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FACTIONAL INTRIGUES AND ALLIANCE POLITICS

The Case of NARC in Kenya's 2002 Elections

By
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INTRODUCTION

Kenya's 2002 elections were politically momentous. The new government, made up of coalition forces, has not only paved the way for a new political dispensation that analysts anticipate will set off Kenya's much needed economic and political reconstruction (Barkan 2003), but most importantly it provides some important lessons for the study of coalition formations in politics. For one, it demonstrated to opposition parties elsewhere in Africa what can be achieved by standing together.

The formation of the National Rainbow Coalition (NARC) was not a new phenomenon in Kenyan politics. A look at the country's political history reveals a pattern of political coalitions over the years, made up not only of selected individuals co-opted by then President Daniel arap Moi to serve in his administration, but of political parties uniting for private interests. The formation of NARC, however, is more than short-term political manoeuvring, it was an unprecedented assembly of most of the main opposition parties, with the intention of ousting the Kenya African National Union (KANU) once and for all. As a result, an investigation of both its formation and governing performance six months after the elections seems opportune.

This paper analyses the National Rainbow Coalition, 'the coalition of all coalitions', in the context of the 2002 Kenyan elections. It comments first on the pre-election patterns of political coalition and the manoeuvring of key political figures between the different parties before the elections. It then examines the factors that inspired NARC's formation. The most widely accepted rationale for the coalition, the paper emphasises, was the public's desire to see changes in Kenya's political environment. It also discusses key problems the coalition forces are now

facing, among which are power conflicts among politicians, the difficulty of managing and coordinating the government's policy agenda, and the emergence within the alliance of opposition blocs along ethnic lines. NARC's governing record in the context of the various political and economic reforms it has undertaken thus far is also reviewed briefly. The paper concludes that a coalition of such diverse forces may very well have expected to have a rough time in its early days as a ruling party. Fortunately for NARC both time and the people of Kenya are, for now, on its side.

PRE-ELECTION PATTERNS OF COALITION FORMATION AND MANOEUVRING

Before the birth of NARC many political realignments, some more calculating than others, were orchestrated between KANU and smaller opposition parties. The most significant of these was KANU's formal alliance with Raila Odinga's National Development Party (NDP). This took place during a meeting of KANU national delegates, chaired by Moi, in March 2002, where the party constitution was amended and the 'new KANU', with a new party line-up, was created to allow for the absorption of the NDP (Karega-Munene 2003).

Each party, it seems, had what the other needed. Odinga's political suaveness and the support he enjoyed from the Luo areas of the Nyanza province were some of the rewards he brought to the alliance. Conversely, Odinga wanted nothing less than a presidential seat, and he hoped that, as KANU's new secretary general, he would move up when the time came. The alliance necessitated some reorganisation within KANU's party structures.¹ Odinga was installed as the new secretary general of the party, replacing John Joseph Kamotho. It was a small price to pay for the twenty Luo-Nyanza parliamentary seats he delivered, which greatly enhanced KANU's electoral prospects. The new KANU, as it came to be known, consisted of several different factions. Apart from Odinga's NDP cohort there was the old guard led by the then vice-president, George Saitoti, and other prominent groups, which included reformist new-guard parliamentarians and KANU moderates (Center for Strategic and International Studies December 2002, pp 2-6).

The newly reconstituted KANU did not last for long, however. It was disrupted when Moi endorsed an inexperienced Uhuru Kenyatta as his successor. Many interpreted this move as Moi's desperate attempt to continue to rule Kenya by proxy (Munene 2003). With the announcement by Moi of the 42-year-old Kenyatta as his preferred successor, Raila Odinga and other ambitious KANU leaders saw their opportunity of succeeding Moi disappear.

Kenyatta's limited experience in government and his considerable dependence

¹ The party line-up at the end of the KANU national delegates meeting held on 18 March 2002 was: Raila Odinga, secretary general; Uhuru Kenyatta, vice-chairman; Musalia Mudavadi, vice-chairman; Kalonzo Musyoka, vice-chairman; Katana Ngala, vice-chairman.

² At this time Uhuru had only been a Member of Parliament since October 2001, having been nominated by Moi himself.

on Moi were not well received.² He had tried to contest a parliamentary seat in 1997 on a KANU ticket in his home area and had lost. Most of the top 'new KANU' leaders felt they were being marginalised and this, compounded by the possibility of the party losing as a result of Kenyatta's lack of political experience, left most of them with little choice but to leave the party and move into other advantageous alliances (Holmquist 2003). The other reason this dispirited group gave for abandoning KANU was that they disagreed with the methods used by KANU to nominate its presidential candidate. The men, who included Raila Odinga, George Saitoti, Kalonzo Musyoka and William Ole Ntimama, had hoped that the nomination of the KANU presidential candidate would be open and the process carried out in a more transparent manner (Wanyande 2003).

The most telling of these alliances in Kenya's politically charged pre-election environment, after the implosion of new KANU, was, of course, NARC, although there were other minor mergers before NARC. The ex-KANU leaders, with the help and under the leadership of Raila Odinga, formed a scanty coalition, known as the Rainbow Coalition, which later took over an already existing minor party called the Liberal Democratic Party (LDP). This was necessary, as the coalition was made up of a number of registered parties, which could not join the National Alliance of Kenya (NAK) until it became a registered political party (Wanyande 2003). NAK was a coalition of leaders and parties, the most notable of whom were Kibaki of the Democratic Party (DP); Kijana Wamalwa of the Forum for the Restoration of Democracy – Kenya (Ford-Kenya); and Charity Ngilu of the National Party of Kenya (Holmquist 2003). Another significant alliance in terms of voter support and influence was the Social Democratic Party, which was initially made up of two factions. One was headed by Prof Anyang' Nyong'o (Kenya's current Minister of Planning and National Development) before it opportunistically crossed over to the LDP as a way of joining NARC. The other faction, headed by James Orengo, remained independent of all the numerous alliances and mergers forming across the political arena. Lastly there was the Ford People Coalition, a weak coalition comprising three political parties: Ford People, Safina, and the National Labour Party. Deeply divided on many fronts, the coalition soon disintegrated – yet another example of the factional intrigues in Kenya's chequered political history.

The pre-election milieu in Kenya was characterised by a number of such factional intrigues and manoeuvrings. Politicians, without reservation, jumped from one camp to another, striving to be a member of a side with the potential to win. The support accorded by outsiders to the cooperation between KANU and Raila Odinga earlier in 2002 and the rapidity with which individual politicians jumped into this political alliance are testimony to this trait. It appeared that the NDP alliance, coupled with Moi's efforts to woo the Kikuyu through Uhuru Kenyatta, intensified the winning potential of the 'new KANU' and, for many politicians, being in KANU appeared to be a sure way of securing a parliamentary seat. This support group included political heavy weights such as Njenga Karume, the patron of the Democratic Party, who had, in fact, twice before supported Kibaki's candidacy

(Munene 2003). It wasn't long, however, before the same politicians ditched the new KANU and coalesced with NARC. Many were honest enough to admit that when misfortune befell the new KANU it became evident that they would not win if they remained in the party.

With Raila Odinga no longer part of the team holding together the political strings within the alliance, the political dynamics in Kenya changed and, as a result, many politicians started to shift alliances. Former NDP members, as expected, followed Odinga. Others who left included the new recruits and aspiring youths who had been elevated to the ranks of vice-chairman within KANU, and a few old KANU members rebelliously followed in Odinga's footsteps. Among this latter group were vice-president George Saitoti, Joseph Kamotho, Fred Gumo and Moody Awori (Munene 2003). Many of these politicians, according to analysts, abandoned KANU simply in order to survive in Kenya's volatile political arena.

REVIEW OF NARC – FROM CONCEPTION TO CURRENT STATUS

Neither the establishment of NARC nor the subsequent influence and power it commanded politically would have been possible without the fusion of two most significant opposition political parties. These were the newly created LDP – Raila Odinga's coalition of KANU renegades and the major opposition bloc of the National Alliance of Kenya. NAK joined LDP on 14 October, the day that Uhuru Kenyatta was named KANU presidential candidate. On 21 October fourteen parties, including Odinga's predominant LDP Party, merged to form the National Rainbow Coalition.

Analysts have recorded many factors that inspired leaders of the coalition to unite. The most widely accepted rationale, and one canvassed by NARC itself, is that the people of Kenya desired to see a united democratic front within the opposition. Popular pressure from below demanding opposition unity was hard to ignore. According to the opposition coalition, at every political rally they attended, political parties noticed a growing consensus among their supporters calling for such unity. Needless to say, steps were thus taken towards establishing a coalition force that would accord with the wishes of the Kenyan people 'to rid their country of authoritarian rule and restore some of the democratic forces that had been derailed over the decades'.³ Such demands for unity were certainly not a figment of the opposition forces' imagination. Chants of 'unite, unite', it was observed by some, were heard frequently as the campaign proceeded.

The 1997 election results were further proof of how much of the electorate's support was for the different opposition parties. In the 1997 general elections four of NARC's coalition leaders who contested the presidency individually received close to 58 per cent of the presidential votes. Mwai Kibaki, Raila Odinga, Kijana

³ From a speech made in Parliament by Honorable Moody Awori MP in 2001.

Table 1
1997 Presidential Election Results

Number of votes per candidate/party	Percentage of votes per candidate/party	Parties and Presidential Candidates
2 500 856	40.6%	Kenya African National Union (KANU) – Moi
1 911 742	31.0%	Democratic Party – Mwai Kibaki
667 886	10.8%	National Development Party (NDP) – Raila Odinga
505 704	8.2%	Ford Kenya – Kijana Wamalwa
488 600	7.9%	Social Democratic Party – Charity Ngilu
8 306	0.2%	Ford People – Kimani Wanyoike
78 325	1.3%	Others
6 161 419	100%	Total

SOURCE: DONOR INFORMATION CENTRE ON ELECTIONS IN KENYA

Wamalwa and Charity Ngilu respectively received 31 per cent, 11 per cent, 8 per cent and just below 8 per cent of the votes. However, they lost to Moi because they had split the vote. Their poor planning and complete disregard for the importance of a winning strategy, it seems, robbed them of victory.

The decision by the fourteen parties that made up NARC to unite was, without doubt, a calculated vote pooling move. The coalition forces were confident they would succeed at the polls and the 1997 election numbers assured them of such victory. In fact, had it not been for the disputes over leadership and positions of power and internal party differences of policy bedevilling attempts to forge unity, the 1992 election results would also have presented an opportunity for opposition unification. Moi only received 36 per cent of the votes in these elections, whilst the combined opposition presidential candidates accumulated 64 percent.

The other factor that has no doubt tainted the new government's image and is touted by the opposition (mostly KANU) as the most likely element that brought them together, is that they all aspired to the top leadership. Ousting Moi and ridding the country of his authoritarian rule was not the only thing they hoped for. All considered themselves eligible for Moi's position, and all were inevitably in pursuit of personal ambitions. Indeed, in the months running up to the elections, political analysts had their doubts about the credibility and honesty of its members, since

Kibaki and most of his teammates were party to Moi's decades of plundering. The adage 'old wine in new bottles' was used frequently by the media in reference to this scepticism. Each coalition leader had earned extensive political credentials during his stints in Moi's government. Mwai Kibaki was vice-president for 10 years, a minister for 25 years, and a Member of Parliament for 39 years. George Saitoti was vice-president for 13 years, a minister for 18 years, and a Member of Parliament for 18 years. The others had similar experience and had held a variety of ministerial portfolios over the years.

There are other less mundane and inconsequential explanations. The coalition's loathing of Moi and his administration, for example, cannot be overstated as one of the factors behind the unification of the major opposition parties. After several failed attempts by individual parties to bring an end to Moi's authoritarian rule and KANU's dominance since 1963, parties were eventually convinced that this would only be possible through collective efforts. Moi's government was decrepit and inept; the economy had almost collapsed, with a growth rate of 0.7 per cent in 2002; corruption was an everyday phenomenon; poverty and crime were on the rise; and basic social services were almost non-existent. At this stage a change of regime was necessary, with the aim of establishing a credible/capable democratic and developmental government.

ELECTION PERFORMANCE

There may be mixed feelings about NARC's performance after its election victory, but it has been showered with praises for the way it conducted itself in the electoral arena during the campaign period. The merger proved to be 'a coalition of all coalitions' – for one thing, it survived the process of nominating parliamentary candidates without disappointing other aspirant party members. Most of the NARC parties had agreed to field a single parliamentary and civic candidate in each constituency and ward across the country. A few parties, however, were not bound by this agreement. The strategy of automatically nominating some party members as candidates for some constituencies avoided disappointing hopeful candidates and, more importantly, it prevented members from splitting into new alliances (Holmquist 2003).

In addition, Kibaki's non-confrontational, non-overpowering disposition helped to defuse whatever tensions may have arisen within the coalition during the nomination and campaign period. However, to all intents and purposes, the establishment and electoral performance of NARC was a clear vindication of the value of alliance politics under conditions of a weak and fragmented opposition. Much of NARC's success must also be attributed to other members of the team, which included professionals, as well as political heavyweights who, according to political analysts, worked as a team. The team was especially commendable for its ability to work together through focused consultations and teamwork. For example,

when Kibaki was injured in a road accident, his departure for London, where he was hospitalised, did not stop his teammates from campaigning with the same degree of fervour and commitment (Munene 2003).

NARC's victory in the presidential and parliamentary elections shows that all its hard work, its relentless campaign strategies and Kibaki's ability to placate his ambitious party colleagues paid off in the end. The results were no surprise, but they were nonetheless a great achievement for NARC. The results of the 2002 elections at both the provincial and national level show how sweeping Mwai Kibaki's victory was. He received 62.2 per cent of the total vote, compared to Uhuru Kenyatta's 31.6 per cent. The rest of the votes went to Simeon Nyachae (6.5%), James Orendo, and Wawere Ng'ethe. Kibaki reached the 25 per cent target in all eight provinces, which enabled him to meet the constitutional requirement that requires 25 per cent of the vote in five provinces. He did not, however, win all eight provinces; in some he lost to Uhuru, indicating that his support and that of his counterparts was concentrated in specific parts of the country. In the North Eastern province, for instance, NARC won only eleven parliamentary seats and Kibaki received a mere 37.1 per cent of the votes (Throup 2003, pp 2-9).

Table 2
2002 Presidential Elections

Parties and Presidential Candidates	Results	% per candidate/party
Kenya African National Union (KANU) – Uhuru Kenyatta	1 835 890	31%
Ford People – Simon Nyachae	345 152	6%
National Rainbow Coalition (NARC)	3 646 277	62%
Others	119 516	1%
Total	5 946 835	100%

SOURCE: DONOR INFORMATION CENTRE ON ELECTIONS IN KENYA

DIVISIONS WITHIN NARC

Since its victory NARC has been afflicted by divisions and tensions caused by a combination of factors, including personal ambition and factional intrigues. A coalition formation made up of such disparate personalities and policy agendas would probably have had divisions from the beginning, though they might have been non-threatening. Since its landslide win, however, more divisions seem to have crept into the ruling coalition, this time threatening actually to split the alliance into a number of opposing sides, on ethnic lines. It must be noted that when almost

all the opposition powers united under one bloc, this was seen as the first attempt by parties in Kenya to coalesce around a progressive and democratic agenda and not along ethnic lines. Competition for support was no longer based on ethnic divisions; parties found themselves competing across a broad range of constituencies. Many voters also followed this new trend. Some voted across ethnic boundaries, others avoided all ethnic affiliations and were only interested in voting for a regime change. It is therefore disappointing to see a resurgence of ethnicity, especially since Kibaki, a non-ethnic dogmatist, initially worked hard to obliterate the palpable ethnic divisions within his coalition. One of his strategies was to appoint Cabinet members not only with regard to merit but also to region.

Given that the unity of the NARC opposition was forged in haste – it was constructed in the midst of the campaigns and its party structures, internal rules and procedures were instituted without prior testing – the divisions that now plague the coalition were inevitable. These tensions and divisions have manifested themselves in a number of ways and have been most damaging in Parliament. Some of the NARC backbenchers, particularly members of the LDP and the KANU alliance, have continuously opposed the government, threatening many of Kibaki's legislative initiatives. For example, they forced the administration to withdraw a Bill aimed at setting up an anti-corruption commission, which, regrettably, stalled the administration's anti-corruption work. Equally illustrative of the instability that faced NARC as a coalition government was an alliance with the opposition of dissatisfied NARC members, which resulted in the passing of the Finance Bill against the wishes of the government (Wanyande 2003).

It appears that the strains in the new government are caused largely by tensions and disagreements between the former opposition parties and the LDP, which consists of the former KANU members and Raila Odinga's Luo supporters. To date the disagreements have centred on two contentious factors. Firstly, the LDP seems dissatisfied with its position within NARC's party structures. It claims that, as a national party, it should be treated as an equal partner of NAK rather than merely as one of its fourteen constituent parties (Throup 2003, pp 2-9). Secondly, and related to this, LDP members were not given equal representation in government, as promised in the Memorandum of Understanding (MOU) they signed with NAK. NAK's members hold fifteen government and fifteen Cabinet positions, while the LDP, the largest of the fourteen parties in NARC, has only eight Cabinet seats and eight assistant ministries (Throup 2003, pp 2-9).

Anxieties within the ruling coalition reached their peak when some LDP members called for a break-up of the coalition in March, arguing that it had achieved what it had set out to do and it no longer served anyone's interests (*Africa Confidential* April 2003, p 3). All of this raises some serious doubts about Kibaki's ability to exert his leadership upon the coalition, to placate the dissatisfied, and to tackle the tensions that are causing the rift between LDP members and the rest of the coalition. Without more leadership control from Kibaki and more cooperation between the coalition members, there will no doubt be tough times ahead

for NARC.

GOVERNMENT FORMATION

Whether or not any of these accusations holds water, some issues threatened the ruling coalition from day one and thus could have affected its governing capacity. According to analysts, when Kibaki came to office and began to structure his new government, there were some initial uncertainties and delays. Firstly, he seems to have deliberately delayed the changeover process; he did not immediately replace the top people of the government as his party members had expected. This delay was later explained by his administration as a necessary way of ensuring a level of continuity in the handover, thus providing the new government with some degree of credibility (Holmquist 2003, pp 200-206). Although the right appointments were eventually made, and appropriate shifts and rotations within the civil service, military and the intelligence were instituted, the tardiness did create some apprehension amongst the coalition leaders.

The other factor that clearly undermined the NARC alliance in its early days of governing Kenya was that it lacked a clear policy direction. This was partly attributed to the absence of Kibaki's leadership and guidance while ministers were devising new policies. Policy-making in Kibaki's administration is an autonomous process; ministries are expected to devise their own agendas. Kibaki has given considerable power to his ministers to make policy, and has continued to encourage this autonomy by means of his hands-off style of governing, which is very different from that of Moi, who centralised policy-making and administration. Such independence and autonomy has come at a price, however. It seems to have created some uncertainty and confusion about policy (Holmquist 2003).

Apart from the ministries Kibaki has formed a number of groupings to deal with policy matters. Among these is the Task Resource Centre (TRC), staffed by a selection of intellectuals and professionals, and the Council of Elders, whose members are, purportedly, mostly economists, and which tends to act as Kibaki's private advisory group (Munene 2003). The absence of effective coordination of policy-making in the early days of the administration exacerbated this confusion, as is evident from the case of free primary education. During the campaign period Kibaki and his coalition committed themselves to providing free primary education, only to realise later that this policy had not been thought out clearly. There was very little idea about exactly what aspects of education would be free, and very limited planning went into the processes. The result was a chaotic situation when schools opened and could not accommodate all the new students who sought admission. This is an illustration of how complex it can become for Kibaki, despite his earnest attempts to make policy-making an independent and empowering process for his ministers; to manage the government's policy agenda and to secure agreement for it from all fourteen members of the coalition.

Despite these initial tribulations, the rest of the changeover processes were

smoothly instituted. The appointment of Kibaki's Cabinet, for example, although it may have bred some initial dissatisfaction among those who were left out, balanced the diverse forces within the coalition while giving recognition to those who had administrative experience. Fortunately it was not difficult to find competent men and women – most of the coalition members had all the right qualifications, both academic and in terms of government experience, and some were former permanent secretaries. But it is Kibaki himself; Saitoti, his new minister of foreign affairs; and Amos Wako, the attorney general, who are NARC's most experienced members. In terms of ethnicity the Cabinet appears to give representation to all the main ethnic groups: five Kikuyu members; five Abaluhya; four Luos; two Kalenjin; two Kamba; two Meru; two Mijikenda from the coastal province; two Masai; one Embu; and one Arab (Throup 2003, pp 2-9).

NARC'S GOVERNING RECORD

NARC's governing record has, understandably, been of interest to many political groups in Kenya and to analysts in general. The most critical of these groups has been KANU, whose condemnation of NARC's performance reached its peak when it termed the ruling party's 100 days in office 'a total fiasco' (Miring'uh 2003, p 3). KANU put forward many reasons for this harsh charge. NARC's hard-line position on corruption and the vigorous actions it had taken in the fight against it were interpreted as a mere vendetta against KANU's leadership. KANU challenged the governing coalition to put up solid structures in its fight against corruption instead of pursuing personal vendettas against its past enemies.

More damaging, perhaps, has been the claim that NARC has failed to fulfil its promises. A fair share of this disapproval, surprisingly, came from NARC itself. NARC's coalition partners, and thus the party's authority, have also come under scrutiny. The coalition is said to be coming apart at the seams, with a number of its leaders caught in power struggles among themselves.

To some degree these accusations are KANU's way of playing the opposition party it promised to be – providing checks and balances in the only way it knows. It is a realisation of Uhuru Kenyatta's promise to 'turn KANU's attention to ensure that all those leaders and representatives Kenyans elected deliver on their promises, be unselfish, realistic and honest as they fulfil their responsibilities'.⁴

A more constructive assessment, however, reveals a slightly less stark picture. Firstly, in order to assess NARC's performance it is necessary to list the major challenges NARC, as a new government, must pay attention to and against which it should be judged. The new government, for the most part, needs to restore its people's confidence in itself and its institutions; it needs to revive the economy; fight corruption with new and committed individuals; and, most importantly, fulfil

⁴ Uhuru Kenyatta, in a speech delivered after the elections, to concede defeat, 30 December 2002.

the many promises it made during the campaign (Wanyande 2003).

Many of these promises are slowly being fulfilled or will eventually become a reality. Others, however, seem to have, disastrously, been blocked by Parliament. Among the few successes Kibaki's government can genuinely brag about are the introduction of free primary education – although this has had mixed results; initiating reforms in the judiciary; regaining donor confidence; and, of course, putting the Constitution Review Commission back on track (Mbae 2003).

The adoption of the new Constitution, based on the draft constitution released in September 2002, was one of NARC's many campaign pledges that has received some attention, but not as much as NARC promised during the campaign. The Constitution had some progressive democratic provisions, such as the one long advocated by women's groups, on protection against discrimination and the preservation of matrimonial rights upon divorce, but it also had some contentious clauses. For example, the draft constitution created a new position – that of a powerful executive prime minister. Many coalition members are apprehensive of this position, as it is expected to be filled by Odinga. As a result, the constitutional review has been supported in LDP quarters and is being deliberately delayed by other factions.

The government's move to implement free primary education, despite its initial problems, is considered by government supporters to have worked out better than expected, and credit should be given to NARC for fulfilling its promise in this regard. Critics of the government, however, disagree, believing the policy was implemented in haste, without much coordination or planning. Because resources are limited the program has been inundated with problems. These have included lack of physical facilities, limited education materials, and congestion – for example, a classroom intended for a maximum of fifty students now has to accommodate anything up to 150 students (Mbae 2003).

The early days of the administration saw some promising anti-corruption initiatives and the anti-corruption movement seems to be one of the government's most successful endeavours thus far. It recently recovered KSh15-billion (US \$187.5-million) stolen during the Moi era (*Africa Confidential* April 2003, p 3). The court system has also been targeted for reform through the establishment of a special commission to advance the reform agenda.

Discussions about human rights abuses have also been made a priority, with the Minister of Justice and Constitutional Affairs, Kiraitu Murungi, calling for the establishment of a truth and reconciliation commission to deal with human rights violations under Moi's regime.

In relation to economic and social issues and other reforms it seems the jury is still out. The free education policy, though initiated with very little preparation, has given Kibaki another opportunity to reconnect Kenya with the international donor community. Aid will be forthcoming for education and the government is negotiating new credit from the World Bank and the International Monetary Fund (*Africa Confidential* April 2003, p 3). At least \$300-million is expected in credit from the World Bank, provided Kibaki's government enacts some of the new anti-corruption

laws.

CONCLUSION

From the above it appears that the NARC government is a fragile coalition, made up of members with very different political agendas. Already, NARC is experiencing a ruthless battle of personalities and ideas between the different factions, at the expense of Kenya's recovery. Both the constitutional review and the anti-corruption initiatives have suffered setbacks as a result. And only a few of the many promises made have been fulfilled.

Nevertheless, there are a number of reasons why the NARC government should remain optimistic. Among these is the fact that it has members who are genuine reformers and seem to be committed to the reform agenda. The international donor community has already made pledges to assist the government to rebuild Kenya. And the Kenyan people themselves still have confidence in the ruling coalition government. The new administration has a real opportunity to address many of Kenya's problems. Fortunately for NARC there is still time to do so.

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LEGITIMISING ELECTORAL PROCESS

The Role of Kenya Domestic Observation Programme (K-DOP) in Kenya's 2002 General Elections*

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INTRODUCTION

The past two decades have seen a movement in Africa from authoritarian regimes toward popular democracy through electoral rule. Local and international election observation is now a common practice in almost all elections that take place on the continent. Elections must be free, fair and meaningful and must be perceived to give legitimacy to the incumbent government.

It has been suggested by various analysts and commentators that Africa, and groups within the democratic polity, should accept as a crucial component of the continental democratisation process the important role of domestic election observation in ensuring electoral legitimacy, fairness, and popular acceptance of election result (Abbink, 2000; Von Cranenburgh, 2000; Mair 1999). Implicit in this statement are several assumptions about domestic observer groups: that they are non-partisan and are experienced in the conduct of election observation; that they operate within an acceptable code of conduct; that they have a clearly defined notion and understanding of 'free and fair elections' and that they have the necessary technical and administrative capacity to observe the entire election process (before, during and after). If this proposition is to be acceptable as a political canon in a democratisation project on the continent it is vital that it be subjected to critical scrutiny and empirical verification. In this context K-DOP has played a legitimising role in helping foster democracy at a very sensitive and delicate trajectory in Kenya's political history, resulting from the changed nature of partisan competition, particularly at a time when there were high hopes for regime change.

* K-DOP, the Kenya Domestic Observation Programme is an initiative of the Kenya Episcopal Conference (KEC)/Catholic Justice and Peace Commission (CJPC), the National Council of Churches of Kenya (NCCCK), the Supreme Council of Kenya Muslims (SUPKEM), the Hindu Council, the Institute for Education in Democracy (IED), the Media Institute (MI) and Transparency International-Kenya (TI-K) committed to 'free and fair and peaceful' elections in Kenya.

** The views expressed in this paper are those of the author and do not represent those of EISA or any agency associated with EISA.

The 2002 general elections, the third multi-party elections in Kenya in ten years, signify a great surge in the wave of regime changes being experienced on the continent. It baffles many observers why all the woes, chaos and large-scale violence, which have been a feature of elections in Africa, did not seem to characterise the elections in Kenya. The violent outbursts and unleashing of Moi's loyalists during and after the elections, for which the media appeared to be waiting, did not happen. Kenya rewrote the history of election victories in Africa when Uhuru Kenyatta, leader of the incumbent party, did not even wait for the final tally to be announced before, with grace and dignity, he issued a press statement accepting the landslide victory of the National Rainbow Coalition (NARC) and the election of Mwai Kibaki as the next Kenyan president, succeeding the veteran nationalist, President Daniel arap Moi. Compared with the two previous elections (in 1992 and 1997), which were characterised by widespread allegations of electoral irregularity, such as ballot box stuffing, rigging, destruction of opposition votes, and violent clashes, the 2002 elections were generally hailed by all local and international observers who witnessed the unfolding of Kenyan political history as comprehensive, peaceful, transparent and conducted in a pleasant atmosphere.

How did Kenya end up with a widely accepted election result and a relatively low level of violence, given the past role of President Moi and the country's previous electoral history? I attempt to answer this question by analysing what is perceived and declared to be the politically significant role played by K-DOP in bringing the public back into the electoral process and positively affecting the election result.

This paper argues that the relatively successful conduct of the 2002 general elections in Kenya is partly attributable to the role played by K-DOP in the period before, during and after the elections. However, this role cannot be appreciated without understanding the political context under which the elections were contested. This paper uses K-DOP as a case study of best practice in the conduct of systematic and extensive election observation. A conscious decision was taken not to concentrate on the theoretical debate about election observation in order to make this contribution more accessible across several disciplines. It is structured in three parts: the political context of the 2002 general elections; the characteristics of K-DOP; and the strategies employed by K-DOP in monitoring the electoral process.

THE POLITICAL CONTEXT OF THE 2002 GENERAL ELECTIONS IN KENYA

The 2002 Kenya general elections, in which NARC emerge victorious, winning 126 seats, while the ruling party, the Kenyan African National Union (KANU), only managed to capture 63 seats, represents the triumph of opposition politics and an end to the twenty-four-year rule of President arap Moi, in elections described by many political commentators as a 'home-grown democracy'. However, the elections took place within the context of a political stalemate and the dire need for regime change.

President Moi had established a constitutional review commission to facilitate a comprehensive review of Kenya's national Constitution. For the first time the people of Kenya were given the opportunity to take part in such a review. The first Constitution of Kenya was designed at Lancaster House in London in 1963 by a few delegates, chosen to represent the people. This time the people of Kenya were able to take part in the making of a Constitution that would reflect their wishes, aspirations, hopes, and dreams for the future.

Shortly after the commission was appointed in January 2001, the process was marred by series of substantive and administrative nightmares. The ruling party (KANU) repeatedly tried to change the mandate and *modus operandi* of the commission to exclude or reduce the input of civil society formations, and used force to prevent and disrupt the participation of Kenyans in civil education gatherings as well as opposition parties' political rallies. Civil society and opposition political parties mobilised voices of dissent against the destructive actions of the state, arguing that the unrealistic timeframe for the scheduled release of the draft Constitution did not provide enough time for civic education and effective participation of citizens in the process. In response, President Moi introduced interim reforms by decree. This aggravated the already considerable political anxiety about Moi's interest in overruling the constitutional provision of a two-term presidency. In the same vein, fierce debate over the granting of amnesty for economic and political crimes dominated the political discourse and a motion was moved in Parliament to establish a truth and reconciliation commission to explore human rights violations committed since 1966. The lack of commitment and clarity about an appropriate strategy for dealing with the past resulted in the motion being sidelined in the national debate.

