

# JOURNAL OF AFRICAN ELECTIONS



Volume 3   Number 1   June 2004



JOURNAL OF AFRICAN ELECTIONS

Vol 3   No 1   June 2004





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# Journal of African Elections

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Published by the Electoral Institute of Southern Africa  
2nd Floor The Atrium  
41 Stanley Avenue  
Auckland Park  
Johannesburg  
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P O Box 740  
Auckland Park  
2006  
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ISSN: 1609-4700

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Layout: Sue Sandrock  
Printed by: Global Print, Johannesburg

Cover photograph: Reproduced with permission of the  
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Editorial correspondence, including manuscripts for submission and books for review, should be sent to:

The Editor, Journal of African Elections

Electoral Institute of Southern Africa

P O Box 740

Auckland Park 2006

South Africa

Business correspondence, including orders and remittances, subscription queries, advertisements, back numbers and offprints, should be addressed to the publisher:

Electoral Institute of Southern Africa

P O Box 740

Auckland Park 2006

South Africa

Tel: +27(0)11 482 5495

Fax: +27(0)11 482 6163

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# MAKING DEMOCRACY WORK IN AFRICA

## *From the Institutional to the Substantive*

By  
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### ABSTRACT

*This paper argues that democracy can better facilitate and promote development when it is transformed from the institutional level, where it was at the time of transition, to the substantive level, where it is more likely to yield the 'dividends of democracy' and become more relevant to the lives of ordinary citizens. This transformative process at a minimum requires the institutionalisation of participation/citizen empowerment, accountability and legitimacy. After making the point that democracy and development are mutually reinforcing, the paper examines how human rights and elections can be strengthened to serve these purposes.*

### INTRODUCTION

The 'liberalisation' of political space that came through pluralism, multiparty politics and constitutional reform in the wave of democracy which swept through Africa in the 1980s and 1990s was a major achievement on a continent where authoritarian one-party and military regimes previously held sway. However, because the ensuing democracy was in many cases the product of conditions imposed by Western powers and/or the diffusion effect of the globalist triumph of liberal democracy, emphasis has tended to be laid on building formal democratic institutions and structures. A number of countries, especially those that have institutionalised periodic elections and functioning legislatures and established human rights commissions and constitutional courts, seem to have done well in this regard. But, as the experience of many of them has shown, democracy is not simply about satisfying theoretical expectations. For example, it is not about the electoral defeat of unpopular or

discredited incumbents (the euphoria of 'regime change' does not last long!) or, for that matter, about holding periodic elections.

Rather, the democratic project is about and for citizens who have stakes in the project and expect dividends from it. Ordinary citizens who queue for long hours to cast their votes, or take part in riots and demonstrations to oust authoritarian governments, and those who lead and join reform-seeking social movements and political parties, as of legitimate right, expect immediate and long-term dividends. Political scientists and policy analysts have engaged in the search for how best to establish the link between formal and substantive democracy with a view to making democracy more workable and meaningful in the lives of ordinary people. The focus on human rights, which the USA under Carter spearheaded as a foreign policy objective in relations with Third World countries, was one of the earliest fruits of this search.

The concern with third generation rights represents a more recent face of this trajectory. The 'invention' of the governance perspective, which has been embraced by most donors, following in the footsteps of the World Bank and IMF, and the premium placed on accountability, participation, decentralisation, transparency, constitutionalism and the rule of law as key governance variables, represents another landmark in this search.

But by far the most conceptually and theoretically profound effort to bridge the gap between formal and substantive democracy is to be found in the democracy-development or *developmental democracy* perspective. This perspective rejects the notion that democracy can be desired for its own sake, and ties the necessity and utility of democracy, especially in Africa, to its role as a promoter and facilitator of just and equitable development. The major underlying premise is that the underdevelopment of most states on the continent, and the conflicts and wars that originate from structural injustices and inequalities (which constitute some of the defining elements of underdevelopment) are attributable to the non-democratic regimes (military and one-party systems) that dominated the African political scene in the 1960s, 1970s and 1980s. But what exactly is the nature of the link between democracy and development, and how has it played out in Africa? How can democracy become deeper and more substantive? Put differently, how can we ensure a movement from legalistic and pseudo-democracy to real democracy? What roles do elections and human rights play in this process? These are the key questions around which this paper is organised.

It begins with an elaboration of the democracy-development nexus in the light of the African experience. This provides the backdrop for examining issues of elections and human rights in the sections that follow. The final section presents the conclusions and recommendations of the paper. The central argument of the paper is that the process of transforming democracy from the formalistic level to the more substantive level at which it can facilitate development depends on making the system more participatory and accountable. This is why elections and human right are crucial to the process.

## THE DEMOCRACY-DEVELOPMENT NEXUS

The link between democracy and development has long been recognised by political scientists. Following the precepts of modernisation theory, which dominated (Western) social science until the late 1970s, the link was typically posed as a sequencing problem in relation to Third World countries whose democratisation was supposedly part of the modernisation process of becoming more like the West<sup>1</sup>. Was democracy a precursor of development or its consequence? Could democracy thrive without development? Adherents to the 'social and economic prerequisites' school argued that relative affluence (as opposed to poverty), capitalist growth, high levels of literacy, industrialisation, urbanisation, national cohesion, participant political culture and vibrant civil society were necessary conditions for the survival and consolidation of democracy (Lipset 1981; Lipset et al 1993; Przeworski 1991; Diamond 1992, 1993, 1997). The insistence by the Bretton Woods institutions and the international donor community on economic reforms, including structural adjustment and marketisation as concomitants of democratisation (or political reforms), which represent the 'new' neo-liberal wisdom, is also informed by the old precepts.

These postulations, however, raise some basic conceptual questions. Are the processes of democracy and development really sequential or are they simultaneous and mutually reinforcing? Are the so-called necessary conditions for democracy not, in fact, more likely to be the results of thriving democracy rather than vice versa? The history of liberal democracy in the West suggests that the processes are simultaneous and mutually reinforcing. In the African case, democracy's chances of survival and consolidation would be very slim indeed if economic development and modernisation were necessary conditions – not when Keller (1995, pp 228) has added 'a democratic past' to the list of requirements. With only fifteen countries on the continent having adult literacy levels above 50 per cent; less than 30 per cent of the labour force in most countries employed in the industrial and service sectors (the vast majority belong to the category of Hyden's (1980) 'uncaptured peasantry'); the average income per capita for countries in the poverty category (and they are in the majority) being less than US\$300, and the burden of foreign debts and debt servicing being so crippling that many countries have to depend on donor aid to run government budgets (cf ADB 2002), it will be something of an uphill battle to get democracy working in Africa.

To get it to work, a different sequencing of the development-democracy processes – assuming the sequence was really more than a conceptual construct – is necessary. This is because, first and foremost, democracy has great potential to be a facilitator of development in Africa – in fact, its success or failure hinges on the

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1 The issue of democratisation as a form of Westernisation has been resolved, at least for now, with the triumph of liberal capitalism as one of the major World Time markers in the post-Cold War period.



economic performance of elected state power holders. The notion of 'democracy dividends'<sup>2</sup> that has been popularised in a number of African countries to represent the 'expectations of democracy' akin to the 'expectations of independence' clearly reflects this point. This is the essence of the concept of leading African social scientists of democratisation as liberation, and especially of the phase of the 1980s and 1990s as 'second liberation' (Ekeh 1997; Osaghae 2001). As it is, democracy will be nothing if it cannot bring about (or provide the enabling environment for) social and economic transformation and tackle chronic problems of legitimacy, peace, security, poverty, social and distributive justice, illiteracy, disease and participation.

It is instructive that the few African countries, for instance Botswana, that have managed to remain (at least nominally) democratic – or have some democratic past – have not only recorded high levels of economic development but have also enjoyed relatively high political stability, peace and security, which are also crucial referents of development (Kieh 1996). Conversely, countries such as DR Congo, Liberia, Sudan, and Nigeria, which also have the potential to be some of Africa's richest countries but in which authoritarianism and despicable personal dictatorships have held sway, have had retarded economic growth and suffered the worst forms of political instability and insecurity, including civil strife and war (see Przeworski and Limongi 1993 and Joseph 2000 for critical analyses of the impact of regime type on development)<sup>3</sup>. Moreover, the new lease of life enjoyed in countries like Zambia, Kenya and Ghana, including improved governance structures and processes, anti-corruption crusades, virile civil society, and expansion of non-state productive and development processes, may be directly linked with democratic reinvigoration.

But a lot more still needs to be done, especially in the economic sphere, where declining state capabilities have become a formidable obstacle to development. This is largely because as Przeworski (1991, p 49) points out, 'The durability of the new democracies will depend ... not only on their institutional structure and the ideology of the major economic forces, but to a large extent on their economic performance'. This, indeed, is the greatest challenge facing democracy in Africa today, and the fact that citizens are beginning to lose patience with the slow pace of delivery of democracy dividends in some countries – incessant strikes by various categories of workers is one clear indication of this – means that the development concomitant of democracy has to be taken more seriously. This is more so since other forces, such as globalisation and HIV/AIDS, are taking their toll of development efforts on the continent.

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2 Dividends of democracy may be simply defined as the better life expected to be reaped from democracy. They include poverty alleviation, efficient and affordable social service delivery (safe drinking water, health care, education) employment, infrastructural rehabilitation and development, higher incomes, and all other improvements necessary to raise the standard of living.

3 As Joseph has observed, if authoritarianism facilitated development, as some scholars argued in the past, a country like Nigeria, whose track record of military dictatorial rule is unsurpassed in Africa, would be one of the most developed on the continent. The fact that it is one of the least developed reinforces the point being made.

From the foregoing it should be fairly obvious that the more appropriate concept of the democracy-development nexus for Africa – which is also supported by experiences in different parts of the world – is one that links the two processes as simultaneous and mutually reinforcing (Sklar 1987; Ake 1996; Osaghae 2000). This postulation should not, however, be confused with the perspective of the Bretton Woods institutions which pushed for democratisation as a condition for aid to several African countries and a concomitant of the strangling economic reforms that were imposed as recovery and growth strategies. The paradigm turned out to be a failure and retarded the quest for genuine democracy in Africa for at least two reasons.

First, some countries became formally democratic by legislating multiparty politics, holding elections, establishing constitutional courts and adopting new constitutions just to satisfy the requirements for ‘policy-based lending’. The changes that took place were largely cosmetic and, outside of the purview of donors, it was business as usual (Ihonvbere 1996; Osaghae 1999; Young 1999).

Secondly, it is now well known that the implementation of structural adjustment is incompatible with democratisation because while the former engenders authoritarianism, repression and contraction of political space, the latter requires thoroughgoing liberalisation (cf. Gibbon et al 1992 and Mkandawire and Olukoshi 1995; for an essentially alternative view, see Bienen and Herbst 1996).

The fundamental flaw of the Bretton Woods perspective would seem then to derive from the fact that it is imposed and externally oriented rather than internally driven and self-determined (Osaghae 1995). This is why the concept of the recent wave of democratisation in Africa as ‘second independence’, which places the emphasis on internal dynamics and popular struggles (cf Anyang’ Nyong’o 1987), provides a more appropriate framework for relating democracy to development. Having clarified the issue of context, the question may be asked: in what specific and concrete ways does democracy facilitate development? How can these be expanded, what obstacles stand in the way, and how can they be overcome? These are the questions I grapple with to close this section.

The essence of democracy may be summarised as involving (i) enhancement of the responsiveness and accountability of the state; and (ii) the empowerment of citizens to participate in and claim ownership of the state and the development project that it superintends. The import of these is that democracy engenders the redirection of the state to serve the interests of citizens rather than those of global capital and its local clients, as has been the case since colonisation. Without this fundamental reclaiming and reorientation of the state, development (from above) will be meaningless to ordinary citizens.

Only a democratic system that enables the creation of a (new) social contract between the state and citizens, and minimally ensures participation and accountability, is capable of effecting such fundamental, if not revolutionary redirection of the state. Anything short of this will most likely make democracy formalistic and disempowering of ordinary peoples (Ake 1994).

In the sections that follow I analyse two issues that have a direct bearing on the democracy-development nexus and are generally regarded as key to the deepening, survival and ultimate consolidation of democracy in Africa. These are human rights, especially third generation rights, which are necessary to guarantee the enjoyment of democracy dividends by ordinary citizens, and elections, which engender the legitimacy of both democracy and development.

## HUMAN RIGHTS

One of the areas of national life where democracy is expected to make a major difference and facilitate development is the enjoyment and protection of human rights. According to Cohen (1993, p 3), 'as the ramifications of the democracy movement unfold it is becoming apparent that many development goals are tied to rights issues. People are less likely to contribute to the common good in an atmosphere of ... insecurity ... as well as unpredictable and prejudicial outcomes of their hopes and plans.' For a variety of reasons that had to do with the deficits in the decolonisation process, human rights were not regarded as an important concomitant of democracy and governance. One of these reasons is the fact that very few countries (South Africa is the one example that readily comes to mind) experienced any sustained popular struggle for (individual) human rights as part of the decolonisation process; instead these were subsumed by the overarching right of the state to self-determination. In the hierarchy of rights that subsequently developed, this was to make the rights of the state superior to rights belonging to individuals and groups.

Perhaps the best example of this hierarchy is to be found in the Zimbabwean Constitution, which hinges the enjoyment of most rights and privileges on the overriding interest of the state. After independence the imperatives of state-directed development and nation building provided further justification for the relegation of individual human rights.

Nothing shows up the hollowness of the pretensions to democracy in the period immediately following independence better than the fact that the importance of the Bills of Rights that were embodied in several constitutions was reduced to the perception that they were merely an integral part of equipping the post-colonial state with defining elements of the modern state. For the most part, the Bills simply reproduced parts of the Universal Declaration of Human Rights related to civil and political rights (to which many countries have now added the African Charter on Human and Peoples' Rights).

Francophone countries also imported and grafted portions of the French Declaration of the Rights of Men and Citizens. For example, the Preamble to the independence (1960) Constitution of Côte d'Ivoire stipulated that 'The people of Côte d'Ivoire proclaim their attachment to the principles of Democracy and Human Rights, such as they have been defined by the Declaration of Human and Citizens Rights of 1789, by the Universal Declaration of 1948, and such as are guaranteed in

this constitution.' Diabate's (1991, p 170) commentary that '[t]he explicit reference to the vested interests of the French Revolution and to the Declaration of 1948 leaves not a shadow of doubt as to the meaning of the words "democracy" and "human rights"', summarises the point being made here about the hollowness and mere formality of human rights provisions.

It was within this context that lawless autocracies and personal rulerships emerged to deny at will citizens' rights, including the right to life; to repress opposition elements, and to transform governments into exclusionary clubs of privileged ethnic groups and elites. The regime of deprivation and abuse of civil and political rights effectively curtailed the participation of vast segments of the citizenry in the governance process. Socio-economic or third generation rights fared no better. This was quite unfortunate, in view of the argument that these rights, which have the potential to liberate people from the scourge of illiteracy, hunger, disease and poverty, and to engender and protect human capacity for sustainability and survival, are a necessary condition for the assertion and enjoyment of civil and political rights in societies like those in Africa, where most people live in conditions of abject poverty and illiteracy. As Dahl (1999, p 175) puts it, '[t]he achievement of certain rights and liberties is likely to precede the achievement of others ... Some democratic rights and liberties are unlikely to exist or endure unless they have already been preceded by the attainment of certain other rights and liberties.' Making a similar point, Vincent (1986, p 13) argues that civil and political rights would be unattainable – in fact unthinkable – without a 'reliable expectation about the maintenance of life itself'. Where the social and economic rights were 'granted', they were paper rights and not justiciable because their enjoyment depended on the solvency and capability of the (ailing) state to deliver<sup>4</sup>.

Widespread disaffection with the poor state of human rights was one of the internal propellants of the clamour for democratic reform. The strangulating effects of economic decline and structural adjustment precipitated demands for a better life and security, while the opening up of previously closed political space produced demands for group rights and more equitable power and resource sharing. The struggle to assert civil and political rights, especially freedom of association and press freedom, was also stepped up. These developments were invigorated by the ample support offered by major Western countries, the United Nations, other influential international organisations and donors who made human rights issues key to their dealings with African countries. Aid was withheld from countries whose governments were guilty of gross abuses, and in the case of Nigeria and Liberia, sanctions were applied on the basis of reports by UN human rights investigators. All these made local and international civil liberties and human rights organisations key actors in the democratic transition process.

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4 Moreover, the point has been made that '[w]here references to human rights are found in the preamble or in the objectives and principles, they are considered under common law jurisprudence not to confer rights and obligations and are consequently non-justiciable' (Eze 1984, p 27).



With so much emphasis on human rights it is not surprising that some of the most visible dividends of democracy so far recorded, at least at the formal level, have been in the area of creating cultures of human rights. Several countries now have human rights commissions, constitutional courts, public protectors/ombudsmen, and other rights promoting and protection agencies. To right the wrongs of the past and create an enabling environment for peaceful co-existence and stability some countries, notably Nigeria and Ghana, have followed the example of the Truth and Reconciliation Commission in South Africa by instituting committees to investigate past human rights abuses and violations. Constitutional reforms; the increased profile of legislatures, especially of their oversight powers; the subordination of military and security agencies to civilian control; increased emphasis on power sharing, consensus-building and negotiations as elements of the political process, are some of the other indicators of marked improvements in the human rights sector in many countries. Social and economic rights nevertheless remain highly problematic and unrealistic thanks to the precipitate disappearance of the developmental state. Citizens of many countries are less well off than they were at independence over forty years ago and the state seems unable to do much to reverse the decline. As was pointed out in the preceding section, this might yet be the greatest challenge and danger to the survival and consolidation of democracy in Africa today.

### ELECTORALISM AND LEGITIMATION

Although the dangers or fallacy of electoralism, that is, the equation of democracy with the holding of elections, are well acknowledged (cf Karl 1986; Olufemi 1999), they do not diminish the importance of elections, especially in the context of democratic transition where they serve as foundations and vehicles of transformation. In Africa where control of or access to state power seem to be the only motivation for participation in politics, the very success of transition depends heavily on the conduct and outcome of elections, and it is not for nothing that Huntington (1991, pp 266-267) has set the two-consecutive election test for measuring democratic survival and consolidation. On balance then, although elections can be said to be formalistic and cannot by themselves bring about democracy, they nevertheless remain fundamental to the democratic process. As Bratton and Posner (1999, p 379) have argued, 'while you can have elections without democracy, you cannot have democracy without elections'.

This is so for at least three reasons. One is that elections represent the most guaranteed form of direct participation by citizens in the governance process. Second, elections offer citizens an opportunity to choose those who govern them and vote out non-performing incumbents. To this extent, elections promote and institutionalise competition, participation and accountability, which are necessary for democratic consolidation (Bratton and Posner 1999, p 378). Thirdly, elections are crucial to the legitimacy of the democratic system, for the very acts of free choice/

participation, competition, and acceptance of electoral outcomes strengthen its validity and credibility. This is because, as Diamond (1997, p 14) argues, the one factor that is capable of enhancing the legitimacy of democracy among citizens is direct experience with it.

However, the aforementioned functions of elections are neither given nor guaranteed. Elections have to be free and fair, and offer *real* as opposed to cosmetic choices to the electorate in order for the functions to be attainable. It is in these terms that elections have had serious problems in Africa. The wide-ranging – in the past absolute – powers wielded by incumbents over the media, the electoral machinery, the police and security agencies, and the inclination towards rigging and manipulating the electoral process to ensure the re-election of incumbents, all made elections non-credible. For a long time it was possible to know the results of elections before they took place: majorities would overwhelm minorities and ruling parties and incumbents would score landslide victories, with little or nothing left for the opposition. Where the opposition was strong – with foreign backing in some cases – disputes over results sometimes led to civil strife or military intervention.

A lot of changes have, however, come with the (second) wave of democratisation in Africa. The expansion of the competitive arena through multiparty politics, efforts to ensure the neutrality of electoral commissions, the deregulation of media ownership and control, and the increased involvement of civil society constituents and foreign observers and monitors in the electoral process are some of the factors that have made these changes possible.

Though a lot of the changes are still formalistic, they have gone far enough to make it possible for powerful incumbents to be defeated and for more countries to pass Huntington's two-consecutive elections test<sup>5</sup>. Nevertheless, because of the high stakes of politics, elections continue to suffer from serious problems of credibility and legitimacy. In most cases, the problem has to do with the neutrality of electoral commissions whose members are appointed by incumbent executives and their inability to administer the electoral process according to the rules of the game. The zero-sum, winner-takes-all nature of political competition, which is engendered by the exclusionary character of the possession of state power, is another source of problems. Finally, the abject poverty and illiteracy of the vast majority of the citizenry leave ample room for electoral processes to be manipulated through pay-offs and bribes.

