the *Parti Lumumbiste Unifié* (PALU). They reacted by refusing to join the transitional government and the other transitional institutions.

Gizenga re-entered electoral politics with the 2006 elections and was rewarded with the post of prime minister for ultimately supporting President Kabila. In contrast, the management of the 2006 electoral process and his own manoeuvring ultimately led to the marginalisation of Tshisekedi and the UDPS. This effectively concluded the neutralisation of what remained the single non-armed political force in the country, which commanded the widest degree of political support and legitimacy. Even though undoubtedly the UDPS has, in large part, itself to blame, the consequences are a setback for the establishment of civilian democracy in the DRC.

The national election commission, the *Commission Electorale Indépendante* (CEI), was created alongside five other institutions which were entrenched in the transitional constitution. The others were the *Haute Autorité des Médias*,

the Observatoire des Droits Humains, the Commission Vérité et Reconciliation, and the Commission de l'Éthique et la Lutte Contre la Corruption. While the CEI played a visible role and made a substantial contribution to the transition, the impact of the other institutions is unclear to us.

Below we examine both the national and provincial elections of July and October 2006 from a risk analysis perspective, and draw lessons for future elections. Most immediately these are the local government elections, tentatively planned for 2009, and the second national and provincial elections, which are to take place in 2011.

Voting behaviour

The introduction to this issue notes that political patronage drives voting behaviour throughout Africa (and much of the rest of the world). In the Congo, since the weak state is not reliable in the delivery of benefits, even patronage ones, voters expect politicians to amass wealth and dispense 'constituency service' personally. Thus money drives politics in the DRC even more than it does in most political systems. Votes and loyalties are for sale, with very little reference to political principles.

Nonetheless, in the DRC voters do not get high returns from their ascriptive voting behaviour (even if they are seen as better than the more strictly policy-based alternatives). The transportation infrastructure of the Congo is so poor that it is extremely difficult for most legislative representatives to reach their rural constituents, or vice versa. Thus the amount of 'constituency service' they actually deliver is very small; they accumulate without sharing very much. This is the one aspect of political behaviour for which their constituencies will hold them accountable and the result, judging from comparable political systems in Africa, is that most of them will not be returned at the next election unless they resort to massive fraud, bribery, intimidation, and other improper practices.

The system of government

The DRC has opted for the French model of a semi-presidential system in which the president of the republic is elected by universal suffrage and shares executive powers with a prime minister who is elected from the parliamentary majority. In practice, the system centres on a strong presidency, which holds the real power.

The prime minister, Antoine Gizenga, of the PALU, who finally resigned for health reasons on 25 September 2008, was old and ineffective, a fact that further strengthened the presidency.

There is broad consensus that the bicameral Parliament is doing a good job in terms of lawmaking, yet its processes tend to be too slow. Parliament has been

accused of taking party lines when it comes to its oversight role vis-à-vis the executive. Although partisanship is to be expected in a parliamentary democracy, in the DRC the degree of such partisanship has led to the automatic support of the majority for the government when the appropriateness of executive actions is challenged. The historical subservience of the courts to the executive undermines their independence and removes the necessary checks and balances. Civil society organisations (CSOs) have been urged by many to step in and require more accountability from the government and Parliament.

A full democracy requires not only the election of the chief executive but also the existence of independent bodies to check the powers of the executive and to ensure the protection of human rights. Independent, countervailing powers were not a part of the Zairian political system under Mobutu. During the transitional period leading up to the 2006 elections Parliament, the electoral management body, and the media (in the form of UN radio OKAPI) did show independence. It is too early to know whether these institutions and others that are important to full democracy will be independent in the long term, as the influence of the international community on the DRC's political system declines.

Where does power lie?

The Congo does not have a single locus of power and some of the most significant loci weaken the state. From the Portuguese establishment of the trans-Atlantic slave trade, through King Leopold's Free State and the era of Belgian colonialism, under Mobutu's Zaire, and on into the present, the Congo has been a site of exploitative resource extraction and the interests attracted by the country's changing resources have shaped its political landscape and driven the patterns of coercion deemed conducive to extraction.

Even at the high point of the development of the state in the 1950s, just before independence, the foreign-owned mining companies and agricultural estates were the most important administrative structures. The vastness of the country and the inaccessibility of much of its terrain have always presented a challenge to state penetration. This challenge was multiplied at independence by the attempt of certain interests to retain control of Katanga's mineral resources through secession, compounded by the absence of university-educated indigenous elites.

Mobutu Sese Seko successfully fended off secession and rebellion, first with help from the UN and then with support from America, France and Morocco. The people of Congo today have a strong sense of nationhood and are remarkably resistant to the temptations of secession. Unfortunately, this cultural identity has been developed in the face of economic and political failure.

Mobutu's attempts to transfer the productive wealth of the country to its

indigenous elites were premature and precipitous and resulted in the death of the goose that was laying the 'golden eggs'. Instead of fostering a new entrepreneurial class Mobutu created a set of 'rent-seeking' elites who were highly dependent on him. The relatively educated elites, called '*assimilés*' in the 1950s and '*intellectuels*' at independence, became popularly known in the 1970s as the '*acquéreurs*' [those who have acquired], thereby becoming distinguished not by their accomplishments but by their greed.

The decline of the Zairian/Congolese state was similar and deliberately contrived. With a weak revenue base, founded primarily on the extraction of 'economic rents' from the country's considerable natural resources, Mobutu could not afford a strong state which might have attracted or coerced the loyalty of its citizenry. Instead he allowed it to weaken further so that there would be no alternative bases of power to his own. The country's transportation infrastructure was allowed to fall apart because it might facilitate rebels reaching the capital. Most of the army was populated with patronage appointments – underpaid, poorly trained, undisciplined, and utterly incompetent, so it posed no threat. Only Mobutu's Republican Guard was kept strong enough to fend off any attempts by the army to gain power (Young & Turner 1985).

Of course this weakened state was unable to defend the country against invasion by the small but disciplined and skilled Rwandan army, nor was it able later to prevent its mineral resources being ransacked by foreign and rebel groups. The heritage of Mobutu's weak state was evident in the DRC's inability to create an army capable of standing alone against the renegade Tutsi (Rwanda-backed) rebellion in Nord Kivu of General Laurent Nkundabatware (better known as Nkunda). It is also evident in its dependence on the intervention at key moments of Angolan forces, supported by Zimbabweans and Namibians, and its continued need to maintain the presence of the UN's 17 000-strong MONUC forces. It is also evident in the fact that most of the 'rents' from the country's mineral resources are generated by foreign interests and paid privately to key Congolese political elites, without passing through the state.

Where, then, does 'power' lie in this weakened DRC? The primary answer is that it rests beyond the country's borders – most powerfully in Rwanda and a bit less so in Uganda in the east and Angola in the west; less visibly, but no less meaningfully, in the US and Belgium, and more visibly but less effectively in the MONUC. If we consider only issues of democratisation traditional donors weigh heavily, and if only the economy is considered, new donors matter increasingly. However, these 'powers' have diverse interests which often put them in competition with each other. No coalition is dominant across all issues.

Certainly, these countries significantly constrain the choices open to the government of the DRC on many questions, but only occasionally can they dictate

what is to happen and on some matters the government can choose for itself the international powers with which it wishes to work (as it has with China on certain economic issues). Despite these qualifications, Congo has only *de jure*, not *de facto* sovereignty and the most important powers at work in and on the DRC are international (Jackson & Rosberg 1982).² Most of the time, it is better to think of sovereignty as a rhetorical tool of the government, not as an empirical reality.

The foregoing 'big' answer leaves unaddressed, however, the 'small' question of where power lies within the Congolese system itself. Mobutu was deposed and the government of Laurent Kabila put in place by the Rwandan army. When Laurent broke with the Rwandans and they attempted to depose him, he was protected by the Angolans. When Laurent was assassinated a small group around him decided that his son, Joseph, would succeed him. As we discuss below it does not appear that this group has an irrevocable commitment to Joseph Kabila but it also is unclear whether it has very deep roots to its power either – its personal popularity is not strong and the army has been shown to be weak. Power instead seems to come from the fact that most of the international community is committed to peace in the country and that gives the group control over a certain amount of resources that can be used to purchase the support of others.

The group's regional base is among Swahili speakers in the east of the country, although it is weakened by delays in the return to peace in the area. It is the strongest political group operating at the national level in Congo today, but that strength is only relative to the weakness of the group's competitors and it is not clear where its social base lies.

As will emerge below in our discussion of election results, the most important national competitor of Joseph Kabila's Alliance de la Majorité Présidentielle (AMP) has been Jean-Pierre Bemba's Union pour la Nation (UN) alliance, which was built out of his Uganda-backed rebel movement in the north-east but has now also laid claim to the old Mobutu Lingala-speaking base in the country's west.

The UN alliance has now been weakened by Bemba's arrest to stand trial in The Hague for war crimes, although the MLC (at its centre) remains significant as a party. The other major national player is Etienne Tshisekedi's Union Pour la Démocratie et le Progrès Social (UDPS), the most important opposition under Mobutu and the most significant political movement with a wholly civilian base (mostly in the Kasai provinces). But Tshisekedi was sidelined in the run-up to the elections, which he then boycotted, and now he is old. The other purely civilian political force is Antoine Gizenga's Parti Lumumbiste Unifié (PALU), which is in a governmental coalition with Kabila's AMP, and thus holds the prime ministership.

2 This observation was first made about Zaire in the early 1980s.

Bemba's UN alliance is the only rebel movement to have held sway in the north-west³ which has successfully transformed itself into a viable civilian force and today it and the other major national parties have clear regional bases. With one exception the other rebel movements, including Bemba's, have effectively been disarmed – a significant achievement. But the Tutsi forces General Nkunda assembled remain militarily potent (even though he has been removed). Nkunda appeared to have national ambitions, but even in the Kivu provinces most citizens oppose him and his forces. It is also extremely unlikely that Angola and the other international forces would allow Nkunda's forces to capture Kinshasa.

In a dramatic turn of events the Congolese and Rwandan governments agreed in early 2009 to work together against their former protégés – respectively, the Hutu militias and the rebel forces of Nkunda's National Congress for People's Defence (CNDP). Nkunda was arrested on Rwandan territory on 22 January 2009 while fleeing the DRC. The Rwandan and Congolese armies subsequently conducted a joint operation in eastern Congo against the Hutu forces from which Nkunda was ostensibly protecting the Congolese Tutsi.

We noted above that votes and political loyalties in the DRC are freely bought and sold by all parties, with the notable exception of Nkunda's CNDP. In this sense, then, the 'small' answer to where power lies in the Congo is 'where the money is'. But the ability to extract and protect revenue streams comes from the international forces of our 'big' answer. Some external forces provide aid, some provide armed support to protect resource extraction for the government. Others (again, notably, those of General Nkunda) use coercion simply to appropriate resources for the rebel groups they support.

THE ELECTIONS

Results

The CEI, headed by Apollinaire Malumalu, a Roman Catholic priest, successfully managed most of the logistical, political and security challenges of the December 2005 constitutional referendum and the July and October 2006 national and provincial elections, despite the fact that the country was emerging from decades of authoritarian rule and a protracted violent conflict.

Joseph Kabila was announced as the winner of the run-off presidential elections with 9 436 779 votes (58,05%) against 6 819 822 votes (41,95%) for

³ After the unpopular war waged in northern Congo with the support of Uganda had ended Bemba and his MLC party lost influence in the north-east, which, like the rest of eastern Congo, is a largely Swahili-speaking area and now supports Kabila, as demonstrated by the 2006 election results. The north-east has also suffered heavily from the military actions of the Rwandan and Ugandan armies and, since 2008, from the brutality of the Ugandan Lord's Resistance Army (LRA) militia.

Jean-Pierre Bemba (Kabila won 44,8% and Bemba 20% in the first round). Kabila's AMP also defeated Bemba's UN alliance in the National Assembly elections. The AMP won majorities in seven of the eleven provincial assemblies as well, with the remaining assemblies going to the UN alliance. Regionally speaking, the outcome of the elections both underlined and reinforced (by giving it numerical/ electoral contours) the divide between the country's Lingala-speaking west and the Swahili-speaking east.

External assistance

The international community supported the electoral process in the DRC from the outset through bilateral and multilateral interventions. This assistance was coordinated by the MONUC, which established multilateral management committees that operated at the political, technical and financial levels.

At the political level the transitional constitution had established an International Committee for the Assistance to the Transition (CIAT) in which ambassadors, heads of diplomatic missions, and representatives of international organisations debated the political aspects of the electoral process and advised national authorities accordingly.

At the technical level national and international experts met weekly to discuss election-related issues and to coordinate donor interventions and the international community's support for the electoral process, through the Appui au Processus Electoral au Congo (Support to the Electoral Process in the Congo – APEC) steering and technical committee structure. APEC comprised representatives of donor countries, CEI delegates, electoral experts deployed by the international community, and representatives of international NGOs participating in the electoral process. It also included the Sécourisation du Processus Electoral au Congo (SPEC), which dealt with all issues pertaining to election security. The combination of committees worked well.

With regard to financial support for the electoral process the international community established a 'basket fund', managed by the United Nations Development Programme (UNDP), which served as a joint structure for the mobilisation, coordination and management of the financial resources and the provision of technical expertise to the CEI for programming activities. The electoral budget was initially estimated at US\$432-million.⁴ A further amount of US\$46-million had to be mobilised for the provincial and second round of

⁴ The various expenditure estimates are not precise. They were generally recorded in the national currency of the donor and therefore the equivalent dollar value would depend on the conversion rate at any particular time. Also, not all the coordinated activities funded directly by donors were necessarily reported to UNDP. It is therefore best to treat these expenditure estimates as minima.

the presidential elections. The DRC government promised to contribute US\$40-million – roughly one-tenth of the total cost. MONUC provided US\$103-million in logistical support, while other donors furnished the remainder of the budgetary allocation. It is worth emphasising that MONUC has been the UN's biggest and costliest mission ever, with more than 17 000 peacekeepers and an annual budget of approximately US\$1-billion for 15 558 troops, 520 military observers, 324 civilian police and 2 493 civilian staff.

Clearly the DRC government's contribution was very small and it is encouraging that the government is reportedly ready to contribute 30 per cent of the overall cost of updating the voters' roll ahead of the 2009 local government elections.⁵ Such incremental progress is likely to ensure that, in the long run, the country is able to fund its own elections and ensure their sustainability.

Governance in the DRC can be characterised as multi-levelled, networked, fluid and complex. This means that lines of hierarchical authority on an organogram provide little information about the actual policy processes. Those with the largest influence on the lives of rural Congolese are their chiefs, the local warlords/militia leaders, a national army (Forces Armées de la République Démocratique du Congo - FARDC) living off the land, UN forces (MONUC) and various relief agencies. These participants connect and negotiate with each other to develop local accommodations, which are only marginally bound by national directives. The effective presence of the Congolese government is very limited outside Kinshasa and the economic centres of Bas-Kongo and Katanga. Again, negotiation dominates, for national revenues do not go to most of the provinces and the provinces with most of the income restrict their revenue transmissions to the centre.

The central government is heavily dependent for security and funds on the UN and donors. Of course the different donors do not generally form a unified body and they negotiate with the government both individually and collectively. Yet informally the donors network intensively and the shared understanding they develop in the process may be the biggest influence on the policy discourses that shape what the government does in most technical domains.

The 2006 (and the anticipated 2009) elections are an interesting illustration of the donor networking process. As has become customary in elections the donors created a funding basket and designated UNDP to manage it. Fifteen donors contributed a total of \$267 338 764 to the basket. The European Community provided two-thirds of the sum and the UK was the next largest donor, with

5 At the time of writing no date had been set for the local government elections. The government claims the reason is a lack of funding while the opposition accuses the government of not being committed to the elections because it wishes to retain the status quo whereby local government authorities are appointed by the government (see p 38).

7,5 per cent. The size of the EC contribution was partly a result of pressure from EU member states, which were also supporting the elections bilaterally. Although the USA as a matter of policy does not participate formally in basket funds, it coordinates with the other donors in choosing the activities it funds directly. The UK's Department for International Development (DFID) and the Republic of South Africa provided extra-basket support. Also outside the basket was the MONUC's very substantial contribution in terms of logistical support.

All those involved in supporting the elections – including the DRC government, donors who did not contribute to the basket, and NGOs such as EISA, which provided support services – met weekly for three years in APEC and other forums to plan the elections and coordinate their activities.

Of course UNDP (with MONUC), as manager of the project, took the lead in the planning process and, as head of the CEI Apollinaire Malumalu was central to implementation. Although it was not a contributor to the basket, the United States Agency for International Development (USAID) is reported to have played a prominent role in the group discussions. DFID, the largest bilateral donor, with its experienced staff, also frequently played a leadership role, an interesting situation since the United Kingdom has never had strong interests or an historical role in the DRC.

The European commissioner in charge of development and humanitarian affairs, Louis Michel, a Belgian citizen, made some notable public pronouncements about the elections, which were not always welcomed by the other donors or the Congolese opposition. Despite tensions between donor interests and their different approaches, it is evident that those involved developed a fluid but relatively coherent approach to the elections and significantly influenced the policies that guided them.

There was strong consensus that the elections were too important to be allowed to fail and that any threats to their success had to be overcome. As a result, donors, particularly UNDP, found themselves making contributions that exceeded their original pledges. The European Union's rapid response forces, EUFOR, were placed in Kinshasa at a critical phase and stationed reinforcements in Gabon, to be called upon if necessary. When there were political challenges to the process the network of those involved broadened even further, including, for example, Zambia and Angola. The boundaries of authority were fluid and none of the participants was ascertainably 'in charge'.

In sum, the process was deeply networked, the boundaries of authority were fluid, and it would be difficult to say who was 'in charge', a situation that reflects the reality of governance in much of the contemporary global world – actions are shaped by the simultaneous understandings and activities of the players, from chiefs to national executives to donors to international organisations, with NGO

impacts on the side. All are implicated in the results, sometimes without decisions ever having been explicitly made.

A similarly fluid, networked process is underway in relation to the local government elections to be held in 2009, though late into 2008 there was still no unity among donors as to what should be done. While the European Commission (EC) preferred to postpone the local elections to coincide with the general election in 2011 others disagreed. One might have thought that the EC position would be definitive, as it has been the largest donor to elections in the DRC. But that would defy the donors' expectation of networking and informal consensus, and would ignore the ability of European Union (EU) member states to lobby in Brussels for a change in the commission's position.

THE ELECTORAL CYCLE: PROBLEMS, PROGRESS AND PROSPECTS

The 2006 elections in the DRC were considered to be acceptably fair, in that the electoral process was generally transparent and, despite numerous irregularities, the outcome was felt to reflect, by and large, the wish of the Congolese people (see the reports of the European Union, EISA, Francophonie, the Southern African Development Community – SADC, the African Union – AU, and the SADC Parliamentary Forum). Arguably the conduct of the elections was absolutely critical to the legitimacy of the government, both internationally and domestically. But with the passing of time the flaws in the process are receiving increasingly critical attention from Congolese CSOs and opposition parties and, as a result, the quality of the next elections will be extremely important.

This section analyses the key problems that arose during the process that led to the 2005 referendum and the 2006 general elections and assesses the extent to which these problems have been addressed during the current electoral cycle. The analysis, based on the relevant components of the electoral cycle, considers the potential challenges to be faced during both the 2009 local government elections and the 2011 national and provincial elections should the problems that have been identified fail to be addressed.

The legal framework

The electoral system

The rules governing the presidential election require that there should be a run-off if no candidate wins an absolute majority of votes (ie, at least 50% +1 of total valid votes cast). For the parliamentary and provincial elections an open-list proportional representation (PR) system is used for district-wide constituencies, making it one of the most complex legislative electoral systems in Africa.

The open-list PR system was designed to prevent manipulation by minorities, for it is the voters, not the parties, who decide the order of candidates on each party's list. Since census data were unavailable the number of seats allocated to a district was based on its voter registration, a system which led to over-representation in provinces where there was massive turnout for registration. The system combines PR (for two-thirds of the lower chamber) and for one-third, first-past-the post (FPTP). Few people properly understand the application of the electoral formula and leaders of many of the major political parties as well as independent candidates often fail to grasp the subtlety of the system, a factor that affects their electoral strategy and limits their ability to lodge complaints successfully.

While the system is seen as inclusive because it allows for the maximum number of party candidates and independents, it necessitates the use of bulky ballot papers comprising up to six large sheets, a situation which complicates the casting of ballots in secrecy (especially for illiterate voters), their folding, counting, transportation, and storage.

A mixed electoral system combining elements of FPTP and party-controlled PR with more transparent rules might better suit the situation in the DRC. In such a system a carefully designed PR component would not only allow for strengthening of the country's weak and unstable party system, it would also provide for the inclusion of ethnic minorities and women in representative institutions.

Given the extraordinarily large number of independents and of parties with very small numbers of representatives in the National Assembly, the introduction of an electoral threshold could be considered in order to avoid a proliferation of parties and independent MPs.

On the other hand, the single-member component of the mixed system would provide the closest link for constituency service between voters and their representatives and therefore has the best fit with the role voters expect of those whom they elect. It would also assure the electorate that no candidate is imposed by party organisations, a consideration that was central in the choice of an open-list PR system.⁶

However, since no major voices have called for a review of the current electoral system it seems that it will remain unchanged for the 2011 elections and,

6 The fact that a prominent member of Mobutu's presidential staff was Rwandan, that Rwandan forces later overthrew Mobutu and installed Laurent Kabila, that Rwanda later attempted to depose Laurent, and that it has supported, and still supports rebel/militia movements in Kivu province, all result in an almost obsessive fear among the Congolese that Rwandans (by whom they mean speakers of that language, not necessarily citizens of that country) have the ability to insert themselves into and control almost any political process. Given the continued conflicts involving Rwandans (both Tutsi and Hutu) in the east of the country, an electoral system that cannot be manipulated by a particular party is a particular priority for the Congolese.

given the centrality of the system to the 'political settlement' in the DRC, it would be a mistake for outsiders to press for change. The system must be selected and accepted by Congolese politicians.

Support for women candidates

The emphasis in the first post-conflict election was, inevitably, on including all those who might otherwise return to war. Thus there was a male bias to the process and only a limited number of women put their names forward. A mere 8,4 per cent of members of the National Assembly are women, despite the fact that almost 20 per cent of the candidates were female.

The open-list PR system tended to be detrimental to the promotion of gender equality within the framework of the Declaration on Gender and Development, adopted in 1997 by SADC, which aims for a minimum of 30 per cent of women in representative institutions. In the open-list system a voter registers support for a party by voting for one of its candidates and the number of votes a specific candidate receives determines his or her place on the party list. The consequence is that even if a party nominates female candidates and even if it supports them in the campaign (and the parties can be criticised on both these grounds) prejudice against women among voters causes them to fall to the bottom of their party lists, where they are less likely to secure a seat. Thus fewer women were elected than were nominated.⁷

Indirect election of senators and provincial governors

The election of (national) senators and provincial governors is conducted indirectly by the provincial legislatures through a secret ballot. There is widespread belief that these indirect elections, most of which took place in January 2007, were characterised by bribery of the provincial parliamentarians, persuading them to vote without taking into account the wishes of the electorate.

While the AMP won a majority of seats in seven of the country's 11 provincial assemblies and opposition leader Jean-Pierre Bemba's Union pour la Nation coalition secured the remaining four provincial legislatures, opposition parties, CSOs and independent analysts all argue that these indirect elections gave way to corruption involving all the parties, though more suspicion was directed at the AMP. This situation has caused a lot of anger. In the Bas-Congo, a province which gave a majority of seats in the provincial assembly to the opposition UN,

⁷ There is no doubt that closed-list PR is the system more likely to improve gender equity than other electoral options. Nonetheless, the choice of the electoral system is at the centre of current political conflicts in the DRC – including the recurrence of Nkunda's rebellion. In these circumstances it would, in our view, be an error for international actors to press for a closed-list PR system for gender reasons. Women have a greater interest in not being killed or raped than in having more representation in the National Assembly, as valuable as the latter might be.

there were violent popular protests when an AMP governor was elected. About 100 people were killed when the Kinshasa government cracked down on the protestors in a response many considered to be disproportionate.

It must be pointed out that bribery was not the only reason for the opposition losing the control of governorships in three of the four provinces in which it had won the provincial assembly elections. Some key opposition leaders have admitted that Bemba had failed to make substantive concessions to his UN coalition partners in terms of power-sharing deals, which led them to cross over to the AMP.

None of this invalidates, however, the more important point that money is influential in Congolese electoral politics. There have also been complaints that, because of the indirect system used for their selection, senators and governors are largely unaccountable to the electorate. This accusation has been countered by some analysts, who argue that the directly elected members of Parliament (MPs) have not been particularly accountable either.

There have been numerous calls for the repeal of the indirect system of election of senators and governors, but thus far there has been no move in this direction. It is worth noting that the election of mayors, commune burgomasters and other executive heads in the decentralised entities after the 2009 local government elections will be based on the same indirect system, a situation that is expected to produce the same effects.

After the 2006 election some optimistic observers felt that even though the national elections might have done little to stabilise the country there was hope for the development of a quasi-federal '*république des gouverneurs*' in which smaller entities, the provinces, would become the relevant frame for accountable governance. The outcome of the provincial elections undermines this possibility, raising a long-standing issue, namely that election support and observation tend to diminish dramatically in sub-national elections.

Voter registration

Financial and time constraints meant that voter registration in 2005-2006 was not preceded by a general population census. The process was based on Law No 4/028 of 24 December 2004 on the identification and registration of voters and the figures used came from population projects, no census having been taken since 1981. Voter registration is compulsory in the DRC, though voting is not.

Only nationals holding exclusively DRC nationality and aged at least 18 are eligible to register. Among those excluded from registering are Congolese nationals physically absent from the country at the time of registration, including those living abroad, as well as nationals serving in the security forces (the army and the police).

In response to major logistical challenges registration took place on a rolling basis from province to province and lasted from June 2005 to February 2006. It had not been completed by the time of the constitutional referendum in December 2005. In view of the armed conflict in the country and the logistics involved an impressive amount was achieved. Of a projected eligible population of 28-million voters, 25,7-million were registered. The complex, IT-intensive technology, which relied on fingerprinting to ensure that no one registered more than once, succeeded in eliminating multiple registrants. The complexity of the system raises questions about sustainability, however.

There is suspicion as well that there were too few registration centres in the west and that the figures were over-inflated in the east of the country, President Joseph Kabila's stronghold. Opposition parties and CSOs argued that it was absurd that the eastern DRC, whose population less than a decade ago was not substantially larger than that in the western DRC and which suffered from lengthy civil wars leading to a massive number of internally and externally displaced people and an estimated four million dead, could still have more voters than the west.

One of the allegations was that refugees and migrants from Rwanda, Burundi and possibly Uganda had been included, especially in the Kivu provinces. None of the international, regional or national election observer missions, political parties or an independent study has, however, confirmed these allegations.

It must be noted that the UDPS boycotted both the registration and the election, alleging that the entire process was flawed. It is believed that thousands of people responded to the party's boycott call.

For the 2009 and 2011 elections the voters' roll will be updated to include people who did not register before for a variety of reasons, including age, absence from the country, and boycott. Voter registration will include 16-year-olds, who may be given a distinctive card that they will be able to use in 2011, once they are 18. It is not clear by what process dead voters will be removed from the roll, however, given that the country does not have a rigorous system of recording births and deaths in a civil registry, and this could prove to be a substantial problem in presidential elections in 2011 and beyond, when, typically, most of those using and officiating at a particular polling station will favour the same candidate.

The 2007 Kenyan elections demonstrated that when the election is close the temptation to 'vote the graveyard' in the presidential poll is irresistible and widespread, making it impossible to tell who actually wins. This suggests that serious consideration should be given to fusing or at least automatically linking the voters' roll with the citizens' register, so that deaths recorded in the latter lead to the amendment of the former and changes in address noted for the former are noted in the latter.