Prior to the elections, the state, through its agents, intensified both violent and non-violent attacks on opposition party activists. Police cracked down on progressive members of society who took a stand against undemocratic behaviour and the abuse of power by the state. It was reported in February 2002 in Kisii that James Orengo, a Member of Parliament (MP) and leader of Muungano wa Mageuzi (People's Movement for Change), a coalition of opposition and civil organisations, along with two other MPs, had been beaten by the police. The leader of Mageuzi was further accused by President Moi of plotting to overthrow the government, which further promoted police harassment.

At an opposition party rally in May, police arrested two MPs on charges of 'treason' for allegedly threatening the President, who then ordered police to record all speeches at political meetings. Subsequently, a petrol bomb attack was directed at the NARC leader – Kibaki – during a political gathering in a predominantly KANU stronghold. Observable trends in Kenyan politics during Moi's regime and the period preceding the elections clearly illustrate that the predominant interest of politicians was control of the state, which had been, and continues to be, the source of kleptocratic accumulation and the most significant arena of patronage and resources. The government, through its machinery, unequivocally sponsored

violence against political dissidents, with police and other terrorist agents cracking down on government critics.

In July 2001 police brutally assaulted a group of pro-democracy activists attending a prayer meeting and political rally in Nairobi in honour of 10 years of multi-party democracy in Kenya¹. Continued intra- and inter-ethnic and political clashes prevailed in the run-up to the elections, with an increasing number of people killed and hundreds of thousands displaced. The Central Depository Unit recorded a series of electoral killings and violent attacks. It was reported that electoral violence had claimed approximately 203 lives between January and August 2002.

The transition to multipartyism, which began with the 1992 election, was halted by the undemocratic practices of President Daniel arap Moi's *ancien régime's* attempts to further political liberalisation. The inability of the greatly fragmented opposition parties and civil society to force further reform on Moi's government further contributed to the political stalemate. Moi's regime's refusal to honour the constitutional requirement to repeat those multiparty elections in 1997 forced civil society and opposition parties to embark on fierce protests that created cracks within KANU.

After a prolonged battle within KANU to choose a successor to Moi Kibaki, Wamalwa, and Ngilu formed the National Alliance for Change (NAC), which was later registered as the National Alliance Party of Kenya (NAK). Moi's defilement of the party structures and the announcement on 30 July 2002 of Uhuru Kenyatta as his likely successor sparked a great resistance and upheaval within KANU. The party's vice-president, George Saitoti; Kamba boss Kalonzo Musyako; Maasai leader William ole Ntimama; KANU's long-time Kikuyu standard bearer, Joseph Kamotho; and Raila Odinga took a hard line and rejected the selection of Uhuru Kenyatta as party president by forming the Rainbow Alliance, which, in effect, became an intra-KANU opposition group, which demanded a secret ballot to elect KANU delegates to the party's national conference in mid-October 2002. Moi's refusal to allow the free election of party delegates at the grassroots branches led to a unanimous decision by the Rainbow Alliance members to break away from KANU and join the opposition Liberal Democratic Party (LDP). The breakaway was led by Raila Odinga, former head of the largely Luo National Development Party.

On 14 October 2002, when Uhuru Kenyatta was announced as KANU's presidential candidate, the LDP also made a public announcement to the effect that it would forge a 'super-alliance' with the National Alliance of Kenya (NAK), with Mwai Kibaki as the president of the party. On 21 October 2002, two months before the general election, the parties officially merged to form the National Rainbow Coalition (NARC), largely comprised of old KANU political legends and

¹ A relatively high number of disturbances of public gatherings was recorded between May and August 2002 by the Central Depository Unit, a non-governmental organisation set up to monitor cases of electoral violence in the period preceding and after the 2002 elections – the police were said to be responsible for 10 of the 13 recorded cases during this period.

representing an official opposition to KANU. The existence and the subsequent electoral victory of NARC has been ascribed to political miscalculation on the part of Moi and the skilful tactics of Raila Odinga. In a preview of Kenya's 2002 national elections, the Center for Strategic and International Studies (CSIS) argued that:

President Moi grossly underestimated Odinga's genius as a political tactician. Were it not for Odinga, most of the KANU old-guard would have reluctantly accepted Uhuru Kenyatta's imposition, most would have never have walked out of KANU, and virtually none would have endorsed Kibaki as their leader and presidential candidate.

CSIS 2002.

As argued by Mike Cowen and Lisa Laakso (1997), elections in Africa raise issues that are not new. They are the problems of political domination and regime legitimacy, the articulation between the local and national levels of politics, and the perennial problem of the lack of institutionalisation of legal procedures and techniques imported from Europe and elsewhere in the world. The 2002 general elections raised issues that reached beyond mere personality and ethnic politics³ to include open political contestation and participation based on ideological disputation between political parties. For the first time in the history of elections in Kenya we witnessed family members competing against each other on different political party platforms for constituency seats. For example, in the Eldoret North constituency, two political heavyweights from the Kalenjin ethnic group fought on different party platforms. This is characteristic of the political environment and the changed nature of political competition and participation along ethnic lines to a more complex political dynamic where both KANU and NARC represent a wide spectrum of political interests and ethnically diverse coalitions, fiercely competing for votes across and within different constituencies. In previous elections (1992 and 1997), voting patterns were largely depicted along ethnic lines (Haugerud 1995; Hornsby & Throup 1992; Rule 2000). It would have been possible to predict accurately, given the ethnic composition of the various contestants, that most Kikuyu would have voted for Kibaki and DP; the Abaluhya would have voted for Wamalwa and FORD-Kenya; the Kamba would have voted for Charity Ngilu and the SDP; the Luo would give their votes to Raila Odinga and the NDP; and KANU would have had an absolute electoral majority in areas dominated by the Kalenjin in the Rift Valley and by the Somali, Boran, Turkana, Samburu and Maasai in the semi-arid frontier zones and the rural Coast Province. But the Coast Province formerly dominated by KANU fell to NARC. The opposition party secured all four seats in Mombasa and gained a considerable number of seats in the rural hinterland,

³ The ethnic community in Kenya is composed of: Kikuyu (21%), Luhya (14%), Luo (12%), Kalenjin (11%), Kamba (11%), Kisii (6%), Meru (5%), Mijikenda (4%). (Republic of Kenya, 1989 Census. Donor Information Center of Elections in Kenya.)

winning all the seats in Kilifi, Malindi, and Kwale Districts. KANU only managed to capture seats in Tana River and Lamu Districts and very narrowly in Taita-Tavveta. Even the political heavyweights within KANU who came from this province failed miserably – Cabinet Minister Noah Katana Ngala, and Shariff Nassir were among those who lost their seats to NARC. As a result, KANU seats in this province were reduced from 18 to 7 out of 21 seats, with NARC moving from 2 to 11 seats – a complete transformation of the political landscape in Coast Province.

The political significance of NARC's victory lies in the united front put together by the opposition parties as a critical challenge to the formidable influence of KANU in Kenyan politics. Kibaki beat Uhuru Kenyatta by 61.3% to 31.6% of the popular vote, while FORD-People's Simeon Nyachae captured 6.5% of the presidential vote, and James Orengo of the Social Democratic Party (SDP) secured 0.4% and Waweru Ng'ethe of Chama cha Umma only 0.2%. Kibaki was able to secure 25% of the votes in five provinces by reaching the 25% target in all eight provinces.

THE CHARACTERISTICS OF K-DOP

K-DOP's participation in the elections was not premised on a demonstrable condition for free and fair elections but rather on the need to ensure that the elections took place within an environment of substantial freedom and fairness so all parties and individuals could compete on a more level playing field. On 27 December 2002, K-DOP deployed 20 000 election observers, including 64 regional observers who were deployed in late October and 630 constituency observers, deployed on 15 November. These long-term observers were complemented by 18 500 short-term observers on the polling day. Overall K-DOP was able to process 17 756 observation reports of polling stations on election day. A number of international countries/agencies provided the 2.5-million Euros worth of funding for K-DOP. The lead donor was the Department for International Development (DFID), which also provided the technical adviser (Mr Simon Osborn). Other significant contributions came from the Netherlands, Austria, Denmark, Finland, Sweden, USAID, Canada, and the United Nations Development Programme UNDP.

K-DOP is comprised of competent, conscientious people with credible credentials, representing different sectors of the society – religious, ethnic, class and racial. The leadership includes eminent and respected community leaders who bring integrity and loyalty to the development of democracy in Kenya. The K-DOP strategic board, comprising six representatives from each participating organisation or agency, was responsible for providing the overall strategic direction of the programme; issuing regular monthly statements about the election process and the political environment; and releasing the final report of the observation.

Each strategic board member is given a portfolio. The representative of the National Council of Churches of Kenya (NCCCK) was given the technical portfolio, which provides a forum for the discussion and agreement of technical issues such as developing training kits and curricula for observers, drafting the national

deployment plan, the code of conduct for K-DOP observers, programme timetable, terms of reference for the field personnel and observers to be recruited, the poll watchers' manual and the observation report forms. The Institute for Education in Democracy (IED) and the Media Institute were responsible for media coverage, legal issues, conflict management and resolution (national level election disputes) and liaison (with the Electoral Commission of Kenya and other national stakeholders); the faith-based organisations (Muslim, Christian and Hindu) were collectively responsible for recruiting, training, coordinating and supervising observer deployment across the country. It is worth noting that this was the first time in the national history of Kenya that the three major religions in the country worked together – the national significance of this collaboration should not be underestimated in a country which has often been at the receiving end of religious fundamentalist attacks. This cooperation saw the level of electoral violence reduced significantly compared to that during the 1992 and 1997 general elections. Electoral violence and conflict in 2002 were localised within constituencies rather than ethnic in nature and resulted largely from personality clashes between candidates who came from the same constituency but represented different parties.

By comparison with other domestic observations (Akatsa-Bukachi 2001), the role played by K-DOP during the elections is best described as extensive, intensive, and systematic. It gave citizens greater opportunity to participate in and own the process. K-DOP deployed approximately 20 000 citizens as poll watchers across the eight provinces, 70 districts, 210 constituencies and 2 112 wards – covered every polling station⁴ and polling stream available, and participated at every level of the electoral process – from registration of voters and candidates, through the campaign, the voting and the count, the public declaration of results, and the instalment in office of Members of Parliament and the President. The K-DOP observer team comprised both long-term and short-term observers. Long-term observers (LTOs) covered all the pre-election activities with the object of gaining an in-depth knowledge of the various phases of the election process. Short-term observers (STOs) were responsible for the closing days of the campaign, election-day activities and the immediate post-election period. All the observers provided the necessary visibility and countrywide coverage of the elections. On election day observers were expected to complete a well detailed poll watchers' report form covering the opening of polling stations, observation of voting environment (ie, violence, bribery, intimidation and campaigning), procedures and closure of polls. The constituency observers (COs) were responsible for ensuring that STO reports reached the regional coordinator, who transported the forms to the K-DOP national office in Nairobi where they were entered in the database by a data entry team and then analysed. From these data K-DOP produced statistical information about its operation.

⁴ There are 18 367 polling stations and polling streams scattered all over Kenya. In some polling stations there is more than one polling stream at the polling station – each stream/station has a maximum of 1 000 voters.

The body's press release described the elections as free, fair and demonstrating the determination and will of Kenyans to choose their leaders with great maturity and tolerance. For this to be possible, the rules of the game must be such that they allow all political parties to organise and mobilise supporters across the country and have access to the ballot, the media and funding for political activities. It also means that all political parties must be involved in developing rules of fairness for determining the eligibility of voters;⁵ procedures must be adopted for identifying and certifying those eligible; and methods of counting the vote must be agreed upon. A system of internal monitoring of the polls must be established by all political parties and put in place. The main areas in which local observation had practical and technical impact in Kenya involve election and registration rules, nomination and campaign process, election logistics, electoral disputes, monitoring and post-election transition.

STRATEGIES EMPLOYED BY K-DOP IN OBSERVING THE ELECTORAL PROCESS

Widespread observation of all contests

K-DOP contributed to creating an environment in which all competing political parties were able to campaign and present their agendas to the electorate. It was also able to scrutinise the election rules to see whether they afforded an atmosphere of open debate and widespread participation without intimidation. The organisation worked closely with the Electoral Commission of Kenya (ECK) and participated in working groups organised by the ECK in an effort to improve internal ECK management and strengthen ECK's capacity as well as to evaluate the implementation of the rules, for example, the nomination processes of political parties, voter registration, prevention of fraud, and ballot secrecy.

K-DOP participated in observation of the nomination of presidential, parliamentary, and civic candidates across the country. The presidential nomination took place on 18 and 19 November 2002. Of the 52 registered political parties only eight submitted candidates for the presidency and the ECK only accepted five of these as valid: Uhuru Kenyatta (KANU), Mwai Kibaki (NARC), Simeon Nyachae (Ford-P), James Orengo (SDP), and David Waweru Ng'ethe (Chama cha Uma).

K-DOP also observed the nomination of parliamentary candidates held on 25 and 26 November 2002. Eventually, 34 parties fielded candidates for the parliamentary elections.⁶ According to information released by the ECK, a total of

⁵ In the context of Kenya's 2002 general elections, an eligible voter was a voter with: a 2002 voter's card; a national identity card or passport; his or her name had to appear on the 2002 voters' register; and his or her voter's card should not be embossed (Kivuitu 2001).

⁶ Fifty-two political parties were registered under the Societies Act. On 29 November 2002, the ECK published a list of 38 parties presenting candidates for parliamentary election. On 2 January 2002, the ECK issued another list. This one included the names of only 34 parties, those excluded being the Alliance Party of Kenya, United Kenya Citizen Party, People's Democratic Union of Kenya and Ford-Kenya.

1 035 parliamentary aspirants contested 210 seats in the National Assembly. Of these, 44 were women (nine of whom were elected). Kangundo constituency in Machakos District fielded the highest number of candidates (13) in the country for a parliamentary seat. KANU fielded parliamentary candidates in 209 and NARC in 207 of the 210 constituencies. Ford-P fielded 185, SDP 96, Safina 59, FORD-Asili 41, Kenya People's Party 23, the National Alliance Party 19, the National Labour Party and the Shirikisho Party of Kenya 17, the Kenya African Democratic Development Union 16, the Federal Party of Kenya 14, National Progressive Party 12, Chama cha Uma and Sisi Kwa Sisi 11, the Kenya Social Congress, the Kenya National Congress and the United Agri Party 10, the Kenya Patriotic Trust Party 9, the People Party of Kenya 7, the Labour Party of Kenya 6, the United Democrats of Peace and Integrity in Kenya and the United Patriotic Party of Kenya 5, the Green Party of Kenya, the Economic Independence Party, the Kenya National Democratic Alliance and the Kenya Citizens Congress 4, Chama cha Majimbo na Mwangaza, the Republic Reformation Party-Kenya, the Umma Patriotic Party of Kenya and the Mass Party of Kenya 3, the Republic Party of Kenya 2, the Democratic Assistance Party and the People's Solidarity Union of Kenya 1.

K-DOP further observed the civic nominations, which took place on the same days as the parliamentary nominations (25 and 26 November 2002). According to information published by the ECK, 41 political parties fielded civic candidates. A total of 7 009 candidates (including 381 women) were nominated for the 2 128 elected civic seats. There is no detailed breakdown by party of nominations for the civic elections.

The parliamentary and civic nomination process was, at times, rather chaotic and uncoordinated and there were reported cases of candidates who had lost the primaries but were nevertheless nominated by their respective political parties. It was observed that between the closure of nominations and the publication of the list, the ECK allowed certain parties to replace duly nominated candidates with others. Apparently, the ECK took a practical – instead of a strictly legal – approach to the problems that occurred with regard to the nominations process, such as double nominations and replacement or withdrawal of candidates after the closure of nominations.

During the nomination process a number of parties were disorganised and in crisis because candidates could agree neither on the methods to be used for voting nor on the results. There were widespread allegations of candidates holding certificates with the signatures of the authorised party signatories forged. In some instances, the NARC presented double nominations in some constituencies, while some candidates were given nomination certificates by party leaders without the party's nomination elections having been held. NARC's parliamentary and civic candidates were reported to have been selected rather than elected in an open competitive primary election. KANU's nomination process appears to have consisted of a coronation of candidates from the top rather than an election. In at least twelve constituencies, among them Nairobi, Eldoret East and Kuresoi, KANU

primaries had to be rerun. Some parties, including one faction of the SDP, that had signed the NAK memorandum of understanding nevertheless fielded candidates for other parties, among them the Federal Party of Kenya, Labour Party of Kenya and KENDA. Ford-Kenya withdrew two candidates whom the party had nominated.

Other reported incidents included the withdrawal of some duly nominated candidates after the closure of nominations. Although the law does not provide for this situation (one can only withdraw until the closure of nominations) these withdrawals were accepted by the ECK and the names of the nominated candidates did not appear on the final list of candidates. Gideon Moi, a son of President Moi, 'inherited' his father's Baringo Central seat unopposed. This followed a series of seemingly well-coordinated withdrawals by nominated parliamentary candidates who were contesting the seat. On 28 November 2002, Amos Kandie of Safina left his party to join KANU and vowed to support Moi. It is still unclear when exactly Thomas Letangule of NARC withdrew from the race, but it was at some time between 26 November and 1 December 2002. Messrs Kandie and Letangule had been cleared to vie for the seat by their respective parties but withdrew from the race at the constituency level before the returning officer. Hence, by the time the nomination papers were sent to the ECK headquarters their applications for withdrawal had already been allowed. By 1 December 2002, apart from Gideon Moi, only Isaac Cherutich Kibet of Ford-P was still in the race and his was the only name other than that of Moi to appear on the preliminary list of parliamentary candidates published by the ECK on 29 November 2002. In a letter sent to the ECK chairman, a Mr Kivuitu, on 1 December 2002, Kibet wrote that he had withdrawn his candidature. A press statement by the ECK, dated 4 December 2002, confirmed that the ECK had received an application from Kibet for withdrawal of his candidature, which it had considered and allowed. As a consequence, on 4 December 2002 Gideon Kipsiele Moi was gazetted as an elected member of the National Assembly. On the same day, the ECK issued a press release stating that no withdrawals would be accepted after 3 December.

After nominations closed, the ECK accepted the replacement and removal by certain parties of their duly nominated candidates, although the law does not provide for this option. In the press statement mentioned above, the ECK announced that, in response to appeals from candidates and/or political parties, it had reviewed certain decisions taken by the returning officers during the formal nomination period. In Kamukunji constituency KANU was allowed to substitute Simon Ngang'a Mbugua for Ahmed Ali Seifudin Abdi while NARC was allowed to substitute Francis Mutwol, Peter K Bett and Herman O Omamba Keino for B Kipchumba (Marakwet west), Ngeny R Kipngetich (Konoin) and Ocholla G Ochieng' (Uriri). NARC and Safina were allowed to nominate candidates in some constituencies where they did not have them. NARC nominated Benjamin N Oonge (Bobasi) while Safina nominated Kassim A Choka for Msambweni constituency. The Ford-K candidates, S Murunga (Kimilili) and F Wanyonyi (Kwanza), who had been

nominated, were removed after an application by their nominating party. Ford-K is one of the parties under the NARC umbrella. The chairman of the ECK had to cope with these issues and announced that returning officers would accept any written proof that candidates belonged to a political party. At the same time the returning officers had to be extra cautious about not declaring candidates validly nominated unless the circumstances warranted such a declaration. The ECK began the formal clearance of parliamentary and civic candidates on 27 November 2002 and gazetted the candidates on 4 December 2002. Thus, it appears, the 'practical' deadline for the nomination of candidates was 3 December 2002.

Helping with logistical problems

Holding three elections (presidential, parliamentary and civic⁷) simultaneously requires an enormous amount of resources and infrastructure. The voting took place in 14 750 polling centres with a total of 18 366 polling stations. Each polling station caters for a maximum of 1 000 voters. K-DOP observation on election day indicated that the process was marred by minor logistical problems such as polling stations opening late and bad weather (heavy rain and floods). It was reported that approximately one-third of the polling stations opened late because of a delay in the delivery of election stationery. In isolated cases voting was postponed (eg, in Tana River, Turkana and Samburu) because of logistical problem and civic elections were postponed to 13 March 2003 in 12 wards because of improperly printed ballot papers and the death of candidates. Other logistical problems included voters' register inaccuracy, lack of secrecy, and misplaced colour codes on ballot boxes.

Each polling centre was manned by one presiding officer and one deputy presiding officer and each polling station had six polling clerks, armed security personnel, party agents and a domestic observer. The effort to place at least one observer in each station facilitated voter participation and a general atmosphere of peace, which contributed to a well organised and efficient poll.

It was reported, mainly in Nairobi, Mombasa and a few locations in rural areas, that people's names were missing from the voters' register. Presiding officers and deputy presiding officers were often found to be inconsistent in applying ECK instructions about how to deal with missing names. This led to confusion and inequitable treatment of a number of voters. The inconsistent application of ECK instructions was partly attributed to the fact that the ECK published contradictory instructions on this subject just before the elections.⁸ In Langata constituency, Raila

⁷ Four candidates contested the presidential election and thirty-four parties fielded 1 032 candidates for the 210 parliamentary seats.

⁸ The law allows people who present a valid identity document or passport and a valid voter's card but who are not on the register to vote, if the presiding officer is satisfied that the person's name was unjustifiably omitted from the register. On 17 December 2002 the ECK instructed its election officer to check such people's name against the so-called black books – handwritten registers from which the final voters' register was derived. In a consultative meeting with political parties on 24 December 2002, the ECK changed this position and ordered its officers not to use the black book.

Odinga (NARC) claimed that names beginning with certain letters (M and O) were missing from the voters' register. Unfortunately, no evidence was found to substantiate the claim that irregularities were specifically directed at any political or ethnic group.

The observer group reported that the secrecy of the vote was undermined on numerous occasions across the country. The phenomenon was more prevalent in rural areas where illiterate voters were assisted in a manner that failed to respect the secrecy of their votes. It was reported that presiding officers instructed voters to proclaim loudly the candidate of their choice, after which the party agent of the corresponding party would follow the voter to the polling booth to assist him/her in making a cross in the appropriate box.

Also mainly in rural areas it was found that clan or family voting was widely practised. In a number of cases the quality of the material used to construct the polling booths did not allow for sufficient privacy and in others voters had to mark their ballots on the windowsill because of poor light in the early hours of the morning.

The colour coding on the ballot boxes distinguishing the three different elections was not always distinct, leaving voters confused about which box was designated for which election. This confusion led to voters casting their ballots in the incorrect box. Colour coding on two sides of the ballot boxes might have eliminated this problem.

Helping resolve electoral disputes

K-DOP's role in conflict resolution was intended to give further legitimacy to the electoral process but it could in no way seek to address the underlying causes of such conflicts as surfaced during the election period. If one or more of the parties was unwilling to accept the outcome of the election and resorted to armed struggle, there would have been little the observation programme could have done to prevent such a response. K-DOP acted as complaint investigator, fact finder, intervener, referee and deterrent to conflict and manipulation of the election. Its officers investigated cases of electoral fraud, intimidation and violence.

In general, they found evidence of election related violence, misuse of state resources for political purpose, and voter bribery. Generally, K-DOP worked with the ECK and with all political parties to produce agreements intended to eliminate campaign violence. It was reported that political parties and their candidates actively and freely campaigned throughout the country and that no campaigning took place on election day.

Monitoring the voters' roll

The Constitution of Kenya stipulates that a citizen who has attained the age of 18 years (evidenced either by an identity card or a Kenyan passport) and has been an

ordinary resident in Kenya for a certain period can register to vote.⁹ A registered person is any person whose name appears in the principal register and is thus entitled to vote in an election conducted under the National Assembly and Presidential Election Act. A person adjudged bankrupt, or of unsound mind, or detained in lawful custody, or convicted of an election offence may not be registered as a voter. The figure provided by the ECK of the total number of registered voters for the 2002 elections was 10 451 150. This figure represents an estimate of about 70% of the total eligible voter population.¹⁰

K-DOP raised the concern that in some constituencies thousands of voters' names were missing from the register. In the February 2002 voters' register update, the Institute for Education in Democracy, a member of K-DOP, conducted a survey of voters registered in 19 of the 210 constituencies between July and August 2002. They found that the registration had been carried out in 'a manner that most of the respondents found satisfactory'. However, errors were detected on the register, ranging from misspelled names to the failure to update the register to take into account deceased voters.¹¹ They calculated that perhaps 1 million people on the register (representing the approximately 2% of Kenyans who die each year) were, in fact, dead. So, in the five years since the 1997 elections roughly 10% of those who had registered for those elections would have died. In rural constituencies, however, less than 0.4% of the names on the register were removed because of death.

The ECK confirmed these findings. The main causes appear to be: that the Department of Civil Registration is not computerised and often relies on the provincial administration (chiefs and assistant chiefs at the location and sub-location level) to supply the department with information about deaths; the poor quality of the registration exercise in some areas of the country, where voters' names were misspelled or not written in the correct order; double registration (approximately 60 000) of eligible voters and a failure to provide those who had attained the voting age with the necessary identification documents for registration and receipt of a voter's card. The extent of its impact and potential bearing on the overall quality of the election process, it was suggested, does not impinge in any meaningful way on what the elections represent for the citizens of Kenya – democracy as a preferred method of effective political change in Kenya's polity and a reflection of a democratic will.

9 One must have been a resident in Kenya either (i) for a period of not less than one year immediately preceding registration; or (ii) for a period of, or periods amounting to, not less than four years in the eight years preceding registration; or (iii) one must have for a period of – in aggregate – not less than five months in the twelve months preceding registration – been ordinarily resident in the constituency in which one applies to be registered; or (iv) for such a period have carried on business there or have been lawfully employed or lawfully possessed land or buildings for that period (s 43 of the Kenyan Constitution).

10 The figure is based on the 1999 Population and Housing Census done by the Central Bureau of Statistics: the total population was 28 686 607, of whom 14 023 352 were older than 18 years.

11 *Registration of Voters in 2002, an Audit*. Institute for Education in Democracy.

Monitoring the media

The Kenya Broadcasting Corporation (KBC) is the official and state-owned public broadcaster in Kenya. It was established by the Kenya Broadcasting Corporation Act, chapter 221 of 1990 (which was amended in 1997). The corporation operates five radio channels and one television channel. In addition, there are three commercial radio stations and one commercial TV station.¹² The KBC is also a shareholder in the Digital Satellite Provider, Multichoice. KBC radio broadcasts in English and Kiswahili and the TV channel covers over 95% of Kenya's population. Moreover, the KBC has three regional broadcasts in fifteen languages. The regional broadcasts are disseminated as follows: Central Broadcast – Kikuyu, Kikamba, Kimasaai, Kimeru and Kiambu languages; Eastern Broadcast – Somali, Boran, Rendile, Burji and Turkana languages; and Western Broadcast – Luo, Kisii, Kalenjin, Kuria and Teso languages.

K-DOP provided systematic media monitoring coverage of the whole electoral process. This revealed that the KBC's coverage of political events consistently maintained a bias toward KANU – on election day 75% of the total airtime allocated to political news by KBC TV and 80% of the total airtime allocated to political news by KBC radio was given to KANU. The media monitoring project also reported that the little coverage that was given to other political parties by the state broadcasting agencies was largely negative.

Monitoring the voting process

The major activity of election observation teams is to oversee the election as it unfolds. The observers evaluate whether election rules are implemented according to the electoral law, without fear or favour. They also evaluate the quality and effectiveness of voter education. On election day most of the K-DOP poll watchers arrived at the polling station at 05h15 and observed the whole voting and counting process, which proceeded, in many instances, into the early hours of the morning. In general, the voter turnout was reported to be 57.2% of the 10.5 million registered voters (of whom 4.83 million are women and 5.65 million are men). The lowest turnout rate was recorded in the urban centres – Nairobi (42%) and Coastal Province (42%), while the Central Province recorded the highest turnout rate (66%). In comparison with other elections on the continent the voter turnout was quite low. However, if the estimated number of more than 1 000 000 dead persons on the voters' register is correct, a more accurate figure would be 63%, so the low poll need not be over emphasised. Although K-DOP observers encountered widely scattered voting problems such as isolated incidence of violence and intimidation,

12 The radio stations are: Metro FM (covering mostly Nairobi, Mombasa, Kisumu, Nakuru, Nyeri and Eldoret); Coro FM (spreads through to Nairobi, and Mount Kenya regions); and Pwani (located in the Coastal region). The TV station is Metro TV, which covers an 85km radius from Limuru.

mostly in Nyanza and North Eastern Province and mainly attributed to clashes between supporters of opposing political parties, they evaluated the balloting process overall as having no serious flaws that might have affected the outcome of the elections.

Monitoring the counting and tallying process

All K-DOP observers remained at polling stations to watch the votes being counted and recorded. Counting began immediately after the last ballot was cast. The presiding officer, accompanied by all the electoral clerks, party agents, and K-DOP observers, transported the ballot boxes to the constituency counting centre, where the result was tallied and announced in the presence of all witnesses. In a number of cases heavy rainfall delayed the counting process. In Turkana Province, 22 polling stations were isolated by appalling weather conditions and, after three days, the election team had to be evacuated by helicopter.

CONCLUSION

This paper demonstrates that K-DOP played a legitimising role through its systematic and in-depth observation of the electoral process within a context characterised by political stalemate and a dire need for regime change. The diverse civil society agencies that came together to form K-DOP and, especially, the involvement of the three major religious groups in the organisation, give further legitimacy both to K-DOP and to the electoral process, enabling K-DOP to transcend ethnic and religious bigotry and conduct its observer role with a generally acceptable degree of neutrality and impartiality.

K-DOP successfully facilitated an environment in which voters could participate freely and exercise their right to elect their leaders. K-DOP was able to unite the entire country around a common national purpose. In almost every polling station the voters were given a sense that their vote counted. They demonstrated clearly that elections are not only the domain of electoral commissions and political parties; that citizens, if given ownership of the electoral process, will ensure and protect the integrity and legitimacy of the process.

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ELECTIONS IN NIGERIA IS THE THIRD TIME A CHARM?

By

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INTRODUCTION

The April 2003 elections in Nigeria, the first civilian administered elections to take place in two decades, were hailed as the largest in African history and are surely a major milestone for both the country and the continent. Although they were marred by serious irregularities they were historic – instead of a military coup, a civilian government was to be succeeded by another civilian government.

President Olusegun Obasanjo won with 62 per cent of the vote, and his party scored huge victories in the National Assembly and the State Assembly elections. In the face of predictions of violence, Nigerians defied the odds and went to the polls peacefully in most parts of the country. Turnout was high, and there also appeared to be a respectable geographic spread of the winning party's base of support. But these encouraging facts and other optimistic assessments of the elections offer only superficial portraits of an outcome that remains far more uncertain.

Prior to the elections problems arose with the electoral framework and undermined confidence in the process. Other serious concerns were the high incidence of violence in the pre-election period, especially during the party primaries, and shortcomings in the voter registration and voter education process. These problems helped create an unstable climate for the elections.

The electoral commission addressed many of the inefficiencies that arose during the National Assembly elections, but serious irregularities in the presidential and gubernatorial elections the following week brought the results in some areas

into question. The main opposition party has yet to accept the results. Because of these problems it is difficult to say whether Nigeria is measuring up to the standards of democratic consolidation commonly used by political scientists.