## CONCLUSION AND RECOMMENDATIONS

How can the anomalies and problems which presently make it difficult for human rights and elections to serve as veritable instruments for transforming formalistic democracy to substantive democracy be dealt with? With regard to human rights,

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5 Even so, the possibility of a relapse into authoritarianism remains high in virtually all the countries. To this extent, discussions of democratic consolidation may be premature.

social and economic rights have to be made the pivot of the new culture of rights if citizens are to be able to enjoy the dividends of democracy. In the absence of any serious efforts to empower and liberate the vast majority of citizens from poverty, disease and ignorance, human rights will remain formalistic and incapable of endearing democracy to ordinary peoples.

In the case of elections, on which the stability and survival of democracy ultimately hinges, a number of reforms are recommended. First, control of electoral commissions should reside with the legislature and / or judiciary rather than with the executive. South Africa's participatory and transparent process of appointing commissioners, which has worked well so far, provides a useful model for constituting commissions. Secondly, the capacity of the commissions to conduct free and fair elections needs to be enhanced. To reduce the desperation and high stakes engendered by winner-takes-all politics, the first-past-the-post electoral system should, wherever possible, be replaced by the proportional representation system, which guarantees more opportunities for power sharing and bargaining among competing parties.

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# TRADITIONAL AND MODERN POLITICAL SYSTEMS IN CONTEMPORARY GOVERNANCE IN AFRICA

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## ABSTRACT

*This paper analyses the role of traditional and modern institutions of governance in contemporary Africa. It examines the traditional institutions in their historical setting and the way in which they negotiated with the modern political arrangements under colonialism and later during the post-independence period. Both the colonial and post-colonial authorities viewed traditional political institutions with disgust and suspicion, seeing them as backward vestiges of the past, but also as possible competitors for colonial and post-colonial political power. This uneasiness was ameliorated somewhat under the colonial system by the introduction of 'indirect rule' and the use of 'customary law' under 'Native Authorities', which were used as a neo-traditional colonial policy control mechanisms. Under the post-independence political order, traditional political institutions were either banned or tolerated to the extent that they were retained only as 'cultural' institutions. In Swaziland the neo-traditional colonial system came to dominate the modern party system and in Lesotho the traditional system existed side by side with the modern political party democracy. In Buganda and Ashanti the neo-traditional systems were marginalised and banned. With the crisis of the African post-colonial states and the tendency towards presidentialism, there has been a resurgence of traditional political institutions in a number of countries. The result has been an attempt on the part of the political elite to adopt a conciliatory attitude towards them, while at the same time, using state patronage to woo them and make them part and parcel of the contemporary political party system as 'cultural' institutions. Such is the case in South Africa, Uganda and, to some extent, Lesotho. The real question is to what extent the traditional political systems can be reconciled with the modern political party system and to what extent these institutions can help heal the wounds of ethnic divisions and conflicts on the continent. This paper will try to provide some theoretical and practical approaches to how cultural identities and the institutions they represent can become the basis of new forms of African state formations under the African Union.*

## INTRODUCTION

The contemporary political scene in Africa is characterised by the distancing of political rights of the majority from real political power and influence. The vast majority of African people are second-class citizens in their own countries who are used as voters to elect the political elite every four or five years. Since most of these elites speak foreign languages, they are unable to communicate with their people in a manner conducive to easy relationships. Multiparty democracy has not necessarily translated into greater democracy in a number of countries, as demonstrated by the series of coups that took place in African countries in the immediate post-colonial period. The rise of military dictators became a function of the Cold War as well as of the need for a single political leader to have unchallengeable political power, in the majority of cases with the open support of the so-called democratic countries of the West.

This support of the West for dictatorial regimes, which were considered agents of 'freedom' against Soviet power, soon proved unsustainable and, as the Cold War came to an end, their usefulness was exhausted. This led to pressures for the restoration of multiparty democracy, which resulted in the organisation of a number of 'sovereign national conferences', especially in the former French colonies. These conferences were supposed to contribute to an orderly return to political pluralism in an atmosphere of Western capitalist triumphalism characterised by the 'End of History' ideology (see Fukuyama 1992). The collapse of the Soviet Union became a major landmark in the revival of some form of pluralist, multiparty democracy in a number of countries. But in some this trend was soon exhausted with the continuation of 'democratic' one-party rule by the dominant party, such as happened in Tanzania. Moreover, new forms of one-party rule, like the 'no party democracy' in Uganda, emerged and were supported by the Western powers.

The history of Western democratic models in Africa is therefore a varied one and one needs to re-examine the role of *liberal* democracy in non-liberal pluralistic societies where traditional and cultural identities have remained strong. It is also necessary to examine what we mean by the terms 'traditional political authority' and 'modern political systems' before we add to the confusion.

Modernity was introduced by colonialism and was informed by it. Colonialism also, as indicated above, defined 'tradition', reinventing it to suit its interests. But elements of tradition also continued to exist and be used by the people in a somewhat modified 'post-traditional' form. In this way colonially created neo-traditionalism and post-traditionalism came to exist side-by-side and defined the way democracy was introduced in the post-colonial period.

The failure of present-day post-colonial states in Africa to consolidate themselves, in our view, a reflection of these two historical conjunctures – 'modernity' co-existing with 'tradition' in a somewhat 'inauthentic' relationship.

This stands in sharp contrast to the historical record, which reveals a rich tradition of the capacity of African people in the pre-colonial period to develop diverse political systems to suit their conditions. A study of these systems reveals a rich variety of forms of state and systems of governance. It is to these different forms that we now turn.

### AFRICAN TRADITIONAL POLITICAL SYSTEMS\*

Early anthropologists researching African political systems were pre-occupied with uncovering their functions and roles. This, as Blandier (1963) points out, enabled them to define the political relations and organisational basis of the systems, but the approach did not go far enough in elucidating the nature of the political phenomenon itself within the social system. The typological approach tried to advance the analysis by defining the 'types' of system studied by classifying the forms of political organisation arising from them. All this was done under the evolutionary assumptions of the origin of the state.

Fortes and Evans-Pritchard (1963) adopted this approach in their book on African political systems. The analysis enabled these scholars to trace the systems investigated from their simple, undifferentiated forms to more complex, centralised ones; from *gemeinschaft* to *gesellschaft* and from mechanical to organic solidarity. Marxist theories used to identify stateless societies from state forms based on class rule.

However, these approaches tended to create fixed hierarchies, which obscured the organic links in the political relations of the 'types' being investigated, and their politico-ideological basis as well as their cultural and historical preconditions. This weakness was not helped by the structuralist approach, which attempted to overcome evolutionist weaknesses by measuring the types in terms of structural differentiation. As Eisenstadt, Abitbol and Chazan (1988) noted:

It was assumed that the more institutional spheres are differentiated and specialized, the more the political structure takes the form of a specialized political sphere with distinct roles and organizations.

The main weakness in all these approaches was the exclusion of history from the analysis of African societies. The assumption that African societies did not have a history of their own became the very reason for ignoring the role of history and for locating African historical political consciousness solely in the era of colonisation so that the anti-colonial struggles that followed were seen as arising out of colonial consciousness rather than in the African historical consciousness that was confronted

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\* For those interested in pursuing the issue of African political systems reference is made to my book: *Africa in the New Millennium: Towards a Post-Traditional Renaissance* 2003. University of South Africa Press, from which most of the material in this paper is drawn.



with the new forces of change. Because of this approach, African historical political forces were dislocated from the real roots of African political development and ignored in favour of new forms that were superimposed on newly created colonial states that were in fact inorganic.

One of the first African scholars to address this grievous distortion of African political systems was Cheikh Anta Diop. In his book *Pre-colonial Black Africa* he tried to 'defreeze' and 'defossilize' African experience in order to show its historical role and its relevance in the new situation. Diop began a long battle, together with African-American scholars, to relocate Egypt within the Black African world from which the 'Aryan Model' and the theories of eighteenth- and nineteenth-century European racial scientists had detached it. Only from these roots, it turned out, could the history of the European State systems as well as their political institutions be understood.

Quoting extensively from the work of the French scholar Fustel de Coulanges, who studied the 'Ancient City', Diop was able to demonstrate that the very concept of state as a 'territory' comprising several cities, or that of 'empire' and its organisation, came from the African-Egyptian political experience. He recorded institutions that had developed in Africa before they were replicated in Europe. This discovery became even clearer when anthropologists studying African social systems stumbled upon the fact that African religions had a lot to do with concepts and ideas of African political power and that it was this which enabled Fustel de Coulanges to understand the 'Ancient City,' including the European ones. According to Blandier (1967):

This development can be explained in part by the progress of anthropology, which involved the recognition of 'other' political forms, and the diversification of political science, which has been forced to interpret the new political aspects of political society in the socialist countries and in the ex-colonial countries.

pp 120-23

Blandier argued that there was a need for political anthropology to 're-examine with greater precision the problem of the origin, characteristics and the forms of the primitive state' with a view to understanding later forms and institutions. He further added that 'most of this work has been done in the field of Africanist studies through which a more dynamic anthropological theory is developing'.

This approach was an attempt to reverse the 'mirror' images that functionalist anthropology implied. This is what necessitated the invention of 'primitive' society in order to understand and define the Western identity. The new approach emphasised a correct historical understanding of these societies and it is from this position that the links between African religions and political power were established. Through this orientation it became possible to realise that 'even in the so-called complex societies, possessing hierarchies and clearly differentiated

authorities, the relations between political power and religion are not radically altered' (Blandier, p 109).

The most important lesson to be learnt from African political experience, which the evolutionary and structural approaches could not capture, was the diversity and variability of the forms of social political organisation of African political systems at each stage of development of the state. It is now widely accepted that the assumption of the existence of universal stages of development of differentiation, together with the concomitant manifestation of similar institutional qualities, has tended to minimise the importance of certain factors in the internal structures of certain polities. The variations at each stage have been perceived as secondary to the major characteristics of the overall stage (Eisenstadt, Abitbol and Chazan 1988, p 4).

There are examples in different parts of Africa which show major breakthroughs of advancement from acephalous societies and chieftainships to early state formations and from early state formations to fully-fledged states. But because their development did not follow a linear progression, these breakthroughs did not always result in identical outcomes. There have also been states, for instance ancient Egypt and Ethiopia, which were able to develop into more differentiated imperial states, whereas others such as the old states in West Africa like Ghana, Mali and Songhai did not go beyond certain rudimentary phases of state formation (Eisenstadt, Abitbol and Chazan 1988).

The realisation that some of these differences might be traced back to the so-called secondary variations that they exhibited in the earlier stages has made social scientists aware of another phenomenon of African political systems: the reversibility and irreversibility of certain state forms. This has shown the possibility of the reversibility from state forms to traditional 'stateless' forms and vice-versa under certain social and historical conditions. Although both peaceful means and conquest were used to achieve political change, the right of a group of people to separate and form new communities in which they could assert their own freedom was guaranteed in economic and social arrangements as well as in religious beliefs. These religious beliefs, backed up by concepts of mystical order on which African moral order was based, constituted the rationale for a monarchical political order but also formed the basis for its challenge.

Diop, a physicist, was ahead of his time when he drew attention to the fact that the boundary between monarchical authority and tribal clan authority was a narrow one. According to Diop, with different levels of culture many African people lived in a 'scarcely shaken or liberalised clanic organization', while those who lived in the cities and towns were detribalised. People could move from the one to the other because of this inherent right to separate and form separate communities and political forms.

We need to look deeply into the internal structures of specific polities if we are to understand their viability or solidity. The empire of Mali has been cited as a good example of the reversibility of state forms. Mali held suzerainty over most of

western Sudan from the tenth to the thirteenth centuries. When it ceased to exist, a number of political units within it such as the Mandig were able to revert to the traditional framework of the *kafu*. According to Eisenstadt, Abitbol and Chazan (1988, p 5): 'The imperial referent, and especially its political symbols, remained explicit not only in the Mandig consciousness and ideology but also in the transformation of the structural arrangements of the *kafu* according to forms derived from the imperial setting.' Ashanti has also been cited as a good example in this respect.

The above examples demonstrate that political systems have never developed in an entirely self-contained manner. People who live within the confines of a particular system were also usually organised in other ways and at different levels, of which the political system is an important example. Others include economic formations, ascriptive collectives and civilisational frameworks, structures that may change within the same society to different degrees or in different constellations (Eisenstadt, Abitbol and Chazan 1988, p 16).

In his study of pluralism in pre-colonial African societies, M G Smith, the Caribbean anthropologist, argued that the customary dichotomisation of African political systems into 'state' and 'stateless' (centralised and acephalous societies) was misplaced because it made it difficult to understand the organisation of different kinds of society and their linkages. Instead he demonstrated that by looking for differences in corporate organisation one could discover the variety of political structures that made it possible for Africans to accommodate different kinds of social organisation and social life into different kinds of polities. This was a major breakthrough for social anthropology.

One of the central aims of any examination of pre-colonial African political systems must therefore be to demonstrate why African societies were able to organise themselves so as to accommodate the very large number of diverse communities that peopled the continent. It is in fact this aspect of inquiry that gives African political systems a character of their own. It is also this aspect that reveals the secret behind their survival under different historical and social conditions. The post-colonial situation is not different from this historical experience, which proves that Africans can make and unmake their state forms and that the people of Africa, like all human beings, are truly the creators of their history.

In his famous study of African societies, *The Destruction of Black Civilization: Great Issues of Race from 4500 BC to 2000 AD* (1989), Chancellor Williams has summarised the different experiences of African political systems, to which he has given the general name African Constitution. This 'constitution' is a body of principles and practices, which he draws from the customary laws that governed black African societies from ancient times up to the time of invasions. He traces the lineage ties and corresponding responsibilities and age-set and age-grade systems as the earliest institutions through which the African constitution functioned and out of which its democracy was born. According to him, these basic elements continued right through state forms such as kingdoms and empires (Williams 1989,

pp 162-65). He believes that a majority of African states operated on the principle of acceptance of common ancestry and the construction of the lineage system as 'the powerful factor' that provided the basis and incentive for later formation of kingdoms and empires.

Out of these basic relationships Williams extrapolates some theories and principles of traditional constitutional law, and these spell out the fundamental rights of the African people. For instance, one of these principles is the right of the common people to constitute the final source of power. Then come the rights of the community of people over those of individual members, including chiefs and kings. These principles can be found scattered through the constitutions both of communities that did not accept chiefs and those of communities in kingdoms and empires (Williams 1989, pp 171-76). In the examples below, we will see how these fundamental principles were disorganised by the colonial powers.

### THE COLONIAL INTERVENTION

Like the missionaries of Christianity, who misunderstood or misinterpreted African traditional religions, the colonial administrators could also not comprehend the deep meaning behind African traditional political systems outlined above. Terence Ranger (1995, pp 247-8) comes to the same conclusion in relation to what he terms the colonial 'invention' of traditions in Africa. Oliver (1992) also demonstrated that in order to 'invent' new forms of administration, which were inconsistent with African political systems, the colonial powers, in many cases, crammed many kinds of African communities into an entity, which they then called a 'tribe' for purposes of administration. And in yet others, they broke up and segmented existing larger polities into units that they regarded as coherent 'tribes'.

Some of these entities were culled from different political arrangements that had been destabilised by the slave trade, and were then turned into 'tribes'. But many were small states whose existence went deep into prehistory. In Oliver's own words:

It was normal for such states to form in clusters of twenty or thirty, each cluster representing a common language and culture. These common features probably indicated the long residence of a nuclear population within a common environment, together with a significant degree of intermarriage between neighbouring units in a cluster.

p 148

According to him, these entities were not tribes but minute statelets, Athenian-sized polities, containing populations of between five thousand and ten thousand people. It was to these clusters that the Europeans attached the term 'tribe, meaning something more than a collection of intermarrying clans, but also something less than a nation, particularly in the lack of any overarching political institutions'.



To achieve their objectives, the colonisers needed to degrade African political systems and destroy them where they posed a real threat to their interests. The first problem arose in dealing with what turned out to be very much more sophisticated systems of traditional political power than had at first been imagined. The way this problem was handled is well illustrated by the case of the Ashanti State to which Basil Davidson (1992, pp 66-67, 70-72) has alluded.

The state of Ashanti was one of the best-organised African states on the West Coast of Africa. It was, according to David Kimble (1963, p 264), 'the nearest approximation to a modern nation that was reached independently of European influences'. Without doubt one of the most impressive aspects of Ashanti's history was the systematic development of a national ideology and the elaboration of complex social and political institutions for the management of society's affairs.

By the 1880s Ashanti was a strong power, with its involvement in the Atlantic trade paying dividends to a new emergent merchant class called the *asikafo*s ('wealthy persons'). British imperial interests saw these new economic forces trying to transform their society into a modern African nation-state as a threat. In 1874 they decided, despite attempts by the Ashanti ruling classes to reach a compromise, to invade the territory and destroy its internal cohesion in preparation for turning it into a British colony. According to Davidson (1992, pp 66-67, 71) 'the whole scope for possible development into modernizing structures was stopped dead and could not be started again so long as colonial dispossession continued'. For the time being, 'all roads, in those days led to dispossession [and colonisation]'.

Buganda fared better because of the collaboration of its ruling class with the British invaders against another African kingdom, the kingdom of Bunyoro. Buganda too was found by the British to be a 'special case' in relation to other kingdom states and segmentary societies in the East African region. The reason for this differentiation lay in the way the British viewed the traditional political system in Buganda when they arrived. In a rather one-sided way, and without understanding the organic links between the different elements in the African political structure, the British missionaries, who were the first to arrive in the country, formed a very high opinion of the political system they saw there. They mistakenly equated it with a knightly and feudal state on the lines of the 'Norman' feudal state in England, in contrast to many African societies they had seen.

The first representative of the British Missionary Society, Bishop Tucker, could not believe that this institution was indigenous to Buganda. In line with then prevalent anthropological views on 'primitive Government', Tucker thought the system had old links to an ancient civilisation, which was assumed to be alien to the region. Hence Buganda's ruling class was looked upon favourably by the British colonisers and, when colonial rule was established in 1893, a treaty of special relationships between the new agents and the British crown was 'negotiated'.

This was the basis of what came to be called the Uganda Agreement of 1900. The agreement put the Kabaka of Buganda under British 'protection'. It also rewarded the newly created neo-traditional Christian elite by sharing all the land

of Buganda between the British Crown and the new rulers, thereby depriving the peasants of their former rights in land under the clanic system. But contrary to these mistaken British beliefs, the traditional political system in Buganda was a combination of the ancient kinship system based on totemic clans and a more recent state administration, which the clans had created and incorporated to co-exist with the clan system under the Kabaka. In this political organisation, the articulation of solidarity, despite the horizontal hierarchies, was vested in other clan leaders, who maintained control in their areas and only sent representatives to the Lukiiko, the traditional parliament (Eisenstadt, Abitbol and Chazan 1988, pp 24, 177, 190-92).

A newly invented, neo-traditional 'Buganda Model' worked out by an administrator called Wilson was installed and was replicated in other parts of Uganda. Under the new system chieftainships and 'ministries' in the new Buganda 'kingdom' were 'allocated' according to the strengths of the new religious factions, which emerged out of the religious wars fought in Buganda between 1885 and 1899, creating an oligarchy of senior chiefs acting as a caucus. The leaders of the new religious factions became the ministers and officials of government and the Kabaka's traditional powers to appoint chiefs were reduced (Nabudere 1980). What emerged did not represent the 'traditional' Bugandan system of administration but a neo-traditional system designed to serve colonial interests. As one missionary observed in 1888:

The poor king was but a child in the hands of his (newly converted) Officers and Ministers. His time was chiefly occupied in giving his consent and approval to the distribution and division of the various chieftainships. All the posts of authority are occupied by Christians, all the land falls into their hands; even the king himself is no more their despot and murderer, but a helpless instrument in their hands.

Low 1971

Thus we can see that the later invention of 'traditional' institutions imposed by the colonial powers complicated the political arrangements on the continent. They created institutions that could not be understood by the people, and because of this the new power structures, which were created, were, in many cases, resisted. This invention of 'traditional' structures and forms was taken from inside African systems and exploited for different purposes by those who benefited from them. There were also attempts to superimpose on these new powers European monarchical forms.

As Terence Ranger has demonstrated, the invention of certain 'traditions' and 'customs' in Africa came at a time when modernisation in Europe was resorting to similar approaches. The 1870s, 1880s and 1890s proved to be fertile ground for 'a great flowering of European invented tradition' in many fields – ecclesiastical, educational, military, republican and monarchical. It was an age of imperialism. It was also the time of British colonisation of much of Africa:

There were many and complex connections between the two processes. The concept of empire was central to the process of inventing tradition within Europe itself, but the African empires came so late in the day that they demonstrate the effects rather than the causes of invented tradition. Deployed in Africa, however, the new traditions took on a peculiar character, distinguishing them from both their European and Asian imperial forms.