As in 2005-6 the electoral commission will rely heavily on MONUC for logistical support, though MONUC does not intend to be a full co-partner of the CEI/CENI but prefers to let the Congolese take the lead in order for them to achieve sustainability and autonomy.

The implementation of the voter registration process is being delayed by the absence of indispensable laws and by a lack of government funding for the electoral commission. Most donors have already committed funding to the UNDP, though some key donors are not yet convinced that the country is genuinely committed to the local government elections, and have therefore shown limited enthusiasm.

The election campaign

Many observers anticipated large-scale violence during the 2006 elections as a result of the incomplete demobilisation, disarmament and reintegration (DDR) process of the various armed groups, the lack of a multiparty democratic culture, the negative role of Rwanda in the Nord-Kivu province, the political polarisation between the eastern and western provinces, as well as the prevalence of ethnic and regional politics countrywide.

Ultimately, the only major battles occurred at the highest levels of the state and despite the fact that more than 100 political parties had signed a code of conduct and that Kabila and Bemba had committed themselves in writing not to resort to violence during and after the elections. Other incidents of violence remained isolated and localised. Overall, the people of the DRC showed an admirable degree of self-restraint, refusing to become involved in the spasms of violence during the campaigning period and after the election.

Against this background the conflict management panels put in place by the CEI throughout the country, with the technical assistance of EISA and funding from DFID and the Swedish International Development Agency (Sida), combined with improved voter education and information programmes, proved invaluable in preventing and managing election related conflicts at the grassroots level.

The fact that the elections generally went off well should not, however, be allowed to camouflage the inherent volatility of the process in many areas of the country. In Bukavu in South Kivu province, for instance, a number of short-lived episodes of mob violence at polling stations on election day might easily have escalated and brought the voting process to a halt in large parts of the city. The incidents were prevented from escalating by the intervention of international election observers linked to a local church mission, whose local knowledge and reputation managed to keep the crowds at (relative) bay until the arrival of the MONUC.

There is still reason to fear massive violence during the transitional elections but for several reasons concerns about an escalation of violence at the grassroots level in 2009 and 2011 are likely to be more localised: local government elections do not directly threaten national elites, most of the former rebel movements no longer have the capacity to resume a full-scale war, and the geographical scope of General Nkunda's rebellion is relatively limited to Nord-Kivu.⁸

In terms of risks outside the Kivus the danger of violent behaviour would largely come from the presidential camp, especially if it felt threatened by a possible regrouping of opposition parties, combined with UDPS's probable participation in the 2009-2011 elections. Other possible reasons for the presidential camp to be tempted to resort to violence and intimidation, particularly ahead of the 2011 general election, include internal divisions within the AMP, the decreasing popularity of the president in his eastern stronghold because of the continuing war, lack of security and continued control of parts of the national territory by the Nord-Kivu rebels of General Nkunda, the brutalities of the Rwandan Hutu militias in the Kivu provinces and the Ugandan LRA in the Province Orientale bordering Uganda, and general dissatisfaction with the government both in the west and the east owing to the lack of service delivery, rampant corruption and escalating levels of poverty. Therefore, in order to help reduce tensions and promote a culture of political tolerance and moderation, conflict management panels must be re-established to deal with conflict at grassroots level. It would also be useful to pressure politicians from both the ruling majority and the opposition to recommit themselves to political tolerance and to a peaceful electoral process.

Such a commitment at national level will probably be forthcoming for local elections, since the stakes are lower. The same is likely to be true of the 2011 elections if the main question is only which coalition will gain a majority in the National Assembly (and thus the prime ministership). If the presidency is in play, however, there will be a strong likelihood that violent conflict will be resumed. For better or worse, Bemba's legal troubles make it unlikely that the UN alliance will pose a serious presidential threat in 2011. However, the deepening and spreading of current divisions within the AMP combined with better unification and organisation of the opposition could threaten Kabila's hold on power in 2011.

Election security

'Securisation du Processus Electoral au Congo' (SPEC) was a UNDP project intended to ensure the security of the electoral process throughout all phases of

⁸ In late March 2009 the DRC government and the CNDP rebels signed a peace accord, a process facilitated by former Nigerian president Olusegun Obasanjo.

elections (pre-voting, voting and post-voting). It was an administratively difficult project as the DRC army and police have their own 'unusual' rules. On the ground, however, it was relatively successful. Thousands of troops were trained, equipped and deployed.

The overall security of the elections nationwide was dealt with by the UN troops and the EUFOR (European Forces) in Kinshasa. The DRC police, trained by the French and British, ensured the safety of electoral operations in and around the polling centres and stations and the results centres and supervised the transmission of results, the security of polling staff, and so on. As a result, no major incidents were recorded during the 2006 general elections. In 2007, during the indirect elections of senators, governors and vice-governors, however, clashes between civilians and the armed forces caused the deaths of hundreds. It is not clear whether SPEC was still a running programme, at this time.

Incidents of violence between the two rounds of the presidential election sent a strong signal to the Congolese people that despite the democratic process political power in the DRC is only available for those who also hold various degrees of coercive power – either their own or those of international guarantors. The only viable contenders for the presidency commanded armed men. Though the Congolese people did not want violence, the contenders engaged in spates of it, which might have worsened without international intervention. For example, donor mediation was critical in deescalating the crisis that occurred when the Congolese army attacked Bemba's residence in Kinshasa.

The dispute, dubbed by the Congolese the 'Kabila-Bemba War' of March 2007, was not the direct result of the elections but of unresolved issues such as the reunification of the army, the security of political leaders, the collaboration between leaders after the elections, and so on. The degree of popular support for Bemba evinced by the election results clearly demonstrated that he remained a threat to Kabila, so, although Bemba's personal security detail posed no threat to the country, it provided an excuse for cracking down on a strong political opponent with a substantial following in the capital. What Kabila failed to realise was that the real threat lay in his native land, the east of the DRC, and that the complexity of the country meant that the DRC itself was a time bomb.

In 2007 the UNDP commissioned a team of international security experts to evaluate the SPEC Programme, but its report has not been made public.

Post-election

Settlement of election disputes

Many disputes over the electoral processes were addressed through the CEI and the courts from the start of registration onward, particularly in respect of the

national and provincial assembly elections. A special division of the High Court, set up to resolve electoral disputes speedily, functioned competently and fairly but rejected about 60 per cent on technical grounds. Although these decisions were correct (and, in view of the fact that most of the evidence was hearsay, inevitable), they did not give the complainants the satisfaction of having their cases heard. The courts cancelled 18 election results because of irregularities.

It is generally believed that much of the success of the use of the justice system to resolve electoral disputes can be attributed to the support provided by the international community, which helped restore the reputation of the courts, which had steadily deteriorated during the Mobutu years.

Disputes over the presidential results took both legal and extra-legal forms. Just before the CEI was to announce the results of the first round, in which, to the fury of the Kabila campaign machine, there was no clear winner, Kabila's troops surrounded CEI headquarters, with tanks, directing their canons at the building. The same troops also shot at Bemba's helicopter and attacked his residence while he was meeting with diplomats about the stalemate.

After the run-off Bemba's MLC challenged the results in the Supreme Court, even before they had been published, and, when the party lost, MLC supporters, accusing the judiciary of not being impartial and independent, set fire to the Supreme Court building. Bemba's challenge led to the premature publishing of the results (ie prior to the legal deadlines), in order to prevent further conflict.

This alteration of procedure as a conflict-prevention strategy had the adverse effect of reinforcing the widespread view that the international community backed Kabila.

Loss of momentum after the elections

While the 2006 elections benefited from tremendous assistance from the international community, the transitional Parliament and, to a lesser degree, the transitional government, there has been limited support for post-election programmes like the promotion of accountable governance, the fight against corruption and poverty, and preparations for the 2009 and 2011 elections. Funding for the local government elections has been elusive, a factor that has cast uncertainty over whether these elections will be held as scheduled.

These considerations raise the issue of how long donor funding should continue for elections in the DRC. Everyone (CSOs, donors, party officials) interviewed by us in Kinshasa was persuaded that the maintenance of democracy in a post-conflict society requires at least 10 years of donor commitment after the first elections and that the funding must be dependable. If local capacity is to be made sustainable, skills developed in one election must be kept available for the next one. This requires core funding for the periods between elections

to enable vital preparatory activities such as voter registration, civic and voter education, testing of computer systems, and the conduct of staff, observer, and voter training.

Popular disillusionment

There is increasing impatience with the growing poverty levels, the corruption of public officials and their cronies, high salaries paid to members of the national and provincial governments and legislatures, the absence of peace in the east, the shrinking of the democratic space, political assassinations and human rights violations.

The absence of democracy dividends in the form of jobs and a better life for all has also created a considerable amount of disenchantment which may trigger declining public trust in democratic institutions and processes. Conversely, the electorate may choose to sanction their representatives by voting them out.

While it is unrealistic to expect government to address all these challenges so soon after being elected to office, there are concerns that democracy is benefiting only a small coterie of the political elite, the recipients of state largesse, while the masses are being asked to wait for the fruits of the 'five presidential projects' (*les 5 chantiers*) promised during Kabila's election campaign. Conversely, appropriate civic and voter education programmes may help the electorate to be better informed and educated and therefore equipped to make mature choices like voting out under-performing representatives in the next elections.

A possible direct consequence of this situation could be voter apathy in future elections or even a general disillusionment with democracy, a situation which could open the door to and legitimise extra-legal means of accessing and/or retaining power.

Bemba's arrest

The DRC opposition leader's arrest and indictment in the International Criminal Court (ICC) for crimes against humanity has affected the MLC and the parliamentary opposition as a whole, and has been interpreted by his supporters as 'this-is-what-happens-to-the-losers'. As a result, in the future politicians may use all the means at their disposal to ensure that they do not lose an election.

The development of democracy in the DRC is at a critical stage. Entrenching a democratic culture takes a long time and it is imperative to build on the achievements of the recent past in order to avoid reversals. The role of the international community will continue to be of paramount importance not only in providing funding but also in monitoring and acting on the risks associated with incumbency, especially in a context where the opposition is getting weaker. In concrete terms, the shrinking of the democratic space in the DRC shows that

the presidential political group could sooner or later change the rules of the game to favour itself either by making it easier for itself or more difficult for the opposition, or even by attempting to extend the two-term limit.

It would not be surprising if the incumbent attempted to influence the post-transition electoral commission⁹ in his own favour by manipulating the new commission's composition, independence, impartiality, and even professionalism in order to guarantee victory. Furthermore, Rwanda (understood in a broader sense, meaning the government, the Hutu militias, and successive Rwandan-backed rebel movements) has demonstrated its strong destabilising effect on the DRC.

Concerted international diplomatic efforts are being made at present to resolve this situation. The consolidation of peace and democracy in the Congo will depend heavily on these two factors (the behaviour of the incumbents and that of Rwanda). The other factors are directly or indirectly linked to these two.

REFLECTIONS ON THE FUTURE

Local government elections

The local council elections proposed for the Congo in 2009 present a dilemma – on the one hand, they are essential to continued political party development, the institutionalisation of electoral management in the DRC, and the integrity of the general election in 2011; on the other, they may well result in a premature destabilisation of the existing local government structures in the country.

During the colonial period the Belgians institutionalised chiefdoms as the basic unit of governance. In some places this meant providing formal recognition and clear geographical boundaries for existing institutions, in others, hierarchies of chiefs were new structures, gradually displacing previous patterns of governance by councils of elders. In both cases the Belgians came to influence or control the processes of chiefly selection – although those selected tended to have life tenure once appointed. The upward reaching hierarchies of headmen and chiefs in the colony were met by the downward reaching hierarchy of the Belgian-staffed colonial state. In the early independence period the local councils briefly contested the authority of chiefs and district bureaucrats, but the last such local elections were held in the early 1970s, after which the Congo/ Zaire reverted to its colonial pattern.

⁹ The transitional constitution provided for the replacement of the transitional CEI, which comprised representatives of political parties and CSOs, with a Commission Electorale Nationale Indépendante (CENI) after the 2006 national and provincial elections.

During the civil war the importance of the chiefs was almost certainly further enhanced – while other officials fled before warring armies and militias the chiefs alone remained with their people to provide some modicum of order and to negotiate with contending ethnic groups and warlords. It is virtually certain that these ‘traditional’ institutions underwent substantial change during the war, probably becoming even more authoritarian and exploitative. But to rural dwellers they would remain the face of order; the one force in their environment they could understand and with which they could negotiate. It is thought that only half of the country’s *tribunaux de paix*, the lowest judiciary level of the bureaucratic face of order, are functioning today.

Local government elections and the reinstatement of local councils will disrupt the authority of both the lowest levels of the Congolese bureaucracy and the chiefs. The former hardly matters very much in most places, for the formal state has had little real authority since the latter years of Mobutu. The chiefs, however, are there, and they matter. The plans for the new order of local councils do include provision for the representation of chiefs, but will nonetheless present a challenge to them – a new structure of authority and accountability. Everywhere in Africa the transition from the sole authority of chiefs and headmen at the communal level to a pattern of shared governance has proved to be conflictual and disruptive. (Of course, some countries, such as Tanzania, stripped the chiefs of all authority, but that is not contemplated in the DRC.)

A further consideration is that local government elections in Congo in the early independence period (1957) produced a set of political and ethnic alliances that were often completely different from the national ones (Young & Turner 1985, ch 5). Thus the local elections may serve not to strengthen the national political parties and alliances (which aren’t very strong anyway) but rather to complicate their lives still further.

Is this the right time for such a disruption of local order? A new local government Act has still not been finalised and even if it were, it is unclear exactly how powers and responsibilities would be divided between old and new structures. Is it wise to disrupt local order when it still has not been re-established in many places and is fragile in others? On top of this, will local elections drive local warlords who lose them into renewed conflict and reinforce the dictatorship of those who win? And what resources will the new local councils have to pursue their mandates, since, currently, even most of the provincial assemblies are underfinanced? There is no doubt that the monopoly of communal power by the chiefs and headmen must be challenged in the long run or rural Africans will be left as ‘subjects’, not ‘citizens’ (Mamdani 1996), accountability will be poor, and ethnic divisions reinforced. But, given everything else the Congo is currently facing, it is legitimate to ask whether this is the right moment for the challenge.

From a national political perspective, however, the local governance picture looks quite different. Local government officials – be they chiefs, bureaucrats or councillors – will have considerable influence on the conduct of the national and provincial elections planned for 2011. Since the colonial era chiefs and headmen have survived by backing the government of the day and local bureaucrats can be expected to skew things toward those who appointed them.

Many of the current local officials are leftovers from the Mobutu era, but Kabila's PPRD/AMP government has already begun to replace them unilaterally, giving rise to the perception that the government is not committed to holding local government elections in 2009. The appointments are seen to be giving undue advantages to the incumbents. Local council elections create the possibility that there would be opposition (or at least neutral) management of the electoral process in many parts of the country. Thus the opposition parties see local government elections as absolutely central to democracy and to keeping alive the possibility of 'alternance' (ie, a change in the governing party).

If the foregoing were the only problem there might be a way to negotiate a temporary resolution between the 'chiefly order' and the 'level political playing field' positions. A representative of the MLC suggested to us that the party would be willing to postpone the elections if the key positions in the local bureaucracies were filled by all the parties on a proportional basis. In fact, there are other considerations as well. One is the fact that the Sun City agreement which created a transitional government specified that local government elections would precede the national ones. The main civilian opposition to Mobutu, the UDPS, led by Etienne Tshisekedi, was affronted by its exclusion from the transitional government and boycotted the national elections, reducing their legitimacy. For the UDPS local government elections offer a face-saving way to re-enter the electoral process – a new start in the cycle of elections at the 'proper' level specified at Sun City. Most observers (although probably not the government) feel that it is important to bring the UDPS back into the system. Furthermore, the negotiated distribution of local positions to the parties would be of no benefit to the UDPS as it does not have a presence in the National Assembly.

The final consideration is the institutionalisation of electoral management in the DRC. The Congolese members of staff who gained experience and training running the 2006 elections are already beginning to dissipate. If there are no elections for them to manage in 2009 they will be gone by 2011 and the process of building a depoliticised election machinery will have to begin again from scratch. Furthermore, MONUC provided essential logistical support for the 2006 elections and would assist again in 2009, with the possibility that it might continue its mission thereafter. If the 2009 elections are not held, however, it is unlikely that any of the essential logistical support will be available in 2011.

None of these considerations would be definitive if it were likely that the Congolese people will want to renew Kabila's mandate in 2011. More thorough registration in the west and the participation of the UDPS might well produce a different result, especially if, as seems likely, the government fails to deliver on its election promises of peace and development.

One of the reasons why combatants in the civil wars agreed to fight elections was that they were assured by the international community that the process would not end in the 'winner taking all for all time'. If the donors are to assure the combatants – not all of whom have yet fully disbanded their armies – that they will have a 'free and fair' chance in 2011, the democratic momentum must be maintained.

On balance then, almost all the independent observers and development partners we consulted felt that it is essential to hold local government elections in 2009. The only dissenting voice is that of the European Union delegation, whose opposition appears to rest on the grounds of economy rather than of local stability.

A compromise between all the preceding considerations and opinions – but one which no one suggested to us – might be to hold local government elections only in towns. Such elections would pose no challenge to the chiefs and would be substantially easier and less costly to organise. A similar interim solution was followed in Mozambique.

Democratisation and the future of the Congolese political system

Executive power in the DRC is formally divided between a president, currently Joseph Kabila of the PPRD/AMP, and a prime minister, currently the newly appointed Adolphe Muzito, of the PALU/AMP. (Muzito was previously budget minister.) Kabila, who replaced his assassinated father, has neither a clear nor a strong personal power base. He is young, does not have a university education, is primarily a Swahili speaker (he does not speak Lingala, or much French) and is sometimes accused of being a foreigner. His political future appears to depend on the ability of Chinese contractors to deliver, at least on improving the roads, one of the 5 *chantiers* he promised in his election campaign.

Since the PPRD is unlikely to be prepared to lose control of the presidency in the 2011 elections it may well look for a stronger candidate. Katumba Mwanke, from the office of the president; Moïse Katumbi, governor of Katanga; or Vital Kamerhe, speaker of the National Assembly, could, in principle, replace Kabila if the party feels threatened. Katumbi and Kamerhe each has a strong popular base, (although there are international objections to the former). Currently, however, Kabila appears to be strengthening his power base and to be moving to marginalise

Kamerhe.¹⁰ So we are not suggesting that Kabila's removal is likely, only that it is unlikely that 2011 will bring a change in the party controlling the presidency, even if Kabila himself does not stand.

Notwithstanding the above, it is quite possible that a more united opposition hoping to gain a majority in the National Assembly may pose a strong challenge in 2011. In that case, although the PPRD is likely to retain the presidency, it might well lose the prime ministership and its majority in the Assembly.

Does this mean democracy is at hand?

If democracy is defined narrowly to mean only relatively free and fair multiparty elections and a significant chance of change in the political parties ruling the country, the answer would be 'yes'. However, the answer is 'no' if the question is rooted in a deeper understanding of democracy as being based on the rule of law, protection of the political rights of minorities, a vigorous press, and, above all, the level of responsiveness of the political leadership to the wishes of the citizenry.

In most respects Congolese political life seems to be remarkably lacking in accountability. The courts are notably corrupt. It is true that the special divisions of the courts established to hear challenges to the elections acted with integrity, but they were formalistic, denying most of the appeals on technical grounds. The legislative bodies in the transitional and new governments have passed an impressive number of new laws on governance issues, often with technical assistance from citizen and donor bodies. Legislators have also attempted to hold the government accountable for its misdeeds. As the opposition is a minority, however, it can only voice complaints, not enforce improvements. It is unclear as well whether legislators are acting in their constituents' interests or their own as members of the elite.

The motive for seeking political office is personal advancement; political success or connections are seen as the most rapid and reliable route to wealth. Vote buying is generally seen as normal, if not as morally correct. It was, however, notable that in 2006 money spent in this way did not always produce results, at least not in the presidential elections. The impact seemed much stronger in the provincial elections. In South Kivu, for instance, a list of the victorious provincial candidates was circulated prior to the actual counting of the vote.

Once obtained, government office offers a wide array of opportunities for what the industrial democracies would consider corruption. The votes of a

10 Following his public criticism of the secrecy surrounding the deal between the DRC and Rwanda to conduct joint operations against the various militias and rebel groups roaming the eastern Congo Kabila and the AMP exerted considerable pressure on Kamerhe, which culminated, after weeks of defiance, in his resignation from the presidency of the National Assembly in late March 2009. Interestingly, Kamerhe was supported in his defiance by the whole parliamentary opposition and a few AMP deputies.

substantial number of legislators appear to be available for purchase by the highest bidder. Of course these features are common to patronage-ridden democracies. In the DRC, however, the flow of patronage seems to stop with the office-holder him/herself. Legislators give very little, if anything, back to their constituencies – not only in policies that favour their interests but even in concrete physical projects or assistance with government jobs and services – the latter being the usual stuff of patron-client relations.

The DRC, which is the size of Western Europe, has an abysmal road system, making it very difficult for legislators – even the current provincial ones – to get back to their constituencies. As a consequence, many don't even try.

Barring massive fraud, the majority of those representatives who take but do not give will probably be defeated in the next round of elections for their failure to deliver on the wild promises they made in their election manifestos. If they fail to win re-election will their successors be more accountable, at least by the standards of patronage? Perhaps, but if not, voter cynicism will set in; indeed it may be doing so already.

Even if a form of accountability does finally take hold in the DRC it will be for the delivery of patronage goods, not for policies that will improve the life of the people. This is probably inevitable in a poor, rural society, for peasants are used to buying social security by building personal relationships, a custom that feeds naturally into patronage politics.

If government officeholders are to deliver any benefits to the citizenry they must have resources, and a fundamental problem in the DRC is that public resources have, overwhelmingly, been privatised. The proceeds of the country's considerable wealth in natural resources go into the private bank accounts of those with power, not into taxes. Even the physical equipment of public offices is treated as private property; within weeks of the 2006 elections the cars, computers and even the plastic office furniture had disappeared into the market place.

Until the income from Congo's collective wealth begins to enter government coffers through the front door as taxes, rather than exit through the back door as private predation, the state will have no resources with which to deliver benefits for its citizens. Some return on this privately appropriated wealth in the form of donations to the development of local communities would be a step forward, even if it is one of patronage. But if there are to be sustainable major benefits the tax base of the state will have to be recaptured from the private hands of the political elite. There is some movement in this direction thanks to the efforts of the tax authorities, but it may be too slow to avoid the deep disappointment of the citizenry, whose hopes were raised by the long-sought return of democracy.

So, democracy in some deep sense will be a long time coming to the Congo and will probably depend on the relocation of the best income-earning

opportunities in private production rather than public predation. Does this then mean that democratisation was a worthless project in which the donors unwisely invested?

Did the elections help to bring peace?

The driving motivation for elections in the DRC was not democracy but peace. Given that instability had become a vortex of human misery into which more and more countries were being drawn, we believe the answer to the question of whether the elections helped to bring peace is cautiously positive, even if the effect is only partial.

The promise of free and fair elections did induce most of the contending military forces in the Congo to withdraw, lay down their arms, or at least suspend fighting. Of course, some groups have not stopped their aggression and others have held back their best troops and *matériel* in readiness to take up arms again if the need arises. The post-election peace was, ultimately, maintained though armed deterrence, exercised by Kabila's presidential guard, MONUC and EUFOR. The basis of power of the rulers thus remains dominantly coercive rather than democratic. In the Kivus governance is not secured and continuing conflict and instability are evident. The influence of regional players (Rwanda, Tanzania, and Uganda in particular) means that their action, reaction and inaction in relation to the election and the electoral results was as important, if not more so, than the domestic electoral process itself. This continues to be the case.

But the 'discourse' has shifted. Groups that once saw legitimate power as coming from the barrel of a gun now have to hide the gun behind a rhetorical screen of popular will or need. That rhetorical discourse tends eventually to take on a momentum of its own and may increasingly shift the locus of combat from the military to the political arena. Whether that political combat is won or lost in terms of the interests of presumed constituents – in other words, whether or not we are getting genuine democratic accountability out of the conflict – is another matter. No matter what, however, we are getting a peace dividend out of which people and the country can begin to rebuild.

Electoral competition has weeded out some of the military combatants. Even Azarias Ruberwa, whose forces were important enough to have won him one of the four vice-presidencies in the transitional government, largely disappeared in the 2006 elections. Some groups that claimed to be fighting on behalf of a constituency had their claims tested and have faded away. This, too, is no small accomplishment and the weeding out is likely to continue, enhancing still further the prospects of peace. We might add that the weeding out applied to civilian political parties as well – 197 of 269 formally registered parties contested the national elections in 2006 but only 58 made it into the National Assembly.

Were elections a 'premature solution'?

The return of General Nkunda to the battlefield in Nord Kivu in late 2008 prompted some to question the relevance of the 2006 elections to the restoration of the state and peace in the Congo. Most notably, Paul Collier, in an essay in *The Guardian*, argued that the DRC illustrates that 'the international community has ... a naïve faith in the restorative power of elections' (Collier 2008). Collier's general proposition about international beliefs may or may not be valid, but we submit that the Congo elections show that they can have more effect than he allows. We find him arguing that the Congo 'glass is half empty'; we are pleased that it is 'half full when a few years ago it was almost wholly empty'. We believe that Collier is being a-historical.

At the time of the Lusaka Peace Accord of 2000 and the Sun City inter-Congolese dialogue of 2002 the DRC was being torn apart by combat and resource predation inflicted by African armies and domestic rebels. The agreements provided a political deal which enabled the combatants to back away from the collective disaster their actions had created. An interim government was established, which permitted the reestablishment of a semblance of order, withdrawal of the foreign armies, and demobilisation of most of the rebel militias.

The settlement required that there be elections to determine which of the combatants would play a role in the reconstituted DRC but there was no rush to hold them; elections came only four years later, after one postponement, and, when they were held, the conditions were not ideal – General Nkunda's Tutsi militia remained in the field, Bemba's forces were only partially demobilised, and Etienne Tshisekedi's UDPS boycotted the process because of its exclusion from the interim government. International attempts to reverse these problems failed.

Does this mean that the elections should have been further postponed? On the one hand, the newly elected government could not benefit from the increased legitimacy that UDPS participation would have given it (as the base of civilian opposition to Mobutu for more than a decade) and the general consensus is that it is dangerous to hold elections if one of the parties has not demobilised, as the September 1992 elections in Angola showed.

On the other hand, several of the armed rebel groups faded from the political scene after they failed to gain electoral support; Bemba moved his base from a military to a political one and was defanged via the electoral process; and the UDPS is likely to participate in the next round of elections.

The problem on which critics such as Collier focus is Nkunda's return to war, but this is not a consequence of the elections. Nkunda did not participate in the polls, he was never likely to win them, and he knows that elections will not bring him to power in the future. Furthermore, the elections strengthened rather than

weakened the hand of the DRC government in dealing with him – it presents a far more unified political front and enjoys greater international legitimacy. The latter is particularly important, as the viability of Nkunda's rebellion depends on the men and *matériel* he receives from Rwanda and his ability to export (probably through Rwanda) the natural resources his troops control (conditions that are, in fact, consistent with Collier's thesis about rebellions (Collier 2007)).¹¹

The only way to remove these pillars, which sustain the civil war in eastern Congo, was by concerted and unified international action, something the 2006 elections make more likely. Indeed, this is precisely what happened. The international community was able to broker a deal whereby Rwanda arrested Nkunda and, in return, was able to conduct a joint Congo-Rwanda military operation against the remnants of the Hutu forces in Congo that it feared. Whatever the merits of what was done the prospects for peace in eastern Congo have improved and the international pressure that created that hope would not have been possible without the elections.