However, on several grounds the elections may be viewed as a positive step towards democratic consolidation. One view is that elections, in and of themselves, constitute an important step forward. Huntington (1991) advances the notion of a 'two-turnover test' whereby democracy is consolidated 'if the group that takes power in the initial election at the time of transition loses a subsequent election and turns over power to those election winners' who, in turn, do the same in another election. Karl and others warn against such an 'electoral fallacy', whereby elections are legitimisation rituals but may say little about civil and political rights and other liberal dimensions of democracy (Diamond 1996, pp 20-37; Karl 1990, pp 1-21). Bratton (1999) stakes out a middle ground in the debate, saying 'elections and democracy are not synonymous'. 'Elections remain fundamental, not only for installing democratic governments but as a necessary requisite for broader democratic consolidation.'

By all measures Nigeria has yet to pass Huntington's two-turnover test. In 1964 the Northern People's Congress (NPC) managed to defeat the incumbent parliamentary coalition, but the so-called First Republic soon degenerated into violence and a military coup. In 1983 Shagari's National Party of Nigeria (NPN) narrowly won re-election in a contest among six presidential candidates, meaning no turnover occurred. This government was also terminated by a military coup. In Nigeria's present and third attempt at democracy, nationwide polls indicate strong support for democracy over military government and security forces appear to have played a largely positive role in the 2003 elections. In addition, those who lost and who might be tempted to organise against democracy seem to have little support from the military, which continually states its public commitment to democracy. In order to avoid the fate of the First and Second Republics it is necessary to have an apolitical military, but the cost has been high as Obasanjo has been unable to hold anyone accountable for serious human rights violations that took place under his administration.

A broader benchmark for measuring democratic consolidation is simply the alternation of power, without specifying two turnovers or two elections. Alternation of power is only possible where vigorous political competition exists. Dahl (1971) famously listed 'public contestation' along with participation as a key ingredient of 'polyarchy', his ideal type of democracy. Rustow (1970, pp 337-63) referred to democracy as 'a system of rule by temporary majorities'. And Mainwaring (1992) identifies a procedural requisite of democracy as the 'opportunity to get rid of rulers who lose their popular support'. In Nigeria the presidency did not change hands, but there was significant turnover at other levels of government and this could be taken as an encouraging sign. For example, eight of the 36 incumbent governors lost in 2003 and, as discussed below, the turnover among the National Assembly rank and file as well as the leadership was substantial. Yet much of the change

occurred within parties rather than between them – high turnover should not be equated with alternation of power. Moreover the ruling People's Democratic Party (PDP) was unwilling to risk losses in some states at any cost, while many opposition parties have been unwilling to concede losses.

Finally, and most significantly, the national scope of the PDP support could be interpreted as a positive step towards consolidation. The democratisation literature has emphasised the importance of cross-regional and multiethnic support in a plural society (Lijphart 1977; Lijphart 2002, pp 37-54; Mainwaring 1992). Linz and Stepan (1996), for example, write 'the more the population of the territory of the state is composed of pluri-national, lingual, religious, or cultural societies, the more complex politics becomes because an agreement on the fundamentals of democracy will be more difficult'. In Nigeria the political geography consists of six 'zones', each one roughly with its own common economic, agro-climatic and ethnic qualities. The PDP secured more than a quarter of the vote in 32 of the 36 states in the presidential election, making surprising inroads into the Yoruba South West zone, securing a solid base in the South East among the Igbos, and garnering the support of many minorities in the South South. Results in the National Assembly and State House elections reflect these patterns as well. Only in the North West, where Mohammadu Buhari and his All Nigeria People's Party (ANPP) leaned towards conservative Muslim society, did the PDP falter. Obasanjo and the PDP may have overcome ethno-regionalism but inter-party competition has never been weaker in Nigeria's three democratic regimes. This raises the question of whether inter-party contestation is being replaced by the emergence of one 'super party' and intra-party competition.

THE PRE-ELECTION ENVIRONMENT

The period leading up to the elections showed some promise in terms of voter participation and the role of the courts. Although the registration process was flawed, 61 million voters registered and the electoral commission implemented technology to reduce duplicate registration. When various disputes arose concerning voter and party registration and electoral law Nigerians utilised the courts as an independent third party with the credibility to resolve contentious issues, and judicial decisions over electoral law were largely accepted as binding.

Other aspects of the pre-election environment were less encouraging. Many party primaries were chaotic and, when they occurred at all, they were non-transparent processes whose results were often hotly disputed. Serious incidents of political violence against candidates and party officials were common, but investigations rarely led to prosecution, contributing to a climate of mutual mistrust and impunity. Finally, when local government elections did not take place as scheduled, governors imposed 'caretaker' governments at the local government (LGA) level. The presence of these un-elected officials gave incumbent parties a distinct organisational advantage at the state level and undermined confidence in

the overall process. In sum, the relative success of the registration process and the frequent use of the judiciary as neutral arbiter must be weighed against a combination of an extraordinarily weak primary process, impunity for political violence, and the weakening of democracy at the local level by the appointment of un-elected local governments.

The registration process

Voter registration suffered from several setbacks that affected overall enfranchisement and therefore confidence in the electoral process.¹ Problems included logistical delays, insufficient staff training, lack of security at registration centres, poor voter education campaigns and other flaws. After various delays the ambitious new computerised registration process was implemented in September 2002. The process required registration staff to fill in complex computer readable forms but inadequate staff training resulted in further delays and confusion. Additional confusion stemmed from unclear lines of responsibility for voter education. The Independent National Electoral Commission (INEC) claimed that educating voters was not part of its constitutional mandate so it made few efforts to do so. Government support for voter education was relegated to the National Orientation Agency (NOA), a state propaganda agency which carried out some limited voter awareness campaigns. Several reports by election observers noted that political parties did not conduct voter education properly, leaving the task instead to non-governmental organisations. The resources of many domestic NGOs were already stretched because of their involvement in monitoring registration and training staff for election monitoring; both of these tasks were unnecessarily complicated by the INEC's initial reluctance to accredit many domestic observers. The result of this confusion over responsibility for voter education was low registration at many registration centres, particularly in the first round of the process.

The most serious problems probably involved the actual distribution of registration materials. The initial registration period only lasted for ten days, giving registration centres little time to compensate for shortages of materials. In many parts of the country shortages appeared to be calculated and there were many credible reports of party officials hoarding forms or distributing them to loyalists. INEC attempted to address these problems by extending the registration period for two days and improving its cooperation with domestic monitoring organisations. Although the short registration period was apparently intended to reduce opportunities for fraud, the reverse appears to have been the case as the scarcity of materials helped drive corruption and generate voter cynicism. Since materials were only available for a short time they, in effect, became much more valuable, and whatever well-meaning officials there were had little time to redirect materials

¹ Some of this information can be found in two reports on the 2003 Nigerian Electoral Process issued jointly by the National Democratic Institute and the Carter Center in November 2002 and March 2003.

to areas where they were needed or to investigate irregularities. In response to these problems INEC re-opened the registration process briefly in January 2003.

After registration INEC failed to publish the voter lists in virtually every area, as required by s 10(1) of the Electoral Act of 2003. This meant that many voters did not know their registration status until election day. According to observers, the failure by INEC to display the voter list in many areas made it difficult to ascertain the authenticity of the register or allow voters to query their registration status. Reports by domestic observers suggest that the figure for voters not included in the register may have been as high as ten per cent. In the end, 61 million voters registered and approximately seven million were eliminated because of duplication or invalid thumbprints detected by the computer scanning system.

Party primaries

Political party primaries were marred by delays, weak internal democratic processes and, in several cases, by violence. For example, the Edo State chair of the ANPP was kidnapped in January in connection with a dispute over the party's gubernatorial primaries (Amaize 2003). As in 1999, the primaries were basically closed affairs. In that year the All People's Party (later renamed the ANPP) picked Chief Olu Falae as its presidential candidate during a secretive meeting in Ibadan. This time around the ANPP picked its candidates amidst accusations of fraud from five other contenders – all southerners – who withdrew in protest (UNIRIN 14 January 2003; *Vanguard* 2003). The Kano State PDP primary was postponed for months because of internal disputes. The primaries in Anambra State were allegedly rigged and pre-determined, with sheets listing the names of candidates being certified even before voting took place (Onyekamuo 2003). The All Progress Grand Alliance (AGPA) only succeeded in nominating its candidate after the abrupt expulsion of three national executive officers (Aziken 2003). The Transition Monitoring Group (TMG), a coalition of 170 civil society organisations, condemned the primaries of both the ANPP and the PDP, alleging widespread bribery. According to one report, 'Undue pressure, including subtle threats and intimidation, were employed by agents of the government to compel delegates to vote in favour of the preferred aspirants (UNIRIN 21 January 2003).'

The most contentious primary clearly involved Alex Ekwueme, who challenged Obasanjo for the PDP presidential nomination. Ekwueme, the former vice-president in the Second Republic, was defeated in the primaries, receiving only 17 per cent of the vote of the party's 3000 delegates. Ekwueme took his grievances to the courts, where his case stumbled. But the PDP was deprived of the compelling image of legitimacy that its 1999 primaries had enjoyed when, after losing, Ekwueme raised Obasanjo's arm in a show of solidarity. This time, after losing the 2003 primaries, Ekwueme withdrew and other influential PDP officials joined other parties (Ughegbe 2003; Ojeifo 2003). Perhaps the most dramatic evidence of disillusionment within the PDP was the unusual, if not bizarre, defection

from the party in December and January of ten senators and representatives, within a one-month period and with the presidential election not far off. The former Deputy Senate President, Haruna Abubakar, led 65 gubernatorial primary candidates in rebellion against the PDP leadership. When the protest failed, he and many others went to court and then opened discussions with the ANPP (*This Day* January 2003).

The courts

The use of courts in new democracies is generally seen as a positive step towards democratic consolidation (Linz and Stepan 1996; Schedler, Diamond et al 1999). But parties also file claims for delay, obstruction or other reasons and this can contribute to an environment of permanent uncertainty about the results. In addition, whether the judiciary plays a positive role largely depends on whether the courts are seen as independent and fair, otherwise their decisions may not be accepted. Historically this has been an issue in Nigeria, most notably in the Second Republic, where neither candidate satisfied the two constitutional requirements for election: a plurality of votes nationwide and 25 per cent of the vote in two-thirds of the states. As a result of the impasse, several parties unsuccessfully pushed for a run-off. The Federal Electoral Commission declared Shehu Shagari of the National Party of Nigeria (NPN) the winner, based on an interpretation of electoral law that declared two-thirds of 19 states to be 12 rather than 13. The electoral tribunal, and eventually the Supreme Court, upheld the Federal Election Commission's decision (Falola and Ihonvbere 1985; Oyediran 1981). General Olusegun Obasanjo (then the military dictator) accepted the Supreme Court's conclusion but his Yoruba kinsman allegedly resented his decision to hand over power to the northern-based NPN. The 1983 elections were marred by violence and the Yoruba states voted overwhelmingly against Obasanjo when he ran for President in 1999.

In the period leading up to the 2003 elections the courts addressed three types of conflict: internal party disputes, executive-legislative disagreement, and challenges to INEC's decisions. Ekwueme's legal intrigues fall into the first category. Another example of this is Jigawa State, where a former Cabinet minister successfully challenged in court the governor's choice for the ANPP gubernatorial ticket (Kalu April 2003). In the second category, the courts in 2002 struck down changes in s 15 of the 2002 Electoral Act that required all elections to take place on the same day. Shortly before the election the Office of the President filed a separate case challenging the validity of the National Assembly's veto override of the electoral Bill, claiming that the Constitution required two-thirds of all members (rather than only of those present) to vote in favour of the override. Had the President's lawyers succeeded, the provisions of the Electoral Act of 2001 would have been upheld, calling for presidential elections before legislative elections. INEC also went to court to void the Electoral Act of 2002 when it required all polls

to take place in one day. Officials claimed that would be logistically difficult. INEC also argued that under the Constitution only it is empowered to fix the dates of the elections, and therefore a simple legislative motion cannot change the electoral Bill (Fadeyi and Soniyi 2002).² These cases also unfolded in a context where INEC had been complaining about lack of funds and the Executive had successfully convinced the public that the National Assembly was to blame. This is only partly accurate, as in 2001 it was the Federal Government that delayed the release of funds to INEC, thereby slowing down the registration process (Transition Monitoring Group 2003).

Challenges to INEC, the third type of case, involved agitation by the smaller parties. These cases were all the more problematic given that the incumbent president had earlier dismissed all the members of INEC and unilaterally replaced them. When INEC failed to display voters' lists at least 60 days before the elections, as required by law, the National Democratic Party (NDP) took INEC to court. The courts, concerned about the dangers of forcing a postponement of the elections, rejected the challenge by the NDP.

Another problem was that at first only a handful of parties was recognised by INEC. Smaller parties also complained about exorbitant registration fees, which they claimed were designed to keep them out of the political process. When the parties won in court, INEC immediately showed its reluctance to implement the decision and the federal Attorney General sided with it, stating that the fact that a party meets the qualifications for registration does not mean registration is 'automatic'. Meetings between the executive branch and the court resulted in the court claiming to have made a 'clerical error' in the decision that had ruled in the new parties' favour (Ughegbe and Akoni 2002; Anaba. 2002). Eventually the Commission was forced to recognise a total of thirty parties, although only 22 fielded presidential candidates.

The mere fact that Nigerians resorted to the courts showed that they had confidence in their legal system and, as discussed above, there was enough fairness in the proceedings and ruling of the courts for one safely to say that they were seen as credible by most Nigerians.

Political violence

Just prior to the elections candidates jockeying for party support partly fuelled tensions, which, in numerous cases, assumed violent proportions. Most intra-party violence occurred at the state level and related to party primaries – the ruling party had more intra-party violence than other parties.

On 19 March 2003 President Obasanjo convened a Peace Summit of all the political parties with the aim of encouraging all parties to work for peaceful elections.

² The relevant sections of the Federal Constitution in INEC's complaint are ss 78, 118, and 58(5). It should be noted that Shugart and Carey (1992) have demonstrated that when presidential elections are held before legislative elections there tends to be a 'contamination effect' on the outcome.

Though the Summit was well attended party leaders failed to utilise the opportunity afforded to commit themselves and their parties to peace-building mechanisms.

In the period between mid-2002 and the elections hundreds of political figures, including prominent opposition politicians, were killed. Just prior to the elections Human Rights Watch issued a report documenting dozens of such cases and stating, 'political violence poses a serious threat to the legitimacy of the state and federal elections (Human Rights Watch April 2003)'. For example, in September 2002 Barnabas Igwe, a prominent reformer with the Nigerian Bar Association, was killed in Anambra State after calling for the governor's resignation for failing to pay civil servants. That same month Isyaku Mohammed, the deputy chair of the new opposition party, the United Nigeria People's Party (UNPP), was killed in Kano, a key battleground state in the elections (Human Rights Watch April 2003). In March 2003 Marshall Harry, the vice-chair of the ANPP in the South South (one of Nigeria's six geographical 'zones') was killed in his Abuja home. Critical of the PDP government in his home state of Rivers, he had decamped to the ANPP. The most prominent murder was probably that of Federal Justice Minister Bola Ige, who was killed in December 2001, shortly after violence in the Osun State Assembly that left one representative dead. Human Rights Watch noted that such violence generally occurred in a climate of impunity and with little reaction from the international community.

Other violence was clearly inter-party. One PDP / ANPP dispute, utilising hired 'mercenaries', in Benue State, left seven people dead. Another incident, in Gombe State, involved an attack by ANPP supporters on the PDP gubernatorial candidate and the Minister of State for Mines and Power, who were travelling in a convoy (Ior February 2003; Ibrahim February 2003).

And just days after he lost the race in Kwara State, the ANPP candidate for a House seat was hacked to death with a machete (Ilorin April 2003, p 5). In the two weeks leading up to the elections alone, the Institute for Democracy in Southern Africa (IDASA), in its weekly report, titled 'IDASA Weekly Updates on Election Related Violence and Conflict' reported the following incidents of political violence:

- In the Niger State Progressive Redemption Party (PRP) supporters attempted an attack on the governor's convoy.
- Mohammadu Buhari, the ANPP presidential candidate, was attacked in Adamawa State, which is a PDP stronghold.
- In Ondo State the campaign convoy of Chief Gani Fawehinmi, presidential candidate for the National Conscience Party (NCP), was attacked.
- Seven people were injured in a gunshot and machete attack on the Oyo State governor, Alhaji Lam Adesina.
- In Abuja six gunmen raided the house of the spokesperson for the PDP Presidential campaign, Osuntokun, but he was not at home.
- In Plateau State suspected raiders from Chad, motivated by ongoing ethnic tensions between the Fulani and the Tarok, attacked the indigenes of Dwei

village between Langtang and Wase local government councils. Violence and intimidation between the ANPP and PDP gubernatorial candidates became so serious that President Obasanjo considered withdrawing the security officials attached to both candidates and threatened other punitive action.

- In Zamfara police warned religious leaders to steer clear of politics in their sermons. In an effort to avert violence, political parties, after an inter-party consultative forum, decided to suspend political rallies throughout the state.

The geographical distribution of and widely shared blame for this violence suggest it was indeed a widespread problem, and the government's stern approach failed to ease tensions. After the ANPP and other parties announced that, instead of a boycott they would organise a 'mass action' at the presidential polls, the Chief of Defence Staff said the military 'cannot sit down and see the loss of lives and property. It will not be allowed. Even the Constitution says members of the Armed Forces can render assistance to civil authority when the need arises (Omonobi, Yacoob and Ajayi 2003, p 1).' Equally alarming were comments by the Inspector-General of Police, who, in promising to maintain order during the presidential elections, advised his officers, 'Be prepared to maim or cripple any person, no matter how highly placed, who attempts to disrupt the forthcoming polls. You don't need any directive from me to do this (*The Post Express* April 2003).' The permissive climate fostered by such statements continues. If it remains unchanged it will likely undermine both the perception of law enforcement agencies and the likelihood of peaceful political competition leading up to the next election. Moreover, most cases of election-related violence remain unsolved, offering little fear of sanction among those who might be tempted to repeat such tactics in the future.

THE 2003 ELECTIONS

The electoral framework

The national elections took place in three stages. Elections for the National Assembly were held on 12 April and gubernatorial and presidential elections the following weekend, on 19 April. Finally, State Assembly elections took place on 3 May. Although there were 30 parties on each ballot three major parties contested the elections. First was President Obasanjo's PDP, which held a majority of seats in both the House of Representatives and the Senate. Second was the ANPP, headed by Muhammad Buhari. The party had a strong base in the country's Hausa-Fulani North West region, where conservative Muslims in twelve states challenged the federal government by adopting a criminal justice system based on Islamic law. The contest between the ANPP and the PDP was unusual in that both major candidates were former military dictators: Obasanjo (from 1976 to 1979) and Buhari

(from 1983 to 1985). The third major party in the elections was the Alliance for Democracy (AD), a party with historical roots in Obafemi Awolowo's Unity Party of Nigeria (UPN) and its predecessor, the Action Group, with strong roots in the Yoruba South West. Aside from these three major parties the party system was highly fragmented. Many of the remaining 27 opposition parties attempted to form a united front, the Conference of Nigerian Political Parties, but failed to agree on a consensus candidate.

Notable election outcomes

In the context of Nigerian politics there are at least four notable outcomes of the elections. One factor that garnered a great deal of international attention was the irregularities that brought the results into question. There is evidence based on independent observation by domestic and international monitors to suggest that the fraud and intimidation were widespread and serious (FOMWAN & MULAC; Transition Monitoring Group; International Republican Institute April 2003; National Democratic Institute April 2003).³

One report by Muslim civil society organisations, based on 1 100 observations, claimed that at 76 per cent of the polling units the number of votes received by parties did not equal the number of ballots cast.

Observation groups also reported that voters with proper accreditation were refused the right to vote and there were serious violations of secrecy, although some of these seem to have been the result of misunderstanding of procedures.

Under-age voting was a problem in many rural areas such as Kogi, Adamawa, and parts of Kaduna. The stuffing of ballot boxes was observed in several states. Election day violence was serious in states such as Edo, Delta, Bayelsa, Cross River, and Anambra. In some cases it was so serious that elections in those states were postponed or rescheduled.

The National Democratic Institute's delegation concluded: 'The cumulative effect of these problems seriously compromised the integrity of the elections where they occurred and will most likely erode public confidence in the electoral process.' This sort of strong wording from civil society leads Bratton to suggest that second elections in Africa carry contradictory messages about the consolidation of democracy: when civil society mobilises to prevent election fraud it simultaneously undermines the consensus necessary for constituting the new government (Bratton 1999). This tension between civil society and the government remains and could provide an outlet for new sources of opposition focused on questioning the government's legitimacy.

³ Press release by Federation of Muslim Women's Associations in Nigeria (FOMWAN) and the Muslim League for Accountability (MULAC); 'Preliminary Report on the National Assembly Elections', issued by the Transition Monitoring Group; 'Election Observation Mission Preliminary Statement', issued by the International Republican Institute, 21 April 2003; 'Preliminary Statement on the International Election Observer Delegation', issued by the National Democratic Institute, 21 April 2003.

Another outcome is the extraordinary defeat the Alliance for Democracy (AD) suffered in the legislative and gubernatorial elections. In the National Assembly elections the AD lost 11 of its 16 Senate seats and 38 of its 60 House seats. It suffered losses even in states where it was previously strong: in 1999 it had held all 12 Senate seats in Ogun, Ondo, Osun and Oyo, but after the 2003 elections it held only two of these seats. In the intervening period, preceding the presidential and gubernatorial elections, the disappointing performance of the AD precipitated tense internal debate, with various incumbent governors proposing they abandon the pact with the PDP. Lagos State's popular governor Tinubu and others urged caution. Detecting an opportunity, the ANPP presidential candidate, Muhammadu Buhari, made a last-ditch and ultimately unsuccessful attempt to win votes in the South West two days before the election. In the final tally the losses were even more profound in the gubernatorial elections, where the AD lost every race but one. The governors of Oyo State and Ondo State, who both campaigned with Tinubu for the re-election of Obasanjo, lost their re-election bids to the PDP (with a significant delay in the reporting of the complete results for Lagos State). In Ogun State the PDP defeated the AD by 64 to 33 per cent and the governor-elect commented that by not running a presidential candidate the AD was left without any leverage or political capital to negotiate with (Adeniyi April 2003, p 1).

Distribution of Governorships After the 2003 Election By Zone and State*

	AD	ANPP	PDP
South West	Lagos	Jigawa, Kano, Kebbi, Sokoto, Zamfara Borno, Yobe	Ekiti, Ogun, Ondo, Osun, Oyo
South East			Abia, Anambra, Ebonyi, Enugu, Imo
South South			Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Rivers
North West			Kaduna, Katsina
North Central			Benue, Kogi, Kwara, Nasarawa, Niger, Plateau
North East			Adamawa, Bauchi, Gombe, Taraba
Total	1	7	28

* Abuja, the Federal Capital Territory, does not have a governor

The poor performance of the AD in the National Assembly and gubernatorial races leaves the South West in the paradoxical position that, despite having a Yoruba president, many ethnic Yorubas may feel under-represented. Chief Abraham Adesanya, leader of the ethno-political organisation Afenifere, first expressed his frustration with the PDP when he and all six of the AD governors met with President Obasanjo after the National Assembly elections.

Adesanya warned against another betrayal of Yorubas (as the 1979 election debacle was perceived). 'What you sow, you reap,' he cautioned. 'If the PDP continues to do what the NPN did in those days and feel that they can get away with it, it is a delusion (Akinola April 2003, pp 14-15).'

There is good evidence that the AD's weak standing is directly related to its decision not to run a presidential candidate. In other words, its Assembly and gubernatorial candidates lacked 'coat-tails'. It was an open secret, widely reported in the press, that the AD had decided early on to throw its weight behind Obasanjo in exchange for Cabinet positions and other benefits later. Some in the PDP questioned the sincerity of the AD, suspecting that it would try to advance Obasanjo as its own candidate, rather than a joint candidate, or accusing the party of endorsing him merely because of his ethnicity. 'Why can't they just present a front by sponsoring an unknown candidate who will garner very few votes?', asked one PDP politician in Kano (Olaniyonu February 2003). Unfortunately for the AD, the decision not to field a candidate before cutting a deal – as they did in 1999 – proved devastating, leaving its House, Senate, and gubernatorial candidates without the benefit of any coat-tails to run on.

The absence of coat-tails was further compounded by electoral coalitions that occasionally undermined the AD or even advanced the ANPP. Describing the situation in Brazil, Samuels (2003) called the phenomenon of party coalitions at the sub-national level undermining the party's objectives at the national level 'incongruent coalitions'. At the eleventh hour, seven parties in Lagos State endorsed the PDP gubernatorial candidate and called for a 'unity government', even though they were fielding presidential candidates of their own (*ThisDay* April 2003, p B2).

An even more contradictory phenomenon emerged in Kwara State, where the ANPP formed a coalition with two other minor parties in the interests of defeating the PDP candidate, Olusola Saraki; an advertisement listing the names of PDP members gave the impression the PDP had endorsed the ANPP. The PDP, for its part, recruited six parties to endorse its candidate. The contest in that state stemmed from a bitter dispute between Governor Mohammed Lawal of the ANPP and his 'godfather', or patron, Saraki, who left the ANPP for the PDP in 2002. The rivalries led to the murder of the state chairman of the PDP, the bombing of a pro-Saraki newspaper, and an attack on a wedding attended by Saraki supporters, in which two people were killed. Saraki won the contest, and his daughter defeated the incumbent to secure a Senate seat (*The Comet* April 2003, p 5; Human Rights Watch April 2003; Adebayo April 2003, p 8).⁴

A third significant outcome of the elections was the unusually high degree of turnover generally. In the Senate, leaders of each of the three parties have all departed: the PDP leader lost the gubernatorial race in Sokoto; the ANPP leader won the gubernatorial race in Borno State; and the AD Senate leader from Osun State lost his seat to a former deputy governor from the PDP – who, at the time of the election, was in prison on charges relating to the murder of the justice minister (Obi and Adeyemo April 2003, p 1). The Senate President opted not to run for re-election; his deputy was declared defeated; then the results of the race were abruptly reversed (Oderemi April 2003).

Others resigned to run for president. They included Ike Nwachukwu, who ran on the National Democratic Party ticket, and Jim Nwobodo, who carried the banner of the United Nigeria People's Party. In elections for the House, the Speaker was roundly defeated. This defeat was related to his controversial campaigns to impeach the President and, most notably, his suspension from the party only three days before the elections for 'anti-party activities (Akunna April 2003, p 1)'. It was widely believed that the PDP actually used state machinery, even on polling day, to make things difficult for his re-election.

This high turnover should be interpreted with a few notes of caution. There were probably some reformers among those who were defeated, while others were weeded out through closed party primaries rather than open-secret ballot (a means of casting and counting ballots that is intended to guarantee the privacy of the individual voter and the transparency of the collective results). Moreover, the turnover must be interpreted in light of the large number of legislators who either opted to run for other elected offices or who voluntarily stepped down. In other words, it is far from clear whether they were defeated by a vigorous and effective opposition or if they were rotated out by their party's notion of 'power shift' – that it is someone else's turn to eat at government's table.

A final notable outcome is Obasanjo's redemption by the Yoruba electorate in the South West zone. As the presidential candidate for the PDP in 1999 he failed to carry even one state in the South West, either because there were two Yoruba candidates in 1999 or because of lingering resentments over the 1979 debacle. After the 1979 election Obafemi Awolowo and the Unity Party of Nigeria were furious with General Obasanjo – then the military head of state – for handing over power to the NPN, which was seen as the successor to the Northern People's Congress, a predominantly Hausa-Fulani party in the First Republic.

It would take nearly 25 years for Yoruba voters to forgive Obasanjo for 'handing over power' to the Hausa-Fulani elite of the NPC. By contrast, the PDP carried all the Yoruba states by huge margins in 2003 (see below). In 1999 Obasanjo garnered only 20 per cent of the vote in the South West Yoruba states whereas in 2003 he received nearly 89 per cent.

⁴ The parties that endorsed the PDP candidate were AGPA, LNDF, NCP, PAC, NAC, and DA.

Comparison of 1999 and 2003 Presidential Election Results in the South West

State	ANPP*			PDP		
	1999	2003	Loss	1999	2003	Gain
	%	%	%	%	%	%
Ekiti	73.15	2.3	- 70.85	26.85	92.42	+ 65.57
Lagos	88.07	7.15	- 80.92	11.93	69.35	+ 57.42
Ogun	69.83	.05	- 69.78	30.17	99.92	+ 69.75
Ondo	85.37	3.6	- 81.77	16.63	94.61	+ 77.98
Osun	76.47	2.35	- 74.12	23.53	95.0	+ 71.47
Oyo	75.29	2.85	- 72.44	24.71	93.9	+ 69.19

*The ANPP was known as the APP in 1999

Note: Official figures for Ondo's 1999 vote totals come to over 100%

CONCLUSION

At present, Nigeria is caught between Huntington and his 'two turnover test' and those like Karl, who warn of an electoral fallacy. Holding the elections on time is a momentous accomplishment, especially given the scale of the task in a country with 120-million people. Keeping violence to a minimum in most places while ballots were cast is also a notable accomplishment. The role of election monitors and the support of the international community were probably crucial in this regard. Although the actual numbers of international monitors were small in relation to the number of polling stations, support for the massive civil society effort and the electoral administrative apparatus was substantial and available early. To be sure, the military presence also played a role, but with impunity for human rights problems an ongoing concern, the larger framework of politics suggests this cooperation was not entirely cost free.

Civil-military relations as a potential snag in the consolidation process have not gone away either. The government could pave the way to peaceful elections by pursuing prosecutions in cases of election violence, which could have an important effect on de-legitimising violence as a tactical option for supporters. Future elections would benefit from clearer designation of the responsibilities of the police, the military, and local private security organisations and the resolution of legal ambiguities in their respective spheres of authority.

The election results themselves offer a mixed assessment for consolidation of democracy based on the several definitions offered at the outset of this paper. On the

one hand, the proliferation of parties could be interpreted as a movement towards greater political competition, along the lines anticipated by Dahl. Despite its single-member district plurality electoral system, Nigeria has always been something of an anomaly, with five parties seeking the presidency in 1979, six in 1983, three in 1999, and twenty-two in 2003. This is even more unusual in view of the predominance of three major geographically concentrated ethnicities. In reality, though, the country may be inching towards a two-party system now that the AD holds only eight per cent of the House and five per cent of the Senate seats. Duverger may have been right after all, but in the short term this may mean the political disenfranchisement of minorities and those excluded from the ruling party's umbrella.

On the other hand, the expansion of the PDP's umbrella carries mixed blessings for democracy's cause. True, the party now cuts across ethnic cleavages, as Lijphart suggests is healthy for a new democracy. However, it appears to have done so by simply internalising political competition within parties rather than promoting competition among them. This is evident in the lack of transparency in the primaries as well as the irregularities in the elections (although many parties share the blame here). The PDP may have to choose between the appearance of a popular mandate at the polls and the reality of popular opposition.