Ranger 1995, p 211

The 'bifurcation' of the colonial and post-colonial states, as Mamdani (1992) calls it, was therefore the necessary mechanism to bring about this colonial domination. There was nothing specifically African about it. The only part that was African was the invention of 'customary power', which, in any case, was subject to European 'morality' and 'principles of natural justice'.

The emphasis on feudal patriarchal forms of power was not accidental. Contrary to what Mamdani has argued, the idea of invented 'traditions' and customs did not spring from the phase of African conquest states and African administrative chiefs as such. They were also not a replica of the British experience in Asia, particularly India, as he has argued. On the contrary, the way tradition was 'invented' in India was also influenced by political developments in Britain that were connected with the developments of the age of imperialism globally.

While Mamdani is right in stressing the African sources of some of the 'invented' customs, he nevertheless overstates the point and draws a wrong conclusion about the influence of Asia in this respect. Moreover, he also understates the significance of the European imperial sources of 'invented' traditions and customs upon African societies (Mamdani 1992, pp 22, 38-9, 43-45). The decentralised despotism he describes was the mirror of the European invented 'tradition' of the monarchy and its consequent policy implications in the colonies of Africa and had fateful consequences, which we can see today in the crisis of postcolonial states in Africa. We have also to understand how the structures of command were created out of this heritage of European absolute despotism. The imagery of the omnipresent British monarch was, for instance, used to create in the African mind images of the patriarchal ancestor who gave advice and guidance to his people through the power of the chief and colonial administrators.

## INDIRECT RULE AND THE POST-COLONIAL EXPERIENCE

The adoption of 'indirect rule' was a mechanism used by colonial rulers to exploit some aspects of African traditional forms and practices and turn them into legal systems of governance under colonial administration. Moreover the ideology and strategy was used as a basis for the 'divide and rule' policy that was devised precisely to play on and strengthen cleavages between the created and imagined 'tribal' administrative units in order to prevent them from unifying their resistance against

the colonial state. Thus, instead of 'primitive' Africa being a 'mirror' through which Europe saw itself, in reality Europe was 'echoing' its own image through these imagined creations of colonial rule in order to dominate and exploit them.

The system of 'indirect rule' was thus devised and used precisely in those areas that had developed sophisticated traditional political systems and then the system was generally applied in new areas where hierarchies similar to those of the developed structures were present. It is not accidental that the systems selected for trial were those of Northern Nigeria in West Africa and the Kingdom of Buganda in East Africa. Lord Lugard (see Kirk-Greene (ed) 1970, p 9) developed the system first in the administration of Northern Nigeria and then transplanted it to Uganda. In 'Political Memorandum', he put forward directives for the guidance of political officers working in the field, in which he emphasised the approaches to be adopted:

The British role here is to bring to the country all gains of civilisation by applied science ... with as little interference as possible with Native customs and modes of thought. Where new ideas are to be presented to the native mind, patient explanation of the objects in view will be rewarded, and new methods may often be clothed in familiar garb. Thus the object of Vaccination and its practical results may be sufficiently obvious, while the prejudice which exists among some Moslems may perhaps be removed by pointing out that it is a preventive disease by contagion, no less than circumcision enforced by their own law.

Lugard added that the degree to which a political officer might be called upon to act in an administrative capacity would depend 'upon the influence and ability of the Native Chiefs in each part of the Province'. In normal circumstances and in every case the officer was to endeavour to rule through the 'Native Chiefs'. In districts where there was no chief a political officer's function became 'more largely administrative, and among uncivilized pagan tribes he must assume the full onus of administration to the extent to which time and opportunity permit':

In such communities he will constantly endeavour to support the authority of the Chief and encourage him to show initiative. If there is no Chief who exercises authority beyond his own village, he will encourage any village Chief of influence and character to control a group of villages, with a view to making him Chief of a district later if he shows ability for the charge.

pp 10-11

We can thus see how, within the colonial experience, roots of decentralised despotism were created as components of centralised imperial rule. The native chief was made to appear 'native' in name only. What was 'native' about 'Native Authority'? The

main duties of the chief were predetermined by the colonial order and not by tradition or custom. His 'authority' was also prescribed by the imperial order. Lord Lugard's biographer, Dame Margery Perham, has described Lugard as 'the supreme source for the study of indirect rule' in Africa, adding that he provided the system with its administrative theory and philosophy.

Lugard's political guidelines constituted the basis for strengthening native administration and hardening the concept and application of what was officially accepted as 'Native Custom'. This is because it gave directives for the institution not only of native administration but also of native courts and the administration and taxation of native lands. The conduit was the district chief who, once recruited and made a salaried servant of the colonial state, 'afforded', according to Lugard, 'a valuable means of instituting and enforcing native authority'.

These neo-traditional guidelines therefore enforced the authority of the chief to become a village tyrant since the rural community, which was not subject to colonial rule, could not challenge his authority on the spot. The chief could always interpret all actions and decisions he made as being under the authority of the 'tradition' and 'custom' of the people he ruled. But this was never the case, since colonial law backed him and the customs were defined as 'law', which they were not.

Thus, within the colonial despotism of 'customary' rule, had already emerged a despotic and autocratic post-colonial order. This was brought about partly by the use of invented 'traditions' and customs by the African elites and chiefs to further invent their own 'traditions' and modes of behaviour, which were an imitation of European modes. This was achieved through a number of political manoeuvres on the part of these elites.

A good example of this manipulation of the traditional system by the colonialists was that of the Kingdom of Swaziland. Swaziland has been referred to as 'unique' in Africa because of the fact that its 'traditional' system has been maintained throughout the colonial and post-colonial periods. This uniqueness has to be seen in the context of the attempt of Britain and, to some extent, apartheid South Africa, to use the traditional Swazi political system for their ends.

For this reason the concept of 'tradition' used in this context had, according to Hilda Kuper (1947, p 9), to be seen, as 'something that is constantly being made'. But this process has two sides to it. In her view, in the Swazi case it became 'totally impossible to separate 'traditional' and 'western' elements in the colonial practice'. What resulted was a 'Westernisation' of Swazi tradition.

The pre-colonial political system in Swaziland was a centralised, patrilineal 'dual monarchy' in which the king ruled together with his mother. It is a system that compromised the original matriarchy and matrilineal system within the emergent patriarchy and patrilineal system. Under the system the new king was chosen indirectly when one of the several queens of the late king was chosen by the royal council to be queen mother. Once this was done, the king was automatically chosen from the line of sons of that new queen mother, with whom he must rule.



Even then the king was traditionally said to be 'ruled by the people' and by civil councillors. He was guided by two main councils, although this could be the subject of some 'invention', as we shall see below: One of these was the *Liqoqo*, the inner (privy) council which was composed originally of princes but was later enlarged to include high-ranking officials, a total of about twenty in all. The second was the *Libandla*, the council of state composed of chiefs, headmen and all adult males. The latter, however, had no right to overrule the *Liqoqo*. The king, who spoke last in the councils, tried to reconcile the views of the two institutions, both of which made decisions by consensus. Below these two councils were clan councils and extended family councils presided over by the elders of the respective clans and extended families. These decided inheritance and other minor disputes in the families and clans.

When King Sobhuza II came of age and became king he tried to 'change tactics' by adopting what came to be called 'ethnic mobilisation' in the face of British refusal to concede the return of lands. This was necessary in order to deal with the social disintegration arising from the land alienation, labour migration, and church education that attacked aspects of traditional culture. This 'tactic' was, however, not entirely the work of Sobhuza. The colonial administrator seems to have encouraged the King in this course of action in order to create a basis for 'indirect rule' in Swaziland. Sobhuza, with the support of the British colonial administrators, produced a document entitled: 'The Original Swazi Political Organisation', which outlined the institutions of the king, the queen, the *Liqoqo* and the *Libandla*, as well as the role of the chiefs.

It has been questioned whether in fact this document faithfully represented the original workings of the traditional system of Swaziland. But as it came to pass, this structure, with some modification, was made to constitute the Native Authority of Swaziland under British rule. Under it, the colonial administration had the power of dismissal over chiefs and traditional officials. Both the ruling family and the colonial government, each for different reasons, were thus using neo-traditionalism to consolidate their power and contain the rising political consciousness of the new working class from the mines, who were also influencing the dispossessed peasantry in the rural areas against the emerging order. Outstanding anthropologists such as Bronislaw Malinowski, Winfred Hoernle and Isaac Schapera supported this strategy of 'ethnic mobilization' for their own academic and ideological reasons (Daniel and Stephen 1986).

After World War II, using this partly 'invented' structure, colonial legislation was put in place to establish 'indirect rule'. The new system increased the role of the 'traditional' ruling elite that was under the control of the British colonial office and gave it the opportunity to accumulate new wealth from the new lands that were being returned to workers who made contributions to buy back the lands. Royalties from concessions and mines later supplemented these contributions.

By the time the British were prepared to grant independence to Swaziland, the Westernised neo-traditional institutions had assumed dictatorial powers. In

April 1973, the king and his council, in what was described by outsiders as a 'constitutional coup d'état' used Parliament, which the neo-traditional council dominated, to suspend the independence Constitution and hand absolute powers to the King. All parties, including the Ngwane National Liberatory Congress (NNLC), which won three seats in the parliamentary elections of 1968, and the King's own Imbokodvo National Party, which had the majority of seats, were banned and outlawed. A new attempt was made to redefine neo-traditionalism to fit the changed conditions of neo-colonialism in post-colonial Swaziland.

A constitutional commission was set up to make recommendations for a new constitution for the country. The new constitutional order which was temporarily put in place and which continued until the 1989 constitutional reform restored the colonial neo-traditional invented system and added new 'traditional' elements to it. This new system was tailored to meet the needs of the moment while reviving some of the old forms, which did not have the traditional control mechanism against the abuse of power, by the traditional royal and chiefly clans. Swaziland was declared a 'no party state' and the *Libandla* National Council was made the sole policy-making body. But the *Libandla* was no longer open to all male Swazi as was traditionally the practice. It was open only to those few who had influence and new forms of wealth and property.

To implement this new arrangement the King, in 1978, announced a new system of representation through *Tinkhundla* councils, forty of which were set up throughout the country with a number of neighbouring chiefs' councils forming one *Tinkhundla*. The chiefs were responsible for creating and controlling their local councils. The King appointed the officer in charge of a region who, in turn, appointed the chairman of the local council. The *Tinkhundla* was regarded as the advisory body to both the local chiefs and the *Libandla* National Council. Thus political freedoms were banned and made subject to the whims of the absolute king, a power that negated all the customary control mechanisms of the Swazi traditional political system.

The Swazi use of neo-traditionalism in the post-colonial period stands in sharp contrast to the way traditionalism and neo-traditionalism were adopted in the Constitution of Bechuanaland, now Botswana. Botswana, unlike the majority of African states, has not experienced a major constitutional crisis and is generally regarded as the most stable state in Africa. There are many factors behind this stability, including the existence of mineral wealth, which has been used to cement the relationships between different factions of the ruling elite. But many wealthy states, an example being Nigeria with its oil wealth, have not been stable precisely because the political institutions have not been stable in some parts of the country. The northern part of Nigeria where indirect rule was applied and the traditional institutions retained in some form has been more stable.

Most writers on Botswana, have acknowledged that one of the most important factors contributing to this stable environment was the incorporation in the country's Constitution of both traditional and modern forms of governance. Political representation was accorded to traditional chiefs in the 15-member House of Chiefs,

which has only advisory powers and is not involved in the scrutiny and crafting of legislation. Members of Parliament and the President are elected, but the existence of traditional institutions such as the *Dikgotla* and the *Dikgosi*, which act as go-between chieftaincy systems subsumed under the chiefs (some led by Cabinet ministers), has acted as a stable method of communication between the central government and the rural communities who participate in popular decision-making through the system of general assemblies.

The representation of the chiefs in the Botswana Parliament is unique in contemporary post-colonial African democratic experience 'where all that is traditional is considered archaic' and to be relegated to oblivion. Mohamed Salih (2001) has argued that although the representation of chiefs in the country's Parliament may be regarded as no more than symbolic, these institutions nevertheless have tremendous influence on the way the country is governed:

The fact that the government would seek renewal through democratic elections means that the chiefs can use their power to sway voters to withdraw their support from the government in aggrieved constituencies. This alone could explain why, although Botswana was governed by the BDP (Botswana Democratic Party) during the last 35 years, the popularity of the party fluctuated from one election to another.

pp 162-63

### THE POST-COLONIAL STATE

Benedict Anderson, in his admirable book *Imagined Communities* (1991), has described how colonial nationalism and 'nation-building' were fashioned within the colonial order by instilling nationalist ideology through the mass media, the educational system and administrative regulations, as well as the three institutions of the census, the map and the museum. He argues that despite the anti-nationalist rhetoric of the colonial rulers the lineage beneath the colonial ideologies and policies and nationalism 'become[s] decidedly more clear'.

Indeed, the whole idea of 'nation-building' was being 'administered' by the colonial offices before the granting of independence to African countries. Sir Hilton Poynton, a former administrative head of the British Colonial Office, speaking at a Cambridge symposium in 1978, reminded those assembled that the objectives of British colonial policy could be summed up in one word: 'Nation-building'.

He perceived Britain's intentions during the colonial era as being to 'build' separate 'nation-states' as the 'successors' and inheritors of colonial states in order to ensure the 'continuity' of the colonial project. For the colonial administrators, colonial constitutional reform, which, according to Dennis Austin (1964) became necessary in the wake of African nationalism, was essential to 'enable colonial rule to be [made] more effective and not to hasten its demise'.

Thus, the period 1945 to 1960 has been seen by Anthony Smith (1983) as being characterised by three main elements: territorialism, democracy and pan-Africanism. Territorialism was the culmination of the colonial boundary demarcations which had now become real and which also created a psychic identity and cultural vision of the new elites:

The state as the basis of extraction, centralized authority, autonomous institutions and monopolistic coercion was a boundary-defining unit, a body with distinct territorial focus and jurisdiction; its 'face' and 'shape' were largely determined by the fact and shape of the territory it controlled. Hence, the nature of the state spilt over into the definition of the nationalism that arose to challenge the rulers of the state. It was not the state per se that was challenged, much less its rights over a recognized territory and demarcated populations ... it was merely the right of those who controlled that territorial state that was in question.

This development created the 'nationalism' of the new African intelligentsia who were blocked from advancement. It also raised the question of who should rule the territorial-state. Since the colonial powers were at the same time dismantling the agencies of 'indirect rule' in the rural areas, this created a double nationalism. On the one hand, there were the new political elites who wanted to assume the colonial territorial power in order to move to 'independence', on the other, there were the former 'traditional' rulers who aspired to take over the colonial state on the basis that they were the legitimate traditional rulers. The instrument the political elites adopted in this process was the creation of 'national political parties', which, in many cases, were replicas of the metropolitan political parties, sometimes imitating their ideological orientations and programs. Early political organisations such as the Convention Peoples Party in Ghana sought to centralise the state and inherit the instruments of coercive power immediately after independence. At the same time they tried to co-opt other civic organisations such as trade unions, peasant associations and co-operative societies as 'extra-Party' institutions into the mainstream political parties. This is what was called the national democratic movement.

Thus, Benedict Anderson is correct to define the nation as an 'imagined political community':

It is imagined because the members of even the smallest nation will never know most of their fellow members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.

p 6

Anderson quotes Gellner (1983, pp 1-7), who states on a similar point, 'Nationalism is not the awakening of nations to self-consciousness: it invents nations where they do not exist.'

What the African nationalists were doing in harmonising and mobilising 'popular participation was therefore one of the processes of imagining the existence of a community which had to be inserted into the territorial nation' (Anderson 1991, p 6).

But Gellner points to an important peculiarity of Africa nationalism, which has come to symbolise one of the fundamental pillars of its failures. He argues that, unlike Islam, which 'allows the use of pre-industrial great tradition of a clerisy as the national, socially pervasive idiom and belief of a new-style community', many nationalisms of sub-Saharan Africa 'are interesting in that they exemplify the opposite extreme. According to him 'they neither perpetuate nor invent a local high culture . . . nor do they often elevate an erstwhile native culture into a new, politically sanctioned literate culture, as European nationalisms had often done'. Instead, the political elites have persisted in using an *alien* European high culture as a basis of their rule:

Sub-Saharan Africa is one of the best, and certainly the most extensive, testing grounds for the attribution of great power to the principle of nationalism, which requires ethnic and political boundaries to converge. Sub-Saharan political boundaries defy this principle almost without exception. Black Africa has inherited from the colonial period a set of frontiers drawn up in total disregard (and generally without the slightest knowledge) of the local cultural ethnic borders. ... The efforts either to replace the use of European languages as the state administrative medium, or to adjust inter-state boundaries so as to respect ethnicity, have been weak and infrequent. What is the explanation? Is nationalism not a force in black Africa after all?

Gellner 1983, pp 9, 81

Thus, the political elites have not even tried to create the high culture that is a prerequisite for authentic nation building but have continued to play an objective role as upholders of the post-colonial state project in which the state was reformed by the colonisers before their departure to carry out new tasks in the new global conditions under multilateral imperialism<sup>1</sup>. Crawford Young (1988, p 5) is therefore right in stating that the crisis of the post-colonial state has its origins, in part, in the characteristics of the colonial state itself.

He notes that these states had certain 'particularities'. Firstly, their territoriality was ambiguous in that the newly defined frontiers were a dramatic change from most pre-colonial political arrangements. According to him, this has paradoxically 'proved to be one of the most enduring impact[s] of the colonial rule'. The territorial unit became the basis of the anti-colonial struggle. It also became the structure

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1. For a proper understanding of the concept of multilateral imperialism, see Nabudere 1977, chapter four.



through which the nationalist leadership sought to legitimise and secure the state, which they wanted to create as embodying the sanctity of their 'nationality'. This became a basic premise of African international law, entrenched in the OAU charter.

Secondly, there is the application of the doctrine of state sovereignty as advocated by Burke as opposed to the concept of popular sovereignty advocated by Rousseau. The doctrine of state sovereignty originated in the concept of conquest which, in European occasional treaties of conquest, laid claim to full sovereign prerogatives to the colony of the colonial powers in the late colonisation period under which Africa was colonised. The doctrine, which was applied to African domains, became the ideological justification for a number of sweeping measures adopted by colonialists over African people and their resources, such as land. This gave the colonialists the application of the axiomatic derivative of sovereignty that the state holds ultimate proprietary rights over land and the wealth below it and above it. For this reason, the colonisers conceded only a derivative territorial personality, and not a national one, through which the colonised were 'invited to share a subordinate affective tie to the imperial centre' (Young 1988, p 6).

Thirdly, and following on the above, the colonial legal order became a hybrid construction. While insisting on the ascendancy of its law, the colonial state did not (and could not) enforce a comprehensive legal monopoly:

The colonial legal order confined its demands for exclusivity to economic and social spheres covering activity of the external estate of European and other immigrants, and to criminal offences that were deemed, directly or indirectly, to affect colonial peace.

Young 1988, p 5

Those legal areas that had no impact on the colonial realm because they only concerned the subject populace could be treated in African jurisdictions by customary law. In these areas the ultimate hegemony of the colonial state could be enforced by tutelage and monitoring of the African courts, whose verdicts were subject to review, and whose personnel subject to screening by the colonial state.

Fourthly, by the time tropical Africa came to be colonised, the imperial state was already an over-developed liberal state. It had relatively well-developed professional bureaucracies with greater resources, it had permanent military forces well equipped with imposing weaponry and doctrines dealing with the scope and range of state action both at home and in the colonies which went beyond those of an earlier age.

Finally, Africa's colonial state-building venture had a more comprehensive cultural component than was the case in Asia or the Middle East, with the possible exception of the New World, where enslaved Africans were colonised within the borders of a dominant European cultural world. This cultural component incorporated racist ideas, which were much more comprehensively elaborated than they had been with the earlier colonies in Asia. They also carried along the invention

of traditions, which bolstered the colonial state and which the post-colonial state imitated.

### THE NEED TO RE-IMAGINE THE AFRICAN STATE

The above analysis suggests that Africa needs to redefine its political institutions to take account of their cultural heritage. It is not enough to imitate colonial and European political systems suitable for different economic and social conditions.

#### *Somalia*

The collapse of the state in Somalia has revealed that the post-colonial state is not a viable unit of African governance. Indeed, some of the elements appearing in its reconstitution in the northern part of the country, called Somaliland, go to prove the viability of some of the African political forms.