CONCLUSIONS

The 2006 elections were imperfect, but they probably reflected the will of the citizens of the DRC at that time. The opposition controls some of the country's governorships and, if it becomes more unified and organised, may gain control of the legislature and the prime ministership in 2011. This is a considerable accomplishment, but it does not represent full democracy. Politics in Congo is driven by money and patronage and politicians are not accountable to the electorate, so the gains made in governance have been marginal. Nonetheless, the elections were extremely important in advancing the prospects of peace in the country – and this more than justifies the huge effort the people of the Congo, the United Nations and the international community put into them.

11 Also for an evaluation of Collier's arguments from the perspective of the larger scholarly literature, see the short review articles compiled in *Concern for the Bottom Billion*, IDS In Focus Series 3 (Brighton: Institute of Development Studies, 2008) www.ids.ac.uk/go/bookshop/ids-series-publications/in-focus/in-focus-issue-3.

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THE POLITICAL ECONOMY OF DEMOCRATISATION IN SIERRA LEONE

*Reflections on the elections of
2007 and 2008*

*David K Leonard and Titi Pitso
with contributions from Anna Schmidt*

Titi Pitso, Manager: Elections and Political Processes, EISA,
served with UNDP as a technical advisor to the National Election
Commission during the 2007 presidential elections in Sierra Leone

e-mail: titi@eisa.org.za

Anna Schmidt, Fellow in Governance

Institute of Development Studies (Sussex), served as a European
Union election observer in Kailahun District during the 2007

presidential elections in Sierra Leone

e-mail: a.schmidt@ids.ac.uk

ABSTRACT

This study evaluates Sierra Leone's 2007 and 2008 elections, the role of the international community in supporting them, and their implications for the country's democracy. The 2007 presidential and parliamentary elections in Sierra Leone, the third generation of elections since the end of the civil war, were deemed substantially fair and resulted in a change of governing party, with Ernest Bai Koroma as president and the African Peoples Congress (APC) in the majority in Parliament. The 2008 local government elections were less successful, but gave the APC an even more decisive win. The restoration of peace in Sierra Leone, the succession of reasonable elections since 2000, and the change of regime via the ballot box in 2007 are all rightly seen as major accomplishments. This article examines the institutions of Sierra Leone's society and government that combined with international assistance to produce these positive results. Nonetheless, the structural conditions that gave rise to the civil war in the country – under-development, resource flows (diamonds and now, increasingly, drugs) that are difficult to control, a corrupt and remote

*political elite, marginalised youth, and strong regional divides in politics
– all continue to exist.*

INTRODUCTION: SIERRA LEONE, CONFLICT AND ELECTIONS

Poor governance, violence and elections have been closely intertwined in the independent history of Sierra Leone. Even in the colonial period the presence of alluvial diamonds had a corrosive, corrupting influence, increasing the incentives for politicians to hold onto political power and for others to provide them with the means to do so (see, eg, Green 1960).

The country gained its independence in 1961 but its election history has been turbulent. Though Sierra Leone has had regular elections since independence, from 1978 to 1992 the All Peoples Congress (APC) ruled the country under a one-party system. There was an attempt in 1991 to re-introduce multiparty democracy through a referendum but this was scuttled when General Valentine Strasser overthrew the government of President Joseph Momoh in 1992 and introduced a state of emergency, ruling through the National Provisional Ruling Council.

Strasser promised to hold elections within two years but the unstable political situation in Liberia spilled over into Sierra Leone and threw the country into violent civil conflict. Strasser was himself overthrown in a January 1996 coup led by his deputy, Brigadier General Julius Maada Bio.

The restoration of democracy started with the holding of multiparty elections (termed peace-keeping elections) in 1996 under difficult conditions, as civil war continued to be waged in some parts of the country. The first round produced no outright winner, necessitating a second-round presidential run-off in February 1996 which was won by Tejan Kabbah of the Sierra Leone People's Party (SLPP) with 59.2 per cent of the vote against John Karefa-Smart of the United National People's Party (UNPP), which appealed to the traditional electoral base of the APC. (After the disintegration of the country under the APC government and the long decline that preceded it, the party's traditional northern support switched to the UNPP and Karefa-Smart. The APC's Eddie Turay – now majority leader in Parliament – finished fifth in the first round, polling just over 5 per cent. The speed with which the APC was subsequently rehabilitated in the minds of the Sierra Leone electorate under Ernest Bai Koroma is partly explained by the UNPP's own later electoral collapse, down to 1 per cent of the vote, in 2002.)

Kabbah's victory was shortlived. In May 1997 he was deposed by Major General Paul Koroma, whose Armed Forces Revolutionary Council (AFRC) was, in turn, ousted by the Nigerian-led West African intervention force, the Economic Community of West African States (ECOWAS) Monitoring Group (ECOMOG). President Kabbah was reinstated in March 1998 but despite the signing of the

Lomé Peace Accord¹ in 1999, civil war continued until 2002, characterised by massive human rights violations.

The 2002 elections were a component of the peace-building process. The result of the presidential election was a landslide for Kabbah, who won 70 per cent in the first round. The SLPP won 83 parliamentary seats while the APC managed to garner 27 and the People's Liberation Party two. Although the elections were reported by observers to be generally free and fair they were marred by numerous reports of irregularities and even complaints of partisanship on the part of the National Electoral Commission (NEC).

The 2004 local government elections, the first in 32 years, were won by the SLPP, with just over 50 per cent of the vote, while the APC polled about 35 per cent – the latter in itself a rebound from 1996 and 2002. Observers judged the elections to be generally free and fair, although again there were reports of widespread electoral fraud by both the SLPP and the All Peoples Congress (APC).

The 2007 presidential and parliamentary elections were the third generation of elections since the end of the civil war. President Kabbah was prohibited by the Constitution from running for a third term. Unlike in 2002, when Sierra Leoneans went to the polls to vote for peace, in 2007 many were disillusioned with the SLPP government.

The mechanics of the 2007 elections were complex because they required four simultaneous processes – the boundary delimitation of constituencies, the creation of a new electronic voters' register, presidential and parliamentary elections, and a presidential run-off. The complexity was exacerbated by the country's poor road infrastructure, aggravated by the fact that the elections took place during the rainy season. Despite the adverse circumstances, however, the NEC withstood the SLPP's attempts to politicise it and (with substantial donor support) conducted elections which were deemed by all involved to be a substantially fair reflection of the will of the people of Sierra Leone – although they were not without elements of fraud (Kandeh 2008, p 606).

In the first round of the 2007 presidential elections no single candidate received the required number of votes to be elected president. The APC candidate, Ernest Bai Koroma, received 44,3 per cent, while Solomon Berewa of the SLPP won 38,3 per cent, Charles Margai of the People's Movement for Democratic Change (PMDC) 13,9 per cent, and the remaining four parties collectively received fewer than 4 per cent of the vote.

Margai called on his PMDC supporters to vote for the APC's Koroma in the ensuing APC-SLPP run-off and Koroma won, with 54,6 per cent of the vote. The

1 The Lomé Peace Accord was signed on 7 July 1999 between President Ahmad Tejan Kabbah and Revolutionary United Front (RUF) leader Foday Sankoh, granting Sankoh a position in the transitional government as well as amnesty for himself and all combatants. The RUF did not honour it.

APC also won the majority of the parliamentary seats. Unhappy with the results the SLPP tried to mount a court application to stop the NEC's declaring the result but failed in its first bid and subsequently agreed to drop the case.

The 2008 local government elections were less successful. Although the NEC had done its best to ensure the proper implementation of the process, the elections were said to have been characterised by widespread intimidation of women candidates. This time it was the APC that was alleged to have perpetrated intimidation and political violence against SLPP supporters, doing so with the support of the traditional chiefs, who had, by then, switched their allegiance to it from the SLPP. (The issue of intimidation of opposition supporters by chiefs seems to have characterised previous elections as well.) The local government results indicated a landslide win for the APC.

The restoration of peace in Sierra Leone, the succession of reasonable elections since 2000, and the change of government via the ballot box in 2007 are all rightly seen as huge accomplishments. But what do they mean for democracy and good governance or for the people of the country? As discussed in the introductory essay to this issue, democracy is a multi-faceted process and the benefits it generates for various groups in society are not automatic. To evaluate Sierra Leone's notable progress in holding multiparty elections, then, we need to do more than examine the organisations and mechanisms that are providing it. We also need to consider the interlocking institutions that are needed for the most advanced practice of democracy. And we need to evaluate just what direct and indirect benefits are being created, and for whom.

THE SOCIOLOGICAL FOUNDATIONS OF SIERRA LEONEAN VOTING BEHAVIOUR

The importance of ethnicity and patronage to electoral behaviour in Africa was discussed in the introductory article of this issue, a set of generalisations that applies fully to Sierra Leone. Thus, in the rural areas the choice of candidates is driven by patron-client considerations and votes at any given polling station go overwhelmingly to one political party or another.

Only in the major urban areas is the coincidence of ethnicity, family and neighbourhood that drives rural political behaviour broken. Although kinship and rural ties are still influential in the towns adherence to them is not obvious at urban polling stations, so it is harder to enforce patron-client bargains. Voters in Freetown (the capital) and Kono (the heart of the diamond fields) – but only they – seem to cast their ballots more individually. Only these districts are multiethnic and failed to go overwhelmingly for one party or another.

Because of the political effectiveness of patron-client relations, community

or voter patron-client political ties are rational in the rural areas for the individual politician, even if achievement-oriented, policy-based political competition might produce better results for the country as a whole. A policy element was nonetheless observable in 2007 in the capital city.

The SLPP and the APC are approximately balanced in the rural areas of the country, so that urban Freetown has the capacity to determine the national results. The urban electorate was upset at the prevalence of poverty and the lack of adequate electricity, water and jobs in 2007 and seems to have blamed the SLPP government for turning donor poverty funds into corruption and patronage rather than the intended public services (Kandeh 2008, p 605). This suggests that even if the policy sensitivity of most Sierra Leonean voters is weak, government performance mattered to an important degree in 2007.

THE STRONG PRESIDENCY AND A PARLIAMENT OF RURAL AMBASSADORS

The tendency of African states to strong presidencies and weak legislatures has been noted in the introduction to this issue. The weakness of Sierra Leone's Parliament is compounded by a lack of capacity. Its committees have no legal advice or research staff, no more than five clerks serve the 24 committees, and there are only four committee rooms. Four-fifths of its MPs were new in 2007 and have developed no policy expertise. The debate schedule is unpredictable and the MPs don't even have offices.

It is, therefore, no surprise that most legislation comes from the executive and committees are dependent on the agencies they allegedly supervise. The result is that some laws are poorly drafted and even key pieces of legislation (such as those central to rapidly approaching elections) are delayed. The political opposition does not play an important role in creating government accountability.

More remarkably, however, Sierra Leone's MPs aren't very good at the role of patronage ambassador, which they have chosen. The transportation infrastructure in the country is very poor, travel takes a long time, and not all MPs have vehicles. When they do get to their constituencies most MPs (especially the opposition ones, of course) are unable to deliver resources that even approach the volume of demand. Thus they disappoint their voters, and the turnover of MPs in each Parliament is very high. Of course there is an element of 'performance voting' but it has little impact on party allegiance, only on the incumbency of individuals. Unfortunately this type of performance evaluation enhances corruption and runs counter to the urban bases of assessment discussed in the previous section.

The only reliable source of support for MPs is their party, so they need to control its nomination process to ensure its favour. This leads both to MPs

taking a strong party line between elections and to their willingness to bolt to independent status at election time if their party nominates someone else (as happened in the 2008 local government elections).

POLITICAL PARTIES

Sierra Leone has two major political parties, which are regionally based and do not differ greatly on policy matters. The SLPP is the older. The APC was created by Siaka Stevens in 1960 when he lost his SLPP nomination for Parliament. The SLPP is strong in the (Mende) south and east of the country, the APC in the (Tembe) north.

Despite the endurance of the two major parties they are highly factionalised. The APC's victory in 2007 was facilitated by Charles Margai's defection from the SLPP and his creation of the PMDC when he failed to gain the SLPP nomination for the presidency. His strength in Bonthe District undercut the SLPP, although the PMDC now seems to have declined in importance. The SLPP hasn't established clear internal leadership since its defeat in the 2007 presidential elections, with a new chair elected only in March 2009. And the new president, Ernest Bai Koroma, finds it difficult to control his highly factionalised APC. The lack of strong party leadership has given rein to inter-party violence by the two youth wings (especially that of the APC).

A major issue surrounding the parties is their nomination processes. Currently there is a mixture of primaries, selection by district executive committees, and the choices of national party leaders. Dissatisfaction with the nomination process was a major cause of independent candidacies. Primaries would reduce this problem. On the other hand, the importance of parties over individuals can be enhanced only if the party organisations play a significant role in nominations – one of the few factors that produce some element of party discipline at present. Furthermore, a nomination process run by party organisations is likely to be more amenable than primaries in the long run to increasing the proportion of women office holders.

The lack of uniformity in party processes currently seems to be an issue, as does manipulation from the centre. The solution for which we heard more support was selection by *district, elected* party executive committees – locally responsive but able to implement national party stances, such as gender representation.

The UN Development Programme set in operation the Political Parties Registration Commission (PPRC), one of the electoral bodies provided for in the 1991 Constitution. Technically the PPRC has the ability to prosecute parties for election code abuses, including that of fostering political violence. In fact, such punitive actions have not been taken and it is probably unrealistic to expect a

new institution to take on such powerful actors in such a way. But the PPRC has played a useful role in promoting a Code of Conduct for Political Parties among activists and in mediating the conflicts that have arisen – both during the elections and after them. Since parties in Sierra Leone are not just creatures of elections and as conflicts between them are a recurrent problem, the staff of the PPRC requires technical training in dealing with political party / election related conflicts.

THE COURTS

An independent judiciary is critical to ensuring that the executive respects the laws passed by the legislature. Otherwise the election of a parliament and its deliberations are meaningless. The judiciary is also central to ensuring the framework within which democratic competition takes place – by protecting human and minority rights and by enforcing the integrity of the electoral process. The courts in Sierra Leone, emerging from a long period of authoritarian rule and crippling civil war, do not yet play these roles fully. They have not received the same amount of donor attention as the other pillars of democracy, although steps were taken to strengthen the quality of their supervision of elections.

Specific electoral procedures ensured that the public has an opportunity to challenge or object at any step of the electoral process and Electoral Offences Courts were set up as a division of the High Court in order to expedite judicial supervision of these time-sensitive processes. However, due to limited information about these courts they were not fully utilised. In the absence of accepted judicial procedures any election disputes quickly become politicised.

There have been complaints that a number of significant cases relating to the 2007 elections are still pending and that the courts allowed the NEC to assume de facto authority over key decisions. Given the integrity of the present NEC this is not currently a problem. In the long run, however, one would think that a tenured judiciary would have a better chance of being non-partisan than commissioners who are politically-appointed to the NEC for defined terms.

THE MEDIA

Without independent and competent media, citizens and even societal elites have no hope of being informed about critical issues of public policy or the performance of the government they elect and democracy cannot prosper.

Sierra Leone has a large number of newspapers, but they are small, unprofessional and often partisan. Even the largest have circulations of no more than 2 700 and few copies are distributed outside the capital. Fact-checking is

weak, and sometimes deliberately false articles are published to force a concerned party to pay for the publication of a correction.

Radio has a much more significant impact than the print media and exhibits both the best and the worst of Sierra Leonean journalism. Cotton Tree Network is donor supported, quite professional, and distributes its news to stations (including that of the UN) that cover most of the country (and beyond). Many stations are highly partisan and frequently inflammatory – particularly the talk radio programmes. There is a government station, which, up to now has been an instrument of the government of the day but it is due to become an independent corporation. It is not clear how this transition and scaling-down of the UN mission will affect quality news radio in the country.

Sierra Leone's Independent Media Commission (IMC), a new institution, has made impressive strides. It receives complaints about the print media and can and does enforce retractions, apologies and the payment of fines – although its effect is still limited. The IMC's ability to control radio stations is very weak, however, as there is no equipment for recording broadcasts and thus for creating an evidentiary base for action against them.

The media are deeply concerned about the impact of the government's use of the seditious libel provisions of the Public Order Act of 1965. In the past the Act has been used to deter criticisms of government by bringing criminal prosecutions against alleged violators – not only the journalists who have written the articles but also the owners of the papers and even the proprietors of the presses hired to print them. The managing editors with whom we spoke see the Act not only as constraining freedom of the press but also as preventing its growth, consolidation and, hence, its professionalisation. Since owners are currently threatened with criminal prosecution the only people willing to invest in the media are politicians and the journalists themselves. The current APC government has not brought any seditious libel cases under the Act, but it did put a hold on a Supreme Court challenge to its constitutionality launched by the Association of Journalists. The journalists would prefer regulation by a strengthened IMC – which would also better protect non-governmental players.

MANAGEMENT OF THE ELECTORAL PROCESS

We now turn from the general architecture of democracy in Sierra Leone to the governance of its electoral processes. The National Election Commission manages the key components of constituency boundary delimitation, voter registration, election-day mechanics and certification of the results of the vote. Although the commissioners are political appointees most of them, including the chair, Dr Christiana Thorpe, have, thus far, risen above party loyalties and

piloted the NEC staff in a professional and impartial process, which gave the 2007 and 2008 elections considerable legitimacy.

Without detracting from the work of Thorpe and the commissioners, however, it is important to acknowledge that it would have been difficult for the NEC to have been effective without the considerable technical assistance provided by the United Nations Development Programme (UNDP) and financed by a basket of donor funds. The enforcement of the NEC's decisions was also facilitated by the major effort the British made to reorientate the country's armed forces and police and by the moral suasion of a unified diplomatic community (about which more below) (Kandeh 2008, p 607).

One notable achievement was the commission's annulment of the results at 477 polling stations (predominately in SLPP areas) on the grounds of fraud (where there were more votes than registered voters). The SLPP has never accepted the legitimacy of the decision, believing that without this intervention it would have won the presidency. Nonetheless, if this precedent can be carried into the future it will create a strong incentive not to stuff ballot boxes, an abuse that is particularly difficult to control in rural African conditions. At some polling stations even NEC officials appear to have been complicit in tampering with results.

Another NEC achievement was the redrawing of parliamentary constituency boundaries – a major element in the democratic integrity of any legislative system. A new census in 2004 enabled the commission to achieve a more equitable distribution of seats, decreasing those in the (over-represented) areas traditionally favourable to the SLPP and increasing those in districts where the APC had been strong historically. Given that the SLPP constituted the government, this was a remarkable accomplishment, probably facilitated by the fact that the SLPP had won overwhelmingly in 2002 and wasn't counting votes closely.

The NEC also conducted voter registration campaigns immediately before both the 2007 and 2008 polls, a necessity if the voters' roll is to be accurate. Regular updating of the roll enables the elimination of the names of voters who have died or moved and the addition of those who have reached voting age since the last election. Continuous registration is expensive, but less expensive than compiling a new register for each election or coping with civil disorder when an outdated register lays the groundwork for massive fraud.

Can the standards of integrity achieved by the NEC in 2007 and 2008 survive the departure of Dr Thorpe? Given that it is hard to imagine a group of commissioners with no party affiliations, the answer must depend on the professionalism of the staff and their ability to withstand political pressures. If the NEC staff have to be largely reconstituted for each election (as they have been

in the past), competence, impartiality and integrity will be hard to maintain. The amount of technical assistance given to the commission by the UNDP in 2007 is unsustainable and undesirable. Thus it is critical that core NEC staff be retained between elections and trained, paid, and treated as professionals. Continuous registration would be one way to keep staff engaged and also requires that donor support for core electoral processes be continuous – or at least initiated two years before each election, when registration and boundary matters are being determined. (After all, only the unsophisticated steal an election on polling day itself.) Professionalism would also be enhanced if the commission's staff were deployed between elections as election observers in other African democracies, as happened during the recent elections in Ghana.

THE ELECTORAL TRUSTEES

While the factors cited above contributed to the conduct of free and fair elections and the implementation of the results, they were not the only elements. Other players who contributed were the army and police, who ensured that democracy was not subverted by violence, and the international community, who provided finance and technical assistance. Apart from the UNDP these bodies did not participate directly in the management of the elections, but their indirect roles were critical. They were, in a sense, trustees of the electoral process.

Networked donors

Elections are expensive, logistically difficult and technically complex. A country such as Sierra Leone, near the bottom of the United Nations Human Development Index and emerging from a devastating civil war, could hardly conduct them without assistance. The direct cost of the 1996 polls was US\$20-million, of which half was provided by international aid. In 2002 donors met almost 70 per cent of the \$11-million costs. Indirectly the UN and the United Kingdom were also heavily involved in rebuilding the country.

According to the NEC chair, \$25-million was allocated for the 2007 general elections. Only \$20-million was used and the balance was brought forward and used during the local government elections. Direct donor contributions to UNDP for the 2008 elections totalled US\$17-million, of which \$12.7-million came from the UK.

In post-conflict situations it has become common for the UNDP to manage a large election-support project, which is financed by a basket of donor contributions. Some countries, such as the USA and Germany, decline to contribute to the basket, preferring to sponsor particular elements of the UNDP

programme while other contributors to the basket may also run independent supporting projects, as did the UK.

In Sierra Leone the governance of election support tends to be inclusive. Most donors tend to become involved in the electoral process in some way. The UNDP basket project was run by a steering committee composed of its donors and the government and, in addition, a stakeholders meeting was held for all those concerned with the elections.

The head of the UN Mission in Sierra Leone (UNOSIL) was particularly gifted in coordinating the ambassadors present in the country. Thus the diplomatic community was tightly networked around the elections, a situation no doubt facilitated by the small number of accredited missions resident in the country and the consciousness of all the dangers post-conflict elections can pose.

The breadth and depth of this networking was apparent in 2007 when the SLPP leaders had to be persuaded that the party had lost the elections and needed to surrender the presidency to the APC. Even the ambassadors of the People's Republic of China and Iran, which did not provide electoral support, joined in the persuasive efforts. Such broad, consensual networks are central to the effectiveness of international support for good governance.

There is no gainsaying the importance of the international community's role in the 2007 elections. Jimmy Kandeh (2008, pp 606-7) summed it up well in an article in the authoritative *Journal of Modern African Studies*.

By sandbagging the SLPP into reluctantly conforming to liberal rules and procedures of electoral competition, the international community played a critical role in ensuring a popular outcome to the 2007 elections. The international community, however, did not determine or pick winners in these elections; they simply made it counter-productive for the SLPP leadership to subvert the wishes of the electorate by rigging them. It is in this sense that donor assistance can contribute to democratisation in societies emerging from wars caused by predatory governance.

Was such a role legitimate? By the traditional standards with which we evaluate sovereignty the answer would be 'no, states should determine their own governance procedures'. This purist stance is, however, flawed and unrealistic.

First, during its civil war Sierra Leone had ceased to be a state in any empirical sense (and thus entitled to sovereignty). Without external involvement the Sierra Leonean state would not have been reconstituted and there would have been no elections to hold.

Second, contemporary globalisation is not just an economic phenomenon, it is also a political one. Though the World Bank and the UN are 'apolitical' and proclaim their respect for sovereignty, they are deeply involved in promoting governance reforms, and bilateral donors both lead and follow this endeavour. Today it seems for more appropriate to evaluate the *effectiveness and democratic integrity* of donor influence than to challenge its existence in the name of sovereignty.

There is no doubt that the UK played a key role in all this international effort. Although it maintains that the main reason the elections passed off peacefully was that the vast majority of Sierra Leoneans wanted them that way, it also acknowledges that the programmes it put in place leading up to the elections were designed to encourage public accountability and facilitate its expression. Clearly its efforts, and those of the rest of the international community in this regard, were effective and enhanced democratic processes in the country, thus legitimating their role.

Army and police

The stability of a country's government and the peacefulness of elections frequently depend on the effectiveness and impartiality of the security services, two qualities the Sierra Leonean army had not shown, having conducted three coups d'état since independence and proved ineffectual in suppressing the rebellion of the Revolutionary United Front.

After the intervention of British paratroopers in 2000, the UK assumed a central role in rebuilding the country's army and police services, providing considerable technical assistance, *matériel* and finance through its International Military Assistance Training Team (IMATT) programme. As the elections approached Britain introduced its Military Assistance to Civilian Power (MAC-P) programme into the security services as well (in which other donors also joined). Both the army and the police kept the peace and maintained their impartiality in the critical 2007 general elections. Their cooperation was facilitated by their meeting in the National Security Council Coordinating Group, for together officers found it possible to resist political pressures that would have been harder for them to withstand individually.

The general consensus of observers is that the army (particularly the younger officers) is now committed to remaining out of politics and conducting itself as a professional force. There is less certainty about the police, who are unlikely to be involved in a coup but could be corrupted by the rise in the international drug

trade through Sierra Leone or become an instrument of executive repression.² Continued support for police pay and training in conflict management will be necessary for the stability of the country.

The army would dearly love to be able to serve in UN peacekeeping missions elsewhere in Africa. To do so would bring it prestige and income. Observers feel that it is ready for a 'keeping the peace' (although probably not an 'imposing the peace') mission but it cannot afford the necessary equipment. The UN has been asked to consider advancing money to enable the army to buy the equipment it would need. Financially this would be a good investment for Sierra Leone. More importantly, however, there is evidence from other African countries that military units that have participated in peacekeeping missions are more likely to respect civilian power and human rights at home. It would be a sound investment if it were to reinforce the democratic commitment of Sierra Leone's security services.

WHAT DETERMINES ELECTORAL OUTCOMES?

When elections aren't pre-empted by coups or stolen in the polling booth and when voters are not coerced by the authorities what does determine victory in Sierra Leone? As noted above, regional loyalties to the SLPP and APC are strong and enduring. In most rural areas decisions about which party to support are, effectively, made communally and not by individuals. Chiefs are very much a part of the community decision-making and tend to swing behind the government of the day. But they can only stray a limited distance from their community's historic preferences and they probably have more influence on turnout than on voter choice.

Sierra Leone's parties are highly factionalised and loyalty to a party does not necessarily mean allegiance to a particular group of party leaders. One of the critical events in the 2007 general elections was the defection of Charles Margai from the SLPP when it spurned him as presidential candidate in favour of Berewa. His paternal uncle, Milton Margai, led Sierra Leone to independence and the name Margai resonates powerfully in the country's politics. In addition,

² We were told that a few police were seen celebrating the APC victory after the 2007 elections, which raised the question of whether their impartiality might not have come from antagonisms to the SLPP rather than a commitment to democracy. Other close observers of the security services, while not doubting the personal political preferences of many of their members, were more hopeful that they would maintain their impartiality in the future. There is little doubt that what has been achieved to date within the security services would not have happened without British involvement. Appropriate behaviour is reinforced when it is repeated. It is hard to be certain whether, in this case, it has been reinforced enough.

Charles Margai's father was Sierra Leone's second prime minister (although he is not held in as high regard as Milton).

Charles Margai is also a gifted speaker. When he formed the PMDC and threw himself into the presidential race the SLPP became vulnerable, although its leaders did not seem to realise the extent of the threat until election day. Perhaps they expected the factionalism of the APC to see them through, but the opposition party appeared to unite to pull itself through the elections (though it later left President Ernest Bai Koroma struggling to control the resurgent factions as he seeks to govern).

Although regional party loyalties are predictable and intense, they do not simply turn election day into an ethnic census. To be successful party leaders must be skilled at forging durable coalitions of political elites. And to become political elites, politicians face intense local competition in the provision of patronage goods.

Another element at play is the fact that the capital, Freetown, and the multi-ethnic diamond district of Kono lack the strong traditional allegiances of the rest of the country and therefore swing the results in an otherwise evenly divided nation. In these two areas the provision of jobs and infrastructural projects are critical, although not just as patronage (as they would be understood in the rural areas) but also as public goods. The fact that President Kabbah and the SLPP had failed to provide jobs for the youth of Freetown and that the capital was experiencing electricity blackouts proved fatal to the party's prospects there.