Efforts to minimise internal opposition through party discipline have triggered impromptu dismissals of important figures such as the Speaker of the House and the former chairman of the party, rather than less severe punishment such as loss of perks, scheduling privileges or committee assignments in the National Assembly. The courts, which generally played a positive role in the recent election process, have ruled that political parties have the last word in their internal affairs, including the selection of candidates (Ojeifo; Kalu April 2003). This may serve to some extent to insulate the party apparatus from presidential whim, but the public interest will still not be served without greater transparency of those internal affairs, particularly if there is more competition outside of the public domain. Legitimacy and transparency are inextricably linked in democratic processes.

Section 419 of Nigeria's criminal law covers financial fraud, and the date of the presidential election (4-19 April) struck Nigerians as a humorous coincidence. In the end, it is encouraging that on 29 April 2003, Nigerians successfully installed a new civilian government. A process to entrench democracy has begun and support from the international community remains crucial if Nigeria is to continue to move forward. For the 2007 elections, this will require the resolution of outstanding electoral disputes, bold new measures to curb political violence, and the remobilisation of civil society. For now, the elections have bought a measure of stability, but this brief opportunity to reform the political process should not be squandered.

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NIGERIA

Can the election tribunals satisfactorily resolve the disputes arising out of the 2003 elections?

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INTRODUCTION

Between April and May 2003 Nigeria held general elections to elect the country's President, state governors, and members of legislative houses at both national and state levels. The first election, held on 12 April 2003, was for National Assembly (the federal legislative house) members. This was followed by the presidential and governorship elections on 19 April 2003. Two dates – 26 and 29 April 2003 – were set aside for possible run-off elections (which did not happen). The last election, on 3 May 2003, was for members of the state houses of assembly (INEC 2003). In all, 30 political parties contested the election, although not all the parties fielded candidates for all the political offices.¹

Remarkably, the 2003 elections were the first since the return to constitutional rule on 29 May 1999, after many years of military dictatorship. As will be seen below, many observers and commentators (both national and international) have condemned the elections for what some have called massive electoral frauds and malpractices. It was alleged that in many places in the country there was virtually no voting, yet 'results' were declared by the Independent National Electoral Commission (INEC) – a statutory body charged with the conduct of the elections. Consistent with the practice in other constitutional democracies and the provisions

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¹ A record number of 20 candidates declared their interest in standing as President; 100 indicated interest in the 36 posts of governor; 500 stood for 109 senatorial slots, while 3 000 candidates eyed 369 seats in the (Federal) House of Representatives. See reports at: <http://allafrica.com/stories/200303280571.html>.

of Nigerian electoral law, some aggrieved candidates and political parties challenged the results of the elections at various election tribunals set up under Nigerian electoral law.

Some challenged the election of President Olusegun Obasanjo; others contested those of some of the state governors (Nigeria is a federation of 36 states, each of which is under the governance of an executive governor). Essentially, most of the petitioners were asking for the nullification of the elections for various reasons, including electoral malpractice. With most of the cases still pending, a new government was sworn in on 29 May. Several court applications to stop the swearing-in failed, as courts across the country declined to issue restrictive orders. Despite this, some of the aggrieved persons (presidential, gubernatorial and legislative candidates) continued to pursue their cases in the appropriate election tribunal.

On 31 July 2003, the Court of Appeal, sitting in Port Harcourt, held that the decision of the Governorship and Legislative Houses Election Tribunal, which had thrown out the appeal of Chief Sergeant Awuse of the All Nigerian Peoples Party (ANPP) against the result of the governorship election of 19 April, had been wrong and ordered that the case be remitted to the tribunal for trial on the merits.² Chief Awuse's petition challenged the election of Governor Odili of the People's Democratic Party (PDP) and asked that the election be nullified because of alleged electoral malpractices (the same relief Gen Mohammed Buhari, presidential candidate of the ANPP sought in his petition against the election of President Obasanjo of the PDP)³.

The critical question is whether an election tribunal can nullify the election of a serving officer of government and thereby remove him (particularly, the President of the Federation or the governor of a state) from office. A further, and more general, question is whether election tribunals can satisfactorily resolve the disputes arising out of the 2003 elections. These are important constitutional and political questions, which this paper attempts to answer. It should be pointed out, however, that this is not an attempt to inquire into the merits of any of the petitions brought before the election tribunals; rather, it is a general constitutional, statutory and political analysis based on the present state of Nigerian constitutional and statutory provisions as well as politico-constitutional issues arising out of the 2003 elections.

To accomplish the task set for this article, relevant provisions of the 1999 Constitution of Nigeria and the Electoral Act 4 of 2002⁴ will be examined. As a

² See *Chief Sergeant Awuse v Dr Peter Odili and Others* (Unreported Suit No. CA/PH/EPT/154/2003, decided on 31 July 2003). The case is to be re-tried by a reconstituted election tribunal.

³ Another case, brought by the presidential candidate of the All Progressive Grand Alliance party (UPGA), Dim Chukwuemeka Odumegwu Ojukwu, against the election of President Obasanjo on the grounds that he was not qualified to contest the election, was dismissed by the Presidential Election Tribunal in July 2003.

⁴ This Act has recently been amended by the Electoral Act 2003, although not in any way that might significantly affect the present inquiry.

background, the reactions of various national and international observers (and commentators) who monitored the elections as well as those of some of the defeated candidates (before the filing of election petitions) to the conduct of the 2003 general elections in Nigeria and the results declared by INEC, will be set out briefly. Specifically, this will highlight the politico-constitutional issues involved in this inquiry.

BACKGROUND AND CONTEXT REACTIONS TO THE CONDUCT AND RESULTS OF THE 2003 GENERAL ELECTIONS

The fact that the general elections in Nigeria were the first after the country's return to constitutionalism, coupled with the importance of the country as the most populous in Africa, probably accounts for the large number of national and international observers during the elections. Among these were human rights groups, the European Union Observer Group, the Commonwealth Observer Team, the Centre for Democracy and Development (CDD) Observer Team, the International Republican Institute Observer Team, and various observers from the United States. Since the end of the elections, and even before and during the elections, these groups have issued or made statements concerning the conduct and outcome of the elections. Some of their observations and conclusions are set out briefly below.

At a news conference after the declaration of the presidential election results, the European Union (EU) chief observer reported 'widespread irregularities in six states, mostly in the south and the east'. Among other malpractices, he alleged that there was 'ballot stuffing in the face of EU observers', perpetrated by the supporters and agents of President Obasanjo's party, the PDP. He further slammed the conduct of state-owned media companies, which 'failed to live up to their legal obligation to provide equal access and fair coverage of all political parties and demonstrated political bias in favour of the ruling parties at federal and State levels' (< http://portal.tds.net/news_xml.php). In conclusion, he observed that 'the only way for elections to be free and fair was for Nigerians to question ballot stuffing and incidents of rigging' (< http://portal.tds.net/news_xml.php and <<http://www.cnn.com/2003/WORLD/africa/04/22/nigeria.election/>>). By implication, the EU observers concluded that the 2003 elections were not free and fair. This was also the conclusion of the International Republican Institute in its report, published a little earlier than that of the EU (<<http://www.cnn.com/2003/WORLD/africa/04/22/nigeria.election/>>). The Commonwealth Observer Team observed that 'the election largely went well', although they cited a 'few incidents of violence'. In a statement signed by its leader, Salim Ahmed Salim, the team stated:

From the reports of our team, we know that in most of Nigeria a genuine and largely successful effort was made to enable the people to vote

freely ... But in certain states, the election did not go well ... In parts of Enugu and in Rivers state proper electoral processes appear to have broken down and there was intimidation ...
 <<http://www.cnn.com/2003/WORLD/africa/04/22/nigeria.election/>>

It has been observed that this statement 'appeared aimed at steering away from further disputes after arguments over Zimbabwe caused a damaging split in the organization' – the Commonwealth, a 54-nation group comprised mainly of former British colonial states (<<http://www.cnn.com/2003/WORLD/africa/04/22/nigeria.election/>>). Whatever the reason for the statement it is consistent with others with regard to electoral malpractices in some states or areas of the Federation.

The observations and conclusions of the CDD, which deployed forty observers across the six zones of the country, concerned issues ranging from the preparation and conduct of the episodic elections to the results declared by INEC (CDD 2003). The importance of pre-election issues has been well explained, as follows:

Elections are not necessarily about election-day activities although it forms an important component. It encompasses activities before, during and after elections. It includes the legal and constitutional framework of elections, the registration of political parties, party campaigns, the activities of the electronic and print media in terms of access ... campaign financing, the activities of the security agencies and the government in power ... the authenticity and genuineness of the voters register [and]... the independence or lack of it of electoral agencies and organs ...

TMG 2003

Remarkably, this position holds true, not only for Nigeria but also for democratic traditions all over the world. Commenting on the conduct of elections in the context of Africa, Fombad (2003 pp 26-27) pertinently wrote:

Conventional accounts of the evolution of the electoral processes in Africa in the last decade have tended to focus on the voting processes on election-day or on the outcome of elections without paying much attention on who organized the elections, how they were conducted and the structure and processes put in place for doing this. The centrality of elections to the model of liberal democratic politics to which many African countries today aspire presupposes the existence of electoral institutions that will guarantee a free and fair contest. One of the key institutions essential to accomplishing this is an independent election management body (EMB) ... [In fact] the overall legitimacy and acceptability of an election depends on many factors, one of the most crucial of which is the integrity of the election management process ... Fundamental as they are, elections on their own are neither

the sole means nor the exclusive end of democracy. They do provide a useful indicator of a country's democratic health.

It is against this background that the approach of the CDD should be viewed. The CDD observed that during the election candidates did not have equal access to the state-owned media. The power of incumbency dictated 'somewhat partisan coverage'.

For example, the official national website www.nopa.net became 'largely a campaign vehicle for the executive'. Moreover, in some parts of northern Nigeria it was observed that there was unequal access to, for instance, fuel. While incumbent governors had constant and regular supplies, this was not the case for opposition party campaigners. Furthermore, it was observed that in the period prior to the polls there was nowhere in the country where INEC successfully carried out the promised three-day exercise in which temporary registration slips were to be exchanged for voters' cards. 'This failure may have had effects later, in episodes in which we witnessed confusion over documentation by people attempting to vote, and more seriously, the continuing of the exercise into the polling days.' Even more seriously, the situation led to the possession of multiple voters' cards by non-registered voters.

The CDD further observed that the incumbent administration deliberately released funds late to INEC for the conduct of the elections. This, it observes, coupled with the government's control over appointments of senior members of INEC, made 'INEC's independence of action less than complete'. Moreover, the late release of funds also compromised INEC's logistical effectiveness. On its part, INEC was blamed, among other things, for poor training of election officials and widespread neglect of the welfare of its own staff.

Interestingly, the incompetence and partiality of INEC was also noted by Rotimi Suberu (2003), a close watcher of the Nigerian political scene, shortly before the polls were conducted. He wrote:

The greatest source of anxiety regarding the forthcoming elections is neither ethnicity nor the moral bankruptcy of the major parties and political leaders, but the fragility of the agency that has been entrusted with the administration of the elections, namely, the Independent National Electoral Commission (INEC). Appointed and funded by the federal executive, INEC has been anything but truly independent. Rather, the Commission has demonstrated little competence or independence in the management of such issues as the registration of new political parties, the scheduling of the various rounds of federal and state executive and legislative elections, the compilation and publication of the voters' register, and the regulation of intra-party and inter-party relations.

On the whole, the CDD found it 'hard to avoid the overall conclusion that the main concern of the incumbent government was not to run the most open election possible, but ... to use the advantages of its position to remain in power by whatever means ... possible ...' The election 'was far from free and fair' (CDD 2003).

The Washington-based National Democratic Institute said in its statement that in both the 12 April parliamentary elections and the 19 April presidential poll, 'instances of ballot stuffing, rigging, voter intimidation, violence and fraud ... were so acute in certain parts of the country, particularly the South South and South East regions, that we have serious concern about the legitimacy of the results in certain constituencies ([EU 2003 and http://portal.tds.net/news_xml.php](http://portal.tds.net/news_xml.php) > (last visited 06/09/03))'.

In its own reaction, the United States stated that 'there were widespread and often credible claims of electoral malfeasance perpetrated during the National Assembly, Governorship and Presidential polls'. Consistent with the practice in the United States, State Department spokesman Richard Boucher urged aggrieved parties to 'present their evidence to the competent tribunals', and the tribunals to 'consider those complaints in a fair and transparent manner' (*The Punch* April 2003, p 3).⁵

While the positions of the foregoing observer groups are clear, the position of the Transition Monitoring Group (TMG) (a coalition of 170 Nigeria-based human rights groups and civil society organisations) – who also monitored the 2003 elections – is rather ambivalent. In their interim report on the presidential and gubernatorial elections, they concluded that 'there were substantial flaws in some of the critical stages leading up to the elections which tended to undermine the credibility of the process'. In their final report they remarked that 'the reality of elections is not in doubt', and pertinently asked 'whether the elections, viewed holistically, can be said to be genuine elections aggregating the expressed wish of the people of Nigeria'. Furthermore, they asked whether the elections met 'minimum international and domestic standards that Nigeria as a country is committed to'.

Considering the questions raised, the group noted Nigeria's commitment to the New Partnership for Africa's Development (NEPAD), which commits the whole of Africa, including Nigeria, to 'respect the global standards of democracy, the core components of which include political pluralism ... and fair, open and democratic elections periodically organized to enable the people to choose their leaders freely', and further asked at this juncture: 'Can the 2003 elections pass the test of having enabled the Nigerian people to choose their leaders freely?' (TMG, p xii).

It is also notable that Nigeria is further committed to the *Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government* (Assembly

⁵ The verdict of international and local observers/participants on Cameroon's elections since the 1980s (including the 1997 presidential election) was strikingly similar to those on Nigeria's 2003 elections. For example, international and local observers who had monitored the 2003 election reported that 'it was neither free nor fair'. For the account of this, see the incisive article by Charles M. Fombad: Fombad, pp 31 - 34.

of OAU Heads of States and Governments, 36th Session). Essentially, this Declaration proclaims a continent-wide commitment to democracy and attempts to give substance to that commitment by setting out 'common values and principles for democratic governance' in African countries (para 8). Specifically, it rejects any unconstitutional change in government as an anachronism and a contradiction of Africa's commitment 'to promote democratic principles and conditions' (para 4).

Furthermore, the Constitutive Act of the African Union (AU) (2000), of which Nigeria is a State Party, also provides that 'governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'.

Even more recently, Nigeria was party to the *Declaration on the Principles Governing Democratic Elections in Africa* (Assembly of OAU Heads of States and Government, 38th Session), which reaffirms the principles of democratic governance in earlier instruments and asserts, *inter alia*, that 'democratic elections should be conducted: (a) freely and fairly; (b) under democratic constitutions and in compliance with supportive legal instruments; (c) under a system of separation of powers that ensures in particular, the independence of the judiciary; (d) at regular intervals, as provided in national constitutions; [and] (e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.'

Regrettably, however, none of the various questions raised by the TMG received any definite and final positive or negative answer (TMG, chapter 8; National Democratic Institute and the Carter Centre 2003).

Many observers who witnessed the public presentation of the final report were disappointed with the non-committal position of the TMG. For example, Emma Ezeazu, former president of the National Association of Nigerian Students (NANS), remarked that the 'watered down' position of the TMG 'did not really take account of the gravity of the alleged frauds that were perpetrated during the elections'. He faulted the TMG for 'failing categorically to denounce the polls'. Representatives of opposition parties also condemned the TMG's final report for its ambivalent position (*The Guardian* August 2003, pp 8-9).

The comments of some 'defeated' candidates were similar to the observations of the monitors. The comments of the presidential candidate from the ANPP and the ANPP candidate for governorship of Rivers State are representative of views across the spectrum. According to the presidential candidate, Gen Buhari, the presidential election was 'the most fraudulent Nigeria has ever had since independence ... This would be the first election in which ballot boxes were forcibly removed, with some security agents openly collaborating. This would be the first election in which, through elaborate collusion, those who lost elections were declared winners and those who won, lost' (*The Punch*, 24 April 2003, p 2).

For his part, the ANPP governorship candidate for Rivers State, Sergeant Awuse, alleged that 'no elections were held in Rivers State' and that 'the victory of the PDP is a stolen mandate that cannot stand'. He further stated that he, his

supporters and his party 'are grateful to the international observers and the media who have exposed the brutal disenfranchisement of the people that took place in Rivers State during the ... elections', and declared his resolve to contest the result at the appropriate election tribunal (*The Argus*, p 2), which he did.

Although, as stated earlier, it is not intended to consider the merits of the petitions brought before the various election tribunals, it is noteworthy that the complaints against the conduct of the 2003 elections are largely reflected in the various petitions filed before tribunals nationwide (Nigerian Newspapers online 2003). Even so, this is only to the extent that they are within the statutory grounds for questioning the results of the elections (see below).

BASIC CONSTITUTIONAL PROVISIONS

The basic constitutional provisions relevant to this analysis include sections 1, 135, 139, 143, 180, 188, and 285 of the Constitution of the Federal Republic of Nigeria 1999. Section 1 provides, *inter alia*:

- (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
- (2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

This provision does not differ from s 1(1) and (2) of the 1979 Constitution of Nigeria. Commenting on the rationale for section 1(2), Akande says that 'this subsection is presumably a reassertion of the illegality of revolutions or coups d'état as a means of changing governments', although it is doubtful whether the legality of any coup can be successfully challenged through this provision (Akande 1982, p 2).⁶ While s 1(2) is probably aimed primarily at preventing the phenomenon of coups in Nigeria⁷, it is arguable that any change of government by an electoral process which does not accord with the spirit and intention of the Constitution (for instance, because of flawed electoral processes) is equally forbidden by this subsection. The Constitution provides for change of government every four years by free and fair

⁶ The author did not repeat this view exactly in her subsequent book on Nigerian constitutional law. However, she points out that 'when a military coup occurs, the regime legitimizes itself by suspending the Constitution, and from then its legality no longer depends on any Constitution but on Decrees enacted by itself'. This is probably another way of expressing doubts about the utility of the provision (Akanda 2000, p 16).

⁷ There have been several military coups in Nigeria since the trail blazer of 1966, with the result that since independence in 1960 Nigeria has been ruled more by military dictators than by democratically elected leaders.

elections, and not by any other means. Hence, any person who comes into political office through a flawed electoral process (for want of better expression, this may be described as 'purported election') may be said to be governing Nigeria or controlling the government of Nigeria in defiance of the provisions of the Constitution.

Sections 135 and 180 respectively deal with the tenure of office of a person elected and sworn into office as President of the Federation of Nigeria and as governor of a state of the Federation. According to these sections, the President and governors shall be in office for a period of four years, commencing from the date when they took the oath of allegiance and the oath of office. The incumbent President or governor must vacate office when his or her successor takes the oath of allegiance and oath of office (or would, but for his death, have taken such oaths) (ss 135 (2) and 180 (2)).

In addition to laying down a four-year term of office, the Constitution provides for circumstances in which the office is prematurely vacated. Among these circumstances are the death in office of a serving President or governor; the resignation of the President or governor; and the removal from office of a President or governor by impeachment or because of an incapacity which permanently renders him or her incapable of discharging the functions of the office. The last two situations involve elaborate constitutionally prescribed procedures.

In the case of impeachment of the President of the Federation (s 143) the process starts with the presentation of a notice of allegation of 'gross misconduct' to the President of Senate (the upper federal legislative chamber in Nigeria). In the case of impeachment of the governor of a state (Constitution 1999, s 188) the notice must go to the Speaker of the State House of Assembly. (For the present purpose, only the impeachment procedure of the President of the Federation will be considered, since the same procedure is prescribed for that of a state governor.)

The notice must be signed by not less than one-third of the members of the National Assembly (the Senate and House of Representatives). Upon receipt of such notice, the President of Senate shall, within seven days, cause the notice to be served on the holder of the office and on each member of the National Assembly. If the holder of the office responds the President of Senate shall distribute the response to each member of the National Assembly (s 143(2)).

The Constitution requires that within fourteen days of the date of presentation of a notice of impeachment (regardless of whether any reply has been given by the holder of the office) each House of the National Assembly shall resolve by motion (without any debate) whether to investigate the allegation contained in the notice (s 143(3)). Such a motion shall not be regarded as having been passed unless it is supported by the votes of at least a two-thirds majority of all the members of each house of the National Assembly (s 143(4)). Following a proper motion, the Chief Justice of Nigeria shall (at the request of the President of Senate) appoint a panel of seven persons to investigate the allegation. Members of the panel shall not be members of any public service, legislative house or political party, and shall be

persons who, in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity. The panel has three months from the date of its appointment to report its findings to each house of the National Assembly (s 143(7)(b)). If the panel finds that the allegation has not been proved, the matter ends (s 143(8)). Where, however, the panel's report shows that the allegation has been proved, each house of the National Assembly must, within fourteen days, consider the report, and if the report is adopted by at least two-thirds of the members of the House, the holder of the office shall stand removed from office as from the date of the adoption of the report (s 143(9)).

It is notable that under s 143(11) of the Constitution, 'gross misconduct' as a ground for premature removal of a serving President from office means 'a grave violation or breach of the provisions of the Constitution or a misconduct of such a nature as amounts in the opinion of the National Assembly to gross misconduct' (see also s 188(11)).

With regard to premature removal from office on the ground of permanent incapacity, the Constitution requires a resolution declaring that the President (or governor, in the case of a state government) is incapable of discharging the functions of his office to be passed by a two-thirds majority of all members of the executive council of the Federation (ie, the body of ministers of the government of the Federation (s 144(5))). In the case of a state, the requirement relates to the body of commissioners of the government of the state (s 189(5)).⁸ Following this, a medical panel may be appointed by the President of Senate to verify the claim of permanent incapacity. If it does so, a notice must be signed by the President of Senate and the Speaker of the House of Representatives and published in the official Gazette. On the date of publication the President shall cease to hold office. .

These are the only occasions when a serving President or state governor may vacate office prematurely. There is no constitutional provision for the premature removal of the occupant of such office by any court of law or tribunal.

CONSTITUTIONAL PROVISIONS AND JURISDICTION OF ELECTION TRIBUNALS

There are both constitutional and statutory provisions dealing with the establishment and jurisdiction or powers of election tribunals.⁹ Section 285 of the 1999 Constitution provides for the establishment of National Assembly election tribunals (s 285(1)), and governorship and legislative houses election tribunals (s 285(2)). The former have original jurisdiction, to the exclusion of any other court or tribunal, to hear and determine petitions relating to: whether (a) any person has been validly elected as a member of the National Assembly; (b) the term of office of

⁸ For equivalent provisions relating to state governors, see s 189.

⁹ The tribunals are ad hoc courts, which are constituted to deal with election petitions and cease to exist after the conclusion of the petitions.

any person under the Constitution has ceased; (c) the seat of a member of the Senate or a member of the House of Representatives has become vacant; and (d) a question or petition brought before the election tribunal has been properly or improperly brought (s285(1)). On the other hand, the latter has exclusive original jurisdiction to hear and determine petitions relating to whether any person has been validly elected to the office of governor or as a member of any legislative house (referring to a state House of Assembly) (s 285(2)). In all, there are thirty-six National Assembly election tribunals and thirty-six governorship and legislative houses election tribunals nation-wide – one each in each of the thirty-six states of the Federation.

To be sure, although the offices of legislators at both federal and state level are important, the offices of President of the Federation and governor of a state of the Federation, being the most important constitutional-political offices in the country, will be the focus of this inquiry and the elections to these offices will be used to examine the issues involved.

In the case of presidential elections, the Court of Appeal acts as the election tribunal and operates only in the Federal Capital Territory, Abuja. Under s 239(1) of the Constitution, it has original jurisdiction (to the exclusion of any other court of law in Nigeria) to hear and determine whether any person has been validly elected to the office of President of Nigeria; or the term of office of the President has ceased; or the office of President has become vacant.

These constitutional provisions are supplemented by the provisions of the Electoral Act 2002. The Act describes an 'election petition' as one complaining of an 'undue election' or 'undue return', presented to the competent tribunal/court (see above) in accordance with the Constitution and/or the provisions of the Act (s 131(1)). A petition may be brought by a candidate or a political party that participated in the election on any (and no other) of the following grounds:

- (a) That a person whose election is questioned was, at the time of the election, not qualified to contest the election.
- (b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act.
- (c) That the respondent was not duly elected by majority of lawful votes cast during the election.
- (d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

It is notable that the issue of jurisdiction is as important in election petition cases as it is in cases brought before the regular courts of the country. In *Sanyaolu v INEC* ([1999] 7 NWLR (Pt. 612) 600, at 608), it was held that the jurisdiction of an election tribunal, like that of any other judicial body, is limited to what it is constitutionally and/or statutorily empowered to do. The result is that any petition that is not brought under any of the above grounds is incompetent and the election tribunal before which it is brought has no jurisdiction to entertain it (see below).

Under s 136(1) of the Electoral Act 2002, but subject to s 136(2), if an election tribunal determines on any grounds that a candidate who was returned as elected was not validly elected, it shall nullify the election (s 136(1)). Where, however, it determines that a candidate who was returned as elected was not validly elected, on the grounds that he or she did not win the majority of valid votes cast in the election, it shall declare as elected the candidate who won the highest number of valid votes and satisfied the requirements of the relevant constitutional and statutory provisions (s 136(2)).

Perhaps as a means of avoiding a vacuum in (high) political office, s 138 of the Electoral Act provides that where an election tribunal has determined that a candidate returned as elected was not validly elected, he or she shall nonetheless remain in office pending the determination of an appeal, if the appeal is lodged within 21 days of such determination (s 138(1)). Where an appeal has not been lodged, the candidate shall still remain in office pending the expiration of the 21 days within which an appeal may be brought (s 138(2)).

Significantly, s 138 appears to contemplate a situation where an election petition may be pending and the person whose election is being challenged is sworn into office (as happened on 29 May 2003 with the swearing in of President Obasanjo and the governors of the thirty-six states of the Federation, some of whom, like President Obasanjo, have petitions against their election pending before various election tribunals. In this regard, it can be argued that the courts/election tribunals which declined to issue an injunction to prevent the swearing in of President Obasanjo and the governors of some states, pending the determination of election petitions against them, were right.¹⁰ In fact, in *Asin v Orubu & others* ([1989] 2 N.E.P.L.R. 14, at p. 22), the Court of Appeal (which has a country-wide appellate jurisdiction and is immediately below the Supreme Court of Nigeria in the judicial hierarchy) considered a similar provision under a former Local Government electoral law – the Local Government Election Decree (No 37 of 1987), and rationalised it thus:

After all, the maxim is: *omnia praesumuntur rite esse*. Until the petitioner / respondent has discharged the onus on him to prove that the appellant was not duly elected, the latter ought not ordinarily be deprived of his seat to which he had been returned elected ... The learned trial Judge gave no consideration whatsoever to the desirability, in the public interest, of there being a Chairman for the Local Government functioning pending the determination of the petition before him. Had he given due consideration to section 37 of Decree No. 37 of 1987

¹⁰ Electronic and print media sources reported that several cases were brought before regular courts and before some election tribunals to restrain various elected candidates, including President Obasanjo and Governor Peter Odili of Rivers State, from being sworn into office pending the determination of petitions brought against their returns as duly elected candidates. None of the applications was successful.

[similar to section 138 of the Electoral Act 2002] he would not have made the order of injunction he made ... *Except in exceptional circumstance ... trial courts should be wary indeed in granting injunctions restraining a candidate returned elected from functioning or taking his seat unless and until such a candidate's election have (sic) been avoided on the determination of the petition brought challenging it.* (Emphasis added)

Even so, the critical question that arises from s 138 is whether a President or governor who did not appeal an adverse decision of an election tribunal or who lost an appeal ceases to hold office without any further action, such as a judicial action, to remove him from office. A literal or natural interpretation of this section seems to indicate that the answer is in the affirmative. But this is not the end of the problem. A further question is whether this premature 'removal' is within the contemplation of the Constitution, which is superior to the Electoral Act. Sections 143 and 144 of the Constitution (see above) read with s 146(1) of the Constitution (dealing with situations where the Vice-President of the federation may succeed to the office of President)¹¹ indicate that the Constitution intends to provide exhaustive situations when a President may be prematurely removed from office. In the result, 'removal' under s 138 of the Electoral Act would appear be unconstitutional, null, void and of no effect. In other words, it cannot operate to cause the occupant of the office to cease functioning in that office. The logical conclusion here is that a pending election petition implicitly abates from the date the person whose election as President or governor is being contested is sworn into office. In which case, every effort and/or resource committed to the continuance of the petition thereafter is wasted.

While this position may be constitutionally sound under the provisions of ss 143, 144 and 146, one question remains: Can a person whose election has been nullified by an election tribunal or the Court of Appeal, but who continues in office (especially after 21 days) be said to be holding office in accordance with the Constitution, as required under section 1(2) of the Constitution? As already argued, the Constitution (and even the Electoral Act) contemplates a free and fair election (in the language of the Electoral Act, a 'due election' or 'due return') (s131(1)). As explained by the Court of Appeal in *Ezeobi v Nzeka* ([1989] 1 NWLR (Pt. 98) 478), (where the petitioner alleged that the respondent's return at the election in which he was a candidate was undue) 'for any election of a person to be undue, it must of necessity be unmerited, improper, not rightful, undeserved or inappropriate because of a variety of reasons'. By implication, an 'undue election' or 'undue return' is invalid *ab initio*, and its nullification by an election tribunal or a court merely formalises the invalidity. Arguably, a person who holds office because of an invalid

¹¹ Note that if a presidential election is validly nullified by the election tribunal, this affects the Vice-President as well, since they contested the election under one ticket. In this situation, the offices of President and Vice-President would be vacant and it would be an occasion for the President of Senate to assume the office of President pursuant to s 146(2).

election cannot strictly be said to be holding office in accordance with the Constitution, as noted above. Unfortunately, the Constitution does not provide any explicit remedy in this kind of situation.

Perhaps it may be possible to bring an action for a declaratory relief under s 1(1) and (2) of the Constitution – to the effect that such person's occupation of office is unconstitutional, although the issue of *locus standi* and /or constitutional immunity may scuttle such an action. Specifically, on the issue of *locus standi*, the question might be whether the person who brings the action is competent to bring it – what is his or her personal interest in the matter? The question may arise because the election tribunal having completed its assignment, any action for declaratory relief as explained here will not be an election petition nor will it be cognisable under the Electoral Act, which sets out persons who may bring an election petition.

More importantly, the question of the competence of such a civil action might involve the issue of constitutional immunity. Under the 1999 Constitution (as under the 1979 Constitution, which it replaced) it is not permissible to bring a civil or criminal action against an incumbent President or governor (the same is true of Vice-President and deputy governor) during his or her period of office (s 308). The rationale for this was explained by Nwabueze (1982), thus:

The protection is essentially for the office, not of the individual incumbent as such. It is the majesty and dignity of the nation that is at stake. To drag an incumbent President [or governor] to court and expose him to the process of examination and cross-examination cannot but degrade the office. The interest of the nation in the preservation of the integrity of its highest office should outweigh any objections to the immunity.