According to the study by A Y Farah, the traditional *Guurti* system has re-emerged here as the highest level of the councils of elders. The councils are headed by clan leaders and elders representing the lineages of the clans. The important points of cleavage in this structure are the 'clan-family', the 'clan', and the 'primary lineages' as well as the '*dia*-paying groups'. The latter are the most stable political units because they guarantee security of property and person. It is this that has enhanced once again the agnatic principle that binds together close kinsmen in this form of corporate group with the collective obligation to pay and receive blood compensation – *dia* – as part of conflict control, management and resolution. This goes to prove the arguments advanced by Chancellor Williams referred to above.

The study showed that though this fluid segmentary social system was susceptible to manipulation by adventurist, militaristic and reckless personalities it was nevertheless capable of placing each and every kinsman in *dia*-paying lineage where the individual's basic rights were guaranteed and his/her obligations defined. In this line of political arrangement, a significant number of the elders who represent the lineages of the clans in the *Guurti* are also the representatives of the *dia*-paying groups. *Akils* or local authorities of the *Guurti* attend to internal affairs of the groups and represent them in inter-clan meetings as well as regional and national peace conferences and on other matters of wider interest to the groups.

But this is merely an adaptation of the kinship system whose memory has remained deep in the oral and dynamic culture of the Somali people. The principle has been adapted to the new socio-economic conditions. The new *Guurti* of the clans are commonly urban-based townsmen who are nevertheless dominated by their respective kinship groups. They are tied to their rural kinsmen by agnatic bonds and common treaty. They also own livestock in their rural home areas. It is this common economic interest that enhances the social ties between the two groups (urban and rural). In the words of the study:

The *Guurti* play a central role in the peace process, which harnesses the services of the sacred authorities of the religious leaders and persuasive power of the distinguished poets. Perhaps linked to the natural demographic growth, our study found that political offices had proliferated among the clans in the study area. Most probably, this was also fostered by the need of the clans and sub-clans to assert independence in a situation of turmoil and uncertainty with an explicit tendency to search for solutions in traditional lineage structure, given the absence of effective modern law and order.

These traditional lineage structures had re-emerged over the past thirty years. This means that even before the overthrow of the Saayid Barre regime these structures had been resurrected as a response to the crisis of modernity in Somalia. The study states: 'Today, as in the past, they deliberate policy and take decisions for these groups at extremely democratic meetings in which now, as before, oratory and poetry play important political roles.' This enables us to draw a comparison with the observation made by the two British anthropologists Fortes and Evans-Pritchard, cited above, who noted that centralised authority and administrative organisation in traditional African society seemed to be designed to accommodate culturally diverse groups within a single political system. The anthropologists also noted that centralised forms of government were also to be found among homogeneous cultures with little economic differentiation. From this they concluded that 'a centralised form of government is not necessary to enable different groups of closely related culture pursuing the same mode of livelihood to amalgamate'.

This seems to confirm the Somali situation and would appear to explain the easy collapse of the centralised state that was not based on the traditional principle of accommodation of diverse groups. It also confirms Cheick Anta Diop's observation that a movement from rural 'tribalised' forms to detribalised urban forms and vice-versa has historically characterised the African monarchical arrangements of the past. He notes that where 'detribalisation' had taken hold in towns 'a return to the past was out of the question'. Individuals would, in such cases, be bound together by social bonds. He adds: 'But where clanic organisation still predominated, where the social limits were still determined by the territory of the clan or tribe, there would be a sort of turning inward, an evolution in reverse, a retribalisation reinforced by the new climate of insecurity' (Diop 1974, p 74).

In such a situation, according to Diop, collective life again took precedence over individual life. But such turning back did not mean a total return to the past: 'They were not without the after-effects of the earlier imperial epoch. They were already developed and complex. That is why ethnologists, to their immense surprise, but without exception, always discover in them traditions that do not correspond to this stage of social organisation, but more advanced, they do not often hesitate to attribute this to a phenomenon of degeneration.' This is correct and the fact needs further study by African scholars.

*Ethiopia*

The case of Ethiopian recognition of ethnicity is another kettle of fish. In fact it is a sophisticated example of the practice of neo-tribalism on a grand constitutional scale. The disintegration of the Ethiopian Empire is being managed in a manner that may heighten rather than diminish ethnic tensions. The semi-feudal domination of Ethiopia by the Amhara nationality led to the uprising of other nationalities in Eritrea, Ogaden (Somalia), Tigray and Oromo. In 1974 the Ethiopian army, led by Mengistu Haile Mariam, overthrew the Haile Selassie regime and imposed a Marxist-Leninist regime. The Tigray People's Liberation Front (TPLF), with their allies from different ethnic and satellite groups, formed the Ethiopian Peoples Revolutionary Democratic Front (EPRDF), which took power after the overthrow of the Mengistu regime through a people's war.

Because of this ethnic element EPRDF found that it could only survive if it recognised, at least formally, the rights of the different 'nationalities' to self-determination. This became essential, especially after the new EPRDF regime granted Eritrea the right to secede after a referendum was held in that part of the country and this resulted in Eritrea becoming an independent nation-state. In order to appear to recognise the same right for the other 'nations', 'nationalities' and 'peoples', the EPRDF government introduced a new Constitution in 1993.

Article 39 of the Constitution granted: 'Every nation, nationality and people in Ethiopia the right to full measure of self-government in the territory that it inhabits and to equitable representation in regional and national affairs.' Article 39(1) went a step further by granting 'nations, nationalities and peoples the unconditional right to self-determination, including (the right) to secession'. But it soon became apparent that this 'unconditional right' was in fact conditional. For a 'nation', 'nationality' or 'people' to exercise that right, the ethnic-based regional parliament must first approve the proposal by a two-thirds majority and submit it for ratification by a majority vote of the region's population in a referendum. This is fine, except that other provisions make it almost impossible to exercise this right.

The problem is that the whole constitutional arrangement is based on the idea that EPRDF has to remain in power if these rights are to be exercised at all. This is because the other parts of the Constitution are written in such a way as to make it impossible for EPRDF ever to lose power and to ensure that it is in a position to manipulate those parts of the Constitution, which make it possible for any part of the country to secede. There is, therefore, no guarantee that under the EPRDF government any 'nationality' can, in fact, secede.

Article 50, for instance, provides for a federal structure of government for the whole country, yet article 61 removes the power of the people to elect this federal government. Under the provisions of this article, it is members of the state council in each region who have the power to elect the federal council. Article 61(1) gives the state councils the option to decide whether the people should elect federal councils! In short, the Constitution does not enfranchise the population and the

effect is that the state councils can only involve the 'people' in such elections if they are sure they have been manipulated to vote for particular candidates who are acceptable to the EPRDF.

Similarly, the Constitution declares it to be 'anti-democratic' for any democratic opposition party or opposition group to adopt any constitution abolishing 'the supreme organ of state authority' which the EPRDF dominates. Thus the 'supreme organ of state authority' has the last word on whether people shall be allowed to exercise their fundamental right to vote for an arrangement that is acceptable to them. Such right can only be exercised with the approval of EPRDF political structures. This is, to say the least, a disguised centralised one-party state under the guise of granting the Ethiopian people their right to self-determination.

Thus, although the Constitution gives the impression that it empowers the different ethnic communities to decide their future through a democratic vote, it in fact gives the EPRDF powers to limit the number of ethnic groups that may exist in the country. Although the Constitution provides for the recognition of the *kilil* system, which allows the establishment of 'self-governing regions on the basis of nationality', the EPRDF has reduced the number of ethnic regional groups from 90 to a mere nine recognised regions. Regions 7, 8, 9, 10 and 11 have been regrouped into one ethnic region called the Southern Ethiopian People's Administrative Region (SEPAR).

The fact that this has been done administratively, without the democratic involvement of these 'nationalities' and 'peoples' and that this decision was made by the ethnic satellite groups allied to the EPRDF and not by all the ethnic groups shows how easily the Constitution can be manipulated to suit the wishes of the ruling political elite in the EPRDF. The Constitution does not therefore, as it so proudly proclaims, give the people of Ethiopia the 'right to self-determination', it merely disguises the one-party character of the EPRDF and its allies. Indeed, the *kilils* are themselves dominated by member organisations linked to the EPRDF, whose main partner is the TPLF.

The right to secede is made even more tenuous by the fact that article 40 of the new Constitution gives the power of land ownership to the 'state and the people of Ethiopia' throughout Ethiopia! Even then, the Constitution does not provide for the regional state councils to formulate and / or implement their own development strategies, including the use of their lands. This in effect establishes a policy of state ownership and control of all land in Ethiopia. In such a situation it is not worth talking about the ability of different 'nationalities' and 'peoples' to secede from Ethiopia.

Marina Ottaway (1993) has correctly called this system the 'official politics of manipulated ethnicity'. It does not in effect amount to recognition of the rights of ethnic communities to exercise any 'rights of self-determination'. On the contrary, as Ottaway observes, the system has condemned Ethiopia to continued authoritarianism and disintegration. Ethiopia thus offers a lesson on how the ethnic conflict should not be managed by countries pursuing democratisation.



By contrast with the gimmicks of the EPRDF, Ethiopia has a rich political heritage. According to Mekuria Bulcha, in Oromo, under the *Gada* system the individual citizen has the right to elect and be elected to political office. The authority of those in office is based on the will of the people to whom they are held accountable. According to him this system in the past prevented power from becoming absolute by creating a complex system of checks and balances. The opposition was an integral and institutionalised element of the *Gada* system. Opposition was not only tolerated but also encouraged.

Although in the old imperial order of Ethiopia the Oromo elites were assimilated into the Abyssinian culture, the bulk of the Oromo pastoralists and peasants, who constitute more than 90 percent of the Oromo population, remained, by and large, unaffected by this assimilation. They retained their culture and ways of life. Therefore the Oromo egalitarian values and ethos, including much of the knowledge and practices of their old democratic political system of the *Gada*, have survived up to the present because of this recognition of diversity in the old order. This survival of the old Oromo tradition has also begun to influence the Oromo intellectuals of today as they have universally come to accept it. These Oromo democratic traditions are a force for unity in the new democratic struggles for a free and independent Oromia within or outside the present day Ethiopian state.

### *South Africa*

The South African government has adopted a conciliatory position with regard to traditional political institutions. According to chapter 12 of the South African Constitution, status and role is granted to traditional leadership according to 'customary law'. The Constitution mandates the establishment of houses of traditional leaders through national or provincial legislation. Provincial houses of traditional leaders have been established in all six provinces where traditional leaders are to be found. At the national level, the National Houses of Traditional Leaders was established in April 1997 in terms of legislation passed by Parliament. Under the legislation, each provincial house of traditional leaders nominated three members to be represented in the national house, which elected its own officials.

The National House of Traditional Leaders advises the national government on the role of traditional leaders and on customary law matters. It also has the power to conduct its own investigations into certain matters and to advise the President on request. In the administration, the Chief Directorate for Traditional Affairs is mandated to give support to traditional leadership and institutions. The directorate is responsible for formulating policy relating to the institutions, determining remuneration to the leaders and assisting in the capacity building and the creation of databases for the institutions.

It is still to be assessed how influential these institutions are within the body politic of South Africa. Tentative evidence seems to confirm their importance in building political consensus in the country as well as the maintenance of peace in

the communities. These efforts are, however, affected when the political elites resort to neo-traditional politics to advance their own interests. This has happened on a number of occasions in KwaZulu-Natal.

## CONCLUSION AND PROPOSAL

If a real African renaissance is to become a reality, and not an illusion, the African masses must be placed at the very heart of the movement for Africa's rebirth and not at its margins. Elite nationalism has been seen to be a replica of European state formation. The African genius remains untapped. The real issue now is how this African genius can be brought in the forefront of the renaissance. President Mbeki of South Africa has been the main spokesman for the idea of the African renaissance and Castells (2000, pp 121-26) believes that South Africa could be the hope for turning the continent around. Mbeki (1998b) believes that Africa can build on its rich heritage to bring about a 'rebirth' and a reawakening of the African people, but he also believes that Africa has to move towards creating both sustainable democracies and sustainable economies in the new global context.

The theory is fine, but the crux of the matter will be how the post-colonial leadership can re-energise the African people so that they can champion this renaissance while they continue to act as oppressors. This will require a new African leadership, re-educated in the cultures of the African people. Unless they are able to 'go to the source' of the heritage, as Cabral argued, such a renaissance can only be on other peoples' terms.

One of the most serious problems facing Africa today is the fact that the post-colonial states cannot sustain themselves and one of the factors undermining their cohesion is the fragmentation created by two diametrically opposed tendencies. On the one hand there is the neo-tribal 'divide and rule' political game that African elites have inherited from the colonial rulers and which they have resorted to in order to maintain themselves in power. The second is the division of the continent according to the colonial territorial principle alluded to by Crawford Young. This complicates ethnic divisions, which arise out of mass dissatisfaction with the performance of the post-colonial states and demand equality or sometimes autonomy or separation, as we have seen above.

Eriksen (1996, pp 40-41) suggests three 'options' to contain the disintegration that emerges from heightened ethnic consciousness arising out of exclusion and marginalisation. He believes the nation-state inspires ethnic conflict insofar as the political unit also contains people who do not identify with the cultural group represented by the state. In circumstances where there is a lack of fit between ideology and social reality, the state has three main options – 'assimilation, domination and multiculturalism'. Eriksen argues that the first two 'options' are unworkable and that the third is only workable if African political elites can transcend nationalist ideology through the state and instead adopt an ideology of 'multiculturalism' in which 'citizenship does not have to imply a particular cultural

identity'. Alternatively, he recommends a 'decentralized federal model with a high degree of local autonomy' for dissenting ethnic groups (p 44).

This option recognises historical differences and culturally determined realities. It also recognises what nationalism promises but does not deliver, namely, equality of all peoples and guarantees of their cultural rights within the nation-state. The alternative of a federal or confederal structure of power-sharing conforms to the nationalist promise of the right of self-determination.

Eriksen acknowledges that this solution is not a simple one because both federalism and multiculturalism, which seem to be the better options, 'imply continuous negation and an open political discourse'. He believes this is the only solution 'if the evils of ethnic domination are to be avoided'. He also wants to encourage the 'segmentary character of identities' at the level of the individual citizen. In fact what Eriksen here calls the 'segmentary character of identities' has long been the basis of the multiple characters of African social and political identities. The colonial understanding of Africa that regarded the African people, as having historically been boxed within 'tribal' enclaves has been proven wrong. The segmentary character of identities would also be consistent with the idea of federalism or confederalism.

In a reaction to calls after the Sirte Summit, which was held in Libya in September 1999, for an African Union government, Francis Kornegay, a Bradlow Fellow with the South African Institute of International Affairs, has called for a somewhat similar solution to the crisis of what he calls 'elite sovereignty'. According to him, national sovereignty presupposes a popular sovereignty based on shared national identity, which is not the case in the multiethnic and often regionally divided states of Africa. He therefore calls for a Pan-African parliament based on federal or confederal units, which would develop a political culture of tolerance for diversity and power sharing. This would involve distinct, geographically based ethno-linguistic and cultural regions within the current inter-African nation-state framework (Landsberg & Kornegay 2001, pp 1-3).

Tshiyembe (2000) has argued for a similar solution to the African crisis, proposing a new state model based on African traditions as the basis of a United States of Africa: 'Unless it is a new life, the concept of a United States of Africa will remain empty. Africa will not have a genuine constitutional states or sustainable development. To this end, he proposes a clear distinction between the *legal nation* – the state – and the *sociological nation* composed of ethnic groups, which he calls ethnic-nations, founded on shared language, blood ties, religion and a common history, and 'an evident desire to live together'. He argues that this is the bedrock of nationality of origin.

Tshiyembe further argues that the recognition and reinstatement of these sociological nations, to which the post-colonial states merely pay lip service politically, will prevent political manipulation of ethnicity and disputes over nationality of selected individuals or communities. He gives as his reason the fact that if multinational state were established, the law would provide that nationality

is defined by consciousness and membership of a community of shared values, while citizenship would be defined by consciousness and membership of the state in which the multination exists. In this way, the renaissance of the state can be rooted in Africanness and not in mere legal definition. He adds:

In this model of a multinational state the rights of minorities cannot be enforced against the rights of the minority. The state and the nations that make up the multinational state would have to respect the principles of equality and the right to be different, to achieve a common destiny. In return these nations would enjoy the same rights and duties based on founder rights, including the right to language, religion, culture and nationality. The issue of minority rights is without political foundation in a multinational state.

The collapse of the post-colonial states that is taking place in the Great Lakes Region could be used as a test case for reconstituting the African state by removing borders between states and recreating political entities within a bigger state in which different cultural identities and nationalities are recognised in a system of integrative federalism. This reorganisation could take the form of opening up the entire geographical area to create federated or confederated nations and states as members of the African Union so that the idea of a United States of Africa may become a reality. Should that happen the African Union could have a common continental parliament, federal government and a common defence and external policy, together with other mechanisms such as the Abuja Treaty to coordinate continental and Diasporan economic development. This will also mean that the African Union project, as well as projects such as the New Partnership for Africa's Development (NEPAD), may have to be renegotiated along the way to open them up to more ideas from grassroots communities. This is where the crux of the matter will lie, because the process will have to be innovative in order to solve the conflicts. The idea of opening up the territorial space is to permit the different ethnic communities and other 'stakeholders' to renegotiate their identities, which can open up areas of dialogue about the kinds of political arrangements they wish to see.

This will remove the Tutsi-Hutu polarisation and other ethnic factors since different kinds of other identities will come into the picture. It will also permit emergent civil society organisations, community-based organisations, women's organisations, youth organisations, professional organisations and others to renegotiate different kinds of links that could result in a consensual resolution to the conflicts. Already there are indications that this is the route that civil society in the Horn of Africa is considering. For instance, there is a proposal being put forward by the Centre for Africa and the Diaspora, based at the University of South Florida, that the countries of the Horn – Djibouti, Eritrea, Ethiopia and Somalia – should be united in a confederation of states. Although there are indications that the US State Department is behind the idea, it is nevertheless a good one.

Therefore the involvement of civil society and the communities in any political dispensation is the way to proceed. The process should be democratic if it is to be meaningful and should be transformed from a top-down imposition to a bottom-up consensual process. It will redefine the role of the African state and give the people an opportunity to reorganise the states taking into account their cultures, cultural heritages and the new identities which will manifest themselves. But this must be a democratic and consensual process in which all the communities and social groups and forces play a part.

This is why the role of countries like South Africa, Nigeria, Tanzania, Egypt, Libya and others may be crucial. The involvement of the SANDF in Burundi should therefore not be seen as a short-term engagement but as part of the process of creating confidence and trust that can lead to the opening up of hearts and minds to alternative ways of imagining the state in Africa. In the meantime, all efforts should be focused on grassroots communities, building trust and confidence through learning, dialogue and cross-border activities that link communities across the porous borders. This could be the first step in building up structures and inspirations for reconciliation through an overall renegotiated regional and continental political dispensation. <sup>\*\*</sup>

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<sup>\*\*</sup> This proposal is made in a monograph written for the Institute for Justice and Reconciliation, Cape Town, published in March 2003 and entitled: *The Political Economy of Conflict and War in the Great Lakes Region*.



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# PARTY SYSTEMS IN THE SADC REGION

## *In Defence of the Dominant Party System*

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### ABSTRACT

*In the past ten years or so the process of democratisation in emerging democracies has continued to face numerous and persistent challenges. The most pertinent of these is the rapid movement towards one-party dominant political systems. This phenomenon has been observed by scholars who have administered a series of tests to determine the possibility of democratic consolidation. This paper makes a detailed study of the detrimental implications of dominant party systems. It also explains the distinguishing features between a de jure and a de facto dominant party system using examples from the SADC region. The paper, however, argues that although dominance is, in many instances, created by forms of coercion and electoral manipulation, there are some parameters of politics that do indeed aid dominance in democratically acceptable ways. The paper addresses five basic types of parameters, examines the ways in which they function and discusses their relevance in terms of aiding dominance democratically. The central argument maintains that certain dominant party systems can function within and respect the essential parameters of constitutional democracy. That said, a number of important political questions must be addressed about what such dominance means to the future prospects for democracy in these countries.*

### INTRODUCTION

Since SADC's transition to democracy in the early 1990s its democratic credentials have undergone a series of assessments to examine the state of their strength/entrenchment. Many observers, in their attempt to carry out such assessments, have utilised a range of indicators 'as evidence of a successful transition to democracy' (Bauer 1999, p 429) as well as a series of differing tests to determine the likelihood of democratic consolidation. As a result most recent studies have focused

on determining the degree to which these democratic transitions have been consolidated and many have arrived at the principal conclusion that in the past decades there have been numerous and persistent challenges to democratic consolidation. The most pertinent of these, apart from the difficulty of creating a viable opposition and building autonomous civil society organisations, is the rapid movement toward one-party dominant political systems.

They argue that 'within the institutions of political society, where partisan contestation for political power takes place' (Bauer 1999, p 432), there remains a formidable challenge – the continuing determination by dominant parties to entrench and maintain their dominance.