The SLPP's loss of Freetown points to an important dilemma for any ruling party in the country. Politicians who fail to provide jobs and infrastructure will disappoint their electorate and be vulnerable to challenge in the next election – either from the opposition (in Freetown and Kono) or from another faction of the party (in most of the countryside).

The temptation to be corrupt and profligate with the public purse in order to gain patronage for personally targeted distribution (with some personal wealth on the side) is overwhelming. But there is a dilemma – the state is hugely dependent on donor aid projects and budget assistance, which will be cut off if the international community detects persistent, significant corruption.

Of course an elected office holder can (and should) provide constituency service without being corrupt. Constituency service is a benefit which should be provided to all members of a community, regardless of the way they voted. Patronage, on the other hand, is targeted only at those who support the politician, so the benefit is a reward for political backing. Robert Bates (1981) provides a good analysis of the fact that patronage works best when it is a 'private good' and the damage this does to the 'public good' component of most valuable public policy.

The boundaries between constituency service and patronage overlap, but the end points of the continuum they describe are clearly different. Patronage is politically more efficient and much more prone to corruption. But in a donor dependent country, corruption may invoke donor sanctions and lead to a reduction in the funds for generating constituent benefits (as it did in Sierra Leone). It is central to a politician's re-election that visible benefits are delivered to his/her constituents. The challenge for politicians in Sierra Leone is to learn how to deliver visible benefits to constituents within the boundaries of donor-defined probity – which requires that they move along the patronage-constituency service continuum toward the non-corrupt and collective end. This is appropriate, but it is not easy to do this in a society in which an important section of the electorate demands such benefits in return for their loyalty.

It is precisely this dilemma that contributed to the SLPP's defeat in 2007. The multi-donor budget support (MBDS) partners (the World Bank, the UK, the EC and the African Development Bank) had repeatedly asked the government to produce its auditor-general's report to account for the budget support they had provided. By early 2007 the MDBS partners were no longer willing to tolerate the growing evidence of government corruption and suspended budgetary support until the audited accounts were produced. The government and the SLPP soon realised that their actions were resulting in the withdrawal of the supply of patronage and other public benefits just before the general elections and attacked the donors through the press for trying to perpetrate 'regime change'. Immediately after the elections the new APC government released the auditor general's reports (which revealed the malpractice the SLPP did not wish to disclose) and budget support was restored. The World Bank also funded an interim electricity project for Freetown.

The lesson that corruption could have a dramatic downside was explicitly communicated to both governments (see also Kandeh 2008, pp 604-5). It is too soon to know what impact this object lesson will have on good governance in the country. It could be salutary.

WHO BENEFITS FROM DEMOCRACY IN SIERRA LEONE?

Donors

The fact that Sierra Leone held multiparty elections that were judged to be generally 'free and fair', were largely without violence, and led to a change in governing party was a major triumph for democracy in the country. Clearly the donors benefited from this victory – they were able to enhance the legitimacy of their aid programmes with their constituencies at home (because they were both

democratic and effective) and they were able to see a corrupt and ineffective government punished by its citizens.

The citizens

How have the citizens of Sierra Leone fared? First and foremost, they did not revert to civil war – and the benefits of peace for the average person are always substantial. Second, they were able to orchestrate a change in government and to do so without violence, two outcomes that are not easily achieved but once they have been it becomes easier to repeat them and thus to enhance the stability of the country and its ability to rid itself of clearly ineffective governments.

On the other hand, because it has been shown that ruling parties *can* lose elections those factions in the APC that favour authoritarian rule may have been strengthened. (Some APC leaders have been quoted as saying they will not make the same mistake as the SLPP and will never surrender power again.) Since President Koroma is clearly *not* a member of the authoritarian faction in the APC there is reason to hope that the outcome nonetheless will be positive.

Third, the political establishment has learned once again that it must be able to deliver patronage goods if it is to survive. In this case, however, it is also clear that those goods need to be infrastructure and jobs for the young, which reinforce one other. An increase in less-skilled jobs is inherently pro-poor and, if appropriately delivered, these forms of patronage can benefit a desperately poor, community-based citizenry.

The challenge is for the state to find the money to finance these programmes and then manage them relatively efficiently (which means less corruptly). As the proceeds of the deals with mining interests already seem to have been directed largely into private pockets, they will be hard to recoup for the public purse in the short run. Donors are sure to be called upon to fill the gap.

Fourth, local government will achieve more prominence in the new order. The benefits of this are less clear. District councillors will experience the same demands for patronage goods. The infrastructure projects they undertake are likely to be smaller, a fact that might benefit less-skilled workers.

The first problem, however, is that local governments usually have substantially greater problems with corruption than do national ones – and in Sierra Leone that is a dismal prospect.

The second problem is that the districts struggle with revenue issues even more than does the national government. The conventional wisdom used to be that decentralisation increased government expenditure but in the past 20 years a new trend has become evident, in which bankrupt national governments decentralise responsibilities without passing on the resources to meet them. It

is hard to imagine that this is not happening in Sierra Leone, as only a few places in the country have the potential to generate meaningful taxes, fees, or royalties.

FACTORS THAT MIGHT CONTRIBUTE TO BUILDING ON SIERRA LEONE'S DEMOCRATIC SUCCESS?

International support

Peace is necessary (although not sufficient) to Sierra Leone's recovery and the welfare of its people. The structural conditions that gave rise to the civil war – under-development, resource flows (diamonds and now, perhaps, drugs) that are difficult to control, a corrupt and remote political elite, marginalised youth, and strong regional divides in politics – are all still present.

Authoritarianism did not succeed in the past in repressing the conflicts that grew out of these roots and there is no reason to expect it to do so in the future. Elections are needed as a means for managing these conflicts – providing less violent fields for contesting differences, creating the possibility of political change without rending the fabric of society, and instituting some modest degree of accountability of the government to its citizens. But if elections are not conducted properly they can crystallise and accentuate the very conflicts they should be helping to manage.

The people of Sierra Leone and their leaders deserve great credit for the success of their recent elections. But there is no question that international technical and material assistance was critical to their conduct and that international participants and observers helped to contain the eruptions of violence that accompanied them. Sierra Leoneans need to have more successful elections before they can be left without international assistance for them. Even though the inherent benefits of democracy may not be a certainty, there is no other viable path to peace.

The question then arises: Is the international community looking at an appropriate time frame for election support? The UNDP Project Management Unit effectively ran much of the election, with more than 50 advisers present in the country at one stage. The NEC's role was limited by its capacity and by the rules surrounding the disbursement of basket funds. Could the NEC gain the experience necessary between 2009 and 2012 to manage the process next time? Will donors trust it to manage the funds associated with, for example, procurement? Should donors acknowledge now that technical backstopping is likely to be needed in 2012, but that much could be achieved in the interim if there are proper plans in place?

These questions all point to the urgent need for donors to move from the support of *individual elections* to providing it for full *electoral cycles*. Now is the time to prepare for the 2012 elections. There are three major reasons for doing so. First, the elections will be even more complex than those of 2007-08, for they will include both national and local contests. The magnitude of this task for Sierra Leone's fledgling electoral machinery and the value of spreading out the work are such that separation would be wiser, but this would require a constitutional decision and it may be too late for that. Even if it were not, such a change would require donor involvement now if it were to be achieved in time.

Second, if local capacity to run the elections is to be maintained and further developed, commitments to staff and training must be made now.

Third, many of the most important determinants of an election's outcome are present in the years before it is held – a valid census, an equitable reallocation of constituency boundaries (neither of which will be needed this time), updating and tidying up the voter registry, the institutionalisation of democratic practices in the parties, the professionalisation and appropriate regulation of the media, reconstruction of the integrity of the judiciary on electoral matters, continued strengthening of civil society organisations, consolidation of the impartiality of the security services, and institutional support for Parliament's internal functioning. All these matters deserve attention *now*.

Traditionally the UNDP has been seen as the lead organisation for *election* support. It has built up an admirable capacity for handling the highly pressured and logistically complex technicalities of an election. It is less obvious, however, that it should lead in support for the *electoral cycle*. The above list of requisite activities for good elections covers a much broader range of issues than those traditionally handled by UNDP. Further, UNDP's mode of operation seems much better suited to time-pressured tasks than to those involving gradual change.

The UNDP operation in Sierra Leone in 2007/8 was criticised for its lack of attention to budgeting detail and to capacity building. These observations raise an awkward question, however. Since UNDP's role in the management of elections proper needs to be maintained, another body would have to assume leadership on the larger issues of the electoral cycle and governance. Since joint donor action and coordination is essential, of course, such an agency would have to command wide respect and support in the donor community.

International professional involvement

We have noted in several places above that international service would reinforce the professional values and skills the Sierra Leonean army, police and NEC

need to manifest if democratisation is to advance in the country.³ Could more be made of regional approaches to election assistance? Sharing skills, knowledge and resources could benefit national election commissions at peaks of activities and during quieter times. Creating a community of professionals could help encourage adherence to standards

Improvements in the courts and in regulation

Current 'international best practice' for the design of democratic systems recognises the vital role that regulation and dispute resolution play in the smooth functioning and legitimacy of elections. Sierra Leone's independent National Election Commission, PPRC, Independent Media Commission (IMC), and special tracks in the regular courts for election disputes are all part of a standard UNDP recommended package.

The PPRC and the IMC already play important roles in Sierra Leone's democracy but have not yet found their final form. Ultimately, however, the most important legal support for democracy comes from an independent, professionally competent judiciary capable of making expedited decisions on electoral disputes. Sierra Leone still has far to go in this department. Special sections of the courts have been created for electoral matters, but the judiciary, which has a modern history of subservience to the executive, still has not ruled on a number of key cases arising out of the 2007 elections.

When confronted with violations in the run-up to the elections, it appeared that the police and courts were postponing action until the conclusion of the elections, at which point it would become moot or constitute 'winner's justice'. In the absence of neutral and prompt intervention, disputes become politicised and escalate. Of course all of this is a part of a general problem for Sierra Leone's justice system, but it also deserves special attention in the context of democracy.

Assistance with a pro-employment infrastructure programme

A persistent problem for African politics for half a century has been violent party youth wings. These were evident, although controlled, during Sierra Leone's elections and their aftermath. Thandika Mkandawire (2002, pp 181-216) has argued persuasively that unemployment among urban young men is one of the root causes of the breakdown of civil order in much of West Africa. In the decade

³ The larger argument for this approach to advancing professionalisation is made in Leonard 1991, pp 272-3 and Leonard & Strauss 2003, pp 115-18.

after Africa achieved independence there was much concern about the danger posed by such unemployment. This resulted in an influential series of policy proposals for employment-led development from the International Labour Organisation (eg, ILO 1972). Sierra Leone is one of several African countries that would benefit from revisiting the insights generated at that time and from donor support for an employment-focused series of development initiatives.

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THE POLITICAL AND INSTITUTIONAL CONTEXT OF THE 2007 KENYAN ELECTIONS AND REFORMS NEEDED FOR THE FUTURE

David K Leonard and Felix Odhiambo Owuor
With contributions from Katherine George

Felix Odhiambo Owuor is Senior Programme Manager of the National Democratic Institute for International Affairs Political Parties Programme in Nairobi

E-mail: Fodhiambo@ndi.org

Katherine George received her MA in Governance from the Institute for Development Studies (UK) in 2008

ABSTRACT

For many Kenyans the outcome of the 2007 presidential election represented a continuation of the betrayal of the promise made by Mwai Kibaki's government, elected in 2002, that a new Constitution would be drafted which would help to deal with Kenya's governance problems. The consequence was a closely contested election, ethnic division, a flawed election process, and serious post-election violence, which lasted well into 2008.

This article analyses the underlying political features of Kenya that led to the election failure itself and the fundamental changes to the Kenyan system, including its Constitution, that are necessary to avert a recurrence of the 2007 election violence in the future.

INTRODUCTION: KENYA, CONFLICT AND ELECTIONS

A failure of governance

In December 2007 Kenya erupted into violence after the announcement that its presidential election had been won by incumbent President Mwai Kibaki. The world was shocked, as Kenya had been thought to have made the transition to stable democracy with its peaceful elections in 2002 and 2005. The history of failed constitutional reform, the reopening after 40 years of a particularly toxic combination of ethnic political conflicts, and electoral fraud resulted in post-election violence that exceeded even the scale of the 1992 and 1997 clashes.

In this article we examine the underlying causes of this violence and the fundamental issues that will need to be addressed if the next national elections, scheduled for 2012, are to be successful. There have been numerous other analyses of the details of the elections, with which we broadly agree and which we will not replicate here (see, the Kriegler Commission Report; the Waki Commission Report; Sheehy & Maina 2008; *Journal of Africa Elections* 7.2).

Kenya's quest for constitutional reform

Failures of governance were at the core of the violence that followed Kenya's 2007 national elections. The 2002 government of Mwai Kibaki had promised a new Constitution that would help to deal with Kenya's many governance problems – an overly powerful presidency with a weak legislature and judiciary, a centralised state, mismanagement of and unresolved disputes over land, a history of impunity for violence and corruption, inequalities between ethnic groups, and poverty and unemployment. For many Kenyans, the outcome of the 2007 presidential election was a continuation of the betrayal of that promise, as reflected in the 'Wako' draft constitution Kibaki had submitted to a referendum in 2005, which the people had rejected.

Kenya's independence Constitution of 1963 was based on federal devolution, individual rights, and the separation of powers between a symbolic head of state and an executive prime minister. Its current Constitution evolved through a series of fundamental changes between 1963 and 1969 that undermined democratic safeguards (Gathii 1994). These alterations entrenched executive power in a powerful president by changing from a parliamentary system of government with an executive prime minister to a presidential system; replacing a bicameral with a unicameral legislature; converting from federal devolution to a unitary, centralised state; and moving from a multiparty to a single-party system (de facto in 1969; de jure in 1982) (Chitere, Chweya, Maya, Tostensen & Waiganjo 2006, p 2). The amended sections have been the subject of constitutional debate since 1992, occupied the 2000-2005 constitutional review process, and dominated political party campaign platforms in the 2007 election.

Breakdown into violence

The violence that followed the 2007 elections, during which an estimated 1500 people died and as many as 350 000 were displaced (IRIN 2008a) occurred in three discernable waves (OHCHR 2008). The first came after the announcement of the election results and involved spontaneous looting by youths in the slums of Nairobi and Kisumu of government buildings and of the shops and houses of

known supporters of Kibaki's Party of National Unity (PNU) and his co-ethnic Kikuyu, who were also presumed to have supported him.

The second wave of violence was organised in part before the election by opposition and ethnic leaders as a response should Kibaki win the election. At the announcement of the election results groups of youths attacked Kikuyu and government supporters in the central Rift Valley, with the aim of driving them out of their constituencies for good.

The third wave comprised reprisal attacks, organised by government supporters and Kikuyu militias, mainly targeting migrant workers thought to be opposition supporters in parts of the Rift Valley Province, Central Province, and the Nairobi slums. Male youths played the main role all three waves of violence. The police were also responsible for much of the violence, either because they used excessive force to deal with protestors (potentially accounting for 40% of deaths) or because they chose not to prevent it.

The violence disrupted crop production and transport, resulted in a sharp economic downturn, an 80 per cent reduction in tourism revenue, and a rise in the price of basic goods (Bevan 2008). It also entrenched social fragmentation between ethnic groups in the areas that were hardest hit.

As the post-election disputes and skirmishes dragged on, the international community supported a panel of eminent African personalities, led by former United Nations Secretary General Kofi Annan, to mediate and find a solution. After several weeks of negotiation, on 28 February 2008 the opposition Orange Democratic Movement (ODM) and the PNU reached a power-sharing agreement which created a coalition government, including the position of prime minister, and a redistribution of Cabinet and other ministerial posts (RoK 2008a).

The most concrete aspects of the agreement were: an internationally-composed independent review commission to investigate all aspects of the 2007 general elections and recommend areas for electoral reforms (RoK 2008c); a commission to investigate the causes and effects of the post-election violence and propose solutions (RoK 2008b); a recommendation that a Truth, Justice and Reconciliation Commission (TJRC) should be established to facilitate a lasting healing process and unite the country;¹ and the rekindling of the constitutional review process that aims to provide solutions to the underlying causes of the violence and produce a new draft to be approved by a public referendum (RoK 2008d; 2008e).

1 The TJRC has yet to be convened, as it would require an Act of Parliament.

THE INSTITUTIONAL STRUCTURE OF KENYAN DEMOCRACY

The sociological foundations

In Kenya, as in the rest of Africa, voting is largely determined by ethnicity, kinship and neighbourhood. In the rural areas, where all three tend to coincide, voting at polling station level is generally in favour of one particular candidate, with the decision effectively a collective one, often enforced by violence. Barkan, Densham & Rushton (2006, p 933), found that the average vote for the winning candidate for Parliament in 1997 was 65 per cent, even though there was an average of 4.4 candidates per constituency. And if one had looked at the percentages at polling station level the concentration would have been still higher.) Only in the major urban areas is the coincidence of family and neighbourhood broken. Although kinship and rural ties are still influential among all but second-generation elites, adherence to them will not be as obvious at urban polling stations.

As discussed in the introductory article to this issue these social dynamics contribute to the dominance of patron-client networks in most of the political systems of Africa and, as a consequence, those who are able to distribute patronage goods from their personal wealth dominate politics on the continent. In the 45 years since Kenya's independence African elites have used political office to gain economic advantages, which they have ploughed back into political advancement in an upward spiral.

By now there are wealthy businessmen (and some women) in all but the very smallest Kenyan ethnic groups, who compete with each other for political office. Since political clients trade their votes for benefits targeted to themselves as individuals or to their immediate communities, the patronage-dispensing businessmen are able to direct public policy and its implementation to their personal and collective interests. Not all Kenyan businessmen are politicians, and many (such as the local South Asian community) participate only indirectly in politics. But all but a very few MPs and Cabinet ministers are businessmen.

The strength and weakness of Kenya is that it is unapologetically friendly to business: the major political parties compete over *whose* businesses benefit from access to the state, not over *whether* they do (Leonard 1991). As a result, the collapse of the country's tourism and export economy in response to the continued post-election violence eventually prompted powerful businessmen to press for a negotiated settlement.

A History of political violence

Another critical dimension of Kenyan politics is its violent heritage. In most of sub-Saharan Africa independence was achieved relatively peacefully. In Kenya,

however, the Kikuyu Mau Mau rebellion had broken out in the late 1940s and was put down in the 1950s only with substantial military assistance from the United Kingdom. The presence of those British troops deprived the colony's white settlers of the local control that might have enabled them to mount a Rhodesia-like unilateral declaration of independence.

Thus, even though the Mau Mau were defeated, it is common in Kenya to credit them with hastening the country's independence, and their rituals may sometimes be recreated as an instrument of Kikuyu political struggle – as they were in the oath-taking movement of the mid-1970s and by the underclass Mungiki in the past decade and during the 2008 post-election riots.

The violence of Mau Mau seems to have legitimated other forms of political violence as well. Kenya has had five or six prominent political assassinations – in order, Pio Pinto (a radical Asian), Arwings-Kodhek (a Luo Cabinet Minister), Tom Mboya (a Luo heir apparent to Kenyatta), J M Kariuki (a populist Kikuyu hoping to succeed Kenyatta), possibly Ronald Ngala (a Cabinet minister from the Coast who also figured as a possible successor) and Robert Ouko (a Luo Cabinet minister who was thought to have offended Moi). It was not lost on the Luo ethnic group that all these men were Luo or were reaching out to them politically. All but the last of these assassinations took place during the Kenyatta administration.

Extensive violence accompanied the first multiparty elections, in 1992, and also attended the elections in 1997. Violence targeted mainly the Luo and Kikuyu communities, which had refused to toe the Moi line. In his efforts to retain power for the small ethnic groups when he changed the Constitution to re-permit multiparty competition in 1992, President Moi inserted a requirement that a victorious presidential candidate had to win both an overall majority and no less than 25 per cent of the vote in five of Kenya's eight provinces.

A Kikuyu candidate in an ethnically divided field will easily pass the latter threshold in Central, Nairobi, and (with their Embu and Meru allies) Eastern provinces. There are also substantial numbers of Kikuyus in smallholder settlement schemes and the largest towns in the Rift Valley and Coast provinces. In the rural areas of the latter two provinces most Kikuyu live in multiethnic settlements on land to which other groups had historical title (of which more below).

The strategy for those running against a Kikuyu candidate for president has, therefore, been to deny him the '25 per cent in 5' threshold by mobilising those in the central Rift Valley or on the Coast who were indigenous at the start of colonialism and who are aggrieved about the land issue to attack Kikuyu settlers there, displacing them and rendering them unable to vote.

Moi used this strategy successfully in both 1992 and 1997 but it became irrelevant in 2002 when Moi manoeuvred the nomination of Uhuru Kenyatta

(the late President's son) as the candidate for the Kenyan African National Union (KANU) to stand against the opposition's Kibaki, so that both candidates were Kikuyu. The political logic of creating internally displaced persons (IDPs) became salient again in 2007 when a Kikuyu president (Kibaki) was challenged by a Luo (Odinga), who had Kalenjin indigenous allies in the central Rift Valley. In this case, however, the violence broke out only *after* the election and did not engulf the Coast. We elaborate on this below.

Competing narratives of grievance

The tragedy of Kenyan politics is not just that it is organised around ethnic differences and the 'horizontal' inequalities between ethnic groups (for more about this term, see Stewart 2008a), characteristics that are common to most African countries. The problem is that in Kenya three competing and legitimate grievance narratives accentuate these features.

Early white settlers in Kenya appropriated most of their land from the Kikuyu (Central and Nairobi provinces), Miji-Kenda (Coast), Maasai and Kalenjin (Rift Valley) areas. Land pressures resulted first and most acutely among the Kikuyu, who, as a result, were, by World War I, taking up disproportionate numbers of tenant-labourer positions on white farms (as well as availing themselves of the education the missionaries brought).

The eviction of these tenant-labourers in the late 1930s laid the foundation for the Mau Mau rebellion (Rosberg & Nottingham 1966). To suppress it, the British rusticated Kikuyu labourers, moved Kikuyu peasants into fortified villages, detained large numbers of suspects, and, while they were away, conducted land registration.

At independence the Kikuyu had not only suffered most during the anti-colonial struggle, they alone faced serious problems of landlessness. To pacify them both the British and President Kenyatta favoured them disproportionately in the smallholder settlement schemes that government created out of the old white farms.

The Kikuyu also did well in the labour market (as they had been early entrants, were better educated, and had the country's capital in their territory). Furthermore, their education, entrepreneurialism and support from the Kenyatta presidency enabled them to rise rapidly in the civil service and to do well in business. The combination of all these factors then meant that when white farms were sold in the post-settlement era the Kikuyu were more likely to be able to buy them and divide them up into still more smallholdings.

The Miji-Kenda (Coast), Maasai and Kalenjin (Rift Valley) came to this competition for land later, with less capital and later political support. They also

suffered from the fact that both Kenyatta and Moi used the presidency's ultimate authority over land to reward their most prominent clients (and themselves) with large farms in these areas. Today the Miji-Kenda, Maasai and Kalenjin are aggrieved that lands that were theirs at the time of the British incursion are all occupied and their young adults no longer have access to farmland.

From 1982 on Moi worked aggressively to counter-balance the historical advantage of the Kikuyu, resulting in their becoming disadvantaged, to some degree, in education, civil service employment and business contracts and privileges, while the Kalenjin received special favours.

Despite the removal of state patronage, however, the Kikuyu continued to do well in education and business; their prominence in trade making them the target of still more envy today. But they are aggrieved because they were the most prominent victims of British colonialism and of Moi's affirmative action; to them the fact that they have nonetheless done well is a sign of virtue, not of quite clear favouritism under presidents Kenyatta and Kibaki. The Kikuyu discourse of grievance focuses on the colonial period and the period between 1982 and 2002; other Kenyans focus on 1963-1978 and 2002-2007.

Our purpose is not to determine who, on balance, is more right or wrong but to indicate the ways in which all the discourses have some basis in historical fact and talk past each other.

The third aggrieved people are the Luo. At independence they were as well educated as the Kikuyu and more entrenched in the civil service. They were the victims of Kenyatta's turn against the left in 1966 (both in politics and in the civil service), many of their leaders were assassinated and they have remained political outsiders until this year.

Each of these groups has difficulty appreciating the injustices felt by the others. The leaders of all three groups also tend to use grievances to mobilise their non-elites and then to deliver 'compensating' benefits to their elites. As the Kikuyu elite (*but not their poor*) has prospered despite the difficulties it has sometimes faced, it is a lightning rod for the problems faced by everyone else – and its members aggravate the situation by assigning themselves still more 'compensating' advantages.

The tragedy of Kenya is that it has no unifying national ideology – only incompatible narratives of injustice. The country is not divided on economic ideology – even though the large inequalities it manifests might make such policy divisions seem natural. The question is not *whether* the elites will benefit from a pro-business environment but which ones *will benefit*. For a brief period after independence nationalism *did* provide a unifying political ideology. It is possible that it could again, but to date no political leader has succeeded with it or any other option.

The strong presidency

African states are weak in the face of very strong societies (Migdal 1988). As Aristide Zolberg (1966) noted more than 40 years ago, this makes nervous national politicians construct governmental systems that are as strong as possible – hence the long period of one-party rule on the continent and the persistence even today of very strong presidencies. Kenya's presidents exercise unchecked authority over virtually every aspect of government. Until recently the ability of Parliament to initiate legislation has been all but non-existent and neither it nor the courts has been able to check the executive. Since immediately after independence civil servants have felt obligated to execute presidential directives even when they are manifestly illegal. The result is that the stakes for winning or losing State House become inordinately high.

A Parliament of rural ambassadors

As noted in the introductory article in this issue, the pressures of patronage cause parliamentarians in Africa to see themselves primarily as supplicants to the centre for discrete goods that will benefit their constituents. Kenya conforms fully to this pattern. Nonetheless, many of the country's MPs do also care deeply about public policy. When the democratisation movement in the country began in the early 1990s such MPs had no institutional support. It became the responsibility of various civil society organisations (CSOs), usually with international funding, to analyse pending legislation, note policy areas of concern, draft new laws, and so on. The Constitutional Amendment Bill of 1999 finally created a Parliamentary Service Commission and staff support, which enabled committee work and provided some autonomy.

The MPs who were newly elected in 2002 showed increased legislative independence – but they were most active in relation to matters that enhanced their role as patrons. They voted themselves high salaries and created constituency development funds (CDF), both of which enhanced their ability to distribute patronage.

Ironically, the very fact that they visibly controlled this patronage may have created as much jealousy as loyalty. When MPs were 'ambassadors' seeking patronage for their clients from an 'imperial presidency' they could take full credit for anything that was provided while blaming the president for any disappointments – after all, if they did well for some in this round they also might be able to help in the next round those who had been let down. Now, however, MPs are clearly responsible for the patronage they distribute and must bear the brunt of criticism from those who received nothing. This dynamic may help to explain the fact that two-thirds of sitting MPs were defeated in the 2007 elections.

On the other hand, the CDFs do make the MPs independent of the president in their quest for patronage resources.

Political parties and partisanship

Political parties in Kenya are organised along ethnic lines. Half a century ago it was not obvious that this would be the case. The Mau Mau rebellion arose among the Kikuyu as a result of landlessness and displacement from large white farms (Rosberg & Nottingham 1966). The movement was never wholly about poverty but those Kikuyu who supported the British and joined the Home Guards during the uprising were more likely to come from the better off and/or missionary-educated sectors of the population.