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It is remarkable that this is one area where the Nigerian Constitution departs from that of the United States of America from which it was copied. Under the American Constitution, it is held that every citizen is equal and granting immunity from suits to the President and state governors would amount to placing them above the Constitution. In the case of *State of Ohio v Governor Salmon P. Chase* 12.5 Ohio St.529, Chief Justice Bartley, in granting a *mandamus* against a state governor, stated: 'No officer is placed above the restraining authority, which is truly said to be universal in its behests, all paying it homage, the least as feeling its care, and the greatest as not being exempt from its power.'

Although it has been held in *Sampson Itegebe v Awa* ([1989] 2 N.E.L.R. 92) that an election petition is not a civil proceeding but a suit *sui generis*, it must be remembered that declaratory relief of the nature explained here is not an election petition, but purely a civil action within the contemplation of s 308 of the Constitution. Even if it is held to the contrary and a declaration of unconstitutionality is made under s 1(2) of the Constitution, it is doubtful if it can operate to remove

the affected officer from office, especially having regard to the arguments advanced above. Hence, there is certainly a serious constitutional problem here – a yawning gap. Apart from the constitutional issue, such a situation may well generate mammoth political problems in the country, as opposition parties and their supporters may become lawless and disruptive. It is notable that these problems will not arise if the President-elect or governor-elect has not been sworn into office, for then the ‘constitutional protection’ will not apply.

Apart from the foregoing problems, it is remarkable that the tribunals have no jurisdiction to consider issues which are not brought under or related to the statutorily-prescribed grounds for questioning the results of an election, as stated above. More specifically, the election tribunals have no competence to consider pre-election issues such as the authenticity of the voters’ register; activities of the incumbent government and security agencies that give advantage to the incumbent government; unequal access of opposition parties during election campaigns to state-owned or state-controlled electronic and print media, giving advantage to the incumbent government; and the lack of independence of the INEC – issues which may have adversely affected the outcome of the elections, as alleged by opposition candidates and by various national and international monitors (see above).

In *Princess Iduoze v Benedict Ogbeifun* ([1989] 3 N.E.P.L.R. 98, esp at p 107), where the petitioner raised a pre-election issue in a petition brought under a former local government electoral law – the Local Government (Basic Constitutional and Transitional) Provisions Decree, No 15 of 1989 – the Court of Appeal categorically held that ‘the events or incidents preceding the election, like inter-party disputes or other matters, are not matters that can be properly brought in a petition before the election tribunal’, as its jurisdiction is confined to issues enumerated under the relevant law. The court emphasised that, strictly speaking, the tribunal’s duty is ‘confined to considering “undue election” and “undue return” during the election exercise’.

This judicial decision is consistent with the provisions of the present electoral law. As one commentator has rightly observed, the election tribunals ‘are in law set up to deal with matters arising out of complaints over an election. They are not concerned with disputes arising before the election’ (Babalola 2003, p 48). The implication of this is that there is no forum, under the Constitution and the present Nigerian electoral law, for aggrieved candidates and their supporters to ventilate some of their fundamental grievances about the 2003 elections and seek redress. Besides, it has also been alleged that the election tribunals, appointed by the incumbent government, are not independent / impartial dispute resolution bodies. This was one of the reasons given by some defeated and aggrieved candidates for not bringing petitions before the tribunals, apart from the financial costs of prosecuting the petitions after expensive election campaigns.¹²

¹² See reports in Nigerian newspapers online from April 2003 (available at: <www.nigeriaworld.com>).

On the whole, and very seriously, whatever the outcome of the petitions brought before the tribunals (especially where the tribunals hold against the petitioners), the view of various national and international observers as well as of some defeated candidates and their supporters that the 2003 elections were not free and fair is unlikely to change. This means that the government will remain illegitimate in the eyes of many people throughout its tenure.

CONCLUSION

The 2003 elections in Nigeria have raised important constitutional and political questions. One of these is whether election tribunals have powers effectively to redress the grievances of defeated candidates who come before them as well as the concerns of international and local election monitors. More specifically, the question is whether election tribunals can remove from office elected officials (particularly the President of the Federation or the governor of a state) whose elections are adjudged to have been marred by electoral malpractice. This question has arisen because these officials have been sworn into office before the conclusion of the adjudicatory processes and, by virtue of assumption of office, they become protected by constitutional provisions (as seen above). The analysis here has shown that Nigeria's present Electoral Act contemplates a situation in which an elected person whose election is being contested before an election tribunal, is sworn into office. Yet there is no constitutional or statutory provision by which he may be forced to vacate office if the election tribunal nullifies the election (in fact, any such statutory provision may be held to be unconstitutional if it cannot be supported by a constitutional provision). To be sure, the present Constitution provides exhaustive circumstances in which an elected President or state governor who has been sworn into office may vacate office prematurely, but these do not include nullification of the election by an election tribunal. In such a situation, it is debatable whether the person can be said to be holding office 'in accordance with the Constitution'. In any case, such a situation has the potential to precipitate a serious political and constitutional crisis in the country.

Apart from this problem, it has also been shown that election tribunals have no jurisdiction to entertain and determine pre-election issues, notwithstanding their adverse impact on the outcome of the elections – a situation that is a politico-constitutional time bomb, as bottled angers may explode into a constitutional and political crisis in the country. Besides, the international community may well treat the persons holding political offices under such disputable circumstances with contempt, which may result in international isolation and the attendant economic consequences to the nation.¹⁵

On the whole, whether with regard to disputed issues over which they have jurisdiction or with regard to issues excluded from their jurisdiction, the election tribunals are unlikely satisfactorily to resolve the disputes arising from Nigeria's 2003 elections.

There is here obviously a constitutional and/or statutory inadequacy, which can be remedied by appropriate amendments that require the conclusion of elections and election petitions well before a new government is inaugurated. This will obviate a situation where constitutional provisions may render an order of nullification of an election ineffective, with possible attendant politico-constitutional consequences. Further, the Constitution should explicitly provide that where for any reason an election petition cannot be concluded before a person elected as President or governor is sworn into office, he or she shall vacate office if the election is nullified by an election tribunal, and an interim government should be formed by a constitutionally-prescribed process, pending another election within a period not exceeding three months. Finally, the 2002 Electoral Act should be amended to give jurisdiction to election tribunals to consider pre-election issues, since the question whether an election or return was 'due' or 'undue' cannot be satisfactorily answered without considering pre-election issues directly related thereto.

¹⁵ In this regard, it is remarkable that the reactions of the international community since the conclusion of the elections have been somewhat contradictory. Notwithstanding the general condemnations of the elections by monitors from various countries, and particularly from Europe and the United States of America, the governments of these countries were quick to congratulate President Obasanjo on what some have called a 'well-deserved victory', and have since engaged in a flurry of diplomatic activity with Nigeria since then – the implication of which is an approval of all that has happened, notwithstanding outstanding disputes on the issues in the country.

This contrasts with the position in Zimbabwe, where, for reasons that may not be entirely related to the fairness of the electoral process that retained Mugabe as President, European countries and the United States of America have consistently condemned the presidential election and isolated the country. Is it that, in relating to various countries in Africa, developed countries are considering issues, perhaps economic, other than the need to promote democratic principles? In any case, African countries are no less guilty in this regard. Most of them also hurriedly joined in congratulating President Obasanjo on winning a second term in office, notwithstanding the outstanding queries, and have actively engaged in diplomatic contact with Nigeria since then. Yet, by various regional instruments, including the most recent African Union Constitutive Act, Nigeria is bound to observe democratic principles (including fairness in electoral processes). Surely, this kind of contradiction cannot augur well for the development of democracy in Nigeria, and, indeed, in Africa?

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THE ELECTORAL SYSTEM AND CONFLICT IN MOZAMBIQUE

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PRELIMINARY CONSIDERATIONS

The idea of representative multiparty democracy is a dominant feature of the processes of political transition in many African countries today. This assigns an important role to the electoral system within the political framework of the continent. The electoral system can either enhance or hinder the development of the political system. In the first instance, it contributes to the peaceful and institutionalised resolution of political conflicts, thereby promoting social stability and development. In the second instance, it reinforces contentious factors that can result in forms of violent conflict. In reality, whatever the electoral system, it is always more than a simple, technical and neutral instrument designed to produce the political representation of society. As the product of the history of the struggles of the opposing political forces and the interests of a country, the electoral system – given its practical purposes – plays a director's role in the configuration of both the political arena and its main actors, the parties.

The Mozambican electoral system, as defined by the 1990 Constitution and the 1992 General Peace Accord (GPA), was able successfully to serve the initial transitional process from a one-party society at war to a multiparty democracy. However, the system has exhibited some deficiencies with regard to the consolidation and strengthening of the democratisation process. The political and electoral reality of the country, following two general elections and considering the deep-seated mistrust that still exists between Frelimo and Renamo, shows that it would be advisable to pursue a reform of the electoral system so that it does not become an obstacle to the stability of Mozambique's political system.

The fact that the electoral system is unable to solve political and institutional problems emanating from other social spheres should not lead to the underestimation of its influence. Much as the results of an election depend firstly and fundamentally on the ballot, they also equally depend on the voting system. For instance, during the legislative elections in 1994, had the majority system

provided for in the 1990 Constitution not been modified,¹ Renamo would have obtained an absolute majority in the National Assembly (between 140 and 152 of the 250 seats, depending on the definition of the electoral districts). Such a scenario (an elected Frelimo President and an absolute majority for Renamo in Parliament) would certainly have had serious repercussions for the country's stability. Not as spectacular, but no less relevant, is the influence of the electoral system on issues such as the allocation of seats. If, based on the same number of votes, the chosen method for this calculation had been that of the traditional quota and largest remainders (a system that generally favours the small parties)² instead of the highest average d'Hondt method (that favours the large parties),³ there would not have been an absolute majority in Parliament,⁴ there would probably have been more transparency and political collaboration. These are only two examples of the influence, decisive at times, the electoral system can exert on the political process.

Notwithstanding the definition of an electoral system that results first and foremost from the dynamics of the political struggles that take place in society, the debate must be extended to a broader analytical framework than that of the main institutional and political actors, enabling, on the one hand, the introduction of social dimensions or interests in the medium and long term and, on the other, the benefit of the knowledge and experience gained by other countries about the functionality of their electoral systems. Mozambique's success in sustaining peace in the last ten years has more to do with the capacity to postpone instability than with the capacity to solve the problems that can revive it, namely those occurring during and immediately after the electoral processes.

BRIEF RETROSPECTIVE OF MULTIPARTY ELECTIONS

After about three decades of armed conflict, Mozambique has experienced relative peace since 1992. Since then, the country has experienced two general electoral processes (1994 and 1999) and a municipal electoral process (1998).⁵ The background to the current Mozambican electoral system and the main hotspots of conflict in the electoral process form the focal point of the discussion below.

¹ During the negotiation of the General Peace Accord in 1992, on Renamo's initiative, the majority system was changed to a proportional representation system.

² The first step in this method is to calculate a quota, dividing the total number of valid votes in the district by the corresponding number of seats. The parties are then allocated as many seats as the times the quota occurs in their number of votes. Finally, the remaining seats are allocated according to the largest remainders of votes (also included in this phase are those parties that did not attain the quota).

³ In this case, the parties' votes are divided by a series of divisors (1, 2, 3, 4, etc...) and the party with the highest result in each stage wins a seat. The procedure continues until all the seats are allocated.

⁴ See Appendix 1 for simulated calculations of the allocation of seats in the 1994 legislative elections, following different methods.

⁵ Local elections took place again in November 2003 (after the original presentation of this paper). According to the official results announced by the National Elections Commission, Frelimo obtained an absolute majority in 29 of the 33 municipalities and Renamo gained absolute majorities in the remaining four municipalities. At the time of writing of this note, these results are not yet definitive, they still have to be confirmed by the Constitutional Council.

Background

During the 1980s, particularly the second half, the Frelimo government undertook a series of initiatives aimed at establishing peace in the country. After a great deal of indecision and frustrated attempts to convince Renamo to be integrated into Mozambican society without questioning the single party that, meanwhile, had abandoned Marxism-Leninism to present itself as an open front to all Mozambicans, Frelimo adopted a new Constitution, based on a multiparty system, which was subsequently endorsed by the Popular Assembly at the end of 1990.

The Constitution was approved at a time when the Rome negotiations between the Frelimo government and Renamo were already under way (having commenced in July of the same year) and answered the need to adapt the country's structure and political system. As far as the electoral system is concerned, the Constitution (article 107) provided for a majority system. According to Carrilho's interpretation (1995, pp142-143) this choice would reflect, on the one hand, a coherence with the logic of the system of the presidential government that was in force and, on the other, the concern to 'give the country a parliament that is not fragmented and a cohesive executive'. However, at the Rome negotiations Renamo proposed that the election of MPs to the National Assembly be done through a system of proportional representation. This was eventually accepted and incorporated into the GPA (Protocol III), where it was also defined that the electoral constituencies would correspond to the provinces. In fact, it seems to have been accepted that the proportional system, insofar as it tends to favour a diversified political representation and to avoid the formation of a hegemonic party system, was the one most likely to guarantee Renamo a good political position should it be defeated in an election.

The electoral law 4/93 of 20 December, which was to govern the first multiparty elections, was thus based on the principles established under the GPA. Despite the fact that this law was approved specifically for those first elections, it became the main source of national electoral rights and established the electoral model still in force: the President is elected by absolute majority through direct and universal suffrage in two rounds and in a sole national constituency and MPs are elected through party lists in eleven electoral districts, with at least 5 per cent of valid votes at national level needed as a threshold for the allocation of parliamentary seats.

The 1994 general elections

The Rome negotiations were drawn out, difficult, and marred by the permanent mistrust between the parties. Even after the signature of the GPA, the construction process of the new democratic order continued to be difficult. The joint commissions to be set out as per the accord were formed tardily and worked under difficult circumstances, and the presidential and legislative elections that were expected to take place the following year (1993) only happened in October 1994.

The 1994 elections were successful in terms of voter participation, with abstentions slightly above the 12 per cent mark. In the presidential election, the Frelimo candidate, Joaquim Chissano, was elected in the first round with 53.3 per cent of valid votes; the Renamo leader, Afonso Dhlakama, obtained 33.7 per cent. In the legislative elections Frelimo obtained 44.3 per cent and an absolute majority in Parliament with 129 seats; followed by Renamo with 37.8 per cent, corresponding to 112 seats; and the Democratic Union with 5.1 per cent and 9 seats.

The voting process did not escape the mood of mistrust that dominated the process of political transition. Shortly after the process began the Renamo leader announced the withdrawal of his party from the electoral race, a decision based on a series of allegations of fraud perpetrated by Frelimo supporters. Subsequent pressure by the international community persuaded the Renamo leadership to continue to participate in the electoral process and the National Electoral Commission (NEC) extended the electoral period by one more day. Even though the number of complaints regarding the electoral process received by the NEC was relatively low,⁶ Renamo remained adamant that there had been fraud.

The 1994 election revealed a profound polarisation in the Mozambican political arena where the two main political forces found themselves in a situation of relative balance: Frelimo holding 49.6 per cent of the seats and Renamo 44.8 per cent, with the Democratic Union retaining the remaining 5.6 per cent. In addition, and not less importantly, the elections showed that Frelimo and Renamo had different geographical strongholds that translated into areas of clear electoral hegemony for each of them.

Frelimo's victory gave it an absolute majority in Parliament and the opportunity to form a Cabinet without the need for any political alliance. This resulted, in practical terms, in the end of the process of political negotiation and of Renamo's inclusion in the country's political life that had characterised the period following the GPA. In fact, the integration mechanisms that were established by the GPA, namely the joint commissions, were supposed to terminate with the elections, and the agreement did not contain a specific provision to guarantee their continuity in any shape or form. Frelimo rejected the possibility of a government of national unity that had been raised before the elections and opted to govern without any power sharing.

The 1998 local elections

Frelimo's not-so-inclusive policy with regard to Renamo did not help build mutual trust between the two adversaries. Although Renamo was formally represented in

⁶ NEC's final report (1995, pp 77-92) lists a total of 85 complaints or incidents reported and highlights that the irregularities as reported, when confirmed, were not sufficiently serious to invalidate the vote at any of the polling stations. It is worth noting that many complaints could not be investigated as no proof was presented. In addition, the Electoral Tribunal received only three appeals.

the legislature, with a large number of seats, Frelimo's absolute majority did not allow it any influence over the country's governance. The legislation relating to local authorities that had been approved in 1997 by the National Assembly did not satisfy Renamo, which removed all its members from the NEC and decided not to participate in the municipal elections that were to take place in 33 cities and towns throughout the country in 1998. In addition, Renamo, together with the majority of the small opposition parties, decided to call for an electoral boycott.

The local elections took place on 30 June 1998, with the participation of Frelimo, some small parties and some independent candidates and groups only. The abstention levels were around 85 per cent. To a large extent this can be explained by the absence of effective competition as a result of the opposition's boycott, probably combined with a lack of clarity on the part of the electorate about the role of local authorities.

By boycotting the electoral process, Renamo, which did not have any government position at national level, lost any possibility of gaining any position at local level, thus continuing in a real situation of political marginalisation that in no way corresponded to the electoral weight it had achieved in 1994.

The 1999 general elections

The second multiparty presidential and legislative elections took place in December 1999. These elections were governed by a new legislative package that had been approved that year but did not introduce any substantial alteration of the law that had governed the 1994 elections. Renamo entered the race as part of an alliance with a good number of the small parties.⁷ As for the presidential election, there were only two candidates: Afonso Dhlakama, for Renamo, and Joaquim Chissano, for Frelimo.

As in the previous electoral processes, the tension between the two adversaries was very high. The official results of the presidential election attributed the victory to Chissano, with 52.3 per cent of the votes, while Dhlakama obtained 47.7 per cent. In the legislative elections, Frelimo obtained 48.6 per cent and Renamo 38.8 per cent, resulting in parliamentary representations of 53 per cent and 47 per cent, respectively. Renamo submitted a series of complaints and eventually an appeal to the Supreme Court, contesting the results and demanding a recount.

Of the two main complaints laid by Renamo, one referred to the non-counting of a large numbers of registers (938 in the presidential and 1 170 in the legislative elections) from the 'Zambézia, Sofala and Nampula provinces, where the candidate, Afonso Dhlakama, and the coalition Renamo-Electoral Union obtained the majority of the votes cast' (as per the Determination of the Supreme Court on Renamo-

⁷ The coalition was called Renamo-Electoral Union. For practical reasons, and given the party's hegemony within the coalition, we shall continue to use Renamo in this text, even in situations where it refers to the Renamo-Electoral Union.

Electoral Union's Appeal), which would have equalled about one million voters. The other complaint referred to huge discrepancies between the number of votes cast in the presidential and in the legislative elections, which, given the fact that the voting was running concurrently, was likely to raise doubts about the validity of the results.

In regard to the first complaint, the Supreme Court learnt from the Electoral Administration Technical Secretariat that 550 registers for the presidential elections and 727 for the legislative elections had not been processed because of 'irreparable vices'. These were: 'no indication of the station's code; no indication of the number of votes in the ballot box; no indication of the number of votes per candidate, party or coalition; no indication of the number of valid votes; discrepancies between the number of valid, void and blank votes and the total number of votes in the ballot box; registers and reports with erasures and alterations not confirmed; and registers that had been processed without having been saved into the computers' (Determination of the Supreme Court on Renamo-Electoral Union's Appeal). These omissions would have totalled slightly more than 370 000 votes.

As for the second complaint, the Supreme Court accepted the explanation given by the NEC: 'The logical explanation for the mentioned discrepancy in the number of voters is given by the National Electoral Commission in terms that this Court considers acceptable. Although the voting is simultaneous, the counting of the votes is done autonomously; in the legislatives – specifically due to the fact that the number of candidates is substantially larger than in the presidential elections – there were more mistakes made by the polling stations, be it due to the poor filling out of forms, the erasures and alterations not confirmed, or any other such circumstances. One of these mistakes would have been considered to be irreparable. This resulted in a greater reduction of the number of voters in the legislative elections' (Determination of the Supreme Court on Renamo-Electoral Union's Appeal).

Notwithstanding the fact that the 370 000 votes not counted were substantially higher than the number of votes that officially separated the two presidential candidates (205 593), the Supreme Court rejected the appeal and validated the results as announced by the NEC. Faced with this decision, Renamo declared that it would not recognise the legitimacy of the institutions and of the government born out of the elections, and began preparing for protest marches. These, however, did not take place because of the floods that had, in the interim, devastated the southern parts of the country, shifting national and international attention from the political process to issues of solidarity and humanitarian aid.

The conflict was to manifest itself tragically a year later, in November 2000, when Renamo organised a series of protests in various parts of the country. Notable among the incidents of violence were the deaths of about a hundred people in Montepuez. Seven police officers and eighteen Renamo supporters died during the confrontations that took place on the day of the protests and, a few days later, at least 75 Renamo supporters died of asphyxiation, in the small cell where they were detained (*AIM Reports* 5 December 2000).

This brief description of some of the conflict situations that characterised the Mozambican multiparty elections reveals that although the country had been at peace since 1992, it was a peace that reflected a lack of trust between the major political forces. This was reinforced by the failed negotiation attempts between Renamo and Frelimo in the first half of 2000, which resulted in an internal crisis within Renamo and the expulsion of Raul Domingos, the Renamo parliamentary leader who had headed his party's delegation at the Rome negotiations and was Renamo's most prominent figure after Afonso Dhlakama.

SOME DEFECTS IN THE CURRENT ELECTORAL SYSTEM

The task of peacekeeping in any country depends to a great extent on social legitimacy and on the capacity of its political institutions to allow and promote the normal and pacific exercise of political competition and, through the former, the acceptable resolution of conflicts of interest between different social groups. Evidence gleaned from the recent electoral processes suggests that Mozambican policies are still very fragile and there is considerable risk of political eruption. Although these problems (absence of trust and the lack of a policy of inclusion of the opposition in the government system and institutions) cannot be attributed directly to the electoral system in force, it is clear that the system has not facilitated their resolution and, in fact, contributes to exacerbating them.

The first defect in the Mozambican electoral system is that it does not play an active role in promoting political stability in the country. It is generally accepted that the proportional representation system promotes a more accurate representation of social diversity and prevents the emergence of hegemonic party systems that make democratic rotation difficult than do majority party systems that promote party concentration and favour bipartite systems and the formation of absolute majorities in parliament. However, the Mozambican case is one of the exceptions that shows that even with a proportional system one can be faced with a situation that is more typical of a majority system. Indeed, given the political polarisation of Mozambican society, and notwithstanding the fact that the electoral system is proportional, since independence the elections have produced absolute majorities in favour of the ruling party.

The Mozambican political system is typically bipartite, despite the fact that in 1994 the Democratic Union (a coalition of three small parties), as a result of some electoral confusion, managed to obtain slightly more than the 5 per cent of votes at national level and gained some seats, and that Renamo ran as part of a coalition in the 1999 elections. However, even though the small parties allied to Renamo are represented in Parliament, this would not have resulted in a real increase of votes in favour of Renamo. The data from 1994 indicate that most of those parties' votes (about 1 to 2 per cent) could be attributed to errors or to arbitrary voting and not to a true electoral base. The fact that the Democratic Union did not manage to renew its presence in Parliament in 1999 illustrates that these assumptions are correct.

The absolute parliamentary majority does not encourage government based on negotiation and the political inclusion of the opposition that should be a priority, considering that the country has emerged from a long and destructive civil war. In addition, one still has to consider that, given the electoral balance between the main political forces, one cannot exclude a situation where, as has been mentioned, one of the parties gets an absolute parliamentary majority and the other wins the presidential election. Taking into account that the Mozambican political system is presidential, this type of political cohabitation would seriously jeopardise peace.

Another problem is that the electoral system does not satisfactorily solve the problem of representation of the electorate. In fact, the geographic distribution of the vote results in large areas where each of the big parties is hegemonic (with more than twice the number of votes of the adversary, or more than 70 per cent of the votes, as can be seen on appendices 2, 3 and 4). Frelimo's hegemony is concentrated in the southern provinces and certain areas of Cabo Delgado and Niassa, and Renamo's in large areas of Sofala and Manica provinces, and in some parts of Zambézia province. In these circumstances, the support base of the opposition, at least in the areas where it is hegemonic, will have difficulty understanding why its party is not in government. In this way the legitimacy of the elected government is weakened and the ground is left wide open for the eruption of violence.

A third general problem has to do with the political legitimacy of elected representatives. From the point of view of the quality and legitimacy of the political representation, the fact that the candidates in the legislative elections are chosen on the basis of party lists is another weakness of the system in force, especially because the electoral constituencies are very large, with an important number of voters scattered over an extensive territory (in the 1999 elections, Niassa, the electoral district with the smallest electoral population, had 356 693 registered voters and Nampula, the district with the largest, registered 1 434 764 voters). In the absence of specific mechanisms to solve this problem, the size of the constituencies prevents a real connection, common knowledge and effective communication between MPs and their electorates. This distance reinforces, in turn, one of the worst weaknesses of the list system, which tends to focus on the parties and their leaderships, thus giving less importance to the relationship of the candidates with the voters. These dynamics have repercussions on the way political competition develops, and end up limiting the ground for the expression of rights and the effective participation of citizens in political life. In addition to the general problems mentioned above, the Mozambican electoral experience has highlighted a series of other issues that need to be improved upon. One of the most serious of these is that of the independence of the controlling bodies of the electoral process, in particular the NEC.⁸ Within the environment of political mistrust that prevailed in the country and before agreement could be

8 The leadership, composition and management of the 'STAE' (Technical Secretariat for Electoral Administration) have also been a central point of constant disagreement between Frelimo and the opposition.

reached on the selection process of the personalities who might guarantee the independent running of such bodies, the solution was to 'politicise' them: each party had the right to choose a number of members proportionate to the number of parliamentary seats held by the party.

The recent attempt to open the selection process of the NEC and the provincial and district chairs to civil society was a fiasco. The NEC law was supported by both parties in the National Assembly. However, the work and discussions of the ad hoc parliamentary commission in charge of producing draft Bills lasted about two years without the two political forces reaching agreement on basic issues. The law (20/2002 of 10 October) was finally unanimously approved after a marathon negotiation of 12 hours that involved the top tiers of the two parties.

One of the crucial points being debated was the selection process of the leaders of the electoral commissions. Renamo had accepted without any qualms that candidates for the NEC's chairmanship be nominated by civil society and elected by members of the Commission. This would be an opportunity to introduce into the controlling bodies of the electoral processes the principle of impartiality and independence from the ruling party.

In line with this, Renamo wanted the election to be based on consensus or a two-thirds majority.⁹ However, Frelimo, which, by virtue of its parliamentary representation, has an absolute majority in the NEC, argued that this could block the process because of lack of consensus and that the chair should be elected by an absolute majority. To a great extent, this killed the spirit underlying the proposal to have a chair nominated by civil society. The imperfections of the law and the nature of 'civil society' resulted in the solution that had been found for the selection of the NEC becoming, almost inevitably, a source of problems and disagreement. Indeed, the nomination process was marred by a huge controversy.

Following the association of some organisations and a process of consultation in all provinces that ended in the selection of three candidates to be presented to the NEC, the Christian Council of Mozambique presented a candidate that Renamo and the majority of the opposition considered to have been 'ordered' by Frelimo. The elections of the NEC's chair showed that there was absolutely no consensus – the Frelimo representatives voted for and elected the chair against the opposition block vote, which is a bad omen for the 2004 Presidential and Parliamentary elections.

Despite the fact that the law is very detailed regarding the counting process and the verification of the results, as well as the publication of the registers, this process has been characterised by mistakes and irregularities, and has provoked debate and raised accusations in all elections. On the other hand, experience has shown that the system for the resolution of electoral disagreement, especially with regard to issues relating to verification, has not been satisfactory, leading to suspicion of fraud.

⁹ The same process would be followed with the commissions at provincial and district levels.

Electoral census has been a constant problem. Already two have been 'done from scratch' and an updating process is currently under way. Although the published balance sheets of the budgets for the elections did not distinguish what was allocated to the electoral census, it is common knowledge that it constitutes one of the main expenses, thus jeopardising the financial sustainability of the electoral process. Because of the lack of consensus and political decision about the current and permanent updating of the voters' roll this has been another almost constant point of disagreement, forcing the utilisation of resources that could have been better used in other areas of the electoral process.

TOWARDS A REFORM OF THE ELECTORAL SYSTEM

The difficulties outlined above point to a dire need for a reform of the electoral system so that the most immediate interests of each of the political parties become subordinate to the national interest and to the need to guarantee the best possible conditions for the maintenance of peace and a stable environment conducive to development. The current system has accomplished its mission of enabling a political transition to a multiparty environment, but reveals itself to be less appropriate for the phase of democratic consolidation.

Some general recommendations follow, inspired by the Administration and Cost of Elections Project (ACE)¹⁰, which could serve as a reference for an eventual revision of the current Mozambican electoral system.

Acceptance by the main actors

The central concern of each and every electoral system must be to ensure transparency and balance, or, in other words, that the voters understand the results and the losers do not reject them. In this regard there is a clear problem in Mozambique: the first indications that, because of a lack of mutual trust, the system, despite the fact that it had been negotiated by the two major political forces, did not offer sufficient guarantees, go back to the 1994 elections, when Renamo's withdrawal was only prevented by many diplomatic interventions. These indications were reinforced in the 1999 elections by accusations of fraud and Renamo's refusal to accept the Supreme Court's decision on its appeal. Irrespective of the real problem and of who will be proved right, it is evident that there is a problem of trust in the system and in its institutions, specifically in those most directly responsible for its management.

On the other hand, it can easily be presumed that, within an electoral district where the overwhelming majority of the electorate have voted for a party that

¹⁰ A joint initiative of the International Institute for Democracy and Electoral Assistance (IDEA), based in Stockholm; of the International Foundation for Election Systems (IFES), based in Washington; and of the United Nations (see www.aceproject.org).

ends up being defeated at national level, the results of the elections will seem obscure and in conflict with the dominant sentiment, and thus the legitimacy of the result will be questioned. This problem is obviously aggravated by the fact that there is no generalised form of elected local power adapted to the historical and social reality of the country.

Conceptualising a simple system

This is particularly relevant in a country such as Mozambique for two reasons: firstly, because the majority of the electorate is illiterate and has little access to political information; secondly, because economic¹¹, technical and human resources are relatively scarce. From the voting perspective, and in spite of being one of the simplest systems and of the continuous effort to undertake electoral education campaigns to satisfy the needs of a largely illiterate electorate, there still seems to be room to simplify certain procedures relating to the electoral census and administration in general. This would allow for a more cost-effective system.

Special attention should be given to the process of conflict resolution, focusing on issues related to the counting and verification of the results at all levels. One change should be to find a way of forming the electoral commissions to overcome the obstacle of the existing politicisation. This, together with the creation by consensus of an electoral tribunal that will be respected by all parties, could be an effective vehicle for achieving trust and transparency within the electoral processes.