Other studies have produced similar conclusions (see Barkan 2000) that an important by-product of the dynamics existing in democratic transitions in the region is the preponderance of incumbent authoritarians and a domination of regions across these countries by one party. In his paper 'Protracted Transitions among Africa's New Democracies', Barkan (2000) suggests that discussions of democratic transition and consolidation need to devote much attention to the structural conditions that prevail in neo-patrimonial regimes.<sup>1</sup> He argues that of the seven structural conditions he identifies that shape African transitions – the most important being the effects of Africa's 'very short and imposed previous experience with democratic rule' – two features or by-products emerge. The first is the 'incumbent authoritarian rulers representing one geographic region or a coalition of regions, the second, the domination of a series of regions in most countries by one party' (p 232) as noted above. In the context of this paper, the relevant issue, however, is not the approach he takes but the conclusions he draws from this approach, which are similar to those emanating from many other approaches – that the distinguishing feature of democratic transition in the region is the gradual slide toward one-party dominance.

Even those scholars who have administered the parochial electoral criteria that determine whether democratic regimes in the region have become consolidated have ascertained that they have not because many of the founding and second elections did not result in leadership change – a simplistic approach decried by other analysts as the 'fallacy of electoralism' (Karl, quoted by Bratton and Posner 1999). The main purpose of these studies was to look at elections 'to see what they portend for the consolidation of democracy' (Bratton and Posner 1999, p 377) and

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1 The paper observes the following conditions: 'that the experience with democratic rule was short and imposed; that the economic conditions required to sustain democracy, if not launch a transition, are poor; that almost all African countries remain agrarian societies. In this context Africans usually define their political interests in terms of where they live and their effective ties with their neighbors rather than on the basis of what they do or of their socio-economic status; that all African countries with the exception of Botswana and Somalia are plural societies – societies populated by members of two or more ethnic or linguistic groups, each of which inhabits a distinct territorial homeland; that the African state provides a much larger proportion of wage employment for the middle class than do states outside Africa; and finally that African politics have long been marked by neo-patrimonial norms of political authority and forms of governance'.

their conclusion was that consolidation only occurs when there has been a regime change. Samuel Huntington referred to this as the 'two-turnover test', according to which consolidation occurs whenever the winners of founding elections are defeated in a subsequent election, and the new winners themselves later accept an electoral turnover (Bratton and Posner 1999). This one-dimensional position presupposes that 'formal procedures for elections do create if not a liberal democracy, at least an electoral democracy and that elections if conducted regularly and fairly can in and of themselves create a broader consolidated democracy' (Bratton and Posner 1999, p 379).

The fact is that regional elections, whether founding or second elections, have not always resulted in leadership changes. In the early 1990s the region saw a wave of multiparty elections, which marked the transition from a period of authoritarian rule to a new era of democratic government. This trend has continued and has been firmly entrenched in the politics of the region with many countries, among them Zambia, South Africa, Tanzania, Namibia and Malawi, now conducting a third round of elections. Surveys of both founding and second elections reveal both declining standards of electoral management affecting the quality of the elections and the absence of changes in leadership. The table below illustrates this trend.

Table 1  
Parliamentary Elections 1995-2001

Country	Date	Ruling Party	Party Alternation	Voter turnout %	Party Seats %
Tanzania	1995	CCM	No	76.5	80.2
	2000	CCM	No	72.8	89.1
Namibia	1994	Swapo	No	76.	–
	1999	Swapo	No	62.1	76.1
Zambia	1996	MMD	No	78.5	60.8
	2001	MMD	No	68.5	–
Zimbabwe	1995	Z/-PF	No	31.8	–
	2000	Z/-PF	No	48.3	53
South Africa	1994	ANC	No	86.9	–
	1999	ANC	No	89.3	66.4
Malawi	1994	UDF	No	80.0	–
	1999	UDF	No	92.3	47.3
Botswana	1994	BDP	No	76.7	–
	1999	BDP	No	77.1	5.2



Acknowledging that the introduction of multiparty politics in Africa has resulted in, among other things, an unexpected slide toward one-party dominance is just the starting premise of this paper. As the debate above reveals, many democratic transitions in the region have developed slowly and a typical feature of this development in the long term has been the existence of dominant-party regimes. The detrimental implications of dominant-party systems and the strategies applied by incumbent parties to retain such dominance deserve consideration here. One way of examining this phenomenon is to focus myopically on elections because, for the most part, these are the mechanisms used by most leaders to retain political dominance.

As some cases in the region illustrate strikingly 'dominant parties have not hesitated to structure the rules of electoral competition to their own advantage' by manipulating electoral rules, notably those concerning the eligibility of candidates. This usually involves disqualifying the principal rivals for the presidency, a manoeuvre that has secured many a political regime the necessary political control. Other cases of electoral malpractice emerge during campaign periods with rules of campaign conduct unfairly shaped and reconfigured as a party deems fit. Vote buying and political intimidation stand out as the most widespread electoral malpractices in this regard.

Other factors besides the absence of electoral competition underpin the process of entrenching dominance. According to Giliomee and Simkins (1999, p 340) these include the 'elimination of the dividing line between the ruling party and the state with the result that the ruling party comes to be seen as the state rather than as a temporary government; arbitrary decision making that undermines the integrity of democratic institutions such as the legislature and the judiciary; and the abuse of advantages enjoyed by incumbency as well as abuse of public institutions and resources.' The advantages alluded to by the authors are the fact that dominant parties have decided benefits over the opposition over and above their ability to terrorise and intimidate it. Among these benefits are: the authority to determine election dates; the ability to monopolise state media; and, usually, a stronger and more developed party organisation, although this is seen more as a genuine advantage than as one that can be manipulated (Barkan 2000).

The examples of Zambia and Zimbabwe illustrate the above points most graphically. In the 1990 Zimbabwe general elections, the Zimbabwe African National Union-Permanent Front (ZANU-PF), the ruling party, won 117 of the 120 seats open for contestation in the 150-member Parliament (Nordlund 1996). The 1995 general elections resulted in the same distribution of parliamentary seats. Although the number of seats occupied by the ruling party fell dramatically to only 63 (Matlosa and Mbaya 2003) after the 2002 general elections as a result of the momentous advancement of the opposition Movement for Democratic Change (MDC) in the country's political processes, the hegemony of ZANU-PF hardly diminished. If anything, it was strengthened through other channels. As Matlosa and Mbaya noted 'ruling parties dominate not only in the legislature but more importantly the

executive organ too, which in turn gives impetus to their undue influence and control over the judiciary as well. The recent conflicts in Zimbabwe,' they observe, 'between the executive arm and the judiciary organ are clear testimony to the tensions among key organs of the state as a result of the overwhelming hegemony of the one-party executive' (p 19). The situation in Zimbabwe, however, is far starker than the authors suggest. There has been no change of government in the country since independence, despite the introduction of multiparty politics in the early 1990s.

The country has functioned as a *de facto* one-party state since the merger between ZANU and the Zimbabwe African People's Union (ZAPU) in 1998<sup>2</sup>, a move accompanied by other strategies that helped the new party to formalise its dominance (Du Toit 1999). These strategies resemble those pursued by today's government, although they are less brutal and blatant. Since the March 2002 elections, in an attempt to strengthen his volatile hegemony, Robert Mugabe has increasingly relied on violence to control the opposition, win elections and deter mass action. He has put in place a legal infrastructure designed to extinguish dissent and to consolidate his hold on the economy, state institutions, and the media (ICG 2002). In summary, with ZANU-PF's hegemony secured, Zimbabwe is better characterised as a neo-authoritarian one-party political system.

In the case of Zambia, the country's political record to date has confirmed the suspicions of many pundits, namely that the introduction of multiparty political competition in Africa has essentially not negated the post-independence authoritarian framework of politics. Notwithstanding the restoration of multiparty politics in 1991, which was widely lauded as a model for the rest of the region, Zambia remains a *de facto* one-party state. The Movement for Multiparty Democracy (MMD) was returned to power in each of the three elections held since 1991. The 1991 elections were fiercely contested, with former president Kenneth Kaunda's party, the United National Independence Party (UNIP), receiving only 23.6 per cent of the vote as against the 71.9 per cent gained by the MMD, giving it 125 parliamentary seats (Du Toit 1999). The 1996 elections saw the MMD's parliamentary seats increase by six to 131. Although this figure fell dramatically to 69 seats in the 2001 elections owing, effectively, to continual splintering and fragmentation within the party, the MMD's legislative dominance under Levy Mwanawasa's leadership has now been maintained with an average of 127 parliamentary seats. Opposition party defections have been the single factor behind this comeback.

Under Frederick Chiluba, Zambia's political performance regressed. Despite high expectations of change his governance style mirrored that of Kaunda, leading analysts to come to the disappointing conclusion that Zambia's re-democratisation

2 In fact, Zimbabwe had toyed with the idea of becoming a *de jure* one-party state. At a ZANU party congress in 1984, the party's formal ideological objective was stated as being to pursue a socialist state based on Marxist-Leninist principles, which entailed the establishment of a one-party state, an objective that was eventually abandoned.

did not amount to much. If anything it merely transformed the country from a *de jure* to a *de facto* one-party state (see Burnell 2001; Du Toit 1999; Bratton and Posner 1999). In short, the continuing exploitation of government resources and the manipulation of democratic institutions to undermine the opposition, among other factors, preserved the political culture of a one-party state.

Despite all of the above, the aim of this paper is to argue that dominance is not only created by forms of coercion or electoral manipulation or through any of the strategies thus far discussed but that some parameters of politics do indeed aid dominance in democratically acceptable ways. Dominance, the paper will show, may be based on consent or even indifference on the part of the citizenry; it may be entrenched by real electoral support; it may be necessary for the promotion of national reconciliation and it may be a reflection of the non-manipulative capacity of the dominant party, among other factors this paper will later elucidate. In sum, the assertion is that party dominance should not only be viewed as a state of politics that can only be achieved by wholly undemocratic means. In other words, dominance should not only be looked at as being a symptom of unhealthy dynamics in a particular society. The objective here is not to justify the undemocratic conditions of such a system but rather to provide a viable defence of some positive implications of dominance that are usually ignored and that do not, in essence, invalidate democracy.

In short, the paper will demonstrate that the evolution of a dominant party has both non-democratic and democratic features, although discussion will be limited mostly to the latter. In its deliberations the paper will turn to a few cases of one-party dominant systems in the region, namely the African National Congress (ANC) in South Africa, the South West African People's Organization (Swapo) in Namibia, Chama Cha Mapinduzi (CCM) in Tanzania and the Botswana Democratic Party (BDP) in Botswana.

## UNRAVELLING THE FALLACY OF PARTY DOMINANCE

Before highlighting some of the democratic features that may entrench a party's dominance, it is important to draw attention to the different evolutionary stages, or forms of dominant-party rule, mentioned above. Giliomee and Simkins (1999) have referred in their discussions to three such forms. Firstly, dominant-party rule, they suggest, can be summarised as a 'regime innovation in the direction of a liberal democracy' (p 36). The dominant parties that demonstrate characteristics associated with such a pattern are those in advanced industrialised democracies. Here a party's dominance is recognised by society as an outcome rightly deserved as a result of its progress and achievements that extend beyond mere accomplishments in the electoral arena. The party's strength depends much more on its ability to reformulate complex economic and social policies in such a way that its views on them become a national political consensus (p 37). Other factors such as leadership skills in

managing the divergent issues facing the country and the party's ability to remain open and non-exclusionary also fortify that dominance. The assumption is that any dominant regime type that is indeed evolving in the direction of a liberal democracy is naturally at the same time operating compliantly / willingly within the boundaries of democracy and is committed to competitive politics.

A second pattern of dominance highlighted by Giliomee and Simkins is what they call a 'semi-democracy stuck half way between authoritarianism and liberal democracy' (p 37). In this dominant regime a party's authority is obtained by 'openly utilizing authoritarian practices alongside democratic procedures' (p 38). The authoritarian practices of which they write relate to activities designed specifically to protect the regime from political changes. These have ranged from manipulating the rules of electoral competition to designing laws that allow such exploitation. The small degree of democracy in fact tolerated by the regime, Giliomee and Simkins observe, is the result of the fact that 'it presents it with so few difficulties' (p 38). What it does do, however, is deceitfully borrow some features of democracy such as electoralism while ensuring that it only partially and fraudulently concedes to these elements. The third pattern persuasively examined by both analysts is that of 'presiding over an eroding liberal democracy in the direction of mere majoritarianism and electoralism' (p 38). This is the method used by a regime that has adopted / acquired many features of liberal democracy and, in addition, functions in an almost competitive party system, which, according to the authors, 'acts as a cloak for domination of one group over the other'.

The above analysis of the three distinctive forms of dominant-party rule forces one to draw the following conclusions. Firstly, it is important to mention that the four country case studies examined in this paper share similar characteristics with those prescribed in all the different evolutionary stages. Put somewhat differently, the four cases do not display a single likely pattern such as the second (a semi-democracy stuck halfway between authoritarianism and liberal democracy), the pattern most observers assume is the case with dominant parties such as the CCM, Swapo and, to a lesser extent, the BDP and the ANC. Even Giliomee and Simkins acknowledge that the four cases they study (Malaysia, Taiwan, South Africa and Mexico) taken together do not display a distinct pattern. These countries have shown certain characteristics that are synonymous with all features of the three different patterns of dominance.

It is all too easy to mark the preponderance of dominant-party systems in transitional multiparty politics as an obstacle / challenge to the consolidation of democracy and to judge its existence as a symptom of unhealthy politics. However, if it is possible for a dominant system to function within the parameters of liberal democratic politics, then it is correct to assume and acknowledge that democratic features of a dominant-party system do exist. What is not highly acceptable or credible, however, as noted in a number of studies, is the idea that such democratic features exist in politics other than those that function in the direction of a liberal democracy as alluded to by Giliomee and Simkins. The essential point is that party

dominant systems, even if they operate in the two least desirable forms, can be achieved in part by democratic means.

### IN THE NAME OF NATIONAL RECONCILIATION AND NATION BUILDING

Most of the parties considered in this paper emerged either from a crisis situation (the ANC) or as post-independence forces endowed with the task of nation building while facing volatile post-liberation politics. In South Africa and Namibia the destabilisation of apartheid has provided, in part, some justification for dominant-party rule. While this is true of most countries facing such types of aggression, it must be noted that the very fact of the party's dominance was made possible by its leading role in the struggle and the support it was accorded because of this role. Swapo, as a premier nationalist organisation during the struggle, was among the first black political organisation in Namibia and the only one to engage in armed struggle – hence it managed to command, and still does to this day, the loyalty and allegiance of the majority of the Namibian people (Bauer 1999).

Likewise, the ANC's role as a liberation movement helps it to command loyalty among the South African people. The ANC is, in fact, the world's oldest liberation movement, having been formed in 1912 (Friedman 1999). As such there is every possibility that its status will continue to help consolidate its dominance. As Steven Friedman puts it, 'the ANC has, over more than eight decades, established itself as the almost unchallenged symbolic vehicle of majority aspirations for liberation. Its hegemony as a result seems to rest on irrefutable logic' (p 98). The Botswana Democratic Party is another example of a party that assumed its dominant status as a result of its role in the struggle against colonial rule. To put it differently, of the four dominant parties (ANC, CCM, Swapo, and BDP) under review all but one have relied heavily on what Friedman (1999) refers to as the powerful 'founding myth'; their role in spearheading the demise either of apartheid or of colonial rule. This identification 'with an epoch' by the majority of the electorate in these countries seems to have legitimised the dominance enjoyed by these parties.

It is not just the destabilisation process that requires or demands the existence of a dominant party or the role played by parties in that process that entrenches dominance. Party dominance, it has been argued, serves well when there is a need to promote national reconciliation and forge the unity required after oppressive systems such as apartheid have been eliminated. With this in mind there are those who have greeted the ANC's overwhelming power positively. A degree of political stability needed to be established in the new South Africa, not only to promote national reconciliation but also to create the preconditions for democracy and build the nation, especially in the context of the immense political and development challenges it faced (Butler 2002). According to the model of democratic stability supporting dominant-party systems 'the dominant party is a much better stabilizing mechanism than fragmented parties' (Giliomee and Simkins 1999, p 345). Indeed, there is no denying that the ANC played a stabilising role in the inauguration of



South Africa's democracy, which might have been derailed if the ANC, like the other parties, had been fragmented and weak to the point where there was no dominant political formation.

By suggesting that a party's dominance is valuable and legitimate for as long as the electorate continues to identify it as a founding party, or, more particularly, if its rule is necessary for both social and democratic progress, this section makes one principal assertion; that dominant parties can in fact act as 'benign bridge builders', a concept borrowed from Pierre du Toit. However, Du Toit hastens to add that a dominant party can only create such bridging mechanisms if it has the necessary organisational functions; these being party strength and party system strength. Strong parties, he says, 'outlive charismatic leaders, exhibit organizational linkages, produce effective competition and yield a strong party system' among other characteristics. He nonetheless emphatically adds that in the emerging democracies of African states it is very unlikely that these benign bridging functions actually exist. For this reason, he argues, dominant parties 'are more likely to act as bridgeheads to single party hegemony, either through a sustained period of electoralism or in the form of elections which amount to pseudo democracy' (Du Toit 1999, p 195).

This paper will argue differently. While it is true that the nation-building process in Southern Africa is still new and thus relatively weak, the organisational strengths that Du Toit claims can give a dominant party the ability to perform this bridging function do, in fact, exist, although not to the same level as in Western democracies. For instance, although the ANC will inevitably capitalise on the founding figure of Nelson Mandela, it has, to a large degree, managed to function politically without him; a reflection of the fact that the influence he now exerts is merely symbolic. In other words, in line with Du Toit's thought, this paper will argue that by looking in particular at the electorate's behaviour, the strength of a dominant party, the strength of the party system and at the economic and social performance of a dominant party one may argue that dominant systems such as the ANC, BDP, CCM and Swapo can be viewed or accepted to some degree as legitimate democracies.

### STABLE ROOTS IN SOCIETY

The salient point here is that in some cases dominant systems are a truthful expression of the will of the electorate, which is made up mostly of societies that have formed allegiances with incumbent parties. Transition parties or, to put it more accurately, liberation parties, gain considerably from their political allegiances with stable rural societies and their existence goes a long way to explaining how dominant parties are able to tighten their hold on the reins of power. According to Kuenzi and Lambright (2001), 'a party's ability to survive reflects its ability to maintain support in the population' (p 446). In their study they used two indicators to show the extent to which parties have fairly stable roots in society. One of these

is the percentage of lower chamber seats obtained by a party, the other the average age of parties with ten percent of the lower-chamber seats. Kuenzi and Lambright's results for the first indicator reveal that all the parties used in this paper as case studies, with the exception of the CCM in Tanzania, held over 70 percent of the lower-chamber seats in the 1994 election. The BDP in Botswana, with 100 per cent of the seats, had the highest percentage. These figures reflect the BDP's electoral dominance, made possible by the stable roots it has in society (Kuenzi and Lambright 2001). The question that has to be asked is whether, if a party consistently wins the majority of the votes in a modestly credible and legitimate electoral process, is this in and of itself bad?

Some analysts, of whom Du Toit is one, argue that the fact that the parties are dependent on an ethnic support base undermines the legitimacy of the electoral support they receive and that dominance becomes more threatening if the support base 'reflects and exacerbates race based political identity' (Lanegran 2001). In Namibia, for example, Swapo has been the only party to secure a popular base among the Ovambo, who make up 51 per cent of the Namibian population. It seems, therefore, that Swapo's dominance continues to be entrenched through ethnic appeals (Bauer 1999). We need to face reality, however. In the case of South Africa the black support base, which is both a racial and an ethnic base, returns the ANC again and again to a position of dominance; should this mean that the consensus of the electorate is any less legitimate because it is ethnically or racially based? The results of the SABC/Markinor survey, the Afro barometer and surveys conducted by the Human Sciences Research Council have all suggested that there has been considerable stability in voter support patterns for the ANC since the 1994 elections. As one might have expected, voter support, as expressed by respondents to these surveys though it was not reflected in the subsequent election results, peaked at 69 per cent before the first 'liberation' election, a level which has not easily been sustained but has nonetheless remained stable since then (Schlemmer 1999). According to the pre-April 2004 general election SABC/Markinor opinion poll, 64 per cent of eligible voters were likely to vote for the ANC. In fact, 69.7 per cent of them did so. These patterns suggest that a bonding has occurred between the ANC and the mass of its electorate, which, contrary to popular or scholarly belief, is, in fact, not racially dependent. According to Lanegran (2001, p 4) 'a variety of reports and multiparty democracy surveys published over the years suggest that the race-based interpretation of South African political parties is incorrect'. She bases this view partly on a public opinion survey published by Robert Mattes of the Institute for Democracy in South Africa (IDASA) that revealed that support for the ANC in the Western Cape in the 1994 elections was divided approximately 50 per cent to 40 per cent between African and coloured voters. This, if nothing else, suggests that the ANC's dominance is not overwhelmingly dependent on one racial group and can thus be regarded as a true expression of the electorate's will.