When the British began to permit African political parties among Kenya's ethnic groups in the mid-1950s they restricted them to district-only organisations – which, given the geographical specificity of ethnicity in most of Kenya, meant that they represented particular groups. When Jomo Kenyatta emerged from detention by the British in 1961 he faced a political landscape designed to be ethnically divided. Although he was a national hero he joined KANU, which was an alliance of the Kikuyu and Luo (the two largest and best educated groups), with a streak of Mau Mau-inspired radicalism. It was opposed by an alliance (the Kenyan African Democratic Union – KADU) of all the other, smaller groups, who feared dominance by the Kikuyu and Luo. Kenyatta perceived the potential for class conflict (particularly over land) to fragment political unity among the Kikuyu – but only among them. If he were to support the radical wing in Kenyan politics his own ethnic base would split and KADU would be politically dominant. But if he insisted on class unity (the more conservative line) and provided the landless Kikuyu privileged with access to land vacated by white settlers he could keep the Kikuyu together and emerge as president.

In a series of brilliant political moves in the mid-1960s he enticed KADU to join KANU to create a government of national unity and then destroyed the radical wing of KANU. Radicalism prevailed only among the Luo, because of their remaining leader, Oginga Odinga (father of Raila Odinga, the opposition presidential candidate in 2007), helping to make them the permanent outsiders in Kenyan politics. In the de facto one-party state that resulted, with the Luo and radical Kikuyu excluded, the government in effect became a KADU state, with the addition of conservative Kikuyu in the leadership roles (Leonard 1991, pp 73-81).

When Kenyatta died in 1978 he was succeeded by Daniel arap Moi, his vice-president, a minority Kalenjin and a former leader of KADU. After the attempted coup staged by a group of airforce officers in 1982 Moi was able to jettison the conservative Kikuyus who had supported him (in effect making the government

even more a KADU one) and to concentrate on reversing the gains made by the Kikuyu under Kenyatta (Leonard 1991, pp 168-69; 176-77).

By the late 1970s all ideology had disappeared from Kenyan politics, replaced by purely ethnic competition over the division of spoils derived from control of the state, with a deep split between the Kikuyu (joined by the Embu and Meru) and the small ethnicities / tribes (led by the Kalenjin) and with the electoral balance decided by the second- through fourth-largest groups – the Luo, the Luhya and the Kamba. The battle to control State House began in earnest in 1969 after the assassination of Tom Mboya and the accompanying Kikuyu oath-taking, whose explicit objective was to retain the presidency. The non-ideological nature of this competition began with the banning of the Kenya People's Union (KPU) (to create the de facto single-party state) and the assassination in 1975 of the populist, J M Kariuki. The curtailment of fundamental freedoms and political space, which accelerated after the 1982 coup attempt, eventually led to a sustained clamour for the restoration of multiparty democracy, a movement spearheaded by politicians who had fallen out with President Moi joined by civil society and the international community. The movement was also aided in part by the collapse of the Cold War, which allowed Western governments, no longer needing to worry about 'Communist' competition, to insist on democracy and good governance as a prerequisite for donor engagement. This pressure led to the reintroduction of multiparty politics through the repeal in 1991 of s 2A of the Constitution.

During the first multiparty elections in 1992 it was obvious that Moi and KANU did not have the support of the majority of the country. The newly registered pressure group, the Forum for Restoration of Democracy (FORD), quickly gained and mobilised support across the country. FORD brought together once again the independence era alliance of Kikuyu and Luo, their unity posing a direct threat to Moi and KANU. Nonetheless, the opposition to Moi fell into competing camps, neither group being willing to stand aside and endorse one of the other's leaders as president. After letting Moi through in a three-way race in 1992 and 1997 the opposition finally won in 2002 by uniting around Mwai Kibaki, a Kikuyu and former vice-president. Raila Odinga, who was central to bringing the opposition together, was promised the post of prime minister under a reformed constitution.

Kibaki has been a low-key president and Kikuyu ministers close to him persuaded him to renege on this deal (which was embodied in the 'Bomas'² draft of a new constitution that was prepared just before the 2002 elections). Instead

2 The 'Bomas' draft emanated from the National Constitutional Conference which took place at the Bomas of Kenya theatre facility, Nairobi, and became known simply as the 'Bomas Talks'. The draft was initially formulated by the Constitution of Kenya Review Commission, appointed in 2000 to gauge the views of Kenyans about what they wished to see incorporated in their new constitution.

Kibaki put to a referendum in 2005 the 'Wako' draft constitution,³ which made no provision for a prime minister (and also omitted other key provisions of the 'Bomas' draft) and was defeated by the ODM, led by Odinga. This history helps to explain why Odinga was at first unwilling to accept Kibaki's offer of a prime ministership in a coalition government after the 2008 elections; he had been there before and felt he had been betrayed. Odinga's concerns could only be assuaged by a constitutional amendment creating the position and making it answerable to Parliament (where the ODM has the largest number of seats – 99). This amendment was delivered as part of the Annan agreement.

The other major political parties are Kibaki's PNU, with 43 MPs; the rump of KANU, which supported Kibaki and has 14 MPs; and the Kamba breakaway, ODM-Kenya, which supported Kalonzo Musyoka for president and has 16 MPs. Kibaki appointed Musyoka to the vice-presidency in the midst of the post-election violence.

Although there is stability in the major ethnic blocks of Kenyan politics there is considerable factionalism within and between them as the 'big men' try to assemble and hold together a winning coalition. In the past decade Odinga has continually surprised his opponents by his ability to assemble such coalitions, first for Kibaki, then against him, and finally for himself. To do so, however, the shape of the alliances and the names of the winning group have constantly changed.

In order to counter the fragmentation and instability of parties, in October 2007 Parliament passed the Political Parties Act, which provides a framework for the registration, regulation and financing of political parties. The Act took effect on 1 July 2008 and all registered political parties had to adhere to it by no later than 1 January 2009. Thus far 38 of the 168 previously registered political parties have been certified as complying with the new standards.

Until the old 'brief case'⁴ political parties have been definitively deregistered the intention of the Act to impose discipline within parties by arresting the defections and factionalisation and the irregularities in internal processes which so often characterise them will not have been achieved.

The courts

An independent judiciary is critical to ensuring that the executive respects the laws passed by the legislature. Otherwise the election of a Parliament and its deliberations are meaningless. The judiciary is also central to ensuring the

3 The Wako draft – the government version of the constitution – was named for Amos Wako, Chief Justice of Kenya, who was believed to be the key author of this alternative constitutional document.

4 These are parties that exist only on paper and whose rights to legal existence are kept in the 'brief cases' of individual leaders in order to facilitate factional splits.

framework within which democratic competition takes places – by protecting human and minority rights and by enforcing the integrity of the electoral process. The courts in Kenya, emerging from a long period of authoritarian rule, do not yet play these roles fully and hence were not trusted during the crisis, contributing to its escalation.

The judiciary has even less power than Parliament to check the executive. The current Constitution does not provide guidelines for the exercise of judicial powers, it merely defines their bare structure. The judiciary has weak infrastructure, biased courts, incompetent and corrupt personnel, and serious problems upholding the rule of law (Chitere, Chweya, Masya, Tostensen & Waiganjo 2006). The president appoints without oversight the High Court, Appeals Court, and other judges, as well as the Judicial Service Commission, which recommends judicial appointments (NEPAD 2007). The executive has fiscal control over the courts (Chitere et al. 2006).

It is true that judicial appointments now can be made only on the recommendation of the Judicial Service Commission with the approval of the president (which Kibaki has never denied) and judges can be removed from office only by a tribunal – both improvements over the Moi era. On the other hand the current chief justice manages the judicial system in such a way as to prevent its ever challenging President Kibaki, for example, through his assignment of critical cases.

When there is no competent and independent judiciary there are few incentives for the legislature to spend time and political capital writing or amending laws that will restrict or challenge the presidency – for such laws will not be enforced.

Even during the one-party era the courts heard petitions contesting the outcome of primary elections (which determined who would sit in Parliament). These proceedings, however, could be and continue to be very slow – in some cases lasting as long as an MP's term of office. Mwai Kibaki, when he was running for president in 1997, refused to appeal to the courts for this reason. Thus it is no surprise that the ODM also refused to test its contentions of vote rigging before the courts in 2008 (Gathii 2008).

The media

Independent and competent media are generally considered essential to democracy. Without them citizens and even societal elites have no hope of being informed about critical issues of public policy or of the performance of the government they elect. The existence of strong media also gives opposition and back-bench MPs an incentive to be vigilant in their oversight of the executive;

they are sure to be outvoted on any censure motions but information they obtain by subpoena and/or by speaking aloud under parliamentary privilege will be disseminated by the media.

The past decade has seen significant growth in the Kenyan media. Indeed, that period has been characterised by the mushrooming of print and electronic media with national coverage. The conduct of the media particularly during the 2002, 2005 and even the start of the 2007 elections was very good. However, in the final periods of 2007 some vernacular and regional media were used to propagate ethnic animosity and hate speech. KBC, the national broadcasting corporation, also failed, by and large, to accord equal coverage to the main presidential candidates despite agreements reached by the Inter-Parties Parliamentary Group (IPPG) of 1997.

On the whole, Kenya's print media are among the best in Africa. They are professional and represent competing points of view. It is the proliferation of new, private FM radio stations that has presented a problem. Talk radio shows and live coverage of political events became vehicles for the propagation and implicit legitimisation of inter-ethnic hatred in 2007. There is no effective regulation of these inflammatory practices. In fairness, one should acknowledge that some of the problems stem from a lack of training of radio hosts in handling talk radio contributions in an inflammatory situation and that some vernacular radios also played a major role in urging peace after the conflict erupted (BBC 2008).

Civil society

Today civil society organisations are regarded as essential to democracy. Kenya has a very large number of them, covering virtually every public interest and including many working on election issues. These groups were extremely important in the attempts to reform the Constitution, in advocating a return to multiparty democracy, and in monitoring the end of Kenya's 35 years of one-party rule.

In the transitional elections they were able to put large numbers of non-partisan volunteers into the field as observers. However, most of these individuals are now involved with government or with the new, competing democratic parties and are therefore no longer non-partisan. Thus, there are now fewer genuinely non-partisan groups promoting best democratic practice in Kenya and those that exist are smaller and more dependent on international finance than they were in 2002. The democratisation CSOs were late in mobilising for voter education and election observation and found it harder to recruit observers prepared to be wholly non-partisan. The competing political loyalties of the CSOs may have contributed to the failure of their basket-fund management to deliver finances to them in a timely manner (Sheehy & Maina 2008).

The management of the electoral process

We turn now from the general architecture of democracy to the governance of its electoral processes. The Election Commission of Kenya (ECK) managed the key components of voter registration, election-day mechanics and certification of the results. It had performed very well in 2002 and 2005, was thought to be robust, and its chairman, Samuel Kivuitu, was highly respected.

Kibaki's last-minute appointment of 18 of 21 new commissioners without consulting the opposition, as he had agreed, during the 1997 IPPG negotiations would be the case and the refusal of the ECK to carry out a number of technical improvements recommended by the donor-provided experts assisting it were important danger signals, but the second was not widely known and their significance was appreciated by the international community only afterwards.

Some Kenyans, particularly ODM supporters, did appreciate the significance of these actions, however, and, prior to the elections, began to plan violence in the event of ODM losing the election – for, given the ECK's structure, a loss at the polls would not be accepted as legitimate (Kenya National Commission for Human Rights 2007). The ECK's failures were the most obvious and fatal part of the 2007 elections and have been subject to a detailed investigation by the International Review Commission (IREC) headed by Johann Kriegler, retired South African Constitutional Court judge and the chair of South Africa's first Independent Electoral Commission (hereafter the Kriegler Commission). The commission found that electoral fraud began at polling-station level and was rampant.

It determined that the errors made in the various stages of the tallying process were so great and widespread that it is impossible to reconstruct from the formal record who, in fact, won the presidential contest. The commission focused on the many computational errors it found and a majority of the its members concluded that they had 'not been able to substantiate ... accusations [of] ... malfeasance [at the national tallying centre]' (Kriegler Commission report 2008, ch 6, p 131). The commission's findings therefore implicitly legitimised the negotiated construction of a government of national unity for the country. Our findings concur on all these points.

We note, however, certain limitations in the Kriegler Commission report. Most of the members of the commission were lawyers. Their finding that they could not 'substantiate accusations [of] malfeasance' at the national tallying centre should therefore be taken in a strict legal sense (which raises the threshold for the admissibility of evidence and the burden of proof) – no witnesses were willing to come forward and testify under oath. Our own interviews did uncover those who had received first-hand reports from people who had seen such malfeasance but were unwilling to give testimony under oath. A verdict of 'not guilty' was correct,

but we believe that should not be construed to mean a finding of 'innocent'. In any case, from the point of view of the election itself, what did or did not happen at the tallying centre proper, is less important than the commission's conclusion that there was massive fraud in the general process.

The Kriegler Commission also did not seem to appreciate the significance or evaluate the reliability of the evidence that emerged from the exit poll conducted by the University of California/International Republican Institute (IRI) (Gibson & Long 2008). IRI did not make these results available until after the government of national unity had been negotiated, and polls are not an accepted basis in any country for deciding an election. Nonetheless, in the absence of reliable data from the polls themselves, this survey is the best evidence we have of the way the people of Kenya who actually cast their ballots claimed to have voted. The results are superior to the flawed election returns in that they do not include any ballot-box stuffing, were collected under strict controls by well-trained personnel and are free of computational errors. The poll indicates clearly and with statistical reliability that Raila Odinga should have won the election with approximately 46 per cent of the vote (vs Kibaki's 40%).⁵

Finally, the Kriegler Commission, surprisingly, did not explore whether or not President Kibaki met the minimum standard of 25 per cent of the vote in the required five provinces even if he had won a plurality from the national. The survey evidence indicates that he fell short, in that he received only 17 per cent of the vote in the North-Eastern Province (the ECK claimed he won 50%). In these circumstances there should have been a run-off election, which would probably have produced a decisive result.

None of the foregoing can, or should, provide a legal basis for changing the negotiated settlement brokered by Kofi Annan. We present these concerns instead as an indication that the flaws in the election process not only produced a violent outcome but also one quite different from that which may have been intended by a majority of Kenyans.

The electoral trustees

The above processes and organisations are formally responsible for the conduct of free and fair elections and the implementation of the results. But they hardly

5 The question arises as to why the survey results were not released until after the conclusion of the Annan-mediated agreement. The study had been funded by US Government on the explicit understanding that it would be held in confidence for a period after the elections, doubtless so as not to be seen as interfering with them. Also, some individuals in IRI had doubts about the results (for reasons that are not wholly clear to us) and before they would release them insisted they undergo two US survey audits (which they passed). It has been both alleged and denied that there was a political motive behind the delay in releasing the results.

acted alone. The support of other actors is key to their success. Among these are the army and police, who insure that democracy is not subverted by violence, and the international community, which provides finance and technical assistance. Save for the UN Development Programme (UNDP) it would be a mistake to classify these bodies as participating directly in the management of elections, but their indirect roles are critical. It is helpful to think of them as the trustees of the electoral process.

Networked donors

The donors who support democratisation work in Kenya, and the UNDP, to which they supplied joint programme funds (which paid for full-time election expertise), were well coordinated, held meetings monthly, and had very good interpersonal relations. The lead donor was the USA, deputised by the Danish embassy. Nonetheless, early danger signals about the performance of the ECK were not well communicated within the donor group and therefore neither it nor the diplomats were mobilised into precautionary activity.

The major political focus was on assuring the reappointment of Kivuitu as chair. He was highly respected and had performed well in leading the ECK in 2002 and 2005 but he was not in good health and had taken several months off in 2007. Thus the group over-estimated his and other respected commissioners' ability to organise a complex process and to stand up to intense pressures in a very high-stakes election. In effect, at both the international and the ECK level, the problem was that too much faith was placed in too few people.

The army

Kenya's armed forces might be likened to the Hound of the Baskervilles, which did not bark – they were notably absent in the aftermath of the election. There was the attempted coup by the airforce officers in 1982 and an army mutiny in the 1960s, but the Kenyan military has never successfully intervened in the country's politics. Today it seems determined to be professional and apolitical, a commitment reinforced by its participation in peace-keeping missions elsewhere in Africa. During the post-election violence the generals made it clear to the president that they were not willing to be called out, that they had seen during their peace-keeping work that military involvement could make domestic conflicts worse, and that political problems needed political, not military solutions. Such conclusions bode well for the future of democracy in Kenya.

The police

The assessment of the police is much less positive. Of course their *job* includes dealing with domestic violence, but they are not well prepared to handle it,

meeting it with more force rather than containing or de-escalating it. The police were provided with money from the donor election basket but they used it to purchase riot gear rather than for training. They are alleged to have been responsible for much of the violence, either because they chose not to prevent it or because they used excessive force to deal with protestors (possibly accounting for 43% of an estimated 1 500 people killed in the election aftermath [IMLU 2008]). The Waki Commission is highly critical of their role.⁶

COULD THE VIOLENCE HAVE BEEN PREDICTED?

Clearly some international observers and Kenyans were more sanguine about the 2007 elections than they should have been. They reasoned that there had been no violence or significant fraud during the 2002 presidential elections, despite these having led to a change in governing party, or in the 2005 constitutional referendum, which had been lost by the new president. Furthermore, Samuel Kivuitu would once again head the ECK.

The weaknesses in the ECK were either unknown or poorly communicated to those who might have been able to mitigate them (particularly the internationals). Surely, it was believed, Kenya had now entered the ranks of mature democracies. This conclusion, however, ignored important differences between the 2002 and 2007 elections. In 2002 both the competing presidential candidates were Kikuyu, which removed from contention the most toxic ethnic issue in Kenyan politics.

In the 2002 presidential elections Kibaki had promised a new constitution with a position of prime minister in return for Odinga's active support, with the understanding that the post would be given to Odinga. Kibaki kept his commitment to submit a new constitution to a referendum but it did not include the prime ministership that had been promised to Odinga. Odinga then led the fight to defeat this new constitution and won a 'no' vote, leaving Kibaki with the old Constitution, with the full powers of the Kenyatta-Moi 'imperial' presidency fully in place. In important ways he won by losing.

In contrast to the 2002 elections the candidates in the 2007 presidential contest represented two of the ethnic communities with the bitterest history of conflict – Kibaki, the Kikuyu, and Odinga, the Luo – with the added elements that their fall out over the constitution meant the two men did not trust each other. The presence of the third- party 'spoiler' candidate, Musyoka (Kamba), made it just possible that Kibaki might squeak through despite widespread disappointment with the corruption of the Kikuyus who surrounded him in the government. A sitting president, a deep ethnic divide, personal animosity between the contestants,

6 <http://www.nation.co.ke/blob/view/-/483378/data/46262/-/4cocav/-/WakiRep.pdf>.

the extraordinary powers of an 'imperial' presidency at stake, and the likelihood of a very close election all carried the threat of trouble.

Perhaps some internationals did not want to see the danger signals. Despite his corrupt administration, Kibaki was highly respected as an individual, the country was undergoing excellent economic growth, and Kenya was a good ally in dealing with the 'war on terror' in the Horn of Africa. If this were the view of the US, which played a leading role in supporting the elections, it might have encouraged some members of the Kibaki government to think they could get away with tampering with the election results.

This was not the case with the European Commission or the UK High Commission, however, both of which foresaw that the election would be difficult and expected that there might be violence in the central Rift Valley. As a result, the EC representatives in Kenya put in a strong, early bid for a European Union observer mission and, with support from the UK High Commission, was able to overcome the optimism of Brussels and obtain field observers.

The EC and the UK hoped that a strong international presence would be all that was necessary to keep the election reasonably fair. Very close to the election there were signals that the most likely strategy for illegitimately keeping Odinga from the presidency would be to fraudulently deny him a victory in his Nairobi parliamentary seat. (In Kenya only an MP can become president.) Thus the UK high commissioner and the US ambassador personally observed the elections in Odinga's Langata constituency.

There were other danger signals the international community failed to see. For example, the significance of the fact that the ECK declined to implement important recommendations for its technical operations was not adequately conveyed to the donors who were not directly supervising the election support programme.

Nonetheless, it is perplexing that the only attempt to mitigate the dangers of violence in the powder keg of the central Rift Valley, where ethnic conflicts over land always boil just below the surface, was to provide election observers. The Rift Valley had exploded in similar electoral circumstances in 1992 and 1997 and internal and external experts on conflict warned that the same might happen again (Bayne, Muragu, Newton & Thomas 2007).

The donors had offered to finance district peace committees, which might have mitigated the danger, or at least provided information about the violence being planned. The ECK turned down this offer, which mystifies us, since it was known that the major victims of such violence would be poor Kikuyu, the ethnic group that controlled the presidency. Were the Kikuyu political elite so anxious to retain full control over the election machinery that they were willing to sacrifice their poorer brethren? Perhaps the attitudes of both the ECK and the

police should have sent warning signals to the donors. If, indeed, they did, the signals were ignored.

The major point we are making here is that if there was a failure by domestic and international officials to prepare for violence during the 2007 elections it was not due to the absence of risk analysis but to de facto policy. Although the full scale of the violence was not anticipated, and although it was not predicted to happen in the locations where it would damage international and elite interests, there was enough warning that it should have been a major concern to the government and development agencies in the country. The loss of life in the central Rift Valley in 1992 and 1997 was considerable and the large numbers of IDPs that resulted from it had never been adequately dealt with.

COULD THE VIOLENCE HAVE BEEN AVOIDED?

There were eight main causes of the violence. Starting from the premise that a trigger factor is required to shift a country with underlying tensions from a peaceful to a violent state (Kimenyi & Ndung'u 2005), the immediate cause of the 2008 election violence was the mismanagement and likely rigging of the elections. Two intermediate causes: the role of the media and hate speech and the predominance of ethnic politics. Finally, there were five underlying causes: an overly powerful executive, a centralised state with ethno-regional inequalities, mismanagement of land, a history of impunity for violence and corruption, and poverty and youth unemployment. All these causes were intertwined and mutually reinforcing.

Observers of Kenya's politics agree that the gross mismanagement of the elections triggered the violence. If the polling and counting had been conducted transparently and fairly and if the loser had accepted the results, it is probable that the country would have experienced only minor violence. *If* the donors had been fully aware of the impending technical difficulties in the electoral management process and had pressed aggressively for their repair and *if* the international community had spoken strongly to President Kibaki in a unified voice about the advantages of conducting a fair election and accepting its outcome, it is *possible* that the trigger would not have been pulled and the violence would have been avoided. In the event, as noted above, the international community missed or failed to prioritise some of the important signals of impending trouble and it may not have been united in its message to Kibaki. Finally, it is *possible* that if donors had created a conflict mediation and early warning system for the central Rift Valley early enough and had forcefully signalled its disapproval of any electoral violence, it might have been possible to persuade the key perpetrators to take a different course of action.

Nonetheless, the very factors that made the consequences of electoral mismanagement so explosive also made it *possible* that the Kenyan government and its opponents, in a close contest, would have been willing to risk manipulating the results. Too much was at stake and the chances of squeaking through were too great. In the event, what is past cannot be undone. On the other hand, as Santayana said, those who ignore history are doomed to repeat it. What is crucially important is that the underlying causes of Kenya's recurring electoral violence now be addressed.

WHAT IS NEEDED NOW?

Agenda 4 of the Annan agreement committed the signatories to address most of the sources of violent conflict in Kenyan society. The process of doing so has only just begun and may possibly be stalled. Here we review what we believe are the most important of these issues and what might be done about them.

Constitutional issues

A number of the most difficult issues facing the country have constitutional roots. Several attempts have been made in the past decade to reform the Constitution, good ideas have been deliberated and public views solicited. There is no need to begin the process afresh. The most thorough constitutional review was led by a distinguished Kenyan Asian law professor, Yash Ghai, and resulted in what is called the 'Bomas' draft. If, as originally planned, it had been adopted before the 2002 elections it would probably have been easily accepted and created a far less conflictual foundation for Kenyan politics. For a variety of reasons, however, its presentation was delayed, and the opposition felt it was unacceptably dangerous to extend in any way the term of office of then President Daniel arap Moi.

As a consequence President Kibaki was elected under the old Constitution and, once in power, was unwilling to surrender the powers of the office. Instead, he submitted to a referendum what is called the 'Wako' draft, which did not satisfy other sections of the reform coalition and was defeated by the Orange Democratic Movement under the leadership of Raila Odinga.

It is said that Professor Ghai has recently prepared another draft that pulls together the most acceptable features of all the drafts that are under consideration. Justice Minister Martha Karua has also been charged with presenting still another constitutional proposal. Nonetheless, many observers believe that Kenya is now more likely to proceed by amending the existing constitution rather than putting a new one to another referendum. Whatever the strategy, a number of key constitutional issues must be addressed.

Presidential authoritarianism must be reduced

A key dimension of the violence that frequently surrounds presidential elections in Africa is the extreme concentration of authority in the presidency, with almost no checks on its power. The result is not only an election in which ‘the winner takes all for life’ but in which there is almost no limit to the president’s control. In the political science literature this phenomenon is known as ‘imperial presidency’, but a Cabinet minister we consulted preferred to speak of ‘presidential authoritarianism’, which may be a more politic term.

The deconcentration of the powers of the presidency may follow from a number of coordinate reforms which are under consideration in Kenya – the creation of a prime minister with specified authority, an enhanced role for Parliament, an independent and impartial judiciary, legal limits on what civil servants can be asked to do, and devolution of authority to local government bodies.

Clarity about the role of the prime minister

Following the Annan agreement, Kenya’s constitution was amended to provide for a prime minister, answerable to Parliament. The duties and authority associated with this position are not clear, however, and are contested within the Cabinet. Currently the issue is not pressing because Kibaki is willing to let Odinga take the initiative as prime minister. It may, however, become a source of conflict between any succeeding president and prime minister.

Some analysts express doubts about the long-term feasibility of a hybrid presidential-parliamentary system, pointing to its inherent potential for inter-governmental conflict. However, others call attention to the fact that a strengthened Parliament with a prime minister counterbalances the presidency and injects accountability into the executive, and that most Kenyans, in fact, support the concept of an executive president with diminished authority.

Executive responsibility to the electorate or Parliament

There is significant debate over what form of representation would best prevent ethnic politics and violence. The problem is that direct presidential elections create incentives for political elites with firm majorities in their constituencies either to prevent opponents and minorities from voting or to displace them from their constituencies and provinces. The reason for this is that if a candidate is to achieve the 25 per cent threshold every vote counts in each constituency and in each province. A Westminster-style executive selected by MPs according to a single-member-first-past-the-post (SM-FPTP) system would reduce the incentive to ethnic violence in a society like Kenya because the votes of ethnic minorities (who are currently driven from the polls) would become irrelevant. The fact that

a significant proportion of the executive (the prime minister and those he selects to the Cabinet) is responsible to Parliament would therefore somewhat reduce the incentive to violence.

Method of Representation

The allocation of seats in the Kenyan Parliament is hugely unequal, with the largest constituency more than 20 times more populous than the smallest. These inequities result from the merging of the National Assembly and the Senate in the 1960s and the addition in the Moi years of districts for small ethnic groups. In both periods Parliament gave symbolic representation but had no real power, so the disparities in constituency size did not matter. Now that Parliament has re-emerged as a significant governmental institution and selects the prime minister, the extent of the inequalities is no longer supportable. As noted above, single-member constituencies with plurality votes (SM-FPTP) in a purely parliamentary democracy, as advocated in 'Bomas', reduce the incentives for violence because most constituencies are drawn along ethnic lines and are thus controlled by one ethnic group. But to achieve equality among SM-FPTP constituencies would require major changes in the electoral map. At the other end of the spectrum, Kanyinga (2006) argues that pure proportional representation (PR) using a list system would require leaders to take a national rather than geographic outlook during elections. But pure PR might well increase the chances of inter-ethnic conflict because it would make the country a single multi-ethnic constituency.