Taking into account the country's political and social context

The simplification of the system should not be taken as an absolute value to be achieved, whatever the price. In Mozambique, where multiparty democracy is in its early stages, it might even be necessary to make some aspects of the electoral system slightly more complex so as to make it more inclusive by producing a better and particularly more legitimate representation of all the country's citizens. In other words, the simplification efforts should run parallel with the development of mechanisms capable of ensuring a more effective representation of the various interests and groups that make up Mozambican society.

The issue of inclusivity is more prominent in the legislative elections and often arises from the scrutiny, or rather the methods (majority, proportional or mixed) chosen for the calculation and attribution of seats. Ideally, Parliament should represent all interest groups with significant social weight, even when those groups represent a minority. In Mozambique, the problem of representation arises mainly

¹¹ A large portion of the cost of the two national and one municipal electoral processes that have taken place since the creation of the multiparty system was mainly covered by foreign funds. It is imperative that the financial sustainability of the electoral system be one of the main concerns in the efforts towards its improvement and adaptability to the country's current reality.

from the geographic distribution of the parties' influence and is reinforced by the fact that the Mozambican political system is based on an historical tradition of extremely centralised government. The fact that the voting for each of the two main parties was regionally concentrated, as the 1994 and 1999 results showed, gives rise to a feeling of exclusion on the part of the majority of those who voted for the party that remains in opposition. Generally, the distance between the elected and the electorate they are supposed to represent tends to increase, thereby also increasing the percentage of abstentions (from 13 per cent in 1994 to more than 30 per cent in 1999). This is partly because candidates are elected through party lists from large electoral constituencies, and their re-appointment as candidates is much more dependent on their being in the 'good books' of the party leadership than on work efficiently carried out to try and answer the concerns of the citizens or convey their opinions and expectations.

Experience shows, therefore, that representation and the proximity between voters and MPs are actually the most critical aspects in terms of the legitimacy of the political system. One possible solution to the problem of legitimacy and one which would extend the field of effective participation by the citizens in the framework of an electoral system that is easier for the electoral bodies to manage and simple for the voters would be to introduce a mixed electoral system, which could simplify the vote and, at the same time, combine advantageously the majority system with proportional representation, as is done, for instance, in the German Federal Republic. The extension of municipal power to the whole of the national territory is also a priority.

Promoting open public debate

The legitimacy of the electoral system depends to a great extent on the process that led to its adoption. The Mozambican electoral system was initially the result of negotiations between the two parties involved in the armed conflict, who then went through a consultative process with the representatives of the small parties. However, the weakness of these small parties made it unfeasible to open the Mozambican political space beyond the horizon of the two large parties. Even though there is almost no representation of the small parties (with votes seldom totalling 2 per cent and the knowledge that great numbers of these votes are incidental) (Brito 2000), it might nevertheless be useful to introduce mechanisms to allow for the participation of independent candidates or small local parties. The 1998 municipal elections did indeed show that small local parties can win sufficient trust to obtain representation, thereby functioning as catalysts in the local political sphere.

The debate about electoral reforms is central to their credibility and legitimacy. This debate should not be monopolised by the representatives of the great political forces but should be open to society and be as wide and inclusive as possible, allowing for the active participation of civil society organisations and interested

citizens. This is a means to avoid the supremacy over the general interest of immediate interests and the inborn policies of parties in the political arena to consolidate democracy in the long term and to ensure that the opportunity to eliminate an instability risk factor in the country is not lost because of considerations of immediate or short-term party gains.

Maximising the influence of the voters

Voters need to feel that their vote contributes in some way to the creation of the government and of the policies it will follow. In line with this, the effectiveness of their ability to choose must be broadened: ideally, they should be able to choose not only between parties, but also between candidates from different parties and between different candidates from the same party. Mozambique's proportional representation system, with its closed party lists and large electoral constituencies, is far from contributing to the accountability of those elected to those who elected them. The interests of the voters must be a fundamental concern of the MPs they have elected. A mix of some typical elements of the majority system (for example, the uninominal district with elements of the proportional representation system, as suggested previously), even if it means that the principle of the equal vote might be slightly affected, can give citizens a clearer understanding of the political process and also more and better opportunities to influence political decisions.

Ensuring consistent political parties

The maximisation of voter influence should not result in extreme fragmentation of political representation, as this would render the system unstable and inefficient. Therefore, favourable conditions should be created for the existence of relatively strong and stable parties capable of playing a role in promoting and guaranteeing democracy. In the case of Mozambique it can be argued that a process aimed at maximising the influence of the voters would not place at risk the position of the big political forces, which have historically achieved an influential position *vis-à-vis* the population. Considering that, in terms of political culture, the one-party model is still dominant in Mozambique, and that internal party democracy is still in its early stages, such a process would simply contribute to greater dynamism and more internal democracy.

The increase in the number of candidates from small parties without any electoral base is a complicating factor in relation to the costs of the electoral process, which could and should be avoided. In this area, three complementary measures could be considered: firstly, all parties should be required to pay a deposit which will only be reimbursed if a minimum percentage of votes is obtained; secondly, the 5 per cent limit should be eliminated, allowing for the selection of the small parties to be based on the 'natural' limit (usually around 2 per cent) that is implied in the counting system for the seats; and finally, the d'Hondt method should be

replaced by the traditional quota and largest remainders, which is a more accurate representation of the electoral diversity displayed as per the votes cast.

CONCLUSION

Though it is true that a well-designed electoral system which respects the reality of its country and whose legitimacy is based on consensus between the political forces can play an important role in the nature of political competition and contribute to strengthening democracy, it would be unrealistic to think that the system alone will guarantee such results. Indeed, there are other external factors – the institutions of government, political culture and the structure of the government system – that interfere in the process and determine to a great extent the political life of a country.¹² These factors need to be discussed and should not be concealed by the issue of the reform of the electoral system.

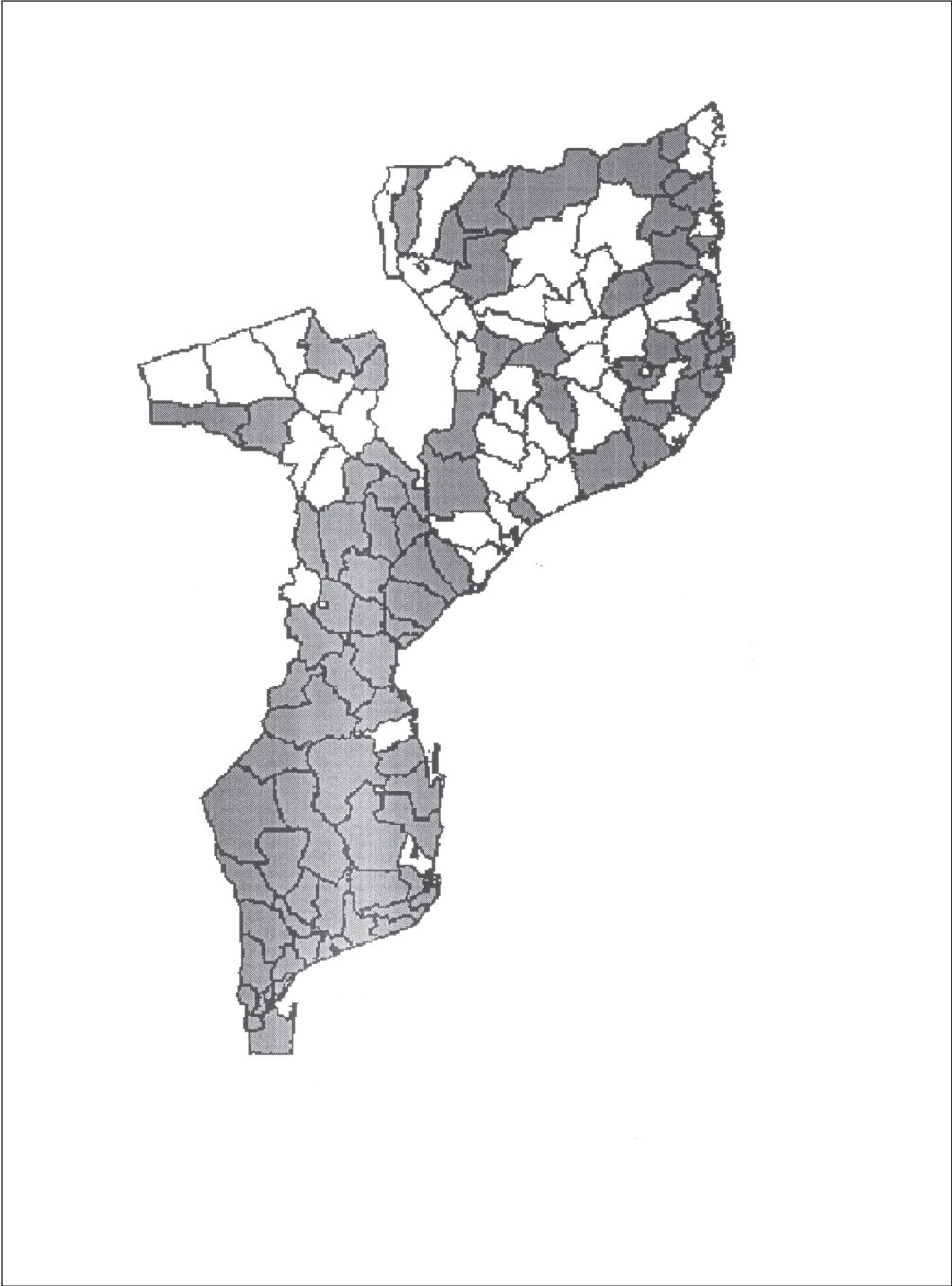
¹² An example is the role of the President of the Republic in the governing system of Mozambique, which is enshrined in the Constitution. If the majority in Parliament is from a different political orientation, the presidential system may be the source of future problems and a serious obstacle in the politics of the country, without it being the fault of the electoral system.

APPENDIX 1 Tables showing the potential effects of different electoral systems (Legislative elections of 1994)

	Traditional Quota and Largest Remainders			D'Hondt Method			Plurality		
	Frelimo	Renamo	UD	Frelimo	Renamo	UD	Frelimo	Renamo	UD
C.Delgado	15	6	1	15	6	12	2	0	0
Gaza	14	1	1	15	0	1	16	0	0
Inhambane	13	3	2	13	3	2	18	0	0
Manica	4	8	1	4	9	0	0	13	0
Maputo C.	16	2	0	17	1	0	18	0	0
Maputo P.	11	1	1	12	1	0	13	0	0
Nampula	20	31	3	20	32	2	0	54	0
Niassa	6	4	1	7	4	0	11	0	0
Sofala	3	18	0	3	18	0	0	21	0
Tete	5	9	1	5	9	1	0	15	0
Zambézia	17	29	3	18	29	2	0	49	0
TOTAL	124	112	14	129	112	9	98	152	0
% of votes	44.33	37.78	5.15	44.33	37.78	5.15	44.33	37.78	5.15
% of mandates	49.6	44.8	5.6	51.6	44.8	3.6	39.2	60.8	0
Difference (%)	5.27	7.02	0.45	7.27	7.02	-1.55	-5.13	23.02	-5.15
Average cost of seat	17062	16102	17556	16401	16102	27310	21589	11865	0

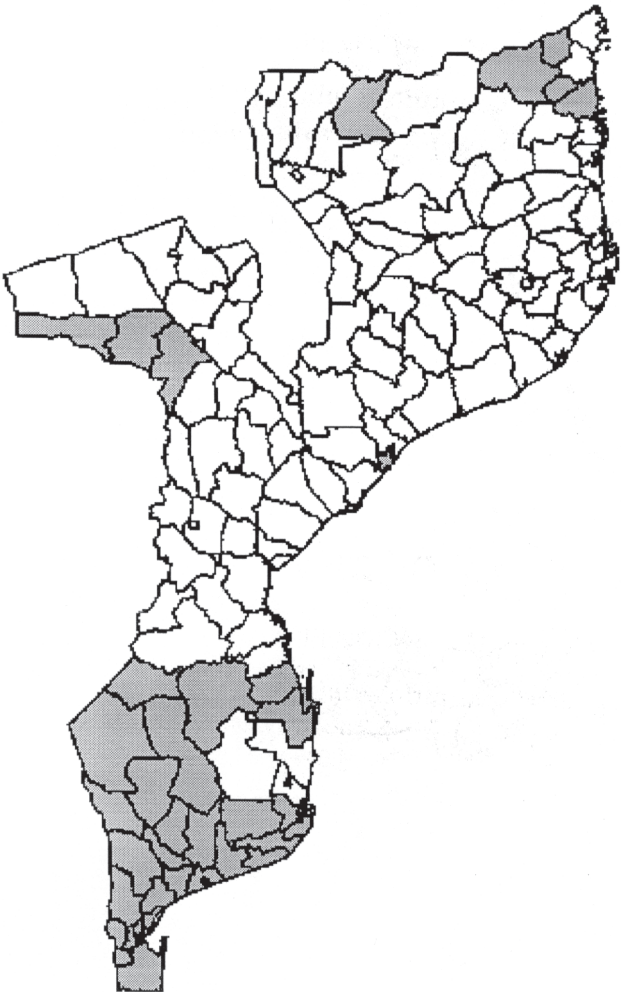
APPENDIX 2

Districts where presidential candidates obtained a number of votes more than double the votes of the opponent (1994)



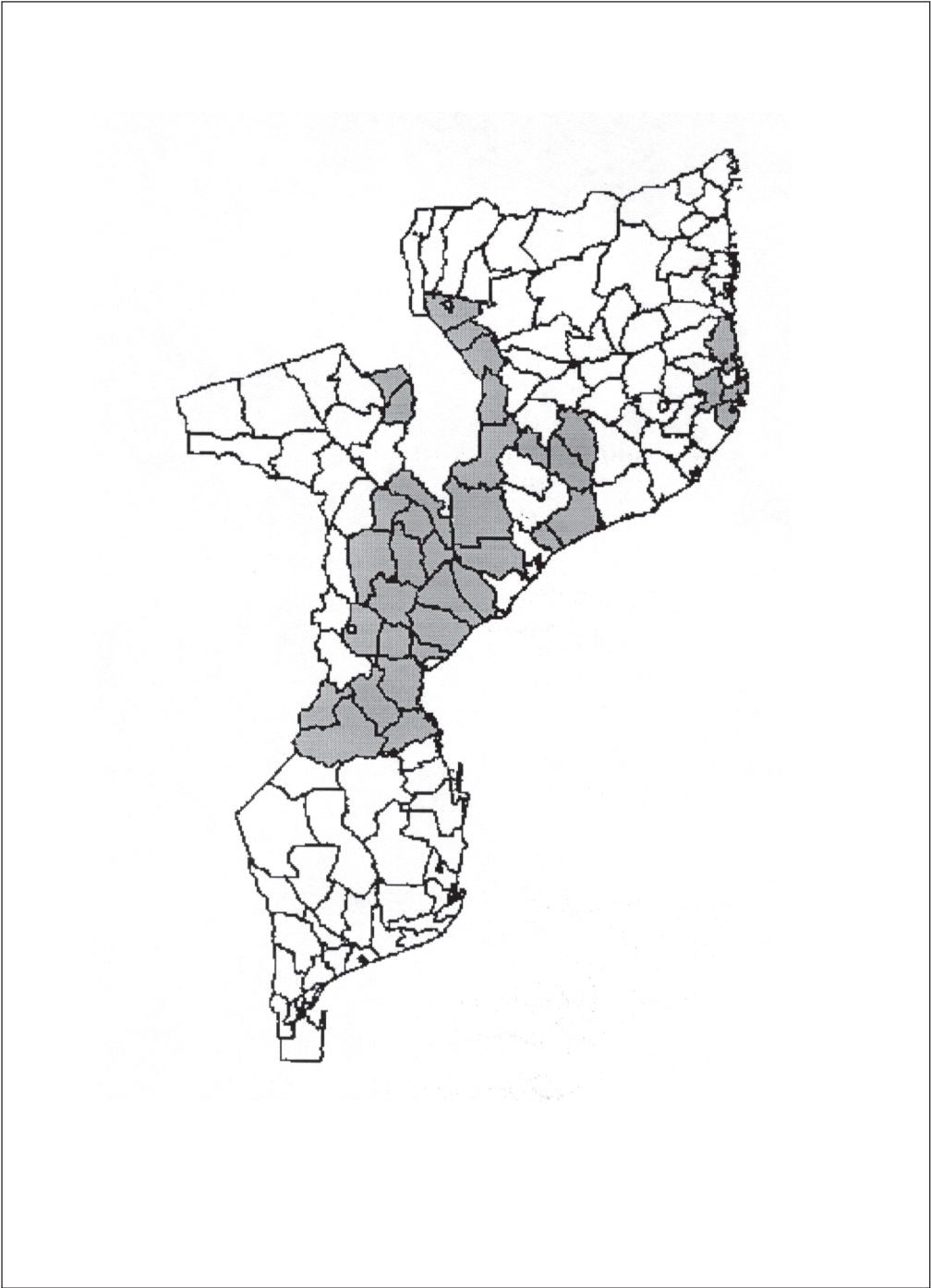
APPENDIX 3

Districts where Joaquim Chissano obtained more than 70% of the votes (1999)



APPENDIX 4

Districts where Afonso Dhlakama obtained more than 70% of the votes (1999)



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ADAPTING TO ELECTORAL SYSTEM CHANGE

Voters in Lesotho, 2002

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On 25 May 2002 voters in the small Southern African kingdom of Lesotho went to the polls in the third general election since the country returned to democracy after a long period of civilian dictatorship (1970-86) and military rule (1986-93). Although voting in all Lesotho's general elections has usually gone smoothly, in every case prior to 2002 the results have been challenged, with varying degrees of severity, by the losing parties (Weisfelder 1999, pp 109-32).

This occurred most notably in 1970, when the ruling Basotho National Party (BNP) lost the election but overrode the result; and subsequently in 1998, when the BNP – now in opposition – had been at the core of an alliance of electoral losers who, in the months that followed and enjoying the quiet support of the security forces, so paralysed the capital that a powerless government felt constrained to call for external assistance to restore order. The result was military intervention by South Africa and Botswana (acting on behalf of the Southern African Development Community (SADC)); the restoration of the ruling Lesotho Congress for Democracy (LCD) to power; and an extended period when, backed by South African muscle, long overdue reforms of the military and police were matched by difficult negotiations among the various political parties concerning the adoption of a new electoral system. The eventual outcome was the decision to move Lesotho away from the plurality (first-past-the-post) system inherited from Britain at independence (and which in 1993 and 1998 had provided highly imbalanced results favouring the winning party) towards a Mixed Member Proportional (MMP) system.

Hence, the 2002 election assumed a significance that extended well beyond Lesotho's borders. On the one hand, just two months after the authoritarian regime in Zimbabwe had rigged the re-election of Robert Mugabe in that country's presidential election, there was considerable interest in whether a reformed electoral system could provide a basis for free, fair, and peaceful elections in another Southern African country where results had customarily been bitterly disputed. In short, democracy in the region badly needed an indisputably legitimate poll. On the other

hand, Lesotho was the first country on the continent to move to MMP at a time when discussion of electoral system change was becoming widespread throughout Africa.

The particular issue in Lesotho in 2002 was not merely whether MMP would provide an improved basis for electoral legitimacy and political stability. That was clearly the prime question, and the fairly unambiguous answer that has been given by events has been 'yes'. Yet there was also an important subsidiary question concerning practicality and voters' understanding. In other words, to what extent was it possible to explain a new voting system to an electorate in one of Africa's poorest countries? How could they be convinced that the new system would be fair? How would they tackle the fact that each voter would now have the opportunity to cast not just one, but two, votes?

The overall success of the election has been demonstrated elsewhere (Elklit 2002 pp 1-10; Southall 2003, pp 1-28). The purpose of the present short paper is to address the question about voters' understanding and to demonstrate their ability to adapt to electoral system change. This, we suggest, throws doubt on any argument that electoral reforms in Africa should be avoided on grounds of the alleged lack of sophistication of poor and largely uneducated voters. Ordinary people appear to have no huge difficulty understanding the broad principles of electoral democracy, even if the detailed mechanics of 'mixed' voting systems may be beyond them.

BACKGROUND TO LESOTHO'S ADOPTION OF MMP

After years in which its principal leaders had been in exile (following the BNP's overriding of the result of the election of 1970) the opposition Basutoland Congress Party (BCP) – led by the veteran nationalist Ntsu Mokhehle – secured a landslide victory of fully 65 seats to nil (with 75% of the total votes) in the election of 1993. This amazing result, it is important to note, was gained in a poll which received massive endorsement from international and domestic electoral monitors as being free and fair. Apart from being an accurate reflection of voters' sentiments, the poll was at one level the outcome of an historical drama: the BCP, the principal vehicle of anti-colonial militancy, was securing its just deserts in the form of victory at the polls, having been unjustly (as it argued) deprived of triumph in the pre-independence general election of 1965 and then cheated outright in 1970.

The voters were not in a forgiving mood and, as much as they chose to celebrate the victory of Mokhehle and the BCP, they were also out to punish the BNP for long years of corrupt and dictatorial government (Southall and Petlane 1995). Yet, at another level, the particular result of the election was the product of Lesotho's unique political geography (the fairly consistent proportions of BCP majorities and BNP minorities being replicated in each and every constituency) (Fox 1995) combined with the mechanics of the plurality electoral system (which, as elsewhere, tended to award a disproportionate number of seats to the winning party).

For the BNP, most notably, but also for a clutch of minor parties, the BCP's whitewash was not only devastating, it was wholly unbelievable, whatever the electoral monitors had to say. Yet worse was to follow, for after the failure of the BNP to force another election by backing a constitutional coup by the King in 1994 (which SADC demanded he reverse)¹, the BNP suffered another trouncing in 1998.

In this latter year the electoral scene had become immensely complicated by a power struggle within the BCP. In brief, the aged Mokhehle had lost control of the party machinery yet had retained the support of a majority of members of parliament (MPs). He therefore wholly outmanoeuvred his intra-party opposition by leaving the party he had created, the BCP, and forming the LCD, which, overnight, became the ruling party. Then, its leadership having been handed over to Pakalitha Mosisili, Mokhehle's chosen successor, the LCD proceeded to thrash all comers in the 1998 general election, taking 79 of the (now) 80 seats, albeit with just 61% of the votes cast (Southall and Fox 1998, pp 669-96). Despite winning a combined total of 40% of the votes, the opposition parties were again left without representation in the lower house of Parliament (even if they secured some compensatory seats by nomination in the relatively toothless Senate).

Although international monitors could yet again find no serious fault with the conduct of the election, the imbalanced result threw the country into turmoil. The principal opposition parties, the BNP and the rump BCP, forged a coalition of protest which drew wider support from other disappointed forces; and together they summoned their supporters to the capital, precipitating weeks of crisis which, when it appeared to be culminating in a decision by the military to stage a coup, resulted in armed intervention by South Africa and Botswana. Because this was initially badly bungled and opposition militants set much of the capital, Maseru, ablaze, South Africa in particular came in for widespread international ridicule and criticism, as well as considerable popular hostility within Lesotho (Southall 2001 pp 153-72). Nonetheless, in the weeks and months that followed, South African diplomacy manufactured a significant political achievement. The LCD was restored to power, but an Interim Political Authority, comprising all twelve political parties that had competed in the latest election, was constituted to consider a change in the electoral system, with the particular objective of finding a system that would provide for reasonable representation of the opposition. The negotiation process which followed was tortuous, and instead of the parties managing to find agreement to enable the holding of a fresh election in May 2001, the entire process was delayed by a year. Eventually, however, 'sufficient consensus' was reached, providing the basis for holding an election under a system of MMP in May 2002. The outcome of

¹ Following the announcement of Prime Minister Mokhehle's decision to establish Commissions of Enquiry into the affairs of the monarchy and the army, the King – prompted by the BNP and secure in the knowledge of the support of the military – dismissed the LCD government on 17 August 1994 and announced the appointment of a provisional administration to lead the country to new elections. However, following intense pressure from the SADC 'troika' of South Africa, Zimbabwe and Botswana, he returned power to the LCD government at the end of September. See Matlosa 1995.

that election was a further huge victory for the LCD, yet on this occasion the reformed system provided for the proportionate representation of the parties of opposition. And after initial rumblings of discontent, they accepted the result and took their seats in Parliament.

LESOTHO'S NEW ELECTORAL MODEL

Lesotho, like the overwhelming majority of Britain's former colonies, had inherited a plurality electoral system. This provided for relatively competitive contests in the elections of 1965 and 1970, the BNP securing a narrow working majority in the former, yet losing by a substantial number of seats (9) in the 65-seat Parliament in 1970.² (However, the working out of forces of 'modernisation'³ and a politically polarised history were to result in thoroughly imbalanced outcomes in 1993, when the BCP won by 65 seats to nil; and in 1998, when the successor LCD swept all but one of 80 constituency seats. Of course, the plurality system has what Elklit (2002, p 2) terms 'an in-built and intentional tendency to produce a result where the winner's share of the seats is higher (sometimes much higher) than its share of the votes', and hence tends to produce definite electoral winners rather than proportionality. Yet the Westminster model, which the plurality system serves, also conventionally produces a parliamentary opposition. However, when it fails to do so, as in the extreme cases of Lesotho in 1993 and 1998, the disadvantages of the plurality system, notably its lack of proportionality, become strikingly evident.⁴ Hence it was that that the IPA had been tasked with reviewing the electoral system to make it 'more democratic and representative' (Elklit, p 2).

The highly fractious negotiation process within the IPA has been detailed elsewhere (Southall 2003). Suffice it to say that, in broad terms, whereas the ruling LCD wished to maximise the number of constituency seats, the opposition rapidly swung to favouring relatively extreme forms of proportional representation. The eventual compromise saw all 80 existing constituency seats, to be elected by the plurality system, being retained, alongside the creation of 50 new, compensatory,

² In 1965 the BNP secured 31 seats with 41.6% of the votes, compared to the BCP, with 25 seats and 39.6% of the votes. The electoral situation was reversed in 1970, with the BCP winning 36 seats with 49.8% of the votes, and the BNP 23 seats with 41.6% (Southall and Petlane 1995, Appendix One).

³ In his analysis of changing electoral patterns over the course of the 1965, 1970 and 1993 elections, Fox (1995) identified the working out of a 'modernisation' variable which saw the influences of labour migrancy to South Africa and urbanisation inclining voters towards the more radical agenda of the BCP. Because most migrants were male, this 'modernisation' variable also had a gender dimension as well as a regional one in that the lowland areas (most immediately susceptible to South African economic impact) were more prone to vote BCP than the more conservative mountain areas.

⁴ To the authors' knowledge, the results in Lesotho in leaving the opposition completely unrepresented are unique, at least in Africa. In the 1960 pre-independence election in Tanganyika, the Tanganyika African National Union took all but one of the 71 African constituencies (11 and 10 seats being reserved separately for Asian and European voters respectively) (Tordoff 1967, p3). Of course, this imbalance in Tanganyika provided a major justification for President Julius Nyerere to lead the country towards a model of 'one party democracy'.

seats to be elected by a national list system of proportional representation. Again, once the relative numbers of constituency and PR seats had been determined, the LCD had favoured a parallel electoral system whereby the 50 PR seats would be allocated according to the number of votes cast divided by 50. In contrast, the opposition parties favoured the MMP system whereby the 50 PR seats would be allocated amongst parties, with PR being applied by total national list election votes cast divided by 130 to determine a quota per seat (which would favour the smaller contestants).⁵ The matter went to arbitration (as shrewdly provided for under the IPA Act of 1998) and the MMP system prevailed, albeit after considerable pressure exerted by the LCD had resulted in the reduction of the PR seats to just 40. It was therefore an '80 + 40' MMP model which was presented to the voters for the general election of 2002.

How was this to be done? The question was all the more pressing because, given the turbulence associated with past election outcomes, many voters were highly sceptical about the capacity of Lesotho's politicians to accept any electoral result which did not favour them.

THE ELECTION AND ITS OUTCOME

Lesotho is, of course, notorious for the extent of its economic dependence on South Africa (by which it is externally surrounded) and its financial dependence on development aid. During the 1970s and early 1980s Lesotho, under the BNP, had attracted international representation and aid by skilfully exploiting its image as an island of non-racialism, and – as well as serving as something of an operations base for the African National Congress (ANC) – had provided hospitality to South African refugees from apartheid. However, following the arrival of democracy in South Africa in 1994 Lesotho lost much of its political sex appeal and all but a handful of foreign countries removed their representation and redirected their aid to South Africa. Those that remained, although initially encouraged by the return to civilian rule and formal democracy in 1993, were thereafter to become increasingly disillusioned by the fractiousness of Lesotho's politicians and the unruly behaviour of its security forces. When the 1998 elections ended in mayhem and Maseru was, in large part, razed to the ground, what remained of the international 'donor community' was very tempted to all but abandon the country to its self-inflicted fate of disorder and underdevelopment. Hence, although the mode of South Africa's intervention in 1998 may have been criticised, its intention and subsequent diplomatic follow-through were welcomed. In the event, therefore, although they had become impatient with the political wrangling which had taken place within

⁵ The difference in outcome would have been significant. Using the 1998 voting figures, the MMP system would have led to the BNP obtaining 33 seats, the BCP 14, and other parties 3, with the LCD remaining restricted to 79 constituency seats. In contrast, the parallel system would have resulted in the LCD obtaining a total of 110 seats, the BNP 14, the BCP 5 and the Marema-Tlou Freedom Party 1 seat.

the IPA, the donors were prepared, in effect, to underwrite the experiment with MMP and to give Lesotho 'one last chance'. The result was that the administration of the 2002 election received considerable international attention and aid, notably from the European Union (EU), the Commonwealth, Britain and the United States, with South Africa itself providing considerable logistical support.

Following the appointment of a completely new team to head the Independent Electoral Commission (IEC) enormous efforts were made to arrange for an electoral process that would offer minimal grounds for dispute.

First, on the basis of a registration process conducted in August and September 2001, a high-tech computerised voters' role was completed by January 2002. Voters, who were required to dip their fingers in indelible ink when registering, would only be able to vote upon presentation of a voter registration card which displayed their photo, fingerprint and signature (with indelible ink again being used at the actual polls).

Second, immense care was taken to involve the agents of political parties at all stages of the process, with party representatives sitting on eight IEC committees (concerning electoral law, security, and so on). In particular, the parties were employed alongside IEC officials in a concerted effort to explain the dual voting process (one vote for constituency MPs, one for a party in the PR election).

Third, and very importantly, ballot boxes were transparent.

Fourth, the dual voting process was carefully explained at the polling booths. It was evident to observers that the staff hired by the IEC from the local communities to run the polling booths had been extremely well trained. They were enormously patient in their explanations to voters of the mechanics of voting and would take great care to direct voters through each step of the process. Hence, after queuing (often for some hours!) to vote, individual voters would (i) have their identities checked; (ii) be provided with a voting slip for the constituency election which, after completion, they would drop into a constituency election ballot box; before (iii) being shepherded to receive their PR voting slip, which, after completion, they would deposit in a completely separate, PR election, ballot box. Finally, the EU financed an Election Results Centre, open to the leaders of political parties and registered election monitors and journalists, to which results were dispatched electronically from the constituencies after they had been announced locally. Additionally, of course, there was a heavy presence of election monitors throughout the country, drawn variously from SADC, the Commonwealth, the European Community and local non-governmental organisations.