Of course incumbency allows dominant parties to sustain 'stable roots in society' and maintain their rural support base by 'indulging in politically calculated

disbursements of government funds to rural areas' (Wiseman 1998). Evidence suggests that government spending targeted at rural areas tends to increase during elections, which may, to a degree, assist dominant parties to maintain their rural support bases. Overall however, the use of such incumbency to allocate resources in a more party-interested manner or even for party political gain has been relatively modest in some of these countries. Besides, however transparent the rules, the balance of scales will always seem to favour the ruling party because of the advantages afforded by its incumbency. For the most part, these advantages are legitimate, unavoidable and even inevitable.

It must be noted, however, that, like all the other factors which ensure dominance, these 'stable roots in society' will not endure indefinitely. There are already signs of declining support for incumbents in many African nations. Urban Africans, for example, are showing dissatisfaction with the performance of their governments and have begun to call for better government. According to the *Economist's* 'Sub-Saharan Survey' (2004), urban Africans increased from 23 per cent of Africa's population in 1980 to 35 per cent in 2001. The BDP in particular has been unable to extend its voting support among newly emerging urban voters. It has, to date, depended largely on its original voters, who include the rural traditionalists, state bureaucrats and ethnic groups. Meanwhile, its most ardent opposition, the Botswana National Front (BNF) keeps drawing support from the urban groups at the BDP's expense (Du Toit 1999). Friedman (1999) refers to this phenomenon as 'the generational change' threat in which the new generation of voters, mostly urban and better informed, does not view the dominant party's heroic deeds with the same enthusiasm as did their predecessors. This is indeed an indication that the dominance enjoyed by the ANC, CCM, and Swapo will not necessarily last forever. If this could happen in Botswana it most certainly can in South Africa and in Tanzania. The party system in Botswana is seen to be changing from a dominant to a semi-dominant system. Until recently 'no election in Botswana was seriously about which party will win power but only about where the opposition might or might not make gains' (Wiseman 1998). Giliomee and Simkins (1999, p 1) point to the cycles that dominant parties inevitably live through, especially in relation to advanced countries. The cycle begins with 'the inauguration of dominant-party rule, which then passes through a consolidation phase and ends with its first time defeat' (Giliomee and Simkins 1999, p 1). While the same cannot be said about the BDP it nevertheless appears to be coming slowly to the end of its prolonged dominance, indicating that, like the advanced countries featured in the Giliomee and Simkins study, non-authoritarian dominant systems in SADC too have a restricted life span.

### COMMITMENT TO COMPETITIVE POLITICS

So far the argument has focused on the 'natural advantages' or long-term benefits usually enjoyed by dominant parties which have allowed them to retain their

dominant status. Consequently it is widely assumed that, given these advantages, dominant parties in the region have little incentive to govern effectively in a reasonably competitive environment and to allow the conditions for democratic competition to thrive. The point to be made here, however, is that some of the region's party-dominant systems do, for the most part, operate in conditions of political competition in that there is 'regular and open electoral contest, opposition parties are free to organize and civil liberties are at least respected' (Friedman 1999, p 99). In other words, dominant parties can secure their dominance while remaining within the parameters of constitutional democracy and, if they succeed in doing so, their dominance is even more deserved. In fact, provided civil liberties and competition exist, dominant-party systems can serve well as necessary platforms for a democratic system; a point which echoes du Toit's argument that 'dominant parties can only be benign bridge builders if political competition and a large measure of civil liberties exist' (Giliomee and Simkins 1999).

The problem arises, however, when it is assumed, as it invariably is, that civil liberties and political competition are not safeguarded in dominant-party systems in the SADC region and that dominant parties signify the suppression of political competition. In fact the BDP in Botswana and the ANC in South Africa are examples of dominant parties functioning in fairly competitive political systems. South Africa has some impressive democratic features. It has an independent judiciary, a progressive bill of rights, a vigorous civil society, institutions such as the police that are independent from the state, an independent electoral commission, a free press, relatively free electoral competition and the right of political association, among other features. Botswana, too, provides an example of a dominant-party system functioning within the parameters of a constitutional democracy. In fact, it is unique in the region, with competitive party politics and regular free and fair elections a feature since independence. However, democracy has yet to be consolidated to create a viable liberal democratic system in both these countries.

Of course, unlike Tanzania and Namibia, Botswana and South Africa have the relatively high socio-economic conditions necessary for democratic competition. Still, the dominant party systems in both the former countries, this paper cautiously argues, have remained moderately democratic and despite the numerous challenges and constraints facing political society in these countries there have been some gains. Elections in Namibia since its independence in 1990, for instance, have been considered free and fair and the country's national legislative bodies have functioned largely unhampered (Bauer 1999). As for Tanzania, a number of elements of fair competition have been introduced by means of several constitutional amendments, the enactment of other laws and the implementation of policies (Mukangara 2003).

#### PARTY PERFORMANCE: ORGANISATIONALLY, ECONOMICALLY AND SOCIALLY

Another essential point to consider in assessing the democratic credentials of dominant-party systems is that domination is 'an art far more than it is an

inevitability' (Pempel, quoted in Friedman 1999). Dominant parties in the region managed to win the loyalty of the majority of the electorate largely because of their ability to position themselves both tactically and prudently in the party system. This has been possible because the strengths of these parties usually far outweigh those of their opponents. Du Toit (1999) defines party strengths as 'the ability of parties to outlive their founding leader, to capture and mobilize support, and to harness the energy of ambitious individuals to the goals of the party among other variables' (p 194). Of the four parties under review in this paper the BDP is, according to analysts (see du Toit 1999, Wiseman 1998), the only dominant party that has thus far succeeded in marshalling almost all these strengths. The party has outlived its founding leader; a factor whose difficulty cannot be underestimated given the importance of Seretse Khama's role in the development of the party. His direction and leadership, according to many, originally established the BDP's dominance (Wiseman 1998). From its election victory in 1965 until his death, Wiseman suggests, 'Seretse's personal prestige virtually guaranteed all the election victories which the party enjoyed.' Another notable strength of the BDP has been its ability to draw in the support of diverse interest groups such as chiefs, bureaucrats, commercial farmers and tribal communities (Wiseman 1998). It should also be noted that other dominant parties, too, have succeeded in marshalling some, if not all these strengths. The CCM in Tanzania, for example, is the only party with the capacity to mobilise voters in all corners of the country (Barkan 2000). With branches in every district and in most villages, the CCM remains the most powerful political organisation; a strength that continues to serve the party well in every election.

Another way of explaining how a party's strengths can present opportunities for the expansion of its dominance is to show that the absence of these strengths can affect a dominant party's progress. Wiseman accurately points out that 'factors relating to party strengths such as leadership and party unity certainly help explain the creation and maintenance of the dominant position of incumbent parties, but also help explain the erosion of that position' (Wiseman 1998). In recent years the BDP's dominance has diminished, partly because its party unity has weakened. The factional cleavages within the party, the increasingly obvious public disagreements among its elites and uncertainty about Masire's successor have all contributed to the deterioration of the party's unity. If these problems remain unresolved, Wiseman suggests, they could undermine the BDP's dominant position within the party system. In the case of the ANC, the tendency to concentrate power at the centre as well as to impose leadership decisions at provincial level has weakened the party's links both with its provincial support bases and with its organisational wing. This neglect has tended to reduce the provinces' membership bases as well as the party's branches. This will inevitably have wider implications for its dominance (see Friedman 1999).

Another related point to be made here is that a well-managed economy, like organisational strengths, can help retain a party's dominance and attract the support of the electorate. The BDP is the best illustration of this. In fact, some would even



say (see Du Toit 1999 and Wiseman 1999) that the major reason for the party's electoral victory in every election is its economic performance. The BDP itself enthusiastically recognises this and uses it as the central campaign strategy in all its electoral contests by ensuring that its election manifesto features its record on the economy (Wiseman 1999). It is easy to see why the BDP has derived considerable electoral benefit from the country's dramatic growth and development. After all, Botswana at independence was one of the poorest countries in the world (Du Toit 1999). The World Bank now designates Botswana an upper middle-income country, all made possible by the BDP's wide-ranging development policies in relation to education, health care, urban infrastructure, the economy, and the administrative state. These policies, it must be noted, were implemented equitably across the entire country (Du Toit 1999). Clearly good economic management remains a major reason for the BDP's sustained political success.

The same, however, cannot be said of the ANC. Although its support base was largely inspired by a desire for delivery the ANC's lack of control over the white-controlled economy and its liberalised policies has hindered it from delivering. This suggests that the party's dominance, if it continues to be evaluated against its ability to deliver and its economic performance, is fragile and short-term. Nevertheless, for the present this dominance seems assured, partly because its supporters insist that the state has delivered adequately and has made it possible for them to 'catch up materially with the dominant white socio-economic group' (Giliomee and Simkins 1999).

### A FRAGMENTED AND WEAK OPPOSITION

By way of concluding the debate, the paper now turns to the role and capacity of opposition parties in dominant-party systems. Despite being overshadowed by dominant parties, opposition parties, it has been observed, can play a significant role as either establishers/entrenchers or impeters of dominant-party directions. In situations where the opposition takes on the former role, political parties are usually weak and fragmented. The assertion here is that highly fragmented opposition parties can and do become unwilling and indirect entrenchers of dominant-party systems. As Olukoshi so aptly put it, 'The dominant-party system in Southern Africa is also symptomatic of the weaknesses, fragmentation and disorganization of opposition parties' (quoted in Matlosa 2004, p 7).

Opposition parties in the region's transitional democracies are generally conceived as overwhelmingly weak and fragmented. They struggle with major questions of tactics and strategy; they espouse no policy stances that are different from those adopted by current ruling parties and they are divided on grounds of history, ethnicity, and race; some, of course, more than others (Southall 2001). As a result very few opposition parties in the region can truly aspire to serve as an alternative government. To understand why this situation is so pervasive in the region's new democracies, some attention must be given to the influences of one-

party systems on the party organisation of the majority of the countries in the region. Matlosa (2004, p 4) writes:

... given the all pervasive political culture of centralization within the one-party system, political parties are highly centralized. This centralization has in turn inculcated and fuelled personality cult politics wherein a party is often equated with the leader. These tendencies have very often led to some form of authoritarian administration. And although most parties argue that they are able to allow internal debate and free flow of divergent ideas, in practice there is very little tolerance of this within parties.

While, it must be said, today's political parties are much more democratically minded and function within a predominantly democratic framework, the features of one-party rule have not been entirely abandoned.

Some information about opposition party situations in individual countries will provide a clearer illustration of this. In Tanzania, for example, almost all opposition parties have experienced internal crises which have left the parties weak and fragmented. The National Convention for Construction and Reform (NCCR-Mageuzi), the main challenger to the CCM in the 1995 elections, is the best-known example of this problem. Soon after the 1995 general elections the NCCR split into two camps, one associated with Augustine Mrema, the party's presidential candidate (and a former CCM deputy prime minister), the other with its secretary general (Kelsall 2003). Not long afterwards, Mrema abandoned the newly reconstituted NCCR faction and joined the Tanzania Labour Party (TLP) as its chairman.

The extent of the damage of the splits on the party's political influence can be seen in the dramatic reduction in its parliamentary seats. In the 1995 general election NCCR-Mageuzi won 16 seats in the mainland Parliament, with 27.8 per cent of the presidential votes going to Mrema. By the 2000 general elections, however, not only did the party fail to field a presidential candidate, its failure to overcome the destructive internal tensions reversed its previous fortunes and it won only one seat.

In addition to experiencing these damaging splits, parties in Tanzania have become platforms for the founding leaders, who have overwhelming powers to establish structures that do not necessarily champion the rules governing internal party democracy (Nyirabu 2002). Some parties have also, to their detriment, organised themselves around obvious religious and ethnic cleavages. Parties in this category are the Civic United Front (CUF) and the United Democratic Party (UDP). Party formations based on and driven by religious positions have found it difficult to survive in Tanzania, in particular mainland Tanzania, largely because religious differences, although they exist in Tanzania, only play a peripheral role in politics and because voters prefer to ignore religious appeals from political parties.

As a result, a party that identifies itself exclusively as religious is bound to lose in Tanzania.

Similarly, parties with strong ethnic bases have no chance of winning in Tanzania largely because the country has no dominant ethnic group. The 127 ethnic divisions are small and not necessarily antagonistic towards one another. The only party that espouses a non-ethnic agenda and has the support of almost all these groups is the ruling party, the CCM (Kelsall 2003). Because of the problems that face the opposition in Tanzania, the CCM's dominance of the political system seems guaranteed for many years to come.

The opposition in South Africa, though better organised and with apparently democratic features, portrays, to a limited extent, similar characteristics. The problems plaguing many opposition parties have more to do with their inability to appeal to the voters as viable, alternative parties than with an inability to democratically institutionalise themselves. Many opposition parties have employed tactics and articulated policy agendas that are deliberately aimed at minority racial groups; highlighting issues, for example, that are not necessarily the concern of most voters (the African majority), and employing campaign styles that are only attractive to small groups of voters (Lanegran 2001). This, it must be noted, happens despite the apparent willingness of the electorate to have politics in South Africa move beyond ethnic identities. Consequently, only small groups of voters support the opposition.

Other factors that continue to undermine the opposition's chances and contribute to its weakness include a small presence in Parliament; vague and indecisive party principles and policies and the fact that the leadership of many smaller parties is neither aggressive nor charismatic (Lanegran 2001). This has given many theorists the impression that the ANC is set to dominate for a significant period.

Generally parties in the region have a further obstacle to tackle – the issue of legitimacy. While some incumbent parties have taken every opportunity to delegitimize opposition parties by depicting them as 'fascist and inimical to the democratic order and national stability' (Giliomee and Simkins 1999), it must be said that in many cases opposition parties behave in ways that allow them to be delegitimized by dominant parties. Friedman argues that 'delegitimation of opposition parties is not automatically within the gift of dominant parties: An excluded party's delegitimation is a function not only of its enemies' actions but of the cultural understandings of the mass public' (Levite and Tarrow, quoted in Friedman 1999, p 101). In recognising that most literature has failed to define legitimacy Friedman posits his definition of legitimacy as 'a status in which the party is regarded as a legitimate participant in the polity, whose views need to be taken into account and which is, at least in principle, a potential partner in a governing coalition'. Based on this definition, this paper cautiously asserts that many opposition parties in the region do, in fact, suffer from real legitimacy problems.

In South Africa, the history of apartheid has naturally delegitimated parties that speak for the white Afrikaner minority. Both the National Party (NP), given its role in introducing and implementing apartheid, and the Freedom Front, with its aspirations to speak for the white Afrikaner minority, face legitimacy barriers (Friedman 1999). In Tanzania the Civic United Front, the largest opposition party, also suffers from severe and real legitimacy problems caused largely by its association with pre-independence political regimes. It has strongly affiliated itself with the pre-revolutionary Zanzibar Nationalist Party (ZNP), an affiliation that has resulted in ideologies that are not clear. The party's close co-operation with the Arab Gulf states and its ties with the Islamic states have prompted voters to question its loyalty and legitimacy, especially in Zanzibar where the history of politics is defined by revolution, colonialism, and racial splits between Arabs and Africans (Ahluwalia and Zegeye 2001).

An illustration of how a politically stable and well structured opposition party can undermine a ruling party's dominance will also serve to support the assertion posited above that weak and fragmented opposition parties which fail to act as alternatives to incumbent parties can and do entrench dominance. The BNF, the largest opposition party in Botswana, has recently begun to emerge as a capable contestant or match for the BDP. This assessment is largely based on its success in expanding its support base by organising and politicising non-ethnic groups, and, *inter alia*, establishing grassroots organisational structures in the remote rural areas. The BNF now has more significant support in rural areas whereas it has traditionally relied heavily on urban support. In the 1994 general elections the party took almost all the urban seats, winning a total of 13 seats in Parliament compared to the BDP's 27 (Wiseman 1998). These results slowly began to advance the notion that the BNF was a force to be reckoned with and to raise the possibility of an end to the BDP's dominance. The BNF's electoral strength, however, has taken a nose dive since then, as shown by the results of the 1999 election, in which it won only six seats compared to the BDP's 33 (*Human Rights Observer* 2000).

## CONCLUSION

The party dominant systems discussed in this paper function within and respect, to some degree, the essential parameters of constitutional democracy. However, in all the systems considered here 'one party monopolizes power' (Friedman 1999). While it is true that some of these dominant systems lack a significant number of the features of liberal democracies it must be noted that dominance is not and should not be dismissed as a symptom of unhealthy political dynamics. In other words, because the parties do not operate in fully-fledged democracies it should not always be presumed that their domination is predominantly achieved by undemocratic means. The paper therefore insists that, guided and constrained by democratic procedures and rules, dominance can be achieved by factors (economic growth, party strengths, and stable political institutions) and advantages (weak and

fragmented opposition, stable electorate support) either aided by or outside of a dominant party's control.

Instead of dismissing dominant parties as undemocratic simply because an electoral takeover by other parties is unlikely for an extended period, observers should be more interested in the implications of such dominance for the future prospects for democracy in these countries (Southall 1997).

There is no denying that dominance raises serious concerns about the quality of these newly achieved democracies so the emphasis should be on assessing whether or not appropriate mechanisms exist that might minimise these implications or effects. These mechanisms, whether they be a strong and organised opposition or non-electoral mechanisms including legislative and independent oversight institutions (auditor general, public protector, human rights and gender commissions, an independent reserve bank, broadcasting authority and electoral commission) will hold the dominant party to account and check any abuse of its power (Butler 2002). To put it differently, the dominant party should be made to exercise its dominance within the parameters of constitutional democracy.

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# GOVERNANCE AND HUMAN RIGHTS IN THE SADC REGION\*

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## ABSTRACT

*Central to the process of the institutionalisation of democratic governance in Southern Africa is the extent to which a human rights culture and practice are embedded within the current political landscape. There are numerous international human rights instruments to which Southern African states are party. But it is one thing to sign and ratify these international conventions and quite another to domesticate them and translate them into the living experience of the peoples of the region. This is the area in which the centrality of a parliament in inculcating a democratic culture and practice is useful. The institutionalisation and entrenchment of a culture of human rights obviously demands, among other things, that political tolerance exists and that institutions of democracy such as the parliament play their rightful role. It is essentially within the legislature that ruling and opposition parties engage closely and such engagement may provide a measure of whether or not democracy in a given country is vibrant and robust enough to ensure a human rights culture and practice. This paper teases out this complex problem and other related issues such as gender equality, the role of the youth and the place of the media and civil society, with a special focus on the Southern African experience.*

## INTRODUCTION

This paper addresses a series of questions on the broad theme of human rights and democracy in the Southern African Development Community (SADC).

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\* This paper was originally presented at a workshop entitled 'Government and opposition – Roles, Rights and Responsibilities', organised by the Commonwealth Secretariat, in co-operation with the Commonwealth Parliamentary Association, the SADC Parliamentary Forum and the SADC Parliamentary Forum and Institute for Civic Education (FECIV) Mozambique in Maputo, Mozambique, 26-30 January 2004. The views expressed are those of the author and are put forward as a basis for discussion. They should not be taken to represent the views of the Commonwealth Secretariat, the Commonwealth Parliamentary Association, the SADC Parliamentary Forum or FECIV Mozambique.

It argues that the identification of applicable human rights standards and their strategic application must be a vital part of the continuing efforts to build democracy, democratic institutions and processes aimed at enhancing the role of parliament and that of the ruling and opposition parties, gender equality and equity and participation by women, young persons, the media and civil society. It offers practical strategies by which human rights can be built into the democratic process on these matters. In doing so, it is necessary first to sketch the broader context of the theme of human rights and democracy.

### THE BROADER CONTEXT

The broader context of this workshop serves to tease out the connections between human rights and democracy, with particular emphasis on SADC. It is difficult to build human rights into democratic processes unless there is a broad consciousness of what these rights are and how they apply to the democratic process. This requires a brief delineation of what the relevant human rights prescriptions are in the democratic process.

The twentieth century bequeathed human rights as a legitimate means of determining the way in which the existence, duration, and functioning of governments, including public bodies such as parliament, ought to be based on the popular will of the people. Human rights have also ushered in benchmarks underlining the terms of acceptable forms of behaviour by governments towards those in their power and within territories under their control. These terms entail responsibility for the appropriate treatment of human beings; they also entail transparency and accountability as essential attributes of the process of governance.