A mixed system, with a proportion of MPs selected by FPTP and a compensating balance voted in by a list PR system, has been advocated as a recipe for a more ethnically balanced Parliament. While this system would probably provide a balance in Parliament, it might still produce incentives to use violence to prevent minority opponents from voting. A final possibility would be to return to the two-house system created at independence, with the Assembly chosen in equal population constituencies and the Senate based on distinct ethnic groups (which would give more effective representation to the smaller groups).

This last option shares with the SM-FPTP system the advantage that it provides no incentives for violence against minority voters. No electoral reforms formally proposed to date call for pure PR or MPR. Barkan, Densham & Rushton (2006, pp 926-39) use 1997 demographic and electoral data to model how the different systems would affect the distribution of parliamentary seats between the major parties and find that the effects would be remarkably modest, which enhances their political feasibility. It is clear that one of these reforms must be introduced in the interests of the long-term legitimacy of parliamentary representation and, given Kenya's history, those that would reduce the incentives for violence deserve special scrutiny.

Devolution

The 'Bomas' draft proposed a return to the system, provided for in the independence Constitution, of regional governments placed between the centre and the district and municipal councils. The Swahili term for regions is *majimbo*, which is the word used when proposals for such devolution are debated in Kenya. On the one hand, devolution would decrease the powers of the centre, make the attraction of capturing the presidency a bit less overwhelming, and provide more alternative bases of power for ethnic politicians who were out of favour at the centre – all of which would seem to reduce electoral violence. On the other hand, *majimbo* has become a code word for returning control of land to local communities and driving out the 'foreign' ethnic groups. As such, *majimbo* is advocated as an instrument of autarchy by the aggrieved Kalenjin and Miji-Kenda and feared as a mechanism for discrimination by the Kikuyu, who are land scarce and widely settled throughout the country.

Mahmood Mamdani (1996) has argued that such ethnically exclusive control over land is fundamentally regressive, both socially and politically, as it gives the local chiefs who control the land despotic powers over their subjects. Independent of the question of what is historically progressive, for a number of reasons it is probably not an opportune moment to move forward on *majimbo*.

- The topic itself has become deeply divisive and greater spur to violence than the other constitutional issues.
- Devolution, or some greater local voice on land issues, could just as easily be addressed by expanding the powers of the district councils, which are already in place.
- The need for greater equity and transparency in the distribution of central resources could as easily be achieved by means of legislated allocation formulae.⁷
- International evidence suggests that there would be fewer governance gains from regional governments than from the centre and few democratisation gains over the district councils. Politicians with frustrated national aspirations would be the main beneficiaries.
- The *majimbo* debate is really about conflict over land, an issue that would be better addressed directly, as we suggest below.

⁷ Note, however, that Kenyatta (through *harambee*) decentralised to communities the responsibility for initiating service expansion in order to legitimate an *unequal* distribution to Kikuyus (who were better placed to raise funds locally). Also note that redistribution was a major agenda for Moi and that central reallocation is unlikely to go further than the extent he achieved.

Electoral Management

Re-establishment of the Electoral Commission of Kenya

The 1997 Inter-Party Parliamentary Group (IPPG) agreement made the ECK a representative body. There are two downsides to this reform.

Firstly, there is no effective oversight mechanism to ensure that opposition parties nominate commissioners. Instead of relying on legislation (which may never be enacted) the 'Bomas' draft entrenched an oversight mechanism in the Constitution that hindered the president's ability to appoint commissioners without consultation. It required that Parliament approve presidential nominees to the renamed Electoral and Boundaries Commission (EBC) (Chitere, Chweya, Masya, Testensen & Waiganjo 2006).

Secondly, most commissioners in a representative ECK are not sufficiently qualified to carry out their tasks (Muite 2008), leaving the commission open to incompetence and abuse. The 2006 Constitutional Minimum Reforms Package, which called for detailed legislation providing for a professional ECK comprising nine commissioners (instead of the current 21) who would formulate electoral policy and supervise a professional secretariat, would have professionalised the ECK. Paul Muite (2008), the MP who spearheaded the package, argues that the professionalisation of the ECK prior to the elections would have resulted in free and fair elections in which the results, even if the victor won by only a small margin, would have been accepted. In terms of the Minimum Reforms Package commissioners would not be appointed but would be openly recruited with regard to merit, regional diversity, gender and approval by Parliament (Muite 2008).

This is one area where there has been some progress. Parliament has passed a constitutional amendment creating the Interim Independent Electoral Commission and the Interim Boundary Commission and has disbanded the disgraced ECK.

Voter Registration

The Kriegler report (2008) details problems with the voter registration process and suggests ways of improving it. It finds that it is highly likely that there are significant numbers of deceased voters still on the voters' rolls (in some provinces more than others) and that the voting procedures make it easy for voters to cast their ballot in one electoral contest and not in another (making it impossible to use the roll to determine whether ballot boxes have been stuffed).

During the course of our interviews a senior person in a CSO concerned with voter education reported an incident he had personally witnessed in his home rural constituency on which he has never given evidence. At the end of the election day a voting official announced to those present at the counting

that X number of presidential ballots had been ‘unused’ (presumably because the voters had died or because they had cast their ballots in one of the other elections and not in the presidential election).

The group agreed that those ballots would be cast for the presidential candidate who was overwhelmingly favoured at that polling station and that the surplus parliamentary ballots would be distributed evenly between all the candidates so that they would not affect those results and would not produce a discrepancy between the two races. The agent for the party that was hurt by this procedure announced that he had no objection as his sole concern was for his party’s parliamentary candidate; he did not disagree with the others about the presidency.

If even someone who is professionally engaged in voter education will not act against such fraud it is clear that the temptations and social pressures are overwhelming in (rural) constituencies where the community is united in its wishes. The only thing that can be done, realistically, is to reduce the temptation and this demands both that the names of deceased voters be removed from the rolls well in advance and that voters be issued with all their ballot papers when they arrive at the polling station.

The courts

Both the ‘Bomas’ Draft and the ‘Wako’ Bill strengthen the judiciary by making it more independent and able to check the executive. ‘Bomas’ and ‘Wako’ describe principles that guide the exercise of judicial power and create a Supreme Court that exercises jurisdiction over presidential impeachment, election petitions, and constitutional matters.

Both documents recommend a Judicial Service Commission composed of appointees who are independent of the executive. The commission’s recommendations for the appointment of judges must be approved by Parliament, and the judiciary is granted fiscal autonomy from the executive (NCC 2004, pp 85-95; RoK 2005, pp 93-102). If they had been implemented these reforms might have restored some faith in the judiciary as a credible institution independent of the executive. One article which is especially salient to the prevention of election violence is that the Supreme Court would replace the current ad hoc system of resolving election disputes. If such a system had been in place the ODM and its supporters would have been able to choose a legal rather than a political – and violent – route to resolve the election dispute.

On the other hand, it is unrealistic to think that the courts can stand alone against extreme pressure from the presidency. Such changes in the Constitution may well make the courts effective in resolving disputes over parliamentary

seats, but for them to decide on disputes with a sitting president the current concentration of powers in the presidency would have to be reduced or the stakes would be too high.

The police

The 'Commission of Inquiry into Post-Election Violence' chaired by Justice Philip Nyamu Waki (2008) submitted a hard-hitting report suggesting a number of reforms in relation to the police. The report as a whole initially met with a hostile reception from all the major parties but it is not clear at this stage whether or not this also applies to the recommendations about the police.

Prosecutions

Political violence in Kenya has been conducted with impunity. Prosecutions have been extremely rare, which has only encouraged further violence and built resentment and calls for revenge. The Waki Commission called for an independent tribunal to prosecute those against whom it is believed there is a prima facie case of organising electoral violence. It gave Kofi Annan a confidential list of those whom it felt should be charged and asked that it be turned over to the International Criminal Court if the government of Kenya did not prosecute them (Waki 2008).⁸ Despite the hostility of the major political parties to the Waki report a local tribunal seemed less threatening than the prospect of international indictments so the government moved swiftly to propose a mechanism for establishing such a tribunal and Parliament was recalled on Tuesday 20 January 2008 to pass the necessary legislation. Only time will tell how vigorously the cases will be prosecuted.

National Land Commission

We noted above that the government's failure to address land conflicts and the manipulation by political elites of grievances over land have been the underlying cause of election violence since the introduction of multiparty politics. Furthermore, the earlier rounds of electoral violence inspired by land disputes (dating back to 1992) have left substantial numbers of internally-displaced families whom it is inhumane to ignore any longer and whose own inclination to violent revenge is undeterred.

It is vital that the land-inspired conflicts be addressed. But it is also important to recognise that they are unlikely to be 'solved'. First, the competing discourses

8 <http://www.nation.co.ke/News/politics/-/1064/485606/-/yw8abjz/-/index.html>.

over land are not only incompatible; they are also legitimate. It is true both that the central Rift Valley was not occupied by Kikuyu when the colonial incursion occurred but also that they have now been living there in significant numbers for nearly a century and that they moved there in good faith.

The land was stolen, but by whites. Kikuyu smallholders who live there now bought the land and are as poor as the Kalenjin who want the land 'back'. Secondly, many of the large landholders did acquire their land under questionable conditions and, in many cases, justice would be served by their being made to surrender it – either by order or by the pressure of progressive land taxation. However, the amount of such land that is viable for smallholder crop production is inadequate to meet the demands of those with historical claims to be in the area, much less of those who are landless.

These questionable large landowners are also among the most politically powerful people in Kenya and are therefore unlikely to be easily or entirely dislodged. Thus, no matter what is done, there will be a 'land problem'. According to experts in this field the crucial step is to create a process of deliberation, negotiation and mediation so that all parties come to realise the limits of what is possible and reach a compromise with which they can live. The first steps for such deliberative and participatory processes are contained in a Bill proposed by Lands Minister James Orengo.

The current Constitution concentrates control over land in the hands of the president, who holds it in trust for the state. The president uses these powers without oversight to make land grants to individuals and corporations and to arbitrate land disputes. One recommendation for resolving the land problems that is contained in both the 'Bomas' Draft and 'Wako' Bill is to remove powers over land allocation from the hands of the executive by creating a central regulatory agency, the National Land Commission (NCC 2004, p 38; RoK 2005, pp 40-1). The Land Commission would regulate the ownership and use of land on behalf of the national and devolved governments.

One drawback is that neither draft constitutionally guarantees the Land Commission's independence. Both are silent on its funding, regulation, and appointment of commissioners.

The 'Bomas' Draft goes a necessary step further than the 'Wako' Bill by outlining legislation on land for Parliament to enact, which includes key provisions for revising land laws and policy, affirming spousal land rights, investigating the legality of government grants and dispositions of public land, settling the landless, redistributing land from individuals back to the appropriate communities, and setting limits on maximum land holdings (NCC 2004, pp 38-9).

If these articles had been implemented they would have started the much needed process of establishing a tribunal to investigate and settle land disputes

by peaceful means and would have contributed significantly to preventing the 2007 election violence.

The Draft Land Policy 2006, which closely mirrors the 'Bomas' recommendations (Wambua 2008), was to have been introduced in Parliament by Cabinet Minister Orengo, and the passage and implementation of this policy may reduce the likelihood of further violent conflicts over land. The debate over land reform seems, in early 2009, to be subsumed once again in the whole discussion about a comprehensive review process for the Constitution (of which more below).

Employment-led development

Kenya is poor; 50 per cent of the population lives in absolute poverty (UNDP 2005). Empirical studies find that violence is much more likely to occur in a low-income country (Fearon & Laitin 2003; Collier, Hoeffler & Sambanis 2005; Collier 2007).

Kenya is currently experiencing a 'youth bulge', where the median age is 18 years and 42 per cent of the population is under 15 (UNICEF 2006). Forty per cent or more of these youths are unemployed and most are under-educated; only 22 per cent go on to secondary education (SID 2004). Being young, poor, uneducated, and with limited prospects of employment or access to land makes people more likely to engage in violence (Collier 2007). A recent analysis of the role of the youth in the election violence (Youth Agenda 2008) confirms that they are easily manipulated to violent ends when the bulk of them are unemployed and disillusioned. The Kenyan government's strategy for reconciliation acknowledged that youth violence was due to a 'lack of effective opportunities to integrate the majority of Kenyan youths into the mainstream economic activities' (RoK 2008b, p viii).

Youth vigilante groups have emerged in Kenya in the past decade offering an attractive route for socialisation, income, and informal employment. Many of these groups were activated during the election violence (OHCHR 2008). For other youths recruitment was based on promises of a new leadership that would redirect state assets to their ethnic group, direct payment (through a locally levied 'fighting' tax [HRW 2008]), land, jobs, and goods derived from looting. Grievances about inequality and marginalisation were used to justify their actions.

Patterns of violence in some districts of Central and Western provinces corroborate that unemployment is a motivating factor, for violence was directed against the homes and food reserves of (competing) commercial and tea-farm workers but left the commercial infrastructure intact (Mozersky 2008). While the youth perpetrated 73 per cent of the attacks they were involved in planning and financing only 7 per cent. Youth Agenda (2008) concludes that the youth were at the tail end of the perpetrator chain and constituted the majority of the victims of violence.

Young men are likely to remain available for violent mobilisation until they find reasonable employment, accumulate some capital, and get married. An 'employment-led development strategy', as suggested in the International Labour Office's 1972 report on Kenya, would address both poverty and violence.

Conflict: resolution and management

Youth violence has been a persistent feature of political activity in Africa for the past 60 years, particularly in relation to elections. It would seem that other, less violent tools for conducting conflict are weakly developed, so the repertoire of mass action is confined to the alternatives of passive acceptance of repression or riot, with nothing in between. Instruments that other societies have discovered for pursuing personal interests in the face of resistance or repression – petitions, demonstrations, strikes, civil disobedience – are weakly developed in most of Africa. The flowering of civil society in Kenya has provided some tools of protest and change for the middle classes but far fewer for the poor.

Tools used to mediate inter-communal violent conflict and bring about reconciliation have fallen into disrepair. International non-governmental organisations and the Conflict Early Warning project based in Addis Ababa are involved in innovative mediation work to reduce cattle raiding in the 'Karamajong cluster', which includes Kenya but applies only to pastoralist areas.

In terms of reconciliation, the African Great Lakes Initiative of Friends Peace Teams has made creative use of 'alternatives to violence' techniques in Rwanda and Burundi and modest efforts are underway in Kenya (*Peace Ways* 2008). Much more could be done on all these fronts. It would be unwise to allow Kenya to slip back into silent resentment and unresolved wishes for revenge. Similarly, the internally displaced persons created during episodes of election violence should not be forgotten. There is an urgent need, on both humanitarian and conflict prevention grounds, for programmes which will either reintegrate them in the places from which they were chased or find them suitable alternative land on which to settle.

WHAT ARE THE PROSPECTS FOR REFORM?

Agenda item 4 of the agreement Kofi Annan negotiated between the PNU and the ODM nominally committed the parties to addressing the above issues. The question is whether they will do so. In the past Kenya's leaders have simply ignored the causes and consequences of electoral violence and pretended they were no longer relevant. This time around, the response has been more positive, although still mixed.

As noted, the Krieger Commission's call for the members of the ECK to resign went unheeded. Ultimately, however, Parliament took the matter out of the commissioners' hands and passed a constitutional amendment creating the Interim Independent Electoral Commission and the Interim Boundary Commission. Appointments to the two commissions will be made by the Parliamentary Select Committee on Constitutional Review (PSC), and confirmed by Parliament as a whole. The term of office of the two commissions will be two years, after which they will be dissolved.

The selection of the commissioners to serve in the IIEC was not without drama. Parliament voted to reject the individual nominated to serve as chairman, forcing the PSC to begin the recruitment procedures afresh.

Similarly, both the ODM and the PNU voted against the implementation of the criminal prosecution recommendations of the Waki Commission.⁹ The government drafted a Bill to establish a local tribunal to try suspects (some of them Cabinet Ministers) rather than have them indicted by the International Criminal Court, but Parliament voted against the Bill, preferring to have the alleged perpetrators tried in the Hague.

Now that Odinga and the ODM have succeeded in achieving an amendment to the Constitution to provide for the post of prime minister do they have an incentive to attempt to reduce the constitutional powers of the 'imperial' presidency? As Kibaki is not an activist president Odinga, as prime minister, is, in practice, already exercising most of the powers he might claim and he is in a favourable position to win the presidency in 2012.

Those in the PNU who will challenge Odinga in his attempt to succeed Kibaki have a better chance of winning the presidency than the prime ministership if parliamentary constituencies continue to be constructed as they are at present, so their motivation to press for constitutional change might not be as strong as it would seem.

Informed observers of Kenyan politics believed it was more likely that selective amendments would be made to the existing Constitution than that a completely new one would be drafted and that even those changes would have to be motivated by dedicated reformers. Opinion polls showed that there had not been strong pressure from the public for a new constitution.

Contrary to these assessments, however, towards the end of 2008 Parliament passed the Constitution of Kenya Review Act to pave the way for the completion of the constitutional review process. The Act provides for a committee of seven experts, of which three are international. The committee has been nominated

9 <http://www.nation.co.ke/News/politics/-/1064/485606/-/yw8abjz/-/index.html>.

by the PSC and thereafter appointed by the president. Thus, after a slow start, progress is now being made.

The fact that Kenyans were deeply shaken by their country's descent into violence after the December 2007 elections, as was the international community, has created an atmosphere in which the democratic changes for which the country's citizens have battled since 1990 can now be fully achieved. This is the moment when Kenya's democratic future can be secured. There is resistance to fundamental change, but there is hope that that can be overcome.

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NIGERIAN ELECTIONS SINCE 1999

What does Democracy Mean?

Sam Egwu, David K Leonard and Khabele Matlosa

Sam Egwu is Professor of Political Science
at the University of Jos, Nigeria

Khabele Matlosa is the senior advisor-research at EISA

ABSTRACT

The Nigerian elections of April 2007 were neither credible nor well managed. The prospects of 'free and fair' elections determining the leaders of Nigeria in the future are also poor. Nonetheless, elections are a secure and consequential feature of the country's governance structure. This article analyses the institutionalised aspects of Nigeria's government, economy and society which produced this result and considers the prospects for positive reform in the near future.

INTRODUCTION: NIGERIA AND THE FOURTH REPUBLIC ELECTIONS

The elections

In April 2007 Nigeria held its third successive election since returning to electoral democracy in May 1999 (the start of what is widely regarded as the Fourth Republic). These elections fell short of the standards for credible, free and fair elections contained in international conventions to which Nigeria is a signatory.¹ Many observers and commentators confirmed that the elections were 'marred by extra-ordinary displays of rigging and intimidation of voters in many areas throughout Nigeria' (Rawlence & Albin-Lackey 2007).

Elections lie at the heart of representative democracy and constitute a mirror of the people's understanding and appreciation of democratic norms. Not only is the democratic character of a regime measured by the extent to which those who govern are chosen by means of free and fair elections, both the quality of voting rights and the sanctity of votes are strong measures of democracy (Danjibo & Oladeji 2007; Ibeanu 2007).

¹ These include, for example, the African Charter on Democracy, Elections and Governance and the African Peer Review Mechanism of the New Partnership for Africa's Development.

While the centrality of elections to representative democracy is widely accepted, elections can also serve as a veneer cloaking an authoritarian regime. In this vein, elections can be held regularly yet not accord meaning to the popular sovereignty implied by the vote. This has been the case since 1999 in Nigeria, where elections seem, thus far, to have served mainly the interests of the power elite and have had little, if any, significant impact on deepening representative democracy, let alone in positively transforming people's socio-economic lives.

Although it has been argued that the series of transition elections that ushered in the civilian regime in 1999 were flawed and were not as good as those in 1992, they were tolerated because of the overriding desire to ease out the military (Danjibo & Oladeji 2007) and enjoyed some measure of the credibility associated with previous elections conducted under the supervision of departing colonial or military regimes (Kurfi 1983).

However, high levels of electoral malfeasance, well reported by domestic and international observers, characterised the 2003 elections that followed under the supervision of an incumbent civilian regime (Ibrahim 2007; Ibrahim & Egwu 2005). It was therefore appropriate that the election report of Nigeria's premier domestic observer group, the Transition Monitoring Group (TMG), was entitled 'Do the votes count?' The group concluded that though voters were eager to exercise their popular sovereignty and have their votes determine the winners of elections the political class had a different agenda, wanting to corrupt the process and rig its way into office (TMG 2003b).

The flaws associated with the 2003 elections reached unprecedented heights in the 2007 elections. Widespread malpractices characterised the voter registration process and voter registers were not displayed at the times prescribed by the law.

The involvement of the Independent National Electoral Commission (INEC) in determining the eligibility of candidates – after it had lost much valuable time to the political crisis created by the abortive attempts by former president Olusegun Obasanjo to manipulate the 1999 national Constitution to grant himself a third term in office – shook the confidence of the populace and opposition parties in its ability to provide a level playing field (Ibrahim & Egwu 2007).

The 2007 elections were characterised by many shortcomings and malpractices, notably poor logistics on INEC's part – inadequate delivery of voting materials, late opening of polls in most of the states, ballot-box stuffing, allocation of votes where voting did not take place, falsification of votes, deliberate denial to perceived strongholds of the opposition of adequate supplies of election materials, among others. INEC also failed to put in place the basic infrastructure necessary to support the efficient transmission and collation of results, for which large amounts of funds had been approved.

Armed gangs were employed to appropriate ballot papers, mark them, add the necessary thumbprint to the register, and stuff the voting boxes at polling booths. All stages of the elections (pre-voting, voting and post-voting) were marked by extraordinarily high levels of political violence – according to official sources 55 people across the country died on election day, 14 April (*Vanguard* 16 April 2007). In Oyo, Ondo, Enugu and core Delta states there were reports of intensifying political violence and in Lagos, Ekiti and Kano reports of high-visibility killings abounded.

The unofficial death toll was estimated by various observers to be as high as 200 (Zasha, Mustapha & Meyer 2007). In states such as Rivers, Ogun, Oyo and Ekiti the total number of votes recorded far exceeded the number of registered voters.

In a few areas genuine elections were held, their outcome perceived to reflect the wishes of the people. Among these areas, according to many of the stakeholders, were Lagos and Bauchi, but even in these states it is necessary to make a nuanced assessment and to avoid the pitfall of concluding that elections are credible merely because opposition candidates and parties win. Rigging on both sides of the political divide irretrievably tarnished the integrity of the elections.

This is not to say that the elections had no redeeming features. Most reviews mention that the media and civil society were effective and that election tribunals were set up to consider post-election disputes. But these are modest positives in a generally disappointing picture.

On the whole, the April 2007 general elections were regarded as the worst in Nigeria's post-independence electoral history. The reports of domestic and international observers confirm that all stages of the elections were fundamentally flawed. As many of them noted, Nigerian citizens showed a rare commitment to electoral democracy by lining up in the sun and rain to exercise their right to vote despite fears that their votes might not count.

Nonetheless, the elections marked a transition from the 'competitive rigging' that characterised the 2003 elections (Ibrahim & Egwu 2003; 2005) to a situation in which the authorities at a centre decided in advance what the final vote tallies would be and rigged the results to achieve that tally.

The Transition Monitoring Group (TMG 2007) judged the 2007 ballot to have been programmed from the start to fail because of the politically motivated activities of the Obasanjo regime in close collaboration with the politically partisan INEC. This conclusion is reinforced by the startlingly close (4 to 3) decision of the Nigerian Supreme Court to affirm the election of President Alhaji Umaru Yar'Adua. In their judgement, however, the seven justices united in criticising INEC and holding that the poll was marred by gross non-compliance with the electoral laws (*Vanguard* 13 December 2008). It is no wonder, therefore, that many

consider the 2007 general elections in Nigeria to have been ‘stolen’ (Rawlence & Albin-Lackey 2007).

A failure of governance

The quality of elections in Nigeria in the Fourth Republic, then, has not been good and does not seem to be improving. In fact, it has deteriorated since 1999 and the elections have failed to produce governments that have advanced the public good – the country is behind in its target for meeting the United Nations Millennium Development Goals, the economy is weak, corruption is a serious problem, government is generally ineffectual, standards of literacy are low for a country of such wealth, and the human and environmental devastation to which the oil industry contributes in the Niger Delta is stubbornly persistent.²

Not only is Nigeria not a very good democracy its general development record is poor, which, given the country’s wealth, suggests that there is a governance problem – and indeed Nigeria’s World Bank governance scores are among the lowest in the world.³ What is the nature of this underlying governance problem? How does it affect democracy in Nigeria? What are the prospects of its improvement?

THE POLITICAL ECONOMY

Party politics and elections in Nigeria date back to the early 1920s when, in response to the nascent nationalism after the First World War, the British colonial authorities initiated constitutional changes. Although limited, the opportunity for the election to the legislative council in Lagos and Calabar of Nigerians with a certain threshold of property helped spur the decolonisation movement, which eventually led to the granting of political independence on 1 October 1960. Since then the notion of elections as the legitimate basis for exercising power has been entrenched in the Nigerian political system to such an extent that even successive military dictatorships in the post-independence era have, sometimes at their own volition, initiated transition programmes, of which elections were a critical element.

Nonetheless, democratic institutions have remained fragile. In particular, overbearing executive power, wielded especially by the presidency, has tended to

2 In 2007/08 Nigeria was ranked 158th of 177 countries on the UN’s Human Development Index. <hdrstats.undp.org/indicators/16>

3 Its average governance score for 2005 was –0.97, against a world average of zero. The World Bank’s governance indicators can legitimately be criticised on conceptual grounds, but even when the more ideologically doubtful ones are pared away the picture does not look good. The country has a corruption score of –1.22 (Kaufmann, Kraay & Mastruzzi 2006).

weaken the legislative and judicial branches of government, while the country's political life continues to be characterised by the exclusion of ethnic minorities and other marginalised groups, including women, the youth, and disabled persons. For example, despite various efforts to engage the executive and political parties in making the political terrain friendlier to women the percentage of women officeholders at national, state, and local-government levels after the 2007 elections is a mere 6 per cent. It is therefore important to provide a brief account of the Nigerian political economy and the context of its electoral democracy in order to understand the dynamic interplay of social, economic and political forces that shape the nature and character of electoral democracy in the country.

The sociological foundations

Nigeria has an estimated population of 140 million, and a federal democracy with constituent units comprising 36 states, a Federal Capital Territory, and a further subdivision into 774 local governments. The population comprises more than 375 ethnic groups (Otite 1990), almost equally split between Muslims and Christians, and the literacy rate is less than 60 per cent.

Although not constitutionally acknowledged, the six geopolitical zones are well recognised as the basis of power-sharing and promoting equity among the component parts of the federation.⁴ Nigeria's plural and diverse ethnic, regional and religious character is a key defining element of its electoral democracy. The potency of these three factors is increased by their tendency to interact with one another, so that ethnic groups (with a few exceptions, such as the Yoruba) usually have a common religious heritage and predominate in distinct states (save where they have migrated to major urban areas such as Lagos and Kano).

The more than 375 ethnic groups in Nigeria vary in size, history and influence, and the tendency of the political elite to politicise and exploit these identities has led not merely to ethnic plurality but to a state of unequal ethnic relations characterised by intense competition for state power and publicly controlled resources.

The politicisation of ethnic and sectional identity has changed along with the changing character of federal politics and the shifting context of the struggle for power and resources. From the late colonial period to the end of the First Republic the 'politics of difference' was framed on the basis of the tripod of the existing three regions – East, North and West, each region representing the interests of one of the three major ethnic groups. However, the feeling of ethnic minorities within

⁴ These geopolitical zones are: North-East, North-West, North-Central, South-East, South-South, and South-West.

the regions that they were oppressed generated considerable tension towards the end of colonial rule and survived into the post-independence era in the form of agitation for the creation of new states and local governments. The establishment of new administrative units in a move to abolish ethnic and regional consciousness as the basis of political mobilisation (for instance the adoption of the existing six geopolitical zones for the purposes of power-sharing and allocation of public resources and opportunities) has not diminished these sentiments.