The wisdom of Lesotho having adopted MMP became readily apparent when the initial results were announced, for the ruling LCD had again made a virtually clean sweep of the constituencies, taking 77 of the 78 seats contested on election day⁶ with 57.7% of the vote (down from 60.5% in 1998). Meanwhile, it had taken a very similar proportion of the PR votes. Had the parallel method of calculating the

⁶ Constituency elections were postponed in Mt Moorosi and Hlotse owing to the deaths of candidates.

LCD's proportion of the PR seats been employed, it would have taken its 77 seats (plus the two seats it subsequently won in by-elections) plus 22 of the PR seats, or 101 of the total of 120 seats. In the event, however, following the allocation of seats under MMP, all 40 PR seats were allocated to opposition parties.⁷

Results of the 2002 Lesotho General Election

PARTY	TOTAL CONSTITUENCY VALID VOTE	CONSTITU- ENCY SEATS WON	TOTAL PR VOTE	PARTY'S ALLOCATION OF COM- PENSATORY PR SEATS	PARTY'S % OF VALID CONS- TITUENCY VOTES	PARTY'S % OF VALID PR VOTES
LCD	30 5 013	77	304 316	0	55.65	54.89
BNP	112 707	0	124 234	21	21.30	22.41
LPC	32 474	1	32 046	4	6.14	5.78
BAC	17 103	0	16 095	3	3.23	2.90
BCP	13 658	0	15 584	3	2.59	2.81
LWP	7 693	0	7 788	1	1.43	1.40
MFP	7 475	0	6 890	1	1.41	1.24
PFD	6 997	0	6 330	1	1.32	1.14
NIP	4 258	0	30 346	5	0.80	5.47
NPP	4 047	0	3 985	1	0.76	0.71
*	17 671	0	7 772	0	3.34	1.40
Valid Votes	529 096		554 386			
Invalid Votes	17 618 (3.22%)		12 063 (2.12%)			
Registered Voters	831 315					

* *Minor parties and Independents*

Abbreviations:

LCD: Lesotho Congress for Democracy; BNP: Basotho National Party; LPC: Lesotho People's Congress; BAC: Basutoland African Congress; BCP: Basutoland Congress Party; LWP: Lesotho Workers' Party; MFP: Marema-Tlou Freedom Party; PFD: Patriotic Front for Democracy; NIP: National Independence Party; NPP: National People's Party.

⁷ The allocation process is detailed step by step by Elklit (2002, pp 1-10).

Given our particular interest in exploring how voters adapted to the new electoral system, what is most remarkable is the overall consistency of the voting pattern. Voters clearly had no difficulty in voting for a particular party candidate for the constituency contest and for the same party in the PR election. The only anomaly is the vastly better performance registered by the insignificant NIP in the PR contest (5.44%) relative to its showing in the constituency elections (0.76%). Yet this is easily explained, for the NIP had made a shrewd pre-election move by officially registering its party symbol (by which illiterate voters distinguish their parties on ballot forms) as a bird very similar to that of the ruling LCD! Despite the protests of the latter, the courts allowed the NIP's choice to stand, with outstanding results for its cunning.

Meanwhile, the small proportion of invalid votes (spoilt or indecipherable) was a testament to the efficacy of the voter education process, both before and during the poll. Given the fact that for the past forty years voters had been using the plurality model, it would have been reasonable to presume that there might have been some confusion with the party list/PR ballot. In practice, however, the opposite seems to have been the case. The number of votes declared invalid under the PR contest was fully one-third lower than in the constituency elections. Furthermore, the number of invalid constituency votes would have been higher if constituency contests had also been held on general election day in all 80 rather than only 78 of the constituencies. Indeed, only five of the 78 constituencies did not reflect this overall pattern, that is, they had more invalid PR votes than constituency votes.

Overall, therefore, the evidence demonstrates that Lesotho's voters had no difficulty adapting to the changed electoral system. Equally importantly, the process was so transparent and so well organised that when the BNP, on the basis of extremely thin evidence, declared that the result had been rigged, its attempt to have the result annulled so lacked credibility that, under only fairly light pressure from international donors, it fairly rapidly gave way and agreed to take its seats in Parliament. Lesotho had achieved far and away the most satisfactorily completed and most widely accepted general election in its tumultuous, post-colonial history.

LESSONS FROM LESOTHO?

The particular significance of the May 2002 general election in Lesotho is that electoral reform in Africa can be accomplished without undue difficulty. Indeed, Lesotho's poll may have a much wider resonance, initially, perhaps, in Eastern, Central and Southern Africa, but perhaps in time to come in the troubled countries of West Africa.

It is probably true to say that the transition to MMP in Lesotho was made a lot easier by the fact that South Africa had adopted PR for its first democratic election, in 1994. Prior to that, the racially separated elections for the tri-cameral (for whites, Indians and coloureds) national Parliament and the various African homelands

had all been conducted under the plurality system. However, because of the complexities of undertaking a constituency demarcation and voter registration exercise and, more importantly, the emphasis placed by the transitional negotiations on securing adequate representation of political diversity, the plurality system had been abandoned in favour of a national list PR system. The result, not least because it was linked to the idea of a Government of National Unity (which included representation from the second and third largest parties alongside the victorious ANC), made a large impact throughout Africa, as it moved away from the practice of 'winner-takes-all', which has provided the basis for dictatorship in too many countries. The South African example therefore proved a stimulus to acceptance of change which eased Lesotho's own abandonment of first-past-the post.

It may now be said that Lesotho has returned the compliment of providing an example. Its own first MMP election occurred during the sitting of an Electoral Task Team (ETT), established in South Africa in terms of the 'final' Constitution promulgated in 1996, under which the electoral system was to be reviewed as long as any reform resulted, in general, in proportional representation. In general terms, the key issue for the ETT was whether it was desirable to re-introduce some form of constituency system so as to restore a direct link between the voters and (at least some of) South Africa's MPs. According to a survey commissioned by the Task Team voters were clear that, although they valued PR because of its representivity, the fact that MPs were only indirectly elected (by securing places on their party lists) adversely affected political accountability (Southall and Mattes 2002). In the event, the ETT presented a divided report to the government. All members agreed that the introduction of an amended electoral system for the speedily approaching election in 2004 would be unwise. However, while the majority favoured the introduction of some 80 multi-member constituencies which would elect 75 per cent of MPs (with 25 per cent being elected by party list in order to guarantee overall proportionality) for the projected elections in 2009, the minority favoured retaining the present system whereby all candidates are elected from party lists. In the event, the government chose to postpone the issue. While it agreed to put forward the Bill necessary to maintain the present electoral system for 2004, it decided that a further Bill, which would consider the electoral system suitable for the longer term, should be handled by Parliament after the next election. Significant commentary opined that this indecision reflected the ANC's own reluctance to change a system which has already served it so well. Nonetheless, some reintroduction of the idea of constituencies has been placed on the agenda, and Lesotho's modest example of how relatively easy it has been to combine constituency elections within an overall framework of PR has been widely noted.

Meanwhile, it is likely, too, that Lesotho's example will be cited as positive evidence in favour of electoral reform away from plurality systems in countries such as Kenya and Zimbabwe, both of which have seen the abuse of first-past-the-post to serve the regime in power (notably via imbalanced constituency demarcations favouring the ruling party) (see, eg, Fox 1996, pp 597-608). At long

last, in Kenya, in the December 2002 general election, the opposition parties learnt the lessons of division by forming a Rainbow Alliance which swept the ruling Kenya African National Union government of President Daniel arap Moi away. A constitutional reform process, now taking place, will almost certainly choose to look in detail at alternatives to the plurality electoral system.

Meanwhile, in Zimbabwe, the dictatorship of Robert Mugabe seems destined to crumble and to make way for a process of democratic transition during which, again, the present opposition parties will probably want to explore electoral reform in pursuit of combining both fair political representation and the popular accountability of politicians. Then again, a major constitution-writing process is about to happen in the Democratic Republic of Congo and it may well be that civil society input (even if not that of political elites) will stress the drawbacks of untrammelled, national list PR. In short, tiny Lesotho may possibly have set the ball rolling towards the adoption of mixed electoral systems throughout the wider region.

In conclusion, however, it is necessary to temper any hasty euphoria about MMP with the recollection that its introduction in Lesotho was facilitated by exceptional conditions. Although it is extremely mountainous and hampered by poor internal communications, Lesotho is an easy country in which to conduct elections. As noted above, it has been the refusal of losing politicians to accept the results of elections, not the actual administration of elections, which has customarily been the problem there. Lesotho, after all, is a tiny country, with a tiny electorate to be registered, educated and counted. At election times it can be saturated with election monitors and observers in a way that a vast territory such as Nigeria cannot. Such factors were clearly highly favourable to the necessary training of electoral staff to facilitate the smooth introduction of the MMP electoral system.

Finally, it must be noted that only a handful of voters can be expected to understand the more complex calculations whereby compensatory PR seats can be allocated to the political parties. What is clearly important in this regard is that voters grasp the principle of proportionality provided for by MMP and that they trust the electoral body which undertakes the calculations. In Lesotho's case, the fact that the LCD was overwhelmingly the most popular party, and was unambiguously returned to power, was almost certainly a factor in the widespread acceptance of MMP.

None of this should detract from the minor triumph for democracy that the 2002 election in Lesotho represents. Yet we must sound a note of caution – although it provides a highly positive example, electoral reform might not be achieved quite so easily elsewhere.

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MISSING CADRES?

List Voting and the ANC's Management of its Parliamentarians in the National Assembly, 1999-2003

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INTRODUCTION

The party list system of voting can give a dominant party undue influence over its parliamentary members, critics say, instancing the practices of the African National Congress (ANC) in South Africa's National Assembly. The party has defended its use of the system and the 'redeployments' it permits as necessary to its program of reconstruction; claiming a right to use scarce human resources, including parliamentarians, in new positions as circumstances change.

Since 1999 the Assembly has seen high rates of turnover and deployments of varying character, and the evidence suggests that the management of its parliamentary members challenges the capacity of the ANC. Lines of gender and provincial representation structure the party's choices, raising issues of representation and accountability. A review of the careers of the sixty members who ceased to be members of the Assembly after the election of 1999 shows that the list system is only one factor to be considered in assessing the internal democracy of the ANC and its policies in Parliament and in government.

THE LIST SYSTEM OF VOTING

Commentators have identified the party list system of voting as a key mechanism influencing political development in South Africa – very negatively, according to most. While the linked but distinct method of proportional representation also adopted in South Africa has strong supporters as well as opponents (Reynolds 1999, pp 97-101; Pottie 2001, pp 33-35; Southall 2001, pp 275-76 and 2003, p 129; Giliomee, Myburgh and Schlemmer 2001, pp180-81), the list system has few supporters beyond the dominant party, the ANC.

Though the party originally favoured a constituency-based system (Pottie, pp 30-31; Reynolds, pp 183-87), it found in office that the list system allowed it to

choose, move and remove parliamentary representatives in convenient ways that, it is said, flout norms of responsibility and accountability between representatives and electors and devalue parliamentary activity when members whose careers rest with the party become mere 'lobby fodder' (Southall 2000, p 158 and 1998, p 448). The system 'constrains the free flow of changing opinion in a democracy (Kotze 2001, p 40)'. Members, without a base in a constituency 'have little incentive ... to champion any cause which may run counter to party policy or practice (Bridgman 2002, p 72)'. The system has 'allowed the ANC to effectively close down dissent within the party' and has 'effectively marginalised Parliament' (Giliomee, Myburgh and Schlemmer, p 173; see also Adam, Slabbert and Moodley, pp 86-88).

The system works best for a party when it has a dominant share of the fruits of politics. Then, as with the ANC, it is said, the lists can be used to 'park' members who are really on their way to other jobs and to entice others with opportunities that diminish their independence. The result of the recent period of floor-crossing from March 2003 (a temporary cessation of party discipline to 'encourage' members to move to other parties in national and provincial assemblies) was lamentable but predictable: nine recruits to the ANC in the Assembly, securing the constitutional majority of two-thirds just missed in the June 1999 election, and not a single loss anywhere in the provinces, so that the party has majorities in the last 'provinces of opposition' – the Western Cape and KwaZulu- Natal (Idasa 2003). The worst result might be that the opposition parties become ever more fragmented and polarised on racial lines and that a dominant ANC risks fracture within more than challenge without.

Though the list system, or its use, may have a lot to answer for, the broader political strategies guiding its use have been defended by the ANC, especially in the policies on cadre deployment adopted at the Kwabwe conference of 1985 and re-affirmed and extended at the national conference of 1997 (gopher://gopher.anc.org.za:70/00/anc/history/kabcadre.txt 2000, pp 1-32; Sechaba 1985, p 14 cf. Giliomee, Myburgh and Schlemmer, pp 170-174). The other parties with a presence at both national and provincial levels after 1994 – the Inkatha Freedom Party (IFP), the Democratic Party (DP), and the (New) National Party – have also used the list system to 'deploy' members, but might be thought merely to be following the dominant ANC in practice if not in philosophy.

In the ANC the deployment of parliamentarians was seen as part of a broader strategy of institutional change, achieved through the positioning of members in key positions in the public and private sectors and requiring mobility in individuals as circumstances changed. Elected representatives were special, but accountability was achieved by a better defined place for the Parliament within the polity and by a parliamentary membership that adhered to new norms of representation in race, sex and place – those values instilled in the 'Chapter Nine' institutions of the Constitution that balanced both Parliament and Presidency (Nijzink 2001, p 59; Southall 2000, pp 161-63). Government was conditional on control of Parliament by the ruling party, and the legitimacy of the party was attested in free and fair elections.

Within this context – management of the list system having produced an increased majority in 1999 and since – it is not surprising that the ANC is reluctant to attend to the campaign by the Democratic Party and others for a changed system of voting. Our review suggests, however, that the ANC has also experienced great difficulty in operating the list system effectively and that troublesome issues in managing its parliamentarians may tempt it to ‘reform’ this aspect of the ‘rules of the game’.

THE NATIONAL ASSEMBLY 1999

An examination of the ANC’s management of its 266 members in the National Assembly, from Vice-President Jacob Zuma down, in the period from the election of June 1999 to mid-2003, shows that the movement of members in and out of the Assembly was, by any standards, frequent. Whether it is a sign of deployment at work or a possibly corrupt management of resources, or merely chaotic politics, has to be determined. Although answers for the whole range of positions open to deployment might potentially involve many institutions, there is no doubt that the Assembly is the central locale of deployment and must reflect and shape the whole. Of the original 266 members of June 1999, sixty (22.6%) were no longer members by May 2003, including the last exclusion of prominence – Winnie Madikizela-Mandela – whose appeal against a conviction for financial offences was pending in mid-2003. From 2000 there were numerous resignations and redeployments connected with the ‘arms deal’, and these and other cases are considered below. Given the likely continuing turnover of members by the time of the next election (April 2004) the party will likely have lost some 30% of its parliamentarians since the last.

This is probably a high figure even for parliaments with a list system, but might be explained in part by the strains of establishing a new system of government after the transition of 1994 (Southall 2000, pp 149-51). A comparison of the published lists shows that of the 252 ANC members elected to the first Assembly, only 130, or barely half, were elected in the following election, though half a dozen others later re-entered the Assembly as replacements for members elected in 1999. Allowing for the fact that some members who do survive until the next election will not, for one reason or another, be re-listed or re-elected, it is possible for the rate of turnover of ANC Parliamentarians to increase further.

THE PARLIAMENTARY INSTITUTION

Would it matter (a distant prospect though not inconceivable) if only a minority of ANC parliamentarians elected at an election survived their full term? An answer might only be as important as the parliamentary institution itself, which is not the all-powerful body of the apartheid regime, based on English notions of parliamentary sovereignty, when ‘the will of a racially-exclusive Parliament was ...

paramount' (Klug 2000, p 35) and cloaked the real power of the state president, elected not directly but by the Parliament. The ANC asserted anew the power of the political party over the institutions of the state, and the 'centralisation of power under Mbeki' (Southall 2000, p 157) might seem to settle the issue. The President, who is not a Member of Parliament (though initially elected as one), chooses the Cabinet (which may, according to s 91(3)c of the Constitution Act, only include two extra-parliamentary members) and appears in Parliament by choice. Despite Mbeki's executive tendencies, he seems more interested in the Parliament than was Mandela, whose practice it was to address Parliament at its opening and during the finance debate. Mbeki has also experimented with attendance at question time, at the launch of the New Partnership for Africa's Development (Nepad) and at the reception of the final Truth and Reconciliation Commission (TRC) report.

Mbeki's position is, indeed, ambiguous. The South African system of government has been variously classified as based on 'plurality election' or 'majority rule', but definitely not on 'direct presidential election' (Blais, Massicotte and Dobrzynska 1997, pp 444-45.); as 'semi-presidential' (Southall 2000, p156); as 'a combination of semi-presidentialism with parliamentarianism' (Lane and Ersson 1997, cited in Southall 2000, p 168); and as 'Parliamentary government headed by a prime minister ...[with] the title of state president' (Reynolds, p 129). The last seems over stated, but the eschewal generally of simple notions of 'presidentialism' seems well established, even if the place of Parliament is disputed.

At issue is the unique way in which the succession of offices linking Parliament and the executive presidency is defined in the constitutional arrangements enacted in 1996. The African nations of the first wave of independence claimed a directly elected presidency separate from the elected parliament as a foremost achievement – remembered was Nkrumah's movement to true independence less than a year after the British left by 'taking office as executive president of the nation, head of state as well as of the government' (Nkomo 1984, p 75). Remembered, too, was a tendency to 'descend' into the 'African pattern' of one-party rule and uncurbed presidential power' (Pottie, p 25).

South Africa's 'second wave' of 1994 adopted a different method. It was distinctly 'parliamentary', as the office of President was filled by the parliamentary nomination of the top-listed candidate of the dominant party in the Assembly. The President can be said to be popularly and directly elected, but only as the leading candidate on a parliamentary slate. Necessarily Mbeki was the ANC's first retirement from the National Assembly, immediately on taking office as President. His successor, businessman E P Mogale, had been just below the 'cut' on the national list at the election. Reflecting the politics of the Alliance that had built the list, he was a member of the South African Communist Party (SACP), and, as it happened, was, a few months later, also replaced.

The issue is less whether Parliament is an institution with certain powers in the processes of accountability (through committee activity for instance) than whether processes of accountability exist within the parties and take shape in intra-

party dispute between members in the parliamentary institution. It is important whether 'the task of criticism rests not only with opposition political parties but also with dissident elements within the ruling party' (Southall 2003, p 19), and important whether the dissidence is parliamentary, at least in important aspects. Mbeki's replacement by Mogale was a formality, but later replacements did not necessarily adhere to the list as presented to the electors in June 1999, and the extent to which the pattern of deployments and replacements reflected internal struggle in the party is considered below.¹

In the period since 1999 there seems no doubt that testing questions have arisen in Parliament about the 'arms deal', when the government's decision, initially secret, to spend (as was claimed later) some R30b on arms purchases unapproved by Parliament, led to criticism by the Auditor General and to a critical report by the Standing Committee on Public Accounts, chaired in the Westminster tradition by an opposition party member (Gavin Woods, IFP). Accused of benefiting personally were ANC government members (Ben Modise, Tony Yengeni) or officials (the most important of whom is Chippy Shaik of the Defence Department). The majority ANC bloc on the committee, under Andrew Feinstein, supported or initiated further inquiry, but denied one aspect – the proposed involvement of former judge Willem Heath after the proposal that he be included had received a strong presidential rebuke. A number of resignations and 'redeployments' took place in relation to these issues. Among them was the resignation of ANC Chief Whip, Tony Yengeni, who was sentenced to a prison term for offences related to the 'arms deal'. Feinstein claimed that 'it had become increasingly difficult, if not impossible, for independent-minded MPs to work for the ANC in Parliament' and that he was concerned 'about our accountability mechanisms in Parliament'. Though he intended to remain a member of the party, he would 'not hesitate to criticise when appropriate' (*Mail & Guardian* 31 August 2001). It is probable that not all the outcomes are yet apparent, but it is certain that issues of presidential and parliamentary power have sharpened rather than settled and that investigation of the 'arms deal' is unfinished.

The ANC's own professed standards provide a context within which to evaluate recent events. This is not to prepare a case for the defence, as it were, but to point to procedural norms and rules, expressing political struggle, that constrain the political party that has adopted them, at least partly for inspection by the 'international community'. Our focus is on the representation of place and gender in the ANC's members in the period since 1999, and the connected issue of the movements (deployments?) of those who, for one reason or another, had left the Assembly well before the election due in 2004. The size and structure of the caucus informs this discussion.

¹ The term 'ANC member' is used throughout to cover affiliates of the ANC's partners in the Tripartite Alliance – the Congress of South African Trade Unions (Cosatu) and the SACP – as all run on a consolidated list under the ANC banner, with positions on the list reflecting relative voting strengths and negotiations between the partners.

THE PARTY IN PARLIAMENT

The 266 members of the ANC in the 400-member Assembly are relatively very dominant in comparison with other legislatures, and the size of the ANC caucus absolutely and relatively is very large – fewer than the 410 members of the Labour Party in the House of Commons, but more than the 229 Republicans in the US House of Representatives, say, and many more than the biggest political formation in the country previously – the 150 or so members of the old National Party in the House of Assembly in the closing years of the apartheid regime. Elsewhere in Africa, the government of Nigeria now also has more than 200 members in the lower house, but the ANC exercises more centralised control over the provinces of South Africa, which provided, in 1999, a further 234 provincial members, making the ANC's 'management' of over 500 active parliamentarians surely a considerable task.

The party acknowledged severe problems at its conference in December 2002 when it questioned whether the resources of the country could really afford such 'direct democracy' (ANC 10 May 2003). A reduction of the Assembly to 350 (as provided in the Constitution) was mooted, with proportional cuts in the provinces. 'Deployment committees' existed at national and provincial level but 'tensions and factionalism' made their functioning 'highly uneven' (ANC 7 May 2003, p 5). The party conceded that it needed 'to address the problem of some cadres not understanding that previous deployment (as a Cabinet minister, MEC [Member of a provincial executive council], mayor, etc) does not mean automatic deployment into that position or one of equivalent stature and financial package in subsequent elections' (ANC 2003).

The 'central organs' of the ANC have committed the party's most valuable human resources (the senior members of the party, including the President) to the parliamentary institution. This can be seen most clearly in the placing of the members of the National Executive Committee (NEC), the party's senior elected body. The occupational positions or deployments of its sixty members are summarised in Table 1. The NEC's non-elected components of ex-officio members (the leagues and the provincial parties) and observers, a mixed and changing group, have their role to play, but it is the capacity to win election to the central body that makes deployment at a certain level significant.

The lonely position in recent years of Mathews Phosa, the former Mpumalanga Premier, in opposition to Mbeki, need not suggest that the NEC is a united body around the President, but the 'deployment' of the others can be read directly from their seniority in the party. Party and executive offices are important, with Frank Chikane, Mbeki's head of office, the most senior of the non-Parliamentary 'deployments', elected, at eighteenth place, to the NEC. Some distancing of NEC members from senior positions in state organisations seems to be accepted; former ministers Tito Mboweni and Gill Marcus, for example, resigned from the NEC when they were deployed to the Reserve Bank as, respectively, Governor and Deputy Governor. Diplomatic postings (Jessie Duarte and Thenjiwe Mtintso), in contrast,

Table 1
NEC Deployments

ELECTED OFFICE	
Nat Assembly	34
NCOP	1
MECs	7
Premiers	3
Mayors	2
PARTY ORGANS	
Mbeki/Zuma offices	4
ANC offices	3
BUSINESS & DIPLOMACY	
Business	3
Diplomacy	2
NOT DEPLOYED	1
TOTAL	60

can evidently be held by current members of the NEC, and there is no prohibition on NEC members being 'deployed' to business, though few of them have been (cf Adams et al).

The choice of (deployment to) direct electoral politics is overwhelming, whatever the nuance of conflict and compromise in each case. Our concern is with the largest single group, the members of the Assembly, whose importance lies in more than mere numbers, as note of the other deployments shows. The presence of mayors (none was in the NEC of 1994 and only one in 1999) shows the party's increased interest in large metropolitan agglomerations of local authorities, set against its continuing scepticism about the capacity of provincial government to follow central leadership. But provincial structures will take time to unravel, if ever they do, not least because the ANC has entrenched some procedural aspects of provinciality in the party (Southall 2001). Thus the deployment of NEC members to provincial parliaments as MECs may seem simply to be a manifestation of the party's desire to get the best from a working system while thinking actively, if thus far unsuccessfully, about mechanisms of changing it. The balance of appointments shows that more than central power is at work, however. No province has more than one NEC member assigned to it, and the cabinets of three provinces (Free State, North West and Western Cape) do not contain a NEC member at all. The

pattern reflects the local power bases of key individuals and, in the case of the Free State at least, a tendency to let the provincial party 'sort itself out'.

The presence of premiers can be taken for granted even less. It is not that four of the seven ANC premiers are missing from the NEC, but that three have been able to win election to it in their own right. Until 1999, the ANC enforced the rule that premiers could only be ex-officio members of the NEC, stressing the subordination of that level of government within party structures by quarantining the individuals in office. The relaxation of the rule for three strong premiers (Manne Dipico, Northern Cape; Ngoako Ramatlhodi, Limpopo and Popo Molefe, North West – the last two in some conflict with the presidency in their governmental roles) may suggest that a 'provincial power base' can now be tolerated to some degree within an NEC otherwise resolutely 'national'.

Those in business (Cyril Ramaphosa, 'Saki' Macozoma, Max Sisulu), and the diplomatic postings, show accommodations to preserve the capacity of the individuals concerned while detaching them from the run of daily consultation of the core which, in the normal course of the parliamentary year, largely takes place in and around the parliamentary and executive offices in Cape Town.

The overwhelming preference of the leading cadres for national activity within a parliamentary framework is obvious. More than half the NEC is deployed to the Assembly, occupying about one-eighth of the caucus but virtually exclusively the most senior positions in and near the Cabinet. (The relative importance of the National Council of Provinces [NCOP] is also revealed.) The twenty most senior members of the NEC are in the Assembly as Cabinet ministers, with the exceptions only of Chikane and Cyril Ramaphosa and, until her recent exclusion from the NEC and Parliament, Winnie Madikizela-Mandela.

From the 'parliamentary side', it seems important that all Cabinet ministers are members of the NEC, with the single exception pointing to a rule that the ANC has bound itself to. The Minister of Sport, Ngconde Balfour, failed to win election to the NEC in 1997 but was appointed to Cabinet and brought into the NEC with observer status, confirmed after the 2002 conference. A precedent had been set in the case of Minister of Public Works Stella Sigcau, a NEC member until 1997 and from 2002, who maintained her ministerial position throughout and was an observer on the NEC during the period when she was not a member. Deputy ministers are drawn from both NEC and non-NEC members and from members of national and provincial lists, which serves to underline the distinctive nature of the Cabinet's membership and accountability. In practice the President has the freedom to co-opt one Cabinet member beyond the NEC, and any extension of that number would have an obvious significance.

PARTY STRUCTURE IN PARLIAMENT

During elections separate ballot papers are used to vote for the national and for the provincial assemblies. Equally important is the differences within the national ballot

which consists of two lists – one national and one provincial – each potentially generating 200 members, or half the total membership of the Assembly. These national and provincial lists distinguish ‘A’ and ‘B’ teams in ways that are central to the system of accountability the ANC attempts to achieve. Table 2 summarises the occupancy of parliamentary posts, defined by seniority as Cabinet ministers, deputy ministers, committee chairs and whips, and backbenchers, by national and provincial lists.

Table 2
Seniority by National and Provincial Lists

	NATIONAL		PROVINCIAL		Total number
	Number	%	Number	%	
Cabinet Ministers	27	100	0	0	27
Deputy Ministers	6	60	4	40	10
Committee chair, whip	26	51	25	49	51
Backbench	68	38	110	62	178
	127		139		266

The ANC is a centralising party, and accepted most reluctantly the quasi-federalism of regional government. Yet a commitment to programs of equality in social and political dimensions, centrally determined, implies a geographical and spatial indifference (or affirmative action for oppressed areas) and a capacity to represent all regions of the country as eventually agreed in an ‘equal’ way. The NCOP was the chief recognition of that in an institutional sense, but the membership of the party in the Assembly shows similarly how a provincial orientation can be organised to be subordinate but can also be compensated and entrenched to some degree. Following Faure, Pottie has noted that a provincial list ‘conforms to elements of proposals for multi-member electoral districts, albeit very large ones’ (Pottie, p 32). Although almost half the national list is on or near the front bench only one in five provincial members occupies this position. Some advancement for the latter comes in positions as whips and committee chairs, and the movement to the deputy ministry has accelerated to four from a single position in 1994. But a near limit at that level has been reached, and that is as far as a provincial list MP can go. Entry to Cabinet during the term of a Parliament would require movement or ‘redeployment’ to a place on the national list, an unthinkable move in light of the convention outlined here, implying incapacity in the national membership. The movement of members in this way would be possible, however, during an election period as the party list is formed.

Though membership of the Cabinet is effectively restricted to half the caucus, the dividing line between national and provincial lists is, in another way, deliberately blurred or re-defined in order to preserve provincial interests. That is, provincial representation is higher because of the ANC's management of the list system than a strict application of proportionality – the declared basis of the voting system – might allow. Though the A and B teams are, in principle, equal in number (133 each), in 1999 the national list was trimmed, and provincial representation augmented, by six positions, allowing a re-adjustment of the numbers in all provincial sets of members to reflect the vote of the ANC in each. The Western Cape and KwaZulu-Natal shed a nominal fifteen posts to the provinces with a better ANC vote, especially the Eastern Cape (4) and Limpopo (3). Such trimming was evident also in other parties with national and provincial representation and has been reported as a puzzling feature of the parliamentary count of numbers in South Africa (Carr 21 July 2003).

These were, to be sure, accretions and movements in the deepest backbench. Members drawn from the party's national list held all the important Assembly posts, and, exclusively, the Cabinet positions. They were elected to positions on the party list by proportionality of voting through party branches and associated organs, without regard, it was said, to race or region – 'an admirably democratic nomination process' (Adam, Slabbert and Moodley, p 87). The party executive certainly modified the lists, most justifiably no doubt to comply with the mandated issue of female representation, but national members were 'national', and not 'provincial' or regionally tied. In outcome, however, the leading group was also a distorted reflection of the party's vote, as its members were drawn most disproportionately across the provinces. The relationship between the party's mass vote and its leadership vote was almost inverse, as Table 3 shows.