It is in this sense that human rights and democracy, as a system of government based on the will of the people and for the people, go hand in hand (see Franck 1992, pp 46-91). This is evident in the following international provisions of human rights: Article 1(2) of the Charter of the United Nations 1945 established the principle of respect for equal rights and self-determination of peoples (Crawford 2001, chapter 2). Article 1 of the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights 1966 amplifies the virtue of self-determination<sup>1</sup> in these words:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

A key aspect of self-determination concerns the insurmountable right of a people or peoples living within a state to freely determine by their own will the type of

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1 See further, Human Rights Committee, General Comment 12 1984 Art 20, *African Charter on Human and Peoples' Rights* 1981.

government, the character of constitutional and institutional arrangements, and the individuals by whom they desire to be represented and governed (General Assembly Resolution 1514 1960). Historically speaking, self-determination provided the impetus for the initial awareness of the importance of human rights to the SADC states and underlined the formation of SADC in the first place. It is this experience that influences the mindset of the majority of the states in SADC towards democracy and human rights.

After gaining independence in the mid-1960s, Tanzania and Zambia constituted the original 'Frontline States' in the liberation struggle against the Unilateral Declaration of Independence by colonial settlers in Southern Rhodesia (now Zimbabwe), Portuguese colonialism in Angola and Mozambique, apartheid South Africa and its administration of South West Africa (now Namibia)(ICJ Rep 1971), Thus Angola, Mozambique, Namibia, South Africa and Zimbabwe were born out of liberation movements that actively waged armed liberation struggles and remain bound by this alliance. Although the liberation struggle was itself a pursuit of the principle of self-determination it is regrettable that in several of the SADC states today the pursuit of that principle fell short of building democratic processes, with the outcome that self-determination came to an end with the granting of formal independence. The exceptions are Botswana and South Africa. For the rest, discontinuity in the internal implementation of self-determination based on the expression of the will of the people about how they wish to be governed, the methods and institutions of governance appropriate for representative democracy became notable, in varying degrees, after independence.

Three broad strategies can be employed to extend self-determination to democracy:

- Building legitimate 'people driven' and 'people based consensus' constitutional frameworks of governance such as constituent assemblies or constitutional conferences representing all strands of society in constitution making. These processes are distinguished from 'top-down' constitution making and reform processes. Where 'people driven' processes exist, or existed, there is a visible executive tendency to circumvent them, thus subverting constitutional democracy and democracy in constitution making. The way the one-party state model of democracy was imposed in the 1960s and 1970s is a case in point; the other is the 'Third Term' debate raised by attempts by sitting presidents to go against the two-term constitutional limitation of the tenure of presidential office.
- Guaranteeing and enabling potential or actual democratic representative institutions to function as such, and as avenues for



transparency and a means of ensuring accountability in the process of governance, in keeping with the democratic will of the people. The one-party state parliament functioned in this way as did those parliaments that were dominated by ruling parties and where the opposition parties collectively were minorities in parliament. These relics continue to hamper the democratic functioning of a good number of parliaments in SADC today;

- There is a genuine need to design, and not to manipulate, effective, transparent and verifiable electoral systems anchored in secret ballots that periodically provide the practical means of detecting, as well as determining, the will of the people with respect to who represents or leads them at various levels of government, including parliament. Article 25 of the International Covenant on Civil and Political Rights 1966 provides, in part<sup>2</sup>, that 'Every citizen shall have the right and the opportunity to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.' By virtue of this provision it is worth noting that the principle of electoral observation by local and international observers, including the Commonwealth, has a basis in human rights and in democracy.

Implementation of these strategies requires political will and commitment to democracy. The strategies are important to consummate the truncated process of self-determination in several SADC states. Independence and completion of the liberation struggle were considered, in many cases, as an end in themselves; in reality they should have marked the beginning of the process of building up legitimate constitutional systems and solid administrative and judicial structures, the consolidation of political parties, putting in place effective electoral processes and representative institutions, including parliament, within which good and transparent governance, the ethics of human rights and the rule of law would reside.

It should not come as a surprise that this is the challenge that still faces most SADC states in the twenty-first century. It is a challenge that the ruling parties, the opposition and parliament must face squarely. The challenge is earmarked by the process of democratic transition from colonialism to independence, and from independence to democracy, and the erection of democratic states and institutions based on human rights and its tenets of self-determination, the rule of law, independence of the judiciary, fairness, transparency and accountability.

A further perspective to the applicable standards of human rights and democracy in SADC derives from the membership of these states of the

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2 The full text of Article 25 is reproduced below under the discussion on participation.

Commonwealth, the African Union and the United Nations. Membership of these organisations carries specific international obligations in the sphere of human rights and democracy. These obligations are duties deriving from the essential qualities of membership required and determined by fundamental political and social values commonly aspired to and accepted by all the member states. That is why these values are expressed in the language of law – in fact of international law, which applies commonly to all states.

The Charter of the United Nations (1945, Articles 1(3), 55 & 56) obliges member states, including those in SADC, to abide by the principle of self-determination, respect for and observance of human rights without discrimination. An array of international agreements concluded under the auspices of the United Nations, and by which almost all SADC states have agreed to be bound, enumerate in more detail human rights obligations, providing for machinery for accountability in the form of periodic reporting by states and, in some cases, the right of individuals to lodge official complaints against ill-treatment by their own governments, or governments in whose territories they reside.

For the Commonwealth and the Commonwealth Parliamentary Association, human rights and democracy are accepted as fundamental political values. The key text concerning human rights and democracy in the Commonwealth is to be found in the Harare Commonwealth Declaration of 1991. Adoption of the Harare Declaration earmarked major political changes in the world. The Cold War had broken down; one-party regimes were being dismantled by popular will in favour of democratic constitutional transitions and pluralism; opposition parties emerged in Africa, Eastern Europe, and in the former Soviet Union.

Once the democratic genie was out of the bottle the ensuing political tide swept away long-standing regimes that had been insulated from the realities of competitive multiparty politics. The promise of the advent of constitutional mechanisms for the peaceful, instead of violent, transfer of power had dawned first in Commonwealth Africa in 1991. Dr Kenneth Kaunda conceded electoral defeat in Zambia and handed over power peacefully to the victorious Movement for Multi Party Democracy.

These are the political circumstances that the adoption of the Harare Declaration encapsulated and which bear out the political merits of that Declaration. Under the Declaration, Commonwealth heads of government pledged ‘to work with renewed vigour’ for:

democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; fundamental human rights.

The significance of that commitment has been reinforced at every subsequent Commonwealth Heads of Government meeting. The accountability of Commonwealth states in respect of the commitment was set forth in 1995 in New Zealand,

where it was agreed to establish a special committee of foreign ministers known as the Commonwealth Ministerial Action Group (CMAG) to recommend or itself take action when Commonwealth countries are in serious or persistent violation of the fundamental political values set out in Harare in 1991 (Beyani 2001).

Fiji, Nigeria, Pakistan, and Zimbabwe are among the members of the Commonwealth whose conduct in human rights has raised such concern as to engage the services of CMAG. The real import of CMAG must be to ensure that Commonwealth states do not retrogress from their commitment to build democracy and uphold human rights, the rule of law, independence of the judiciary, and honest government.

Commitment to these rights is not confined to the Commonwealth. The recent transformation of the Organisation of African Unity (OAU) into the African Union (AU) ushered in new principles of conduct based on democracy and human rights for the member states of the AU. Amongst the mandatory objectives of the Union (Constitutive Act of the African Union, 2002, Article 1(g), (e), (h)) are to:

- promote democratic principles and institutions, popular participation and good governance;
- encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; and to
- promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.

It is of grave importance that the objectives of the African Union do not remain lofty ideals. The birth of the AU after thirty years of the OAU and its experience of the problems of government in African states has brought about a new vision, which is reflected in its objectives. SADC states are included in its purview. Although the AU does not have a supervisory body such as CMAG, it is, nevertheless, the individual and collective responsibility of its members to implement its objectives.<sup>3</sup>

Turning to SADC's legal texts, one finds explicit requirements on the part of member states on the issue of human rights and democracy, which are similar to those of the Commonwealth. In terms of Article 4(c) of the Consolidated Text of the Treaty of the Southern African Development Community 1992, SADC and its member states shall act, *inter alia*, in accordance with the following principles: human rights, democracy, and the rule of law. The objectives of SADC as contained in Article 5 of the treaty include consolidating, defending, and maintaining democracy,

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3 In so far as the objectives of the AU make reference to the African Charter on Human and Peoples' Rights it is feasible that the African Commission could extend its competence under that Charter to specific breaches of human rights when these arise from a failure to implement the objectives of the AU in relation to human rights.

peace, security and stability; the promotion of common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective.

What the broader context shows is that there has emerged a recognition and acceptance of international commitments and obligations to human rights and democracy. Democracy has always been an inherent component of the right to self-determination. More specific references to democracy in that regard may have been skewed by the Cold War, the end of which has witnessed, since the start of the 1990s, the crystallisation of the international obligation to uphold democracy specifically alongside human rights and the rule of law.

The Harare Declaration for the Commonwealth, in 1991, was followed in Africa by SADC's Consolidated Treaty in 1992, consummated by the African Union Constitutive Treaty in 2002. For good measure, Latin American states have also recently adopted a Charter on Democracy and Human Rights. The abiding challenge now, as mentioned earlier, is the effective implementation of these principles. Parliament has a critical role to play in this regard.

### BUILDING HUMAN RIGHTS INTO THE DEMOCRATIC PROCESS

The question of how human rights considerations can be built into every stage of the democratic process so that they run right through the work of government, parliament and opposition invites more strategic thinking on the use of human rights. Attention must be drawn to the preliminary drawbacks. Bills of human rights in the majority of the SADC states remain isolated from the general purview of government, governmental institutions, parliament, ruling and opposition parties. The general political position is that these Bills are only relevant when invoked before the courts by individuals alleging violations of human rights in specific cases. Rather than performing that role alone Bills of human rights must be the basis for an inbuilt democratic culture. To achieve this:

- human rights, as contained in SADC constitutions, must percolate from the constitution into the administrative and decision-making apparatus of government;
- human rights should be key guidelines in ministerial and presidential conduct as well as in the codes and guidelines for the conduct of civil servants and the police.

In these ways, the strategy would be to build a culture of human rights that permeates the entire spectrum of government, parliament, and the rule of law.

A related issue is the duty, neglected so far, to follow up on the incorporation into domestic law, and the application of ratified international treaties concerning human rights and related obligations underlining democracy, which flow from SADC and the AU in particular. Ideally:

- parliaments in the SADC region should establish two additional select committees; one on constitutional affairs to monitor constitutional democracy and compliance with international obligations relating to human rights; another on human rights, which would specifically examine internal compliance with human rights, and the extent to which human rights are infused into the structures of government. Members of parliament from both ruling and opposition parties would sit on these committees.
- parliament must live up to its status as the major democratic, legitimate and effective institution in which common political values are shared and monitored transparently. A central aspect of modern democratic processes is the representative role of the machinery of parliament as the practical embodiment of plural democracy, the political theatre in which competing ideas about governance and corresponding legislative programmes are debated and agreed or disagreed, and as a focal point for constitutional democracy.

Clearly then, parliament is more than a legislative body or 'talk shop'; it is the operative forum for plural democracy; it is also the custodian of constitutional democracy. In the final analysis, parliament must be regarded as the barometer, bearer, and representative of the people's will at all times. It must therefore be legally and institutionally strengthened to ensure the democratic behaviour of the political parties, and the conduct of its individual members in the discharge of their parliamentary duties in and out of parliament.

A member of parliament who is intimidated or harassed either by the ruling party or the opposition in the course of her or his constituency duties must have sufficient recourse to parliament. The rationale for the involvement of parliament here is that political parties must be accountable for their behaviour towards the peoples' elected representatives and an undemocratic political party, whether in government or in opposition, is unlikely to run a democratic system of government, let alone enable parliament to function as a democratic institution.

So far, political parties remain outside any realm of external, or even internal, accountability. As a matter of transparency and accountability, constitutions of political parties must contain principles of human rights and democracy. Only when they function as democratic entities will there be the expectation that they can run government democratically. Those with different views must be heard and their freedom of political opinion and freedom of expression respected without being penalised on political grounds.

Ruling parties must accept the role of the opposition without political irritation; this means according the opposition their rightful status in parliament, something that parliaments, orchestrated by parties in government in most SADC states, are reluctant to do. A change of political fortunes will mean that when in opposition



the former ruling parties will suffer the same fate as that which they now inflict on the opposition. This attitude replicates an undemocratic culture and can be remedied by according the opposition its full status, rights and responsibilities.

Political responsibility is key to the opposition in democracies emerging from one-party states or states dominated by single parties. In reality, the opposition is an alternative government in waiting and should perform the role of opposing the party in government by taking it to task over the propriety of its policies, programmes, and conduct. Crucially, opposition parties must:

- concentrate on formulating alternative policies and programmes democratically, argue their case, and campaign for it. Sadly, most opposition parties in SADC negate this role and give the impression that they are intent on obtaining political power without knowing or preparing for what to do with it once they are in power. Building a responsible and democratic opposition is a precondition for democracy and political pluralism;
- strive to get their political leaders into parliament by running concurrently as presidential candidates and as members of parliament, so that if they lose the presidency they can continue to lead their parties in parliament when elected as members of parliament; alternatively, parliament may be reformed to give an automatic seat to the leader of the opposition by virtue of the seats secured by her or his party.

## PARTICIPATION AND GENDER EQUALITY

Human rights and the process of democracy are inclusive in their application and entail respect for gender equality. Yet, there are, in practice, outstanding issues about how government, opposition and parliament ensure that all their activities are characterised by gender sensitivity, full and equal participation of both women and men in the democratic process and a genuine and effective partnership between them. An issue equally deserving of concern is the ways in which the institutions of democracy bring young people into the process so that they are not just heard but are fully involved in the formulation and implementation of policy.

To deal with these issues it is necessary to identify the applicable standards of human rights and then to suggest strategies by which these can be implemented to ensure gender equality and participation, including by young people, in the democratic process. Let's take the issue of gender equality first.

The applicable standards are to be found in the International Covenant on Civil and Political Rights 1966, the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (Cook 1995, chapters 1, 2, 3 & 4), the African Charter on Human and People's Rights 1981 (Beyani 1995, pp 285-306) and its recently adopted Protocol on the Rights of Women in Africa 2003. Within SADC,

the SADC Treaty, the Protocol on Culture, Information and Sport 2000, and the Declaration on Gender and Development all contain obligations and commitments assumed by SADC states to ensure gender equality.

The preamble to the Declaration on Gender and Development establishes the principle of 'gender equality' as a fundamental human right in SADC, thus bestowing on it a special status from which there should be no derogation by any SADC state. In this context, Article 1 of the Protocol on Culture, Information and Sport defines gender to mean 'the socially and culturally constructed roles, privileges, responsibilities, power and influence, social relations, expectations and value of men and women, girls and boys'. Taken together, all these instruments legally commit and oblige the SADC states to treat women equally with men, to eliminate discrimination against women in public and private spheres, to remove stereotypes and traditional attitudes that treat women as inferior to men, and to ensure the participation of women in public affairs.

Practical strategies required to implement these obligations include:

- Constitutional provision of gender equality as a fundamental human right in the Bills of human rights of SADC states; some constitutions, eg, that of Zambia 1991, unlawfully exclude the application of traditional customary law from non-discrimination on grounds of sex. In such cases advantage should be taken of the constitutional reform process to bring the constitutional provisions in line with those of SADC and international obligations on gender protection. This requires the effective representation and participation of women in legislative and constitutional reform processes (this point is amplified below under the theme of participation).
- Enactment of new legislation to repeal or amend existing legislation that discriminates against women. In Zambia, women's groups carried out a survey in 1987-88 to establish the case for the necessity of enacting the Succession and Inheritance Act and used the survey to lobby members of parliament to support the enactment of the Act. They then mounted a separate project to identify discriminatory laws with a view to campaigning for their repeal, but the project lacked sustained financial support. In a case of direct intervention by the state, Zimbabwe passed the Age of Majority Act in Zimbabwe in the 1980s, which restored the independent capacity of women. The Harare based organisation Women and Law in Southern Africa (WLSA) has undertaken several studies on discriminatory laws against women in Southern Africa and its recommendations should be used by SADC to change such laws.
- Involvement of the constitutional and human rights select committees of parliament (suggested above) in the scrutiny of constitutional

provisions, including bills of rights, and all legislation to ensure compliance with the UN, the Commonwealth, AU and SADC instruments on gender and human rights and to bring to the attention of parliament the need to pass legislation on gender and human rights where necessary.

- Creation of ministries of gender or women's affairs, as in the case of Uganda, as well as focal administrative points for gender affairs within influential areas of government. For example, the Gender Affairs Office in South Africa falls directly under the Office of the Presidency.
- Mainstreaming gender throughout the legal, administrative, budgetary and development apparatuses of SADC states. This requires collaboration between ministries of gender or women's affairs (where they exist), the UN's Division for the Advancement of Women, the Commonwealth Secretariat's Gender Division, the AU's Gender Division, and the Gender Unit of SADC itself. There exists between these bodies sufficient expertise on and capacity for mainstreaming gender. The Commonwealth Secretariat has developed a successful model for mainstreaming gender in the Secretariat and in Commonwealth states, such as Uganda.
- Integration of gender equality and equity in sectoral programmes and development projects, with participation by women.

Participation in the democratic process is also the subject of human rights. The most categorical statement on equality and participation in relation to human rights is to be found in Article 25 of the International Covenant on Civil and Political Rights, which provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2<sup>4</sup> and without unreasonable restrictions:

- a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) to have access, on general terms of equality, to public service in his country.

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<sup>4</sup> According to Article 2, 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

The terms of this provision are quite clear. Participation in public affairs directly, or through freely chosen representatives such as parliament or political parties, is a human right. Participation includes the right to vote and to stand for elections; these must be genuine and periodic and be held on the basis of universal and equal suffrage and by secret ballot as a means of guaranteeing the free expression of the will of the electors. The right to participate also includes access, on general terms of equality, to the public service. The right covers men, women and young people.

Practical strategies for implementing the right to participate and for ensuring the participation of women and young people require the creation of means and avenues for participation in the democratic process. There are three major means.

### *Political Parties*

- Both ruling and opposition parties should be constitutionally obliged to create special bodies or committees for the participation of women and young persons in the affairs of the parties as a means of articulating their own policies within the parties and as a way of contributing to the formulation of the policies of the parties themselves.
- A proportionate number of seats on the executive bodies or committees of political parties must be set aside for women, on the one hand, and young people, on the other.
- Annual conferences or meetings of the parties should have corresponding special themes and sessions on gender equality and equity, and participation by women and young people.

Although some of the political parties in SADC do have similar or related bodies, many of them are merely instruments for mobilising women and 'party cadres' to attend political rallies, sing songs in praise of the leadership, and engage in violent confrontation with other political parties. That does not constitute real and effective participation; it denigrates women and inculcates in the young a culture of violent political conduct inimical to democracy.

### *Parliament*

- A proportionate number of electoral constituencies and seats in parliament must be set aside exclusively for women to stand for election on the basis of gender equality and equity.
- Half the seats available for nominated members of parliament must be reserved for women and the nominees must represent various interests of women and women's civil society movements. The power to choose

who to nominate should be exercisable with the agreement of women's civil society and professional bodies to ensure that the nominees truly represent women.

- Young people should be official observers in parliament in order to cultivate their participation and to encourage them to take an active interest in the democratic process.
- Special procedures should be established for young people, women and civil society to petition parliament and to speak before it on any issue of democracy, governance, transparency and accountability.

### *Other Fora*

- The establishment of a national women's forum to be held by women every year and from which specific policy recommendations concerning the rights of women may be made to government.
- The establishment of a national young persons' forum to discuss democracy, human rights, governance, development and participation by young persons.
- The establishment, at SADC level, of a women's forum, including women members of parliament, to discuss matters of gender, human rights and the participation of women in the democratic process.
- The establishment of a SADC young persons' forum to raise awareness about SADC among young persons.
- The promotion of joint activities and educational programmes for the young between SADC and the Commonwealth Youth Centre in Lusaka.

### *SADC*

- The implementation of the objective of SADC 'to ensure the equal representation of women and men in the decision making of member states and SADC structures at all levels, and the achievement of at least thirty percent target of women in political and decision making structures by year 2005', as stated in the *SADC Declaration on Gender and Development*.

### THE MEDIA

How can the media be assured of access to information, media freedom and a 'level playing field' so they may make their full contribution to the success of the democratic process?



In considering this question, it is worth establishing the legal connection between the legitimacy of the media and human rights in the democratic process. This connection is anchored in freedom of expression in accordance with international human rights law (*Handyside v UK* 1979-80; *Compulsory Membership of Journalists' Association Case* 1986; *Media Rights Agenda & Constitutional Rights Agenda v Nigeria*, Communication 105/95, 128/94, 152/96).<sup>5</sup> Freedom of expression includes the freedom of the press to receive information and to impart information and ideas to the public.