Closely related is the expression of identity politics by ethno-regional political organisations and groupings. These provided the platform for the political organisations that fought for the country's independence, reflecting largely the ethnic-cum-regional orientation of the emergent elites.

There has been a resurgence of ethno-regional political organisations since the democratisation process began. The best-known examples today include the Arewa Consultative Forum (representing the core North, simplistically identified as Hausa-Fulani), the Afenifere (identified as the platform of the Yoruba-speaking population of the South-West) and the Ohaneze N'digbo (which advances the interest of the Ibo speaking population in the South-East). Similar ethno-regional organisations represent the various ethnic minorities.

One consequence of ethnic and cultural mobilisation is the tendency to exclude groups as the context of the struggle for power and resources changes. This is especially the case with regard to the notion of 'indigeneity' introduced into the 1979 Constitution in the context of applying the 'federal character' principle, which has divided people on the basis of an 'indigene/settler' dichotomy.⁵ Thus, despite the fact that the main thrust in the constant adjustment of the country's federal system since the end of the civil war has been the preservation of unity and management of the conflict spiral generated by competing ethnicities, measures introduced to manage diversity have produced the opposite effect, fomenting ethnic and communal divisions.

Despite Nigeria's march towards modernity and democracy the institution of traditional rulers has remained relevant to questions of power and elections,

5 The 1979 Constitution was the first to introduce the notion of indigeneity and it has been retained in subsequent constitutions. It was introduced in the context of implementing the 'federal character' principle in Nigeria, which, itself, was intended to prevent domination by one ethnic group or region of public positions, including Cabinet positions and positions on the boards of state-owned parastatals. According to the Constitution only an indigene of a state can be nominated for a position in that state. The interpretation section of the Constitution goes on to classify an indigene as one whose grandparents belong to an ethnic community indigenous to that state. This makes ethnicity the basis for indigene status and therefore the basis for access to local citizenship rights and it can also be used to exclude people from participating in elections, a system of ethnic citizenship that has divided people into indigenes and settlers. The political conflicts in several parts of the country, especially in the North Central areas around Plateau and Kaduna, are fuelled by it. Where the indigene/settler dichotomy falls along religious lines, as it does in Jos, it leads to an all-out religious battle, setting Muslims against Christians.

creating varying degrees of harmony and tension. Traditional rulers stand at the apex of a large number of the country's culturally diverse communities. Since they claim to espouse the collective communal identities and values of the various groups they symbolically reinforce ethnic and communal political identity, with direct or indirect implications for shaping power and authority. The colonial state cultivated the traditional institutions through the 'indirect rule' system. Where centralised traditional authorities did not exist, they were 'invented'.

In the post-independence period traditional institutions have proved to have such remarkable adaptive qualities that the simple dichotomy between 'modern' and 'traditional' as analytical tools may not be useful in understanding their role within the public space (Whitaker 1969). Thus, despite the fact that traditional rulers have continued to derive their legitimacy and relevance from representing the ethos and norms of the past, they are firmly located within the modern state system. Powerful local traditional rulers such as the Sultan of Sokoto, the Emir of Kano, the Oba of Benin, or the Ooni of Ife, whether from ethnic majorities or minorities, are widely regarded as 'power brokers' and interact dynamically with elected public officials at all levels of governance, despite constitutional attempts to remove them from the arena of electoral politics.

Foundations of the political economy

Nigeria's political economy is underpinned by the central role played by the state in the organisation of social, economic and political life, for which reason enormous interests have grown up around it. The emergence of oil-based accumulation has strengthened the role of the state as the dispenser of patronage. In the context of electoral democracy the state is perceived as the 'coveted' prize to be won by the group or coalition of elites that bind together in political parties.

The post-colonial Nigerian state has its origins in colonial rule, its path to development essentially defined by: a state-led approach to capitalist modernisation; a dependent strategy which emphasised a significant role for foreign capital (even at the height of oil boom); a heavily import-dependent industrialisation strategy; and a philosophy of development which excluded the people from meaningful participation in the development process.

The economic crisis of the early 1980s, which weakened the legitimacy of state institutions, was founded on this model of post-colonial development. The series of market-based adjustment policies beginning with the Structural Adjustment Programme (SAP) and the current National Economic Empowerment and Development Strategy (NEEDS) have aimed at broad economic as well as politico-administrative reform.

However, it was the emergence of the petroleum economy in the 1970s that made the most significant impact on the Nigerian political economy. By the end of the 1980s, oil revenue accounted for more than 80 per cent of the country's external earnings, displacing agriculture, whose contribution to the GDP between 1960 and 1964 stood at an average of 79 per cent. This encouraged the emergence of a 'rentier' state and eroded the basis of the 'social contract', as rent extracted by the state replaced tax as the basis of public expenditure (Guyer 1994).

Today oil and gas account for about 70 per cent of government revenues. More importantly, oil income intensified rent-seeking capitalism, which puts wealth at the disposal of a few and is characterised by prebendal arrangements and the establishment of patron-client networks, which are sometimes ethnic-based (Egwu 1998; Joseph 1987). This model of politics, and the elite bargain associated with it, tends not only to benefit the few, but dismantles the state by enthroning informal channels of influence, transforming it into personal fiefdoms and subverting the rule of law.

Prolonged military rule, accounting for 30 of the 47 years of post-independence life, has had considerable effects on party democracy and elections in Nigeria, eroding constitutional federalism through centralisation of power and resources, violating the rights of citizens, eroding the rule of law and enthroning a culture of arbitrariness and impunity, resulting in high levels of corruption.

Successive transitions to civilian rule initiated by the military have tended to undermine the very basis of democratic politics as political parties were decreed into existence, conditions for forming political parties made stringent, certain categories of politicians excluded, powers of the judiciary limited by 'ouster clauses' in decrees, and deliberate efforts made to expunge ideology from party organisations and manifestos.

Decades of military rule transformed what was essentially a loose federal arrangement in the First Republic, in which economic and political powers were highly decentralised, accounting for a combination of healthy and acrimonious rivalries between the different regions. Partly reflecting the new spirit of nationalism of the post-civil war era and partly reflecting the centralising logic of military rule, the central government reduced most of the constituent units to mere political and fiscal appendages.⁶ This was achieved by creating new states, taking over sources of revenue hitherto enjoyed by the regions and abolishing derivation as the basis of revenue-sharing among the constituent states.

6 There are a few exceptions. President Obasanjo essentially cut off all federal funding to opposition-controlled Lagos State. Yet at the end of his term Lagos was still powerful and running a (self-funded) budget surplus. Lagos is the commercial capital of Nigeria, however. Very few, if any, other states could be so independent.

It is important to acknowledge that although oil royalties have led to a concentration of government revenues in the centre the existence of strong formulas for their distribution among the states does limit a president's freedom of choice. But the remaining areas of discretion are sufficient for the presidency to be the dominant actor.

The adoption of a federalist ideology towards the end of colonial rule, a consequence of the convergence between the ethnic and class interests of the founding fathers, has, to a significant extent, provided the basis of elite compromise and bargains characteristic of the plural nature of Nigerian society. The creation of new states and local governments has been used to contain elite demands cloaked in ethnic and other primordial gowns, and to address the grievances of ethnic minorities. However, over-centralisation of power and resources has stifled the quest of some groups for national self-determination and undermined local autonomy.

In the oil-bearing communities of the Niger Delta a feeling of neglect occasioned by the removal of the derivation principle⁷ of revenue sharing and the grim realities of poverty and environmental degradation as a result of the activities of oil companies have combined to fuel political agitation and sometimes sheer criminality.

There is enough discretion over revenue and personnel at the centre for the presidency to dispense patronage across the country, hijack the ruling party, subordinate the legislature and stifle the judiciary. In the absence from the Constitution of provision for entrenched independent commissions and a politically effective civil society, executive funding of other branches of government can be used to erode the necessary checks and balances. Funding control of 'executive' bodies such as the election management bodies, security agencies and anti-corruption bodies has been used to undermine the credibility of the electoral process. At state level governors, as 'party leaders', dispense patronage and control power that also can be used to subvert the electoral process. All this came into play in the countdown to, and the actual conduct of the 2007 elections

Elections are central to the elite bargain

Elections in Nigeria are not genuine

Elections in Nigeria since the return to civil politics in 1999 have manifested serious deficits, provoking the realisation that votes do not count and resulting

7 The principle by which the state in which revenue is generated (generally by natural-resource extraction) should be entitled to a substantial, fixed proportion of it.

in a widespread lack of confidence in the electoral system, increasing cynicism among the electorate, and the general perception that leaders thrown up by the flawed electoral process lack legitimacy. The consequence is that Nigerian voters are mere voters and do not, in the literal sense, constitute an electorate – there is little or no contact between the people who cast their votes and the officials who do not owe their election to what was on the ballot of the voters (Ibrahim & Egwu 2003; 2005).

Certainly in Nigeria elections are not free and fair. There was even a notable instance in which (accurate) election results were leaked to a newspaper a few days *before* the election took place. As part of an intra-elite deal the current ruling party, the People's Democratic Party (PDP), fixes the results in advance – even for local government elections – in all but a handful of states where the dominance of the opposition is so great that civil disorder would be provoked if PDP candidates were imposed. The election is just a means of putting the deal into practice. However, once power has shifted after the election the deal can be renegotiated.

In the opposition states elections may sometimes be more genuine – but there remains the possibility that they are simply being fixed by a different elite group. That seems to have been the case in the 2007 elections in Kano (although not for those in 2003).

The real power at election time, at least at the federal level, lies with the PDP, which effectively controls INEC. Ensuring genuinely independent election commissioners is a major challenge.

Oil money is the real driver behind the politics of elections and the reason there is so little accountability of the elite to the general populace. Political party financing – real financing, not state funding – enables the manipulation of the elections and the transfer of power. The benefits of office are seen as too significant to be left to popular choice.⁸

Elections nonetheless are an important part of the system

Their deficits notwithstanding, elections have continued to play an important role in Nigeria's political life, and could contribute to democratic consolidation. The current system does provide stability. The country is held together by the elite deals and there is at least the appearance of meeting the constitutional requirement that the president win a quarter of the votes in two-thirds of the states. The integrity of the country does not seem at serious risk, having been tested by civil war. Nonetheless, there is a danger that unconstrained democracy

⁸ The electoral process itself also is a money-making business – the trading of allegiances, networking, etc.

– if it permitted unrestrained ethnic competition and threatened the underlying elite deal – could stimulate ethnic violence. Even in their nominal sense elections matter and will continue to be important in the Nigerian political system. To begin with, despite widespread lack of confidence in the electoral process Nigerians have demonstrated support for the idea of elections, not only as the more viable alternative to the military in the selection and recruitment of the political leadership but also in the symbolic sense that elections are a necessary part of civilian life. Military rule has always been seen in Nigeria as transitory and an aberration before a return to civilian and democratic rule.

An election provides the marker for the authority that is being granted to an office holder by a party and those controlling it. It is not easy (although it is possible) to remove someone from office during his or her ‘elected’ term. The ‘election’ process also defines the length of a term and the Constitution defines how many terms are allowed. Arguably the defeat of Obasanjo’s concerted attempt to win a third term was a victory for these democratic principles.

Do elections provide legitimacy?

In much, perhaps most, of the country the general populace does not consider that elections are legitimate. This is certainly true of the former Eastern Region (where secession was attempted and then defeated in the civil war). Here the people feel disenfranchised, marginalised and under occupation. The feeling of alienation and neglect in Enugu makes more sense in the context of national politics. And it certainly is part of the anthropology of anger in the South-East. But in terms of elections at state and local-government levels the governing coalition largely involves different factions of the Igbo elite (albeit in alliance with national political figures) such that it cannot simply be interpreted as an imposition by other sections of the country.

In Kano, where the opposition government enjoyed wide local support in 2003 but probably stole the 2007 elections, some people feel the elections were largely legitimate. But others (especially those who are well informed) are deeply cynical about the elections and see any outcome as dictated by the elite.

Nonetheless the elections do seem to be important to and bestow legitimacy among the elite itself – as an outward sign of a naked political process that is going on behind it. It also appears that elections are an attempt by elites to gain legitimacy outside the country, for they seem upset that international election observers condemn their blatant rigging.

The rules of the election game

Despite the use of naked power and blatant vote rigging there are important rules of the game. The first is term limits. Despite their flawed nature elections

continue to be a marker of authority that is being granted to an office holder by a party and those controlling it, in addition to defining the length of a term. The imperative of respect for term limits was invoked by the coalition of groups and individuals that successfully blocked Obasanjo's 'third term' ambitions.

Another important rule is 'zoning'. At every level of the political system the elite allocates offices according to geographical (and hence ethnic) zones. The 'rule' is that pinnacle positions must rotate between the zones for that level so it is clear when it is the 'turn' of a region/zone to hold a position. Another, related, rule is that positions that are roughly equal must be distributed between the relevant zones for that level. There are zones within the federal system, within the states, within districts, and even within villages. These principles are now quite locked into the Nigeria elite bargain and define the ways in which the benefits of oil revenues and public office will be shared and rotated, thereby preserving the unity of the country.

The formalisation of the concept of zoning and of the 'federal character' principle (in the composition of the armed forces, higher education, and so on) seems to derive from the fear of secession induced in the elite by the Biafran civil war, although the idea of 'ethnic balance' in government and of a region's 'turn' has always had support.

An emergent rule appears to be that the incumbent president plays a key role in brokering a deal relating to succession. There may also be an implicit, informal rule that those who leave office peacefully will not be prosecuted for their misdeeds while in power. The latter is partly a function of the fact that former office bearers will have played a key role in choosing their successors and is also partly a result of fears that the investigation of one person's misdeeds might well reveal those of another person who it is desirable to protect.

Strong presidency, weak Parliament

Executive power at the national level in Nigeria is marked by a strong presidency with an imperial character. This is a consequence of several factors. These include decades of military dictatorship that eroded constitutional federalism by centralising power and resources at the federal centre, the politics of patronage and corruption fuelled by oil wealth, the erosion of the rule of law, and the acceptance of a culture of arbitrariness and impunity.

President Olusegun Obasanjo's eight-year rule saw the emergence of an imperial' or 'monarchical' presidency, which became the most important source of power and authority. The manipulation of election management bodies and the distortion of the electoral process were made possible by the overbearing powers of the presidency, which allowed the president, who is widely recognised as the

'party leader', to hijack the ruling party and to determine which candidates were selected for election.⁹

In designing the 1979 Constitution Nigeria made a conscious choice to adopt a presidential system of government to replace the parliamentary system in place during the First Republic. The decision was driven by two factors: the desire to promote national unity through a president elected directly by the nation and the wish to have that president bound by clear lines of executive authority.

While the 1999 Constitution, like that of 1979, invested the president with wide powers, it also placed limits on the president by giving the National Assembly powers over appropriation and oversight. However, because of its own institutional weaknesses the legislature is not in a position to impose the necessary checks and balances. A sufficient minority of MPs *did* refuse to assent to President Obasanjo's campaign to change the Constitution to give himself a third term – a highly significant event in Nigeria's parliamentary history, particularly given the amount of money that changed hands. But executive dominance is the more general pattern.

The strengthening of the executive branch is reinforced by the dominance of the public bureaucracy in the policy-making arena. The consequence is that the president is in a position to construct vast networks of patron-client relationships, including control of the party hierarchy, even though a political godfather or a coalition of elites may have selected him for the office. With such vast power and influence the president can also become the key determinant in the selection of candidates for governorship elections in ways that challenge the idea of federalism.

Political parties and partisanship

There are five major political parties in Nigeria today: the ruling People's Democratic Party (PDP), the All Nigeria People's Party (ANPP), the Action Congress (AC), the People's Progressive Alliance (PPA), and the All Progressives Grand Alliance (APGA). The PDP holds the presidency, accounts for more than 80 per cent of the membership of the National Assembly, and controls 27 of the 36 states in the country.

It is believed that the PDP party machine, in connivance with INEC and the presidency, was responsible for the blatant rigging of the 2007 general elections. The ANPP is the second largest, controlling four states – Bauchi, Borno, Kano and Yobe. Its presidential candidate in the 2007 elections, retired General

⁹ Obasanjo's statement that the 2007 elections would be 'a do-or-die' affair is widely cited as a major explanation for the high level of malpractice.

Muhammed Buhari, won the second-highest number of votes. The AC, the third-largest party, formed by the former vice-president, Alhaji Atiku Abubakar, controls the states of Lagos and now Edo (in the South-South geo-political zone, following the Appeal Court judgement that overturned the April 21 election for governor in which the PDP candidate was declared the winner). The PPA controls Imo and Abia, two Ibo-speaking states in the South-East, while the APGA holds the governorship of Anambra.

While the number of political parties increased from three to 50 in 2003 only those cited above appear to be viable, with the PDP alone dominant at the national level and in two-thirds of the states. This has given rise to the perception that Nigeria is faced with the threat of one-party dictatorship and a possible relapse into a civilian form of authoritarian rule.

The 1999 Constitution contains elaborate provisions for the registration and functioning of political parties. Among these are those that seek to 'engineer' political parties with a national support base. This military legacy of 'political engineering' dates back to the 1979 Constitution, which stipulates that for political associations to qualify to be registered as political parties they must demonstrate a presence in three-quarters of the states in the country, while their officers (chair, vice-chair, treasurer, and so on) must reflect Nigeria's 'federal character'. The shortcoming is that this stricture focuses on territorial diversity at the expense of class, gender or other policy-relevant issues. The institutional weakness of political parties is accounted for by a number of factors, including the predominance in the ranks of the political class of those raised under successive military regimes, the absence of internal democracy, and the decline of ideology and issues-based politics in party organisations and campaigns. The additional problem of the limited capacity of political parties and the lack of strategic direction is reinforced by a lack of respect for democratic values and the rules of political competition.

Despite the fact that they are publicly funded political parties are not accountable either to citizens or to their members, a problem linked to the role of party godfathers and oligarchies. Party godfathers may be financiers or intermediaries who use their vast social and economic connections to determine, with little reference to a party's constitution, how the party is run and election candidates selected. Not only do they undermine the formal channels of political parties they seek to control those they sponsor for 'elected' positions by choosing for themselves juicy Cabinet positions and awarding themselves lucrative contracts. Although there are several examples of tension and conflict between godfathers and their beneficiaries the phenomenon of 'godfatherism' severely undermines the viability of the existing party system.

Thus the issue that most concerns the public is the parties' lack of internal democracy. The dominant trend is that although parties hold internal primary

contests they disregard the results in selecting their nominees. The pronouncement by the ruling PDP in the countdown to the 2007 elections to the effect that winning primaries does not guarantee the party's nomination is instructive. In states such as Taraba, Niger, Rivers, Imo, Adamawa, Kebbi and Sokoto, for example, those who eventually contested the 2007 gubernatorial elections on the PDP ticket did not feature in the primaries.

The culture of the elite selection of candidates is so strong that there has been little effort to hide it – and indeed those with power in the various parties *prefer* nominees to be beholden to them and not to have an independent base among party members. The blatantly undemocratic character of these processes has provoked widespread public criticism and appears to be a matter of embarrassment to many of the parties' leaders. The result is that although it is possible to reform selection procedures it is probably unrealistic to think that the *appearance* of internal party democracy would be any more genuinely democratic than the general elections themselves. The expectation of elites that it will be they who determine the selection of public office-holders is so strong that it is unlikely to be seriously threatened until significant social forces have an interest in doing so.

There is much debate among donors and political reformers about the need to create political parties that are based on public policy issues and not patronage but experience suggests that this objective is probably unrealistic at present in Nigeria, partly because of the structure of political power but also because citizens need the state to address more pressing matters.

That politics in Nigeria is structured around clientelism is obvious – office holders use the state to generate income for themselves and their close associates (both sponsors and clients) and then use the accumulated wealth to purchase the election results they desire.

Nicholas van de Walle (2007, pp 50-67) argues that there are three forms of clientelism: tribute (traditional gift exchange), patronage (the use of state resources to provide jobs and services) and prebendalism (the distribution of public positions to elites in order for them to gain wealth from the operation of the office). The term prebendalism was devised by Richard Joseph (1987) specifically to describe Nigerian politics under the Second Republic and it remains a dominant practice in the country. In Van de Walle's view only tribute and patronage are truly distributive, reaching ordinary voters; prebendalism is an elite bargain in which the benefits are narrowly distributed.

Patronage appointments may reduce the effectiveness and efficiency of the state, but they are not necessarily illegal. Prebendalism, on the other hand, dismantles the state, transforming it into personal fiefdoms, and subverts the rule of law. Van de Walle believes that patronage was active for only a brief period at

the time of independence in most African states and has now been replaced by prebendalism. Patronage was necessary to mobilise voters and secure their loyalty and therefore became unnecessary once competitive elections ceased (although it remained active in those states which had competitive primaries in one-party systems) while prebendalism is sufficient in the no-party systems, as the only serious threat is secession, which requires the co-operation of the elite.

Even a Nigeria under multiparty democracy fits Van de Walle's model. Nigeria's political entrepreneurs deliver votes, but without necessarily recruiting and mobilising voters. While in African states with genuine multiparty democracy parties are the vehicles of visible leaders and try to distribute real benefits to their constituents, in Nigeria much of the power is behind the scenes, with the visible leaders simply assuring continuing prebendal access to state resources for the invisible wealthy men who purchase thugs to carry out the work of delivering the elections (sometimes by *preventing* people from voting and stuffing ballot boxes on their behalf). Thus these parties are driven by the prebends of office – the need of elites for continued access to them and the finance from them to purchase the election.

There is vigorous competition in Nigeria, but the outcome is determined by puppet masters. The competition is exclusively between elites and is determined by bargaining among them, with the politicians who stand for office themselves not necessarily the most important actors and the people counting for little. Since the real competition is about office, not policy, the elites often appear interchangeable.

There is a socio-economic logic to parties based on clientelism and not policy, which goes beyond the foregoing political logic, however. The services Nigerians need from their state are readily distributed as patronage goods – schools, health services, roads, and jobs. Since there are not yet enough of these services to meet demands the issue for Nigerians is less the *quality* of these services *in general* than what is available *to a particular constituency*. This form of demand is therefore perfectly tailored to patronage politics (or, as more positively described, constituency service).

If these services were universally accessible the policies that would enhance their quality across the country (or state) could become a political issue, but this point has not yet been reached. In oil-rich Nigeria universal access to services of a reasonable quality *could* already exist if the state operated efficiently and was not subject to such rampant predation. But this is not the way the absence of services is perceived at constituency level, where the demand is simply that the necessary resources to supply them be moved to some users at the expense of others. Similarly, it is probably true that a different macroeconomic regime would make imported consumer goods for the elite more expensive and locally-

produced goods more competitive (both domestically and internationally), thereby providing more jobs for the Nigerian poor. But it is even harder for the average voter to see this policy issue than to see the quality one behind service provision.

Party politics and godfathers

Although it may be argued that the phenomenon of 'political godfatherism' (kingmaking) is not new in Nigerian politics it seems, in the current political dispensation, to have assumed a new form. Political godfathers determine which candidate is selected for election purposes either through the formal channels of decision-making in the political parties or through informal networks of social ties and obligations that ultimately influence party decisions. Godfathers are also linked to the 'primitive accumulation' of votes, in which their influence and networks are used to rig elections or write election results in favour of anointed candidates. However, the ultimate aim of a political godfather is to take over the machinery of government by determining who gets the juicy Cabinet positions, having successfully installed a beneficiary as a president, governor or local-government chairman.

In Nigeria's First and Second republics it was rare to find the kind of political godfathers who debase electoral politics and contests today. In those days charismatic party leaders such as Nnamdi Azikiwe of the National Council of Nigeria and the Cameroons (NCNC) and Chief Obafemi Awolowo of the Action Group (his party in the First Republic) and the Unity Party of Nigeria (his party in the Second Republic) rewarded known party faithful and ideologues with executive and legislative positions. There were exceptions, however, in local politics, where 'powerful' individuals sometimes determined which candidates were selected for election. The late Busari Adedokun (in the First Republic) and Adedokun Adedokun (Second Republic) were widely regarded as 'kingmakers' in Ibadan politics. In the Second Republic Olusola Saraki was known as the 'godfather' of Ilorin and Kwara state politics.

Political godfathers, usually wealthy individuals who spent their fortunes on the poor, had a strong hold on voters, exercising control through their acts of generosity, which were converted into political capital during elections.

There has been a proliferation of 'godfathers' in the Fourth Republic, many of whom are individuals who made their money through their close association with military or ex-military leaders who have become excessively wealthy and are using their wealth to determine the outcome of political contests. At the local level most successful politicians have visible benefactors and once such candidates are in office they do the bidding of their godfathers.

Between 1999 and 2003 politics in Anambra State in the South-East was controlled by Chief Emeka Offor, who single-handedly sponsored the election of Chief Mbadinuju of the PDP to become governor. Chief Offor's stupendous wealth came from contracts in the days of General Sani Abacha's dictatorship. For him, politics was an investment and he needed to make a 'profit' from it. He forced the governor to swear to pledge a certain amount from the monthly federal allocation to the state to be paid to him directly. The commitment of the governor to his godfather crippled the finances of the state to such an extent that for more than a year salaries of public servants, including teachers, could not be paid. He became so unpopular that even the PDP denied him the ticket to run for a second term in 2003 and he was forced to contest the seat for a different party and lost. His successor was Chris Ngige, who was brought to power by another godfather, Chief Chris Uba and was also forced to agree to pay a substantial part of the state revenue allocation to his godfather.

Perhaps the best-known godfather in Nigerian politics, until he died in 2008, was Chief Lamidi Adedibu, popularly known as the strong man of Ibadan politics. He provided '*amala*', a local staple, to hundreds of poor Ibadan residents on a daily basis. He was courted by President Obasanjo and was feared by police and security forces.

The courts

Courts are vital to a democracy. Without them there is little check on the executive and the legislature has no way of enforcing the laws it has passed. Although there is some evidence of a re-emerging independence and professionalism in the courts, at least at the level of the appellate bodies – the Court of Appeal and the Supreme Court – which have handed down some notably independent judgements since the return to civilian rule, there is no doubt that the judges who sat in election tribunals have often been instruments of the election-fixing machinery of the PDP.

For the most part, the higher judiciary was sidelined during the periods of military rule, for the governments in that period attached 'ouster clauses' to any legislation they enacted that might be controversial. Such clauses placed the laws outside the authority of the judiciary so the higher courts were generally excluded from considering cases in which the executive had a strong interest (although they showed their independence in a few cases, when given the chance).

The body of the law, therefore, is less compromised at that level and judges in the higher courts often are well networked internationally and sensitive to the nature of their reputations. A more cynical opinion is that the recent judicial independence is more apparent than real – that it is exercised only when it is in the interests of some powerful member of the elite, usually the president. Those

who share that opinion (among them some experienced attorneys) see the judicial system as impossibly compromised and unlikely to change until the rest of the system does. Two conflicting pieces of evidence are worth mentioning here. The judicial decision to include Atiku as a presidential candidate in the 2007 election was seen as a step forward for judicial independence. On the other hand, both the Appeal Court and the Supreme Court are reported to have been compromised in their deliberations on the presidential election petition. According to newspaper reports both courts received vast sums of money to rule in favour of the PDP.

The media

The media play a critical role in a democracy, having a particularly synergistic relationship with the legislative and electoral processes. Without the media information about government malfeasance and incompetence would not be widely known, so neither citizens nor legislators would be aware of the shortcomings of elected officials and thus be able to hold them to account. In addition, voters buy newspapers and magazines, legislators frequently leak stories to journalists, and public scandals both sell papers and help to build citizen demand for legislative action.