Table 3
ANC Voting – Mass and National List Positions

Rank	Province	Mass vote	% Nat. tot.	Rank	Province	Nat. list %	Nat tot
1	Gauteng	2 486 938	20.3	1	W Cape	34	26.8
2	E Cape	2 411 695	19.8	2	Gauteng	28	22.0
3	Limpopo	1 780 177	14.5	3	KZN	18	14.2
4	N West	1 325 559	10.8	4	Free State	13	10.2
5	KZN	1 185 669	9.7	5	E Cape	10	7.9
6	Mpumalanga	1 072 518	8.8	6	N West	8	6.3
7	Free State	1 059 313	8.7	7	N Cape	7	5.5
8	W Cape	714 271	5.8	8	Mpuma	5	3.9
9	N Cape	201 515	1.6	9	Limpopo	4	3.1
		12 237 655	100.0			127	100.0

The ANC draws its voting strength from the north and the east, but members who live and have a political base elsewhere hold most of the leading positions in the party. The Eastern Cape and Limpopo provide more than a third of the vote but barely 10% of the leadership. Gauteng, KwaZulu-Natal and the Free State provide somewhat more than their notional share, but it is the Western Cape (with less than 6% of the total ANC vote in 1994) that provides fully a quarter of the leadership – a representation that carries through to Cabinet, where six ministers are identified with the province.

The national list is decidedly 'non-provincial' in its ostensible orientation, and its national mission is defined against certain 'provincial guarantees', some described here. However, the leadership of the party also draws on specificities of geography and history that carry individuals selectively to positions of power. The tardiness in relocating the meeting place of Parliament from Cape Town to Pretoria might owe something to the convenience and allegiances of the largest bloc in the party, but more fundamentally preserved in this 'distortion' are the ANC's own minorities of race. An evaluation of the ANC's argument that it is a multi-racial party cannot ignore the 'special case' of the Western Cape. This section of the leadership was one of the most volatile after the election, we note below.

A provincial 'skew' is neither precluded nor favoured by a party rule but emerges 'naturally' in the national leadership. An 'affirmative action' policy for Limpopo to raise 'its' number of representatives on the national list cannot be expected, for the same reasons that the national list is held to be exempt from the gender requirements otherwise prevailing (Pottie, p 211). Nevertheless, provincial identity is respected in the matter of replacements for departing members – those replacements in the period after 1999 maintained overall the distribution of the membership at the time of the 1999 election. This result might be expected in the case of provincial list members, to maintain the 'profile' of the provinces, as discussed, but in the case of the national list the same observed constancy requires a different explanation. Mere efficiency in maintaining constituency and electoral addresses across a parliamentary term might be sufficient to explain the 'custom' – which, all the same, is based on certain, if possibly temporary, accommodations of local expectations. Though members generally are reported to be 'loosely assigned to constituencies across the country, if ... party whips so choose (Bridgman, p 71)', the ANC has, since the election, set a higher standard for itself, with attendant risks. A list system made to work with geographical accommodations sets expectations of the ANC as its managing party accordingly.

The identification of members with particular provinces was not necessarily a simple exercise, as almost any case will show. Thus Jacob Zuma's need to escape a continuing close identification with affairs in KwaZulu-Natal on his appointment as Vice-President in 1999 (when he also led the deployment committee of the NEC) left him a parliamentarian, and he had as much need as any to show a local identity, at least on occasion. Something akin to a nominal constituency in an old territory was not likely to bring benefit to him, however, so ANC lists and literature (including

prominent pictorial identification) showed Zuma from 1999 in the Northern Cape – as far as it was possible to be from his former home. In most other cases it is equally clear that provincial identification in office and home location indicates an historical location in an area, from which the member concerned has built a base.

GENDER

The ANC's goal of one-third female representation in its organs was adopted at the party conference of December 1994, six months after the election delivered a female membership of almost 30% in the National Assembly, and was probably reached in mid-term with those who replaced some of the early departing members of the Assembly. By the 1999 election the party lists allowed a substantial increase from the position of 1994, augmenting the female membership of the caucus by more than twenty women members, the proportion overall reaching 36%.

The proportion has increased slightly in the years since, following the pattern of new appointments reported generally in this paper, at least until the floor-crossings of March 2003 brought six members (all male) from the United Democratic Movement (UDM) and eight new appointments direct to ANC ranks to fill a then substantial number of vacancies. Table 4 summarises the period until then, distinguishing seniority, as between backbenchers and chairs of committees and whips, only for the current period when accurate data are available.

Women members have moved upwards as well as inwards – one to Cabinet and two to the deputy ministry – and more generally to positions as whips and committee chairs, to the extent indeed that the ANC backbench is greatly diminished as a pool of female talent for promotion. The period of floor crossing and new appointments brought numbers only to the backbenches and accentuated the party's problem with maintaining the balance there. Fewer than twenty women from the national list were still on the backbench by mid-2003, a proportion that barely met the party's requirements.

Critics have pointed to the dangers of fetishising parliamentary numbers, arguing that women's 'now close to equal participation in government [sic] has come at the price of weakening the mass-based women's movement that was the driving force behind SA women's move into Parliament' (Geisler 2000, pp 626-27), and, as far as the ANC is concerned, it is not unlikely that there might be a 'straight-line' projection from 1994 to 1999 and beyond (which might achieve parity in about a decade). Equally, the ANC's performance is widely scrutinised, not least by international bodies that have identified female membership as a key objective (Myakayaka-Manzini April 2003). It is certain that the ANC is committed to more than the 'minimum' of a one-third quota in its representation in Parliament, where the party's control of the lists and a desire to overcome 'resistance' to the quota must lead to an attempt at exemplary action (ANC 10 May 2003).

The provincial parliaments are not a source of recruitment, however, as there are relatively few women members there. What was intended as a scale of

Table 4
Women Members ANC, Assembly 1994-2003

	1994				1999				2003			
	M	F	Total	% F	M	F	Total	% F	M	F	Total	% F
Cabinet Ministers	20	3	23	13.0	17	9	26	34.6	16	10	26	38.5
Deputy Ministers	10	3	13	23.1	3	7	10	70.0	3	8	11	72.7
Backbenchers (inc. chairs, whips)	149	67	216	31.0	150	80	230	34.8	143	78	221	35.3
Chairs, whips									31	19	50	38.0
Backbenchers (excl. chairs, whips)									112	59	171	34.5
Totals/overall %	179	73	252	29.0	170	96	266	36.1	163	96	258	37.2

competence – from provincial to national parliaments, and from provincial to national lists in the Assembly – is stretched at both ends. The proportion of female members on the provincial list in 1999 reached 38.1% and the national list only 32.3%, giving support to the view that the provincial list is more easily managed for affirmative action than the national, where election is supposedly without regard to gender. It seems possible that an increased number of ‘lateral appointments’ will be made to the national list in the Assembly, with new members from civil society, perhaps, filling ‘the vacuum that now exists between South African women and the parliamentarians who are expected to represent their interests’ (Geisler, pp 626-27), or fulfilling ‘commentary ... that the quiescence of ANC women MPs results from their allegiance to the party, their domination by male party bosses, and their need to retain their ranking in the list system to secure re-election’ (Southall 2000, p165).

THE FORMER MEMBERS OF 1999

Of the ANC members of 1999, as noted, sixty had ceased to be members by May 2003. Death took seven, one of whom was murdered (it was questioned whether Robert Mkize, flagrantly shot dead by a police officer, was a political victim). The post-Assembly careers of the others are summarised in Table 5, distinguishing national and provincial lists.

Table 5
Former Members of the National Assembly: Career Moves

		National list	Provincial list	No.	%
State & Party Bureaucracy				16	30.2
Diplomats	6	3	3		
Govt Depts	3	0	3		
ANC Org	7	2	5		
NCOP, Prov & Loc Govt				12	22.6
MECs	5	3	2		
Mayors	4	1	3		
NCOP	3	2	1		
Business & Civic				6	11.3
Bus	5	3	2		
Civ	1	1	0		
Political Exits				16	30.2
‘Stormy’	8	6	2		
‘Managed’	7	3	4		
Uncertain		0	4	4	5.7
				54	100.0

Positions in and around state and party organisations, especially in diplomacy and provincial government, were clear enough cases of 'deployment' in the conventional sense, even when some posts implied more the end than the flourishing of a reputation in the party. As with deployments from the NEC, diplomatic positions are reported to have been used to remove some dissidents, especially around the 'arms deal', though not all diplomatic postings can be so characterised.

Deployment to positions in the party apparatus were important at different levels – in leading roles (as with Ebrahim Ebrahim in Zuma's office and Malusi Gigaba with the Youth League), but also as a route for a number of women activists who had served in the first Parliament (Ela Gandhi, Ivy Gcina, Lizzie Abrahams, Elizabeth Phantsi) to 'step back' from parliamentary to party activity, to be replaced overall, as noted, by younger female members.

Deployments of this sort took place across national and provincial lists, as might be expected if largely 'tactical' decisions were being made about a member's fit with circumstances – for example in deployments to MEC positions where a regional identity was important – as with Nomatyala Hanganana in the Western Cape and Frances Marshoff in the Free State. The aversion of national list members to executive positions in state organs was notable, but overall it seems clear that the party's deployment of its central cadre is a useful but limited tool of power.

If half the departures were 'official', almost as many clearly were not. These were 'stormy exits' of varying character. A few (Yengeni and Increase Ncinane, following convictions for financial offences) were disposed of through legal process, making them, in a narrow view, not political at all. More complicated fallings out left Phosa, Jay Naidoo and Z Pallo Jordan in ambiguous circumstances, but certainly still 'in politics', not least as members of the NEC.

Other departures on principle related to the crisis over the 'arms deal', some part of which was, it has been suggested, resolved by posting dissidents to diplomatic positions that were not negligible but were notably distant. Some, like Andrew Feinstein, departed for the private sector. Those reported as moving from Parliament, but without task announcement or later publicity, are classified here as 'managed exits'. Continuing extra-parliamentary work within the party, and possible re-emergence to public office, might not be precluded in these cases, but some fall from grace was implied. There are cases, no doubt, of 'deployment out' of elected office and public life. Many 'deployments' were forced upon the party rather than planned, and only about half of those reported were deployments in the sense that ANC policy demanded – largely to the party organisation and political and administrative positions in the provinces. The rest were mixtures of expediency, compromise and survival – not irrelevant characteristics in evaluating the nature and outcomes of intra-party dissent in the ANC. If about a score of the ANC caucus were more or less successfully deployed in the period, the scale of deployment seems to be less than critics imply. If rather more than that number left the Assembly for reasons other than 'deployment', issues of internal party democracy need both case-by-case and systemic investigation.

The ANC is troubled politically both by the 'arms deal' and by the court decisions in the cases of Yengeni, Ncicane and, later, Madikizela-Mandela. Their wrongful use of parliamentary office 'proved' to some in the media that earlier allegations of possible corruption in the party were correct; to others that the ANC had weeded out some incompetent members; and to still others that the party had been forced to act, while leaving some members of doubtful quality in place. None of these suggestions seems well founded and, in this context, it seems preferable to support a more general conclusion, that 'opposition as behaviour has been ... extensive ... within the ruling party' (Southall 2001, p 275).

It is not clear that the casualties of politics were made easier by a list system that had replacements always ready. Redeployment is one thing, finding a replacement may be another. Since the election of 1999, the party has been required to find new members (taking provincial parliaments into account at the same assumed rate of turnover) at the rate of close to one a week. Replacements must be filtered through the requirements of parity of region (with regard also to provincial orientation even in the national list), and of better than parity in gender. The Assembly is the main site of deployment when the largest body of senior officials in the party is there, but the training and deployment of cadres at lower levels who are capable of promotion to their place are crucial issues for the party.

The sixty replacements considered here did maintain the national, provincial and gender profiles of the members elected in June 1999 with slight modification (an increase, as noted, in the proportion of female members overall) but lags between resignations and replacements could be prolonged – in the first year, the translation of a third of the replacements took more than three months, and in three cases more than six months, to effect. Vacancies were part of the system and, just before the floor-crossings of March 2003, had reached eight. These were small but not negligible numbers, and suggest that managing the system to find formally suitable replacements within Alliance identification has put strains on party capability.

CONCLUSION

One reading of the account above might reiterate the claim that the list system of voting allows 'the party leadership to place loyalists in key positions, and at the same time compensate those who have lost out in internal power struggles through redeployment to comfortable but less strategic posts' (Giliomee, Myburgh and Schlemmer, p 170). This view may, however, over rate the power of the leadership. The same authors (p 172) identify the ANC's ambitions in drawing up 'a comprehensive deployment policy and strategy' that would establish 'committees at national, provincial and local government level to oversee the deployment process and ensure that party members remain accountable after deployment' but these are the arrangements that the party has declared are functioning with difficulty. Southall's caution that the critics may 'overstate the capacity of the ANC to impose itself upon society' seems nearer the mark. The party's 'efforts to curb dissent may

be interpreted as as much an indication of its weakness as its strength' (Southall 2001, p 282).

Any likely electoral strategy will present the ANC with problems in managing its dominant cadres, and more salient issues might include the balance of NEC membership between the national and provincial parliaments and local government, and the continued recruitment and training of entry-level cadres to provincial structures.

The ANC has frankly acknowledged its problems, and it cannot be said that a single line of policy characterises the party, or that one faction of its leadership is dominant to the exclusion of effective opposition on such issues as party recruitment and training, or the 'choice' of electoral and voting systems. This is not to deny that an executive decision, for example, could change the content of policy relatively quickly, but the issues of political mobilisation facing the ANC are not likely to be ameliorated by changes in, say, electoral processes. Problems of mobilisation are acute for all political parties – participation rates in elections appear to have been in steady decline since 1994 (Africa, Mattes, Herzenberg and Banda 2003, pp 4-5) – but the ANC's attempt to reflect its ideology of equality in its parliamentary body presents special dilemmas. There may be opportunities for the organisations of civil society, and especially women's organisations, to fill a need in the party but mobilisation from any source must carry risks for an existing leadership.

Our study of the Assembly over a brief period of some four years cannot show that the ANC is able to operate a 'merit' system of recruitment and advancement, and there may be enough 'special cases' to show, at least, that some bad early decisions were made; but the overweening power of the presidential executive, though asserted, has been less than absolute, and compromise as much as conflict and banishment has marked the passage of many members through the Assembly. The making of the party lists for the 2004 election will show the next stage.

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REVIEWS

Compendium of Elections in Southern Africa

Edited by Tom Lodge, Denis Kadima and David Pottie

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This compendium examines the wave of multi-party elections that has swept across Southern Africa since 1989. Botswana, Lesotho, Mauritius and Zimbabwe have long histories of regular multi-party elections, notwithstanding the success of dominant parties in holding onto power for long periods. Between 1989 and 1993 they were joined by Namibia, Zambia, Angola and the Seychelles. 1994 proved an election-filled year, with elections in Malawi, Mozambique and South Africa. The following year Tanzania held elections. Only Swaziland and the Democratic Republic of the Congo (DRC) withstood the wave. Since 1995 most of the countries in the region have held another round of national elections as well as local elections. Elections have become a pivotal element in the political landscape of Southern Africa.

The volume comprises a set of country studies. Each chapter follows a general format, providing information on the context (geographical, social and economic) and historical background, the elections and the results, and finally (and generally in most detail) the electoral system, especially the management of the elections. Fourteen countries are covered, including Swaziland and the DRC. There are separate chapters on Tanzania and Zanzibar. Mauritius and the Seychelles but not on Madagascar (without obvious explanation). The volume covers elections up to 1999 reasonably thoroughly, and elections between 2000 and early 2002 more superficially; it is clear why discussion of the elections in late 2001 (Zambia) or early 2002 (Zimbabwean presidential elections, Lesotho parliamentary elections) had to be confined to postscripts, but it is not clear why the 2000 elections in Mauritius and Tanzania are also treated skimpily.

The summaries of elections are brief but necessary, because they set the stage for discussions of electoral systems and management. What the accounts do is to show how difficult it is to categorise elections as 'successful'. Some elections are obviously 'unsuccessful', in one or other sense. These include Angola in 1992, Lesotho in 1993, and Zanzibar in 1995 and 2000. In each of these cases a close result contributed to political crisis and violence. In Angola the MPLA secured a majority in the legislative elections but the MPLA's Santos failed to reach 50% in the presidential elections. Unita's Savimbi, who won 40% of the presidential vote, refused to accept the result. No second-round presidential election was held, although Unita's key sponsor (the USA) recognised the elected MPLA government and ceased backing Savimbi. In Zanzibar neither the CCM nor the CUF accepted that the 1995 elections were fair until the CCM was awarded victory (and decided to change its tune!). In 2000, amidst chaotic administration, the CCM won again, more convincingly – but the CUF continued to refuse to accept the results, with an

ensuing saga of rerun elections, boycotts, violence and the summary dismissal of opposition MPs for boycotting the legislature. In two other cases – Zambia in 2001 and the presidential election in Zimbabwe in 2002 – the elections were clearly so deeply flawed that they cannot be considered successes. None of these elections can be considered clear successes.

But even some of the elections conducted ‘fairly’ had flaws that make it difficult to declare them successful. Electoral systems frequently produce outcomes that are difficult to consider fair; undermining the legitimacy of the elections; contributing to discord and prompting, in some cases, the losers to refuse to accept defeat. Westminster-style first-past-the-post electoral systems result in dominant parties enjoying disproportionately large majorities in several countries (including Tanzania and Botswana as well as Lesotho before the recent reforms). In both 1994 and 1999 the BDP in Botswana won only 54% of the vote but the lion’s share of the legislative seats. In Lesotho in 1993 the BCP won 75% of the vote but all of the seats; in 1998 the LCD (a splinter party from within the BCP) won 61% of the vote and all but one of the seats. In Mauritius, a hitherto competitive party system gave way to a period of dominance by a coalition of parties. Although the electoral system was not purely first-past-the-post, there were too few proportionally allocated seats to make much of a difference. The same is true of the Seychelles. Judged in terms of these outcomes, none of these elections can be considered successful.

Another problem is the advantage enjoyed by incumbents. It has been exceptional during this period for elected incumbents to be thrown out of government as a result of an election defeat. The broadened franchise allowed the African National Congress to oust the National Party in South Africa in 1994, and multi-party elections allowed former single parties to be defeated in Malawi in 1994 and Zambia in 1991. Some elections have been genuinely competitive and broadly fair: Malawi, Mozambique and perhaps South Africa in both 1994 and 1999, and Zimbabwe in 2000 (parliamentary elections). But there is no clear case of an election conducted fairly that resulted in the defeat of an elected incumbent government.

Given this sorry record, reform of both the electoral system and the institutions of election management assumes great importance. This volume pays some attention to electoral systems. Unfortunately, a key reform – of Lesotho’s electoral system, used for the first time in 2002 – was too recent to receive detailed and critical comment. Lesotho’s reform raises important lessons for other countries in the region because the legitimacy of the electoral process is likely to be enhanced if losers secure ‘fair’ representation. Lesotho’s first-past-the-post system was replaced with a ‘mixed member proportional’ system, in which one-third of the seats were allocated according to parties’ shares of the total vote, taking into account the seats won in constituencies. In 2002 the opposition parties won just three constituency seats but all forty of the PR seats, resulting in a Parliament that reflected more proportionately the electorate’s preferences.

This volume documents in more detail the electoral administrative machinery. How independent are electoral commissions? How are voters registered? How are the boundaries of constituencies demarcated? How are parties funded? Appendices set out the electoral 'norms and standards' developed under the auspices of the Electoral Institute of Southern Africa, and key features of each country's electoral system and machinery. These are the issues that are going to be increasingly important if Southern African elections are to serve as the means by which electorates can effectively hold their governments to account.

As with any compendium, some readers will find the contents useful whilst others will find them frustrating. The summaries are often superficial; key works on the countries are overlooked; the discussion of electoral machinery may be uncritical; and no clear 'argument' emerges (at least not until the Appendix on norms and standards). Thematic comparative chapters might be more incisive than country case studies. But further work will no doubt take this forward in a more critical and incisive direction. What this compendium provides are strong foundations on which further work can be based.

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One Woman, One Vote: The Gender Politics of South African Elections

Edited by G Fick, S Meintjes and M Simons

The Electoral Institute of Southern Africa

Within current literature, elections as a yardstick for democratic politics are increasingly under critique. A number of scholars observe that the study of democracy has suffered from disproportionate emphasis on elections, principally anchored within the Schumpeterian definition of democracy that centres on contestation (Harbeson 1999; Luckham, Goetz & Kaldor 2000). In other words there is a recognition that elections can no longer be conceived as the only measure of democratic politics, at least in the way that Huntington and the others conceived them. However, elections remain a specific and significant icon in the political process, particularly in the context of new democracies such as South Africa. This calls for a re-theorisation that takes cognisance of this space without collapsing into the reductionism that characterises conventional definitions of politics. Furthermore, a serious lacuna exists in terms of documenting the gender dimension of electoral process, especially in the African context, since, as the authors of this book rightly argue, much of the theory is based on the experiences of the North. *One Woman, One Vote* is therefore a great contribution to addressing the abovementioned gaps in the literature.

The book addresses itself to the following questions: How does gender shape the form and character of the electoral process and representative democracy in South Africa? What does 'the politics of presence' mean for the diversity of South African women in politics? The authors generally explore why the presence of women in politics is important; what the representation of women as a category means; and the strategies used not only to get women into politics but also to create mechanisms of accountability in political party contexts.

In the opening chapter, entitled 'Women and Democracy, Women in Democracy, Gender and Democracy', Sheila Meintjes and Mary Simons deal with the debate on gender and democracy from an historical perspective. They demonstrate the fact that the struggle for representation in the governance of South Africa was born out of a multitude of complex arenas principally relating to apartheid oppression and the stiff mass resistance to it. Specific characteristics of this resistance were the active mobilisation across races (black and white) and the particular way in which black, coloured, Indian and white women mobilised in joint organisations to fight the oppression of segregation and apartheid. A particularly interesting observation is that throughout the twentieth century women's mobilisation in South Africa rotated around the identity of motherhood. Rather than view this as a complete setback, the authors observe that the identity of motherhood 'mobilised women for a broader political struggle'. 'Rallying around motherhood made it easier for women to step into the political space, and harder for men to object' (p18). This very fact enabled a far larger number of women to enter the arena of struggle against state oppression. Much more importantly, it had a broader effect in terms of ultimately creating a deeper location and relative legitimacy of women in the definition of the 'New South Africa'.

The chapter by Cathi Albertyn, Shireen Hassim and Sheila Meintjes takes on the issue of representation and participation outcomes for women. With 27% women in parliament South Africa ranks high on the world scale in terms of women's representation – well beyond the regional average (about 11%) as established by the Inter Parliamentary Union (IPU). The concern of the authors then relates to the question of 'women making a difference', interrogating conventional wisdom in gender debates that attempt to link women's representation in parliament to the positive impact on the gendered nature of laws and policies of the country. Employing what is termed 'indigenous historically based concepts and practices of democracy and equality' (p 25) the authors argue that the increased presence of women in the legislature is not only politically and theoretically justifiable, but is also desirable on the basis that a more representative parliament is a more effective institution. This also relates to the whole issue of citizenship addressed by Fick in chapter three, where the author engages with the complexity of the category of citizenship beyond formal definitions to take into account structural limitations to women exercising the right to full citizenship.

In chapter four Julie Ballington documents the mechanisms that enabled women to become representatives, and the importance of the critical mass of women

in parliament. Dealing with political parties, gender equality and elections in South Africa, Ballington demonstrates the significance of political parties and electoral systems to the presence or absence of women in national legislatures. She demonstrates how, in the context of South Africa, the ANC's commitment to a quota in favour of women has enhanced their representation, making a radical shift from the apartheid era where, for instance, between 1910 and 1980 only 19 (white) women had ever held seats in the House of Assembly. Two other important factors that are analysed relate to women's activism throughout the liberation struggle and the PR electoral system adopted in 1994, especially in the context of the landslide victory of the ANC.

In what she terms the 'dual politics of representation' Shireen Hassim, in chapter 5, is concerned with bringing out the distinction between women's participation in party politics and women's organisations in civil society, and how women as a group came to constitute an electoral constituency in South African politics. Part of the concern also relates to the relative demobilisation of women's organisations as most key actors ascended to political and government posts in the new democracy. Hassim makes a compelling case for greater numerical representation of women, without pre-judging the ways in which representatives will take up gender inequalities once they are in the legislature. She also argues that a critical mass has the potential to dilute the dominance of the hegemonic group, creating space for a variety of interests to be articulated.

Amanda Gouws (chapter 6) considers the gender gap in voting behaviour and argues that where men and women vote on the same issue there will be no such gender gap. Gender gaps arise at three levels: one, between the level at which they participate as voters and at which they become representatives; two, between the presence of women representatives and their effective participation in policy making; and three, between participation in the legislature and appointment to executive positions.

In chapter 7 Ballington examines the need to encourage women's participation in elections through voter education, with the aim of accounting for the successful democratic process of mobilising and educating all South Africans, despite substantive differences in race, gender and class. The analysis looks at voter education at both national and local government level, with specific emphasis on education directed at women voters.

Do electoral systems matter? This is the question addressed by Meintjes and Simons in chapter 8. The authors explore electoral models from a gender perspective and examine the argument normally advanced that proportional representation (PR) systems are better for women. Through a concise historical account the chapter shows how PR was preferred by the different parties involved in negotiating the Constitution of the 'New South Africa', in view of its potential for representing diversity. However, the argument here is that PR on its own does not seem to answer the question but rather other factors, including open or closed lists, and positive measures such as quotas and economic empowerment have to come into play.

In chapter 9 Alice Coetzee and Subethri Naidoo consider the significance of local government to women and suggest that women should be fully involved at this level, as an arena of development and local service delivery. The authors once again disprove one of the conventional arguments that women find it easier to participate in local level politics because it is closer to their domestic responsibilities. Evidence is given to suggest that women have increasingly been squeezed out of local decision-making and that, in fact, gains at the local level have been brought about mainly by the intervention of organisations and lobbies at the national level. The chapter shows that the representation of women varies from council to council, with a tendency for more representation in urban as opposed to rural areas, and in constituencies where the ANC dominates. More importantly, the authors observe that the patriarchal nature of councils, both in structure and operating culture, calls for conscious and continued mobilisation of gender activists at local government level if gender transformation is to be achieved beyond numbers. In the same chapter, David Pottie's postscript provides a brief update of women's representation after the local government elections in December 2000, conducted on the basis of a mixed system (Ward and PR). The figures presented correspond to a general pattern of party support, suggesting that while South Africans are willing to elect women as ward councillors, their choices are primarily determined by party preference. Once again the positive effect of the ANC's dominance is very clear in the figures provided.

The checklist for gender equality in elections that is provided in the appendix is an invaluable instrument that countries and gender activists can employ in voter education, election monitoring and other related activities in the gender struggle.

The book contains a wealth of information, dealing with wide-ranging facets of the gender politics of elections. *One woman, One Vote* combines theoretical engagement with concrete historically grounded analysis of the national and local government elections in post-apartheid South Africa. The authors engage carefully with debates in feminism (and / or feminist critique of political theory) and the whole notion of transition politics, blending this into the understanding of the gender politics of the elections in South Africa.

The analysis offered by the different authors critically subjects feminist debates to concrete enquiry, bringing out some useful generalities and specificities. For example, the discussions on quotas for women and the arguments that different parties gave in favour or against, especially during the negotiation process, offer a useful comparison with other countries such as Uganda and India, where quotas have had contradictory consequences. Indeed, the book demonstrates the need for gender analysis to take on the concrete politics such as the role of electoral systems. These cannot be considered in a social vacuum but rather depend on a range of other factors. The case of South Africa, for instance, where the role of the PR system has been enhanced by the landslide victory of the ANC and the gradual contagion effect to other parties is very revealing. The book makes a unique contribution to the theorisation of women's location in transition politics especially in relation to

positive gains, as opposed to concentrating on how women normally lose out in such situations. The role of the Women's National Coalition (WNC) brings out the other side of women's position in transition – not that of a victim but rather as a legitimate actor in the definition of a democratic South Africa.

The book, however, does not document lived experiences of men and women, for instance in selection and other party activities, which would have breathed more life into the analysis. The reader would have been more interested to see how the actual gender terrain is unfolding in the new South Africa with regard to people's identity and interaction in such processes. In that way, the book would have adequately re-theorised conceptions of issues like citizenship, as well as broadened the definition of the political generally, to offer a fuller understanding of electoral politics in South Africa. Furthermore, the role of traditional authority is assumed rather than problematised. It would be interesting to find out why, despite the strides made, we still have to talk about 'the role of traditional leaders'. What is going on here? What do we mean by traditional? Is it the same thing at all times? Who are the actors? Who is in who is out and with what consequences with regard to electoral politics?

Despite these minor shortcomings, the nine chapters constitute a fine collection of ideas. *One Woman, One Vote* provides new insights into the understanding of gender and electoral politics in the South generally and the politics of transition in particular. The authors also employ a unique style that makes difficult arguments seem self-evident. This is a book that scholars, activists and development practitioners grappling with the question of gender equity in political space cannot afford to ignore.

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*Security and Politics in South Africa: The Regional Dimension**

By Peter Vale

UCT Press; Lynne Rienner Publishers

This is an important and impressive book, and one that I hope many will read and talk about. Writing with verve and passion, Professor Peter Vale, the recently appointed Nelson Mandela Chair of Politics at Rhodes University, provides a lucid and groundbreaking analysis of South Africa's post-apartheid regional security system. It is a complex book, at times necessarily theoretical, at others deeply historical, and always richly comparative and insightful. It is one of those rare books that makes new connections from old themes and adds new themes to understanding South African politics and history. The main argument of the book is straightforward and both damning and liberating: South Africa has failed to transcend regional dominance, differentiation and exclusion based on the interests of the powerful in the new nation state after 1994; whereas histories and flows of people, ideas, communities, needs and futures are based on an integrated regional whole that could and should transcend the narrow interests of the nation state itself.

Professor Vale shows how the idea of Southern Africa is a product of modernity. Although modernity has delivered much to Southern Africa, it has delivered only one way to order the political. He says we need to look beyond states for new forms of community and thus also new understanding of what makes up the region. The opposite of this is the idea of sovereignty, upon which is based much of what makes up security in the region. Sovereignty, he says, is a weasel-word, easily twisted to suit the purposes intended by the South African state, its builders, and its long time patron – capital. In short, he argues, states have failed to deliver community in Southern Africa, and the post-apartheid state is as guilty of this as were its predecessors. Social constructions of Southern Africa are made and remade through intricate forms of human interaction, historically and in the present day, and this is why, looking beyond states for new forms of community promises to deliver an entirely new understanding of what constitutes region.

It is only in these new ways then, Peter Vale argues, that we can overcome security and community as forms of terror and violence. We need to think of the region as a place of multiple belongings, rememberings and communities of interaction; a place where the everyday and the social form the way to secure the everyday life of people, free from violence, terror, and the sovereign state, with its agents, agencies and orthodoxies of forced security. The sovereign nation-state, building the same old communities and behaving as of old in the region is not, Professor Vale reminds us again and again, the natural order of things. Things can change, they must change, and the vision for the future offered by this book is one I would choose any day.

Prof Gary Minkley FHISER

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