Nigeria's media have a reputation for both independence and irresponsibility. Since many media outlets, especially the broadcast ones, are owned by the government this reputation for independence is somewhat exaggerated. Furthermore, as the recent temporary detention of news blogger Jonathan Elendu demonstrates, the government is cracking down on journalists it deems to be overly critical/revelatory of the current administration. Nonetheless, in comparison to those in most African states the Nigerian media are vibrant and free and the emergence of community FM radio is greatly expanding the domain of independent information providers.

Nigeria has a large number of newspapers offering a variety of points of view. The big four – *This Day*, *Punch*, *the Daily Trust*, and *Vanguard* – have daily print runs of 30 000 to 40 000 (with much larger readerships). But these numbers are a far cry from the 300 000 a day the *Daily Times* printed 30 years ago. Broadcast media are far more important today and the ability of community FM stations to work in a multiplicity of vernaculars adds a new dimension.

On the negative side, Nigerian journalists are not very professional. Some are not even paid salaries by their employers and journalists are known to accept money for the placement of stories. Stories are published without proper fact checking – sometimes deliberately, as a way of getting around the Official Secrets Act and forcing government to bring a matter into the open (as the country has no freedom of information Act – something journalists would greatly welcome).

Civil society

Nigeria has an active and diverse civil society, with a number of impressive organisations dedicated to improving the country's democracy. Sadly, many of these civil society organisations (CSOs) are largely dependent on external donors for financial support and their operations are disrupted when donors focus their funding exclusively on elections rather than on the full electoral cycle.

This narrow focus leads to dramatic increases and decreases in organisational activities and to periods of instability when organisations are uncertain whether in fact they will receive support at any particular time. The many faith-based CSOs have a more stable financial base and make an important contribution.

Democratisation CSOs in Nigeria also suffer from the fact that, in fact, elections in the country are generally *not* 'free and fair' and their members sometimes literally risk their lives to combat electoral abuses. These organisations feel betrayed when the international community, which has funded their work and whom they see as an ally in the quest for higher standards, congratulates leaders who have been 'elected' by processes the country's own observers have criticised. Diplomats have developed their own subtle language of criticism – one the Nigerian government understands and is stung by. Diplomatic ways of communicating with those in the front line of democratisation remain to be found.

The management of the electoral process

The management of an election is a critical element in its credibility, integrity and the legitimacy of its outcome. In Nigeria the transitional election of 1999 was managed by a military leader (Abdulsalami Abubakar) following the death of the former head of state, Gen Sani Abacha. This was a case of the military presiding over its own exit from power and ushering in the new era of multiparty politics (as happened in 1979). Although serving military officers have withdrawn from electoral politics some retired generals continue to have an undue influence, primarily as 'big men' or 'godfathers' of political parties who use their wealth to influence electoral outcomes (an example is former president Gen Rtd Babangida).

How does the electoral system work?

Nigeria's electoral system is defined by the country's Constitution of 1999 and by its electoral laws, particularly the Electoral Act of 2006. The first-past-the-post (FPTP) system, which is also widely referred to as the winner-takes-all system (and loser-loses-all), is used for legislative and local elections. By this method the

country is divided into electoral zones and political parties contest through their designated candidates while independent candidates are barred from standing. Only one winner emerges on the basis of a simple plurality (not an absolute majority) of votes.

The system has contributed in no small measure to accentuating electoral conflict and political violence in Nigeria over the years. The winner-takes-all system combined with lack of intra-party democracy has generated election-related political violence, itself a manifestation of the intense battle for state power and oil resources.

For the presidential and governorship elections the FPTP system is modified slightly into a potentially 'three-round contest' – if, for example, in the first ballot the leading candidate in the presidential election does not secure at least a quarter of the votes cast in each of at least two-thirds of the states and in the Federal Capital Territory (FCT); or, in the case of the governorship election, a quarter of the votes in each of at least two-thirds of local government areas in the state.

In the second round (first run-off) the contest is reserved for [the] leading candidate in the first ballot and the one among the other candidates who wins the majority of votes cast in the highest number of states (presidential) or in the highest number of local government areas (governorship). If neither of the two candidates obtains the necessary spread in the second round (second run-off), a third round is held for the two candidates for a decision by simple majority (Guobadia 2005).

Many political stakeholders have proposed that the presidential Electoral Reform Committee (ERC) review the electoral system with the aim of introducing more proportionality in an attempt to institutionalise an inclusive and broadly representative government. This could be achieved in two ways, either by exchanging the current FPTP system for the party-list proportional representation (PR) system or by modifying the FPTP system to include elements of PR. The latter option seems more popular among the advocates of electoral reform in Nigeria.

In their submission to the ERC the Nigerian Bar Association, the Nigeria Labour Congress, the Trade Union Congress and the Transition Monitoring Group proposed that 30 per cent of all legislative seats be filled by PR and the remaining 70 per cent by FPTP.

The Independent National Electoral Commission

INEC, which managed the 2003 and 2007 polls, has not earned the public's trust. For this reason, and because of the overwhelming political influence upon it of government at both federal and state levels, the credibility and integrity of elections have been considerably undermined and the legitimacy of their outcomes severely compromised. Various observer mission reports on the 2003 and 2007

elections attest to this stark reality. The December 2008 verdict of the Nigerian Supreme Court on the presidential election was that the country's electoral laws had not been complied with (*Vanguard* 13 December 2008).

INEC (2007) has tried to deflect public criticism by shifting the blame to political parties – acknowledging that the 2007 election was fraught with myriad irregularities and fraud but blaming the parties for all the electoral malpractices and malfeasance. In truth, INEC was a compliant tool of the PDP, with which it shares the blame for the flawed process.

INEC was also affected by the power struggles within the ruling party and its battles with opposition parties during the election. For instance, both INEC and the Economic and Financial Crimes Commission (EFCC) were abused by the then president, Olusegun Obasanjo, in order to incriminate and elbow out the then-vice-president, Atiku Abubakar. The popular perception in Nigeria is that elections are a ceremonial ritual for the circulation of elites in state power, with INEC playing a facilitative role heavily influenced by the ruling PDP.

If the management of elections in Nigeria is to enjoy public trust INEC must be transformed to ensure its independence and impartiality. This transformation should ensure that the appointment of the commissioners is transparent and their tenure of office is not based on partisan alliances or patronage politics. The transformed INEC should also be financed directly from the consolidated fund and answerable to the National Assembly and not to a particular ministry. Such a proposal is now before the country.

State independent electoral commissions

While INEC is responsible for the management of general elections at both federal and state levels state independent electoral commissions (SIECs) run local government elections in all 36 states. SIECs, established by the 1999 Constitution, 'organize, undertake and supervise all elections to local government councils of the state'. The institutional synergy and connections between INEC and the SIECs is problematic. For instance, INEC is represented in each state by resident electoral commissioners (RECs) who are appointed by the president and report directly to him and not to the INEC chair. The RECs are not subject to any discipline by INEC. This disjuncture between INEC and its related structures at state level also applies to the SIECs. The chairs of the SIECs are appointed by the state governors and report to the governor and not the INEC chair or to the RECs. The SIECs, like INEC, are neither independent nor impartial, they are influenced by the party that is in power in each state.

Given that the PDP controls a majority of the states it has influence over a larger number of SIECs and is therefore able to sway elections in its favour. Worse still, the chairs and members of the SIECs are often political activists whose party

affiliations are well known. It is no wonder, therefore, that SIECs are politically partisan. It is also no surprise that the 2004 local government elections were marred by a plethora of complaints of irregularities and fraud.

Given their partisan nature SIECs are not capable of conducting credible, free and fair local government elections (TMG 2004). The overall transformation of INEC should include restructuring the SIECs to ensure that they are independent and impartial, enjoy public trust and are insulated from undue political influence by powerful political actors at both federal and state levels. Indeed, the Election Reform Commission concluded in December 2008 that INEC should be completely restructured and the SIECs incorporated into the new body (Nigeria, Government of 2008, p 25 ff, p 154).

Other participants

The army

The Nigerian armed forces have long played a prominent and dominant role in Nigerian politics. However, in 1998, after the extremely oppressive rule of Gen Sani Abacha, senior officers in the military apparently concluded that the politicisation of the armed services was destroying their professionalism – a fairly common occurrence when the military is involved in politics for a long time and promotions are determined by considerations of political loyalty rather than professional competence. The senior officers, therefore, decided it was time for the armed services to withdraw from politics and began the movement toward civilian rule. Long periods of military government had destroyed public support for military rule – every coup had been met with public jubilation until Abacha's. And international pressure for democratisation was mounting as well. Of course, the transition was led by retired senior officers (including some former military presidents) who are still extremely prominent in Nigerian politics.

During his presidency Obasanjo removed from active duty the more politicised officers and it is believed that the younger officers who remain in command are less politicised and more committed to civilian rule. It does not seem likely that active officers will initiate interference in politics, but, should the civilian regime be perceived as having failed, it would be unwise to rule out this possibility entirely. It is also important to understand that the army is deployed on election duty and is perceived as the instrument of the presidency in those duties.

The police

The police play a key role in Nigeria's elections – guarding election materials, patrolling polling stations and preventing election-related violence. They are thinly

spread on election day, however, and targeted concentrations of 'area boys' (thugs) can easily overwhelm them. In many places the police do not seem motivated to try to maintain the integrity of the elections. A number of election observers have told of being warned by police not to risk their lives and of receiving no real protection.

Nigeria's police force is a national one and therefore responds to direction from the presidency. But governors are also officially the 'chief of security' in their states and, in practice, state police commissioners are often responsible to them when the president and the governor are members of the same party. On the other hand, there are instances in which governors are 'helpless' to control and use the police to their advantage, despite being the chief security officers of their states, and the presidency, instead, has the influence.

Local and international observers

Local and international observers have witnessed electoral proceedings in Nigeria since the transitional elections of 1999. Election observation serves primarily to ensure the transparency, credibility, and integrity of elections and, in the process, to reduce political tension and violent conflict. There is no doubt that without local and international observation the 2007 poll in Nigeria might have triggered even more violence than it did.

Many international observers witnessed the 2007 contest and almost all of them adjudged the process to be fundamentally flawed.¹⁰ About 50 000 local observers under the umbrella of the transition monitoring group (TMG) also observed the elections throughout the country. Election observation needs to start during the pre-election period so that critical aspects such as voter registration, demarcation of constituencies, party registration, nomination of candidates, and political campaigns are covered adequately.

Networked donors?

Donors have played an important role in the democratisation process in Nigeria, particularly in helping civil society and community-based organisations to know their rights. But the degree of their leverage is hugely constrained by the level of Nigeria's dependence on external funding. Donors' contributions of aid to Nigeria constitute about 1 per cent of GDP, so their leverage is quite modest. (Nigeria's concern about its international reputation gives them a little more leverage, although that, too, is modest.)

¹⁰ Among these observers were the Commonwealth Secretariat, the European Union, the International Republican Institute, the National Democratic Institute, Human Rights Watch and the Economic Community of West African States.

Nonetheless, donors have a role to play in the process of electoral reform and deepening democracy in Nigeria and have made various efforts in this regard since the transitional elections of 1999. Donor engagement was minimal during the 1999 elections but was systematically scaled up during the elections of 2003 and 2007.

The coordination of this donor support was undertaken by the Joint Donor Basket Fund (JDBF). Among those who contributed to the JDBF in support of the 2007 elections were the United Kingdom, the European Union (EU), the Canadian International Development Agency (CIDA) and the United Nations Development Programme (UNDP). The JDBF had a total budget of about US\$30,3m and was managed and coordinated by the UNDP through its Project Management Unit (PMU). Other donors, such as the United States, gave support independently of the JDBF.

The effectiveness of donor support for democratisation in Nigeria remains a challenge. First, the fact that the JDBF concept has not addressed adequately the problem of harmonising donor procedures, policies and approaches to the support of elections and democracy has led to delays in the disbursement of funds.

Second, donor interventions have tended to come rather late, thereby reducing their impact on the democratic process. For instance, donors only established the support mechanisms for the 2007 elections in 2006, despite the fact that the need for them had emerged from the experiences of the 2003 general elections.

Third, the coordination and synergy between and among the civil society partners supported through the JDBF has been problematic as most partners have operated competitively rather than cooperatively. For instance, support was channelled to CSOs through international non-governmental organisations (NGOs), including the International Republican Institute, International Foundation for Electoral Systems, National Democratic Institute and the Institute for Democracy in South Africa, an approach that created disenchantment among local CSOs, which perceived the NGOs as competitors.

Fourth, the JDBF's support for INEC was ill conceived and delivered few positive results.¹¹ Crucially, the politicisation of INEC was overlooked.

Finally, support narrowly focused on elections tended to concentrate on voting and observation, thereby reducing democracy to electioneering.

11 Some elements of the JDBF project – logistical and technical support – might have shown positive results, but INEC refused to have donors provide any support that could be construed as 'reforms'. Donor support from outside the JDBF, eg, from DFID and the United States Agency for International Development (USAID), did achieve some positive results, but these were insignificant.

CASE STUDIES OF THE 2007 ELECTIONS

In the introduction we gave a broad description of national elections under the Fourth Republic. Here we provide two case studies of the process at state level.

Enugu State – ‘The election that was never held’

Enugu, in the south-east of Nigeria, has a population of about 4 million. It is predominantly Igbo and Christian, and its politics has been dominated by the People’s Democratic Party since 1999.

In that time elections in the state appear to have had little to do with recognising the will of the people or with holding government to account. They are, however, hugely important because they are the means by which the settlement between elites is negotiated. However, these settlements are negotiated in advance of the election and the event itself is, at best, a validation of decisions already taken. At worst, it is the imposition of the settlement on the population, regardless of their views. Elections do little to further democracy.

Chimaroke Nnamani, a member of a powerful Igbo family, returned from the United States to enter Nigerian politics. With the financial and political backing of a local powerbroker he won the 1999 governorship election for the PDP. Once elected Nnamani began a process of centralising power, and the control of state resources, within his office.

As leader of the Enugu State PDP¹² Nnamani was able to ensure that the State House of Assembly, dominated by the PDP, did little to challenge his actions.

The amassing of power and money, coupled with a rumoured willingness to use violence, enabled Nnamani to break away from his backers and, by the 2003 elections, he was in complete control of the PDP and the machinery of government at both state and local levels. Despite having made powerful enemies and created popular dissatisfaction Nnamani and the PDP won the elections, which, election observation reports reflect, were characterised by violence, intimidation and rigging.

By 2007 Nnamani had served the maximum two terms. His chosen successor was Sullivan Chime, a loyal member of his administration who, Nnamani believed, he would be able to control after the election.

As in 2003 a combination of popular dissatisfaction with the state government and an aggrieved elite deprived of federal resources suggested to many that, if the poll was fair, the opposition and its candidate, Ugo Agballah of the Accord

12 Although the chairman of the PDP is supposed to lead the party at state level, in practice he falls under the control of the governor.

Party, should win. In the event, it is alleged that almost every conceivable form of election malpractice took place in Enugu State in 2007. All sides acknowledge that the voting materials did not leave the central bank until after 12 noon on the day of the election, meaning there was no way they could reach many rural polling stations before the polls closed. We also heard allegations of widespread violence and intimidation, and of the security forces being paid to act as agents of the ruling party. Despite broad awareness of the fact that the poll was deeply flawed INEC declared Chime the winner and he was sworn in as governor.

Ugo Agballah went to the Election Tribunal, claiming he had won a majority of the lawful votes. Other candidates also filed petitions. Agballah claimed to have provided evidence that result sheets had been tampered with, saying result sheets seen by his party observers had reflected that Accord had won 224 000 votes to the PDP's 80 000, while the official result gave the PDP 811 798 and placed Accord in fourth place, with 15 287.

Instead of declaring Accord the winner the tribunal nullified the election, basing its ruling on the petition of another opposition candidate, who alleged that an election 'did not take place in the state'.

This ruling made it easy for the decision to be overturned in the Appeal Court, since it was based on 'common knowledge' rather than on a precise technical definition of what constituted a 'non-election'. Agballah claims Nnamani influenced the outcome, and that if he had pledged allegiance to Nnamani the result would have gone the other way. Even the counsel for the PDP in the Appeal Court claimed the result was 'more a technical issue than factual'.

Having lost his immunity from prosecution once he was no longer governor Nnamani was detained by the EFCC but has since been released on bail and was voted in as a senator in the same elections. During Nnamani's detention Chime set about freeing himself from his influence, efforts that appear to have been successful, although Nnamani remains politically powerful.

Concerned that the election was not legitimate Chime is making visible efforts to improve state infrastructure, trying to secure legitimacy through the performance of his government.

Kano

The state of Kano has had an opposition governor since 2003. Does this mean that the state is more democratic than the others? Yes, in 2003 and no, in 2007. The state is dominated by the city of Kano, which, in turn, dominates economic production and trade in the north of the country.

Politics in the state is distinctive, reflecting the interests of businessmen, government employees, religious leaders, Western-educated youth and, to some

extent, traditional rulers, although none is represented by its own political party (Muazzam 2008). The formation of the PDP in 1998 was largely the work of political elites, including those in Kano, but the PDP did not have ideological content and, in Kano, brought together parties with contradictory political leanings, which led to factions breaking away after the party (in the person of Rabi'u Musa Kwankwaso) won the state governorship in 1999.

By 2003 there was deep dissatisfaction with the PDP, which, since it was led by someone from the west, was seen to be insufficiently responsive to northern interests. The All Nigeria People's Party (ANPP) became the beneficiary of the movement against the PDP. Ibrahim Amin used his own money to win the ANPP governorship primary but the party's leaders, believing him to be too independent, substituted Ibrahim Shekarau, a political unknown with a humble teacher's background and no material means, as the ANPP's candidate.

The ANPP's presidential candidate was former general and president Buhari, who is widely admired in Kano, and, with him at the head of the ticket and urging a straight party vote, Shekarau won a majority of the votes. Buhari was seen as the symbol of opposition to the Obasanjo presidency in the North-West geopolitical zone (in which the ANPP had done very well in the 2003 elections) as the regime was considered to have undermined the interest of the core North and also to be corrupt. Results from polling stations were quickly communicated to ANPP supporters, who staged a vigil at INEC's Kano offices to ensure that the 'right' results were announced, as they were. The intra-party processes in Kano for 2003 were not democratic, but the results of the election were.

Superficially, the 2007 elections in Kano were a repeat of those in 2003 – Shekarau again won against the PDP and again there was a vigil at the INEC offices. In fact, though, the election probably represented a return to the more typical Nigerian election pattern. By 2007 Shekarau had been able to use his incumbency in the governorship to provide himself with substantial funds and a significant electoral machine which gave him the means of rigging the election despite the fact that he had broken with Buhari's campaign organisation, thus weakening his popular position.

On the other side, the PDP in Kano was divided and the national party did not feel strongly committed to the candidate the state branch had selected. (Once again, the candidate put forward was not one of those who had contested the primary.) The PDP signalled that it would be willing to accept a loss in Kano as long as the party's presidential candidate, Alhaji Umaru Yar'Adua, won 25 per cent of the vote, helping him meet the constitutional requirement for this level of support in two-thirds of the states.

Well-informed observers whom we consulted in Kano believe that it is probable that the PDP's gubernatorial candidate defeated Shekarau but that the

latter had the rigging machinery and election-night crowd necessary to assure that these 'results' were not challenged at INEC. So an opposition win does not necessarily mean that an election was more 'free and fair',¹³ particularly when the victor is an incumbent.

The case is still before the courts.

The PDP *did* succeed in capturing a number of local governments in Kano, despite the fact that international observation at this second stage of the 2007 election was sparse. As in most of the country most local observers and voters had had a positive experience in the elections, for the fraud and violence that occurred were geographically concentrated.

COULD THE SITUATION BE IMPROVED?

The fact that most election contests were rigged was no longer a surprise by 2007. Some minor satisfaction can be drawn from the fact that international and local election observation seems generally to have resulted in concentrating the irregularities at a minority of polling stations and the tallying centres, so that an independent poll reported that most citizens had had a positive experience of voting (Zasha, Mustapha & Meyer 2007).

Of course that citizen satisfaction represents a 'false consciousness' of what was going on behind the scenes. Those who were trained in what to look for found plenty to criticise. The EU observers witnessed widespread rigging and only half-hearted attempts to cover it up and reports in the press and from the people we interviewed indicated great dissatisfaction among politically involved independents.

In our analysis rigged elections are fundamental to the elite political deal that returned Nigeria to civilian rule in 1999 and is believed by that elite to be essential to its own economic and political interests as well as to the unity of the Nigerian nation. The elite could almost certainly achieve its basic objectives with less rigging, and certainly by being less blatant – it does not need to win as many contests as it does at present; its dominance doesn't have to be so extreme and the rigging could be more subtle; all of which would enhance the legitimacy of the political system and move it in a more democratic direction. Until oil money begins to run out, however, it will continue to be the elites who compete and bargain over who will 'win' elections.

In addition, the leverage of international actors in Nigeria is quite limited. The country is not aid dependent in any way – the government can afford to do

13 The international election report from Kano suggests the Shekarau (ANPP) victory was, in fact, valid; we note only that this view is questioned by some seasoned political observers in the state. *The Economist* (28 April 2007) shares the less optimistic view.

most of what it wants to do and donor funds represent a very small proportion of total government expenditure. Leverage is further weakened by the fact that many of the donor governments are consumers of Nigerian oil. The combination of strong elite commitment to the basic flaws in Nigerian 'democracy' and low international leverage means that it is quite unrealistic to expect fundamental changes in the way elections are determined – again, until oil revenues are drastically reduced.

The fact that the international community cannot expect to achieve big changes in Nigerian 'democracy' does not mean that there is nothing it can do. The government of Nigeria and the country's elites are stung by international observers' negative evaluations of the elections and by the (often subtle) diplomatic slights that the sponsoring governments deliver as a consequence. Other non-aid tools include denying visas, trials of corrupt Nigerians abroad, revising educational links, tightening up on financial transactions, and so on. This suggests that marginal improvement *is* possible. But high hopes are unrealistic.

REFORM?

The electoral irregularities and malpractices of the 2007 elections were so profound and widespread that they created a severe legitimacy crisis and even the PDP presidential candidate, Yar'Adua, who INEC declared to be the winner, conceded that they were flawed. Yar'Adua argued that '[t]he April elections were so heavily marred by vote rigging that the European Union observers said they fell far below basic international standards and were not credible' (*Nigerian Tribune* 29 August 2007). In order to address this problem the Yar'Adua administration established the 22-person Electoral Reform Committee (ERC), whose primary task was to chart a new electoral path for Nigeria through appropriate electoral reforms. The Federal Government then issued a White Paper on the ERC report, which was submitted to the Council of State. The main aspects of the recommendations from the ERC report that have been endorsed are:

- the unbundling of INEC and the establishment of the PPRRC;
- diversity of representation on INEC;
- an open secret balloting system;
- guaranteed public funding for political parties that win 5% of seats in Parliament;
- the establishment of an electoral offences commission and a ten-year ban on electoral offenders;
- display of the voters' register prior to elections to ensure claims and objections.

On the other hand, key recommendations rejected by government include:

- divesting the presidency of the power to appoint the chairman and members of INEC; implying that the status quo, where the president nominates and the National Assembly approves, is retained;
- the proposal that the National Judicial Council (NJC) appoints the officers of INEC and the new bodies that have accompanied the unbundling of INEC;
- that hearings of election petitions be finalised before the winner is sworn in;
- the abolition of the state independent electoral commissions (SIECs).

Some of the rejected recommendations are at the heart of the reforms desired by Nigerians, civil society groups and opposition parties organised under the umbrella of the Conference of Nigerian Political Parties, which have expressed strong disapproval of these rejections.

Although President Yar'Adua has submitted seven separate bills to the National Assembly in line with aspects of the ERC recommendations endorsed by the government, the unresolved disagreement between the two chambers of the National Assembly over their collaboration through the Joint Committee on Constitutional Review (JRRC) gives the impression that the process may be unduly slowed down.

Will any of this happen?

In our judgement some procedural reforms are likely to be made to the election processes as the 2007 elections caused embarrassment both domestically and internationally and Yar'Adua does not seem to be opposed to all the changes.

However, we believe it would be naïve to expect significant changes in the way in which Nigerian democracy functions. The social structures underlying its current mode of operation are too deeply rooted and are likely to find ways around any reforms that challenge their fundamentals.

CONCLUSION

Despite the deficits that have characterised the country's post-transition elections, especially those in 2007, there are strong reasons to continue to invest in Nigerian democracy. Among them are the general acceptance by the country's political elite and the populace that elections and the ballot are the most desir-

able basis for exercising power and authority, for defining the legitimacy of government, and for resolving contentious and recurring political conflicts among the country's plural and diverse communities.

Although all donor and independent observer reports agree that currently Nigerian elections are not 'free and fair' and have little prospect of being so in the foreseeable future, even in their nominal sense elections matter and will continue to be important to the country's political system.

Despite a widespread lack of confidence in the electoral process Nigerians have demonstrated support for the idea of elections, not only as the more viable alternative to the military in the selection and recruitment of the political leadership, but also in the symbolic sense that they are a necessary part of civilian life, providing the seal of approval for the authority that is being granted to an office holder by a party and those controlling it. Furthermore, despite the use of naked power and blatant vote-rigging, the current electoral game has some important rules, among them term limits and 'zoning', both of which provide for a distribution of governmental spoils.

The Electoral Reform Commission and constitutional review processes offer important opportunities for changes that will improve the system; changes that should not be neglected. But they are not likely to change the fundamentals of Nigerian politics.

Well-informed participants believe the system will change significantly only if the elite (who currently benefit from 'prebendal' rents from the oil-rich state) want significant change and this seems to be unlikely as long as oil revenues continue to flow.

The ability of outsiders to leverage positive change in Nigeria's electoral behaviour is insignificant. Nigeria is not donor dependent and has a strong sense of its own sovereignty. On the other hand, its quest for regional stature opens it to diplomatic pressure to meet criteria such as African Union governance standards.

The most that can be hoped for is that the current president does not have the same interest in imposing his will as did his predecessor and may allow more openness within the existing boundaries of the electoral system. This could create an opportunity to institutionalise an independent role for bodies such as the Supreme Court and to create a genuinely independent electoral management body.

Criticism of the way in which parties select their nominees – holding primaries and then ignoring the results – is so deep and widespread that there is a possibility that change in this area will be mandated. If so, support for intra-party democracy and the institutionalisation of parties as key agents of democratisation would be useful. On the other hand, these processes are obviously central to the

way in which elite office holders are selected and the chances that they will be made fully transparent are only slightly better than the chances of 'free and fair elections'. That slightly better chance comes from the fact that the elite themselves seem to be unhappy with the unpredictability of the current process, a discomfort reflected in the ERC report.

Another positive element is the independence and professionalism of the courts – at least at the highest level. Although there is no doubt that election tribunals consisting of judges have frequently proved to be instruments of the election-fixing machinery of the PDP, the Supreme Court and, to a lesser extent, the courts of appeal, have handed down some notably independent judgements since the return to civilian rule (and especially since it became clear that Obasanjo would not continue as president).

For the most part, the higher judiciary was sidelined during the periods of military rule, for the governments during those periods attached 'ouster clauses' to any legislation they enacted that might prove controversial. Such clauses placed the legislation outside the authority of the judiciary, thus sparing the higher courts the pressure to hand down rulings convenient to the government of the day. The body of the law, therefore, is less compromised and the judges in the higher courts are often well networked internationally and sensitive to the nature of their reputations outside the country.

Despite the deficits that have characterised the country's post-transition elections, especially those of 2007, there are strong reasons to continue to invest in Nigerian democracy. These reasons derive from the general acceptance by the Nigerian political elite and the populace that elections and the ballot constitute the preferable basis for exercising power and authority, for defining the legitimacy of government, and for resolving contentious and recurring political conflicts among Nigeria's plural and diverse communities.

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