This right is protected by pertinent international human rights conventions under which it may be restricted only by a law enacted by parliament and consistent with human rights obligations in a democratic society. That means there must be a legitimate justification for such restrictions and the restrictions themselves must be proportionate or reasonably related to the preservation of national security, public order, and public health (*Sunday Times v UK* 1979).<sup>6</sup> However, permissible restrictions on freedom of expression do not extend to prohibiting or penalising the media for propagating information, news or ideas that oppose or criticise, cause shock to the public, or mock public figures, including political leaders (*Lingens vs Austria*).<sup>7</sup>

It is essential for the media and civil society to invoke the special obligations that bind SADC member states on the question of media freedom and access to information. These obligations must inform the formulation of strategies that can be used to protect the freedom of the media and its access to information and guarantee its ability to contribute to the success of the democratic process.

Obligations assumed pertinently by SADC states in this respect arise from the SADC Protocol on Culture, Information and Sport. Under Article 20 of this Protocol, 'State Parties shall take necessary measures to ensure the freedom and independence of the media' and cooperate, in fulfilment of the principles of the Protocol, in the promotion, establishment and growth of independent media, as well as free flow of information. 'Media freedom' is defined in the Protocol to mean 'an environment in which the media operate without restraint and in accordance with the law'.

On the question of the availability of information member states agree, in Article 19, to encourage news agencies in the region to establish a SADC News Agency Pool connected by computer so as to ensure the efficient and effective exchange of news and information. In addition, member states agree to give more financial and editorial autonomy to the news pool to enhance the professional

5 *Handyside v UK* (1979-80) 1 EHRR 737 (European Court Case); *Compulsory Membership of Journalists' Association Case* (1986) 8 EHRR 165 (Inter-American Commission Case); and *Media Rights Agenda & Constitutional Rights Agenda v Nigeria*, Communication 105/95, 128/94, 152/96 (African Commission Case).

6 2 EHRR 245

7 8 EHRR 103

competence and credibility of media practitioners. There is a further obligation to ensure that the media are adequately sensitised about gender issues so as to promote gender equality and equity in information dissemination under Article 17.<sup>8</sup>

This is an impressive range of obligations by any standards. But, inevitably, the question arises: what measures have the SADC states taken individually and collectively to ensure the freedom and independence of the media and the free flow and availability of information (ie, access to information)? The answer to this question is neither clear nor assured. While South Africa has the most progressive measures on the freedom of the press, Zimbabwe has the most retrogressive; others have no clear measures and are content with constitutional provisions on freedom of expression in Bills of human rights, criminal libel in criminal law codes, and defamation in civil proceedings.

There must, therefore, be deliberate strategies to implement SADC obligations in relation to freedom of the media and access to information. Appropriate strategies could be:

- Incorporating into national constitutions the provisions of the SADC Protocol on freedom of the Media and guaranteeing access by the media to information. For example, the Ethiopian Constitution has direct provisions about freedom of the media and the prohibition of censorship.
- Enactment of enabling legislation for the protection and self-regulation of freedom of the media and the flow of information in accordance with the SADC Protocol and international human rights standards. The media and civil society should participate actively in the formulation of such legislation. Ethiopia held a week long workshop in December 2003 involving the government, the media, and international participants, to discuss proposals concerning freedom of the media.
- Repeal of draconian laws relating to criminal libel and defamation to the extent that they are incompatible with human rights while

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8 See also Article 18 on Information Policies:

1. Member States agree to formulate and harmonise information policies after thorough consultations involving appropriate stakeholders and civic society.
2. Member States agree to establish, publicise widely and implement information policies which are in line with the SADC Declaration on the Role of Information in Building the Community.
3. Member States agree to establish and strengthen the institutional framework for the implementation of information policies.
4. Member States agree to create political and economic environment conducive to the growth of pluralistic media.
5. Member States agree to promote specialised training of journalists in the areas of culture and sports to improve the coverage of these.

maintaining appropriate safe guards against hate speech and incitement in accordance with human rights requirements.

- Establishment of self-regulating institutions for the media and the preparation by such institutions of codes of ethics for the media and for individual journalists and others working in the media.
- Capacity building for the media and its capacity for self-regulation in particular. This could involve training people, particularly journalists, in the role of the media in democratic processes.
- Technical and administrative support to enable self-regulation; to gain expertise in human rights and media law, gender equality and equity; and to facilitate the efficient exchange and flow of information by electronic, audio visual, radio, and news print throughout the state and at SADC and international levels. Specific support should be given to the Media Institute of Southern Africa as the focal point for training and a centre for the flow of the exchange of information between and within SADC states – the Institute has a chapter in each SADC state.
- Regular briefings for the press, followed by dialogue between the media and government, parliament, political parties, and civil society as a form of access to information and accountability through the media.
- Promotion by the media of investigative and analytical reporting, documentaries and satire.
- Equal treatment of state-owned and private media and the establishment of an environment that promotes all aspects of the creation, existence and work of the private media; not just newspapers, but also radio and television. Although SADC states have embraced the privatisation of state-owned enterprises many have not privatised the media, with the result that there is a lopsided monopoly of the media by the state. Privatisation of the media, or at least the state relinquishing its monopoly of radio and television through legislation would go a long way towards 'levelling the playing field'. At present, the state media in the majority of SADC country enjoy preferential treatment from their states and the monopoly of state media, particularly local television, is legally protected. It should be realised that competition in the propagation of ideas by competitive plural media is as vital to democracy as competition between political parties and economic entities – that is the very essence of democracy.

The final issues to consider are: how should democratic societies deal with pressure groups and lobbyists? How should civil society be involved in the formulation of policy and the work of bodies such as select committees, and how can they help with implementation? Well, pressure groups, lobbyists, and civil society are an indispensable part of democratic societies. They often represent different interest groups and non-political constituencies or stakeholders that do not have a voice in the political parties, in parliament and in government.

Their civic role should be welcomed and appreciated instead of being regarded as an irritant. A major weapon in the hands of pressure groups and lobbyists is their ability to cause electoral liabilities for political parties, members of parliament and governments that do not listen to them directly or through their constituents.

Ideal strategies suggested for dealing with pressure groups and lobbyists are as follows:

- institutionalised policy channels through which lobbyists and pressure groups can express their views and proposals officially as a means of exerting pressure on political parties, parliament and government;
- with regard to political parties and parliament, such channels could be in the form of constituency platforms for lobbying individual candidates sponsored by political parties, and constituency members of parliament;
- with regard to parliament, there could be a parliamentary lobby forum for lobbying parliament as a whole and parliamentary workshops between members of parliament and pressure groups and lobbyists;
- in respect of government, policy channels could be through individual ministries, and collectively through a Cabinet lobby forum with pressure groups and lobbyists;
- lobby and pressure groups should learn the art of specialised lobbying and how to maximise their impact by organising themselves into separate groups by reference to ability and expertise so that, in accordance with placement and ability, some can specialise in lobbying individual members of parliament, while others can specialise in lobbying parliament as a whole, including the Cabinet.

It is fundamentally important that civil society be pro-actively involved in the regular formulation of policy to ensure that government policy is democratic, non-partisan, and represents stakeholders who do not participate directly in politics. In this regard:

- the involvement of civil society could either be by constituting a 'policy think tank' acting in partnership with government, or through regular policy consultative channels established between civil society and government;
- civil society could also establish its own policy forum for projecting policy views and proposals to parliament and government: the model of the Oasis Forum in Zambia comes to mind here;
- it should be an acceptable democratic practice of modern parliament that civil society should be involved in the work of the select committees by holding special sessions between civil society and parliament and by calling on members of civil society to testify before them as experts in given areas of government policy and operations;
- civil society should not always be seen to be 'on the other side' of government policy; it can help with implementation of government policy but only when its members have been party to the formulation of such policy and, as a result, support the ensuing policy;
- civil society can help implement government policy through advocacy and, where possible, by being independent implementing partners. A non-political civil society carries great moral force in explaining the merits of government policy and lending support to the implementation of such policy, as is the case currently in Kenya. However, although civil society can undertake this role, it should guard against the dangers of co-option; civil society should retain its independent status as 'civil society'.

## CONCLUSION

The framework of human rights in international law underlines the process of democracy. It is vital to appreciate that democracy is built into human rights, starting with the right to self-determination as the basis of the will of the people in determining the form of the state, its constitutional structures and representative institutions, inclusive of parliament, and the holding of genuine periodic elections as a means of expressing the will of the people. This is a continuous process which does not end with formal independence or liberation for that matter. The baselines of plural democracy, namely, the existence of political parties, freedom of the media and access to information, gender equality and equity, and participation in the political process, including by the young, are protected respectively under human rights through freedom of association which is inclusive of political association, freedom of expression, gender equality and the elimination of discrimination against



women, and the right to participate in public affairs directly or through freely chosen representatives.

The SADC states are parties to an impressive array of international human rights instruments concluded by the United Nations, the African Union, and SADC itself. However, ratification of these instruments is not enough. A primary task is to bring about awareness of what obligations these instruments entail in the sphere of human rights and democracy. Knowledge of human rights in relation to democracy in general, or at the specific level of SADC, should neither be assumed nor taken for granted. But such knowledge is a pre-requisite for the strategic implementation of human rights obligations applicable to democracy. The starting point is to ensure that the democratic process is based on, and guided by, the application of the relevant standards of human rights. For most of the states in SADC the major difficulty lies in the application as well as in the implementation of human rights obligations in general and in connection with democracy in particular. The modest suggestions presented in this paper are only a skeletal outline intended to pave the way for the implementation of the requisite standards of human rights in the budding democratic processes in SADC.

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# THE BROADER CONTEXT

## *Mainstreaming Gender in Public Institutions of Governance and Democracy\**

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### ABSTRACT

*The theme of the workshop was democratic values, processes and institutions and my paper addresses gender mainstreaming, equal and effective participation of women and men in democratic processes, and the methods of ensuring genuine and effective partnership between them. The paper specifically addresses the following question: How can Government, Opposition and Parliament ensure that all their activities are characterised by gender sensitivity, full and equal participation of both women and men in the democratic process and (ensure) a genuine and effective partnership between them? Gender mainstreaming, equality, parity, equity and sensitivity are social justice concerns and for democracy and human rights to thrive it is essential that these concerns be effectively addressed. There cannot be democracy and genuine partnership between women and men if there is no equality and mutual respect founded on the above principles.*

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\* This paper was presented at a workshop entitled Government and Opposition: Roles, Rights and Responsibilities, organised by the Commonwealth Secretariat, in co-operation with the Commonwealth Parliamentary Association, the SADC Parliamentary Forum and Institute for Civic Education (FECIV) Mozambique, in Maputo, Mozambique, 26-30 January 2004. The views expressed here are those of the author and were put forward as a basis for discussion. They should not be taken to represent the views of the Commonwealth Secretariat, the Commonwealth Parliamentary Association, the SADC Parliamentary Forum or FECIV Mozambique.

## DEFINITIONS<sup>1</sup>

**Gender mainstreaming** is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, social and economic spheres. It is a process of assessing the implications for women and men of any planned action, including legislation, policies or programmes in all areas and at all levels, so that women and men benefit equally and gender equality is achieved.

**Gender equality and equity:** Gender equality means the equal valuing by society of women and men by removing discriminatory barriers and making resources equally available to women and to men to enable them to realise their full potential. Equality does not mean sameness, it means *equality before the law* and *equality of opportunity* (rewards, access to resources that enable opportunities) so that women's equal rights to the benefits of a country's resources are secured by the country's constitution, statutes, policies and institutions. Gender equality also means *equality of results/outcomes* (recognising the differences between the needs, interests and requirements of women and those of men so as to ensure equity), which is the real achievement, reflecting positive change and not merely words on paper. Therefore, initiatives for the realisation of women's rights to equality must cater for the disparities and disadvantages from which women continue to suffer.

**Gender parity and fair representation:** Gender parity is the recognition of full equality between women and men in all areas of life: national, political, economic, social, developmental, and so on. Fair representation is about ensuring that women have an equal voice in determining the way they are governed and that their representation in elected and appointed positions is based on equality of opportunity and so on. It is about both quantity and quality in that it ensures that women are fairly represented in key decision- and policy-making positions at all levels of government.

**Social justice** is a commitment to policies, principles and activities / measures that bring about just and fair social arrangements. These measures and arrangements enable all people and communities to live up to their full human potential and to participate actively in and benefit from the social, economic, cultural and political life of the country.

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1 All the definitions adopted for this paper in relation to the following principles are from the campaign on 'safeguarding the gains for women in the draft constitution' (Kenya), Training Manual, by the International Federation of Women Lawyers (FIDA-Kenya), Institute for Education in Democracy (IED), Kenya Human Rights Commission (KHRC) and the League of Kenya Women Voters (LKWV), Nairobi, Kenya, 2003.

**Affirmative action** is a temporary social justice measure to remedy past and present discrimination, eliminate the effects of barriers of opportunity and create mechanisms to bring about equality, equity, parity and justice. Affirmative action makes equality between women and men a political and social reality.

This paper, although highlighting the general principles of gender equality, parity and mainstreaming, draws mainly on Kenyan experiences of engendering the democratisation process.

## GENDER MAINSTREAMING ACTIVITIES OF THE GOVERNMENT, THE OPPOSITION AND PARLIAMENT TO ENSURE EFFECTIVE PARTICIPATION OF WOMEN AND MEN AND GENUINE PARTNERSHIP BETWEEN THEM

### *Background and context*

As a result of the 2002 general elections, conducted on 27 December, the National Rainbow Coalition (NARC) came to power in Kenya. The Constitution of Kenya requires that a candidate for presidential, parliamentary or civic elections be proposed by a political party and, to this end, NARC was registered as a political party and sponsored the members of Parliament (MPs) who now form the government.

NARC is a loose coalition of more than fourteen parties which had been in opposition since the re-introduction of multi-party elections in Kenya in 1991 and came together with the aim of defeating the then ruling party, the Kenya African National Union (KANU). This unity of purpose was based on the experiences of 1992 and 1997, where the opposition failed to seize power (although garnering a majority of votes in aggregate) because it was not united. The main parties in the coalition are the Liberal Democratic Party (LDP) on one side and, on the other, all the other parties under the umbrella of the National Alliance of Kenya (NAK) led by the Democratic Party (DP), the Forum for Restoration of Democracy – Kenya (FORD-Kenya), and the National Party of Kenya (NPK). It is instructive that the words democracy or democratic are included in the names of most of these parties. Because NARC's main object was to seize power it appears that the parties involved did not seriously work out a formula for governing once they had done so. The situation is further complicated by the fact that Kenya has a presidential not a parliamentary system. The president enjoys tremendous executive powers and a government of equal partnership between coalition parties is difficult to enforce. Although NARC produced a Memorandum of Understanding (MOU) and created a coalition committee known as 'the Summit', the spirit and the letter of the memorandum have allegedly not been respected. Indeed, the Summit has never met to deal with the challenges that emerged as soon as the President appointed members of his Cabinet. Since that date there has been discord and serious

differences have arisen between the main parties in the coalition over the MOU. The result has been a split into two camps, the LDP and NAK. The disputes over the MOU are some of the reasons why NARC has been unable to keep its election promises, especially its undertaking to complete and implement the Constitution, on whose draft the MOU was based.<sup>2</sup>

During the 2002 general elections KANU, which had enjoyed political monopoly as the ruling party in Kenya for thirty-nine years, lost to NARC. This loss was a destabilising and shocking factor, from which KANU is still recovering. As a result, in the twelve months after NARC took power and KANU became the official opposition party or the government in waiting, KANU did not authoritatively or effectively provide proper checks and balances on the government. The NARC government is made up of leaders who have been in opposition for most of their political careers or who might have served in the KANU government but were not directly in charge and therefore did not have experience, while the opposition has never played that role as it has always been in government. As a result, there is need for a strong opposition to keep the government in check and also to keep it constantly accountable to the electorate, yet there is also a need to strengthen the capacity of the opposition to provide effective checks and balances. Although NARC still enjoys good will from Kenyans there is an urgent need to hold it accountable to its citizens and to safeguard the democratic gains of 2002.

The democratisation process of the 1990s resulted in an enhanced democratic ethic, culture and space, which have created an environment for good governance with many Kenyans involved in the governance of their country. There is always the risk of retrogression where some people in government may be tempted to inhibit the consolidation of these democratic gains. During the last general elections it was clear that the Electoral Commission of Kenya (ECK) carried out its task in a professional, credible manner. Yet we cannot state that democracy has been achieved in Kenya because other stakeholders in the electoral process have not attained a similar degree of professionalism. Indeed, political parties remain the biggest hurdle on the road to democracy. Kenyan political parties are not professionally managed nor do they have the institutional capacity to manage their internal democratic processes. One can hardly identify any political party in Kenya with a specific ideology or philosophy. None can claim to be an institution with an up-to-date register of members (voters) or even a strategic plan of programmes; most are forums or vehicles for seizing political power or positions in Parliament and other elective institutions.

It is against this background that the issue of gender mainstreaming, equality and parity must be addressed.

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2 Under the current Constitution the President enjoys immense executive powers and has the final say on all public appointments even though in some cases he may do so after consultation. The draft Constitution seeks to ensure the devolution of executive power, something some people allege the NAK faction of NARC, from which the current President comes, do not wish to see happen.

## ENGENDERING THE PROCESSES OF APPOINTMENT AND ELECTION

It is difficult to answer the question '*how* can government, opposition and Parliament ensure gender mainstreaming and equality in all their activities and a *genuine effective partnership* between women and men?' without first seeking to understand *why* it is necessary and what kind of imbalances need to be addressed? The '*what*' and the '*why*' help us to identify effective methods of addressing the problems.

The justification for gender mainstreaming, equality and access to equal opportunities for women and men stems from the historical and traditional imbalances that have existed in the representation of women in appointed or elected positions. The focus is mainly on such positions because it is here that government intervention can be enforced effectively.

Although the population of women is equal to, if not slightly higher than, that of men, there are fewer women in elected and appointed positions. This is not because women are less educated than men or because women do not vote or seek elected positions, it is the result of a variety of factors and reasons.

### *Kenya's electoral system*

The electoral system practised in Kenya is known as first-past-the-post (majoritarian) on a constituency basis where the candidate with the highest number of votes, irrespective of voter turnout or the number of candidates, wins the election. In addition Kenya's laws do not provide for independent candidates, requiring prospective candidates to be sponsored by political parties. The practice has been that, since political parties do not receive public funding and their elections and other processes are not supervised or monitored by the ECK, there is no legal obligation to ensure gender mainstreaming or fair representation of women. For example, while the Constitution was amended in 1997 to require that in the case of nominated MPs parliamentary parties must take into account the principle of gender equality, of the twelve nominated MPs in 1997 only four were women. In 2002, as a result of intense lobbying and advocacy by many women's and other human rights organisations working towards ensuring gender equality in Kenya, the situation improved significantly, in fact reversing itself so there were eight women and four men.

The table below shows the distribution of parliamentary seats for women since 1969, the first time a woman was elected and one nominated.

As the table shows, the number of elected and nominated women MPs has more than doubled since the 1997 general elections. This is significant progress and an indication that more constituencies are accepting women leaders. This trend must not be reversed and the Gender Commission when it is established must safeguard and enhance these gains. A fairer electoral system would also contribute to the enhancement of these gains.



Year	Elected		Nominated	
	Women	Men	Women	Men
1969	1	154	1	11
1974	5	152	2	10
1979	3	155	1	11
1983	1	157	2	10
1988	2	186	1	11
1992	6	182	–	12
1997	4	206	4	8
2002	10	204	8	4

Presidential and other public appointments, including those of ministers, permanent secretaries, ambassadors and positions in public institutions of governance like the judiciary and parliamentary committees, appointments to constitutional commissions, government corporations and even semi-government corporations and institutions are not based on the principle of fair representation and do not significantly enhance gender mainstreaming. The number of women appointed to decision-making positions since NARC took over power is significant compared to that during the last government's tenure. However, this number is almost inconsequential compared with the promises NARC made to the women of Kenya in return for the part they played in ensuring it won the elections. Indeed, the President of Kenya assured Kenyan women that when he was elected he would ensure that *at least one-third of all* the appointments would go to women. The principle of affirmative action that was also promised to women has not been effected to address past imbalances. Although the draft Constitution provides for affirmative action and gender mainstreaming, there is no deadline for implementing these provisions once the draft Constitution is implemented.

The cost of vying for an elected position in Kenya is prohibitive for women, who have no access to the kind of resources necessary to mount an effective and successful election campaign. Elected positions continue to be the preserve of the rich in Kenya.

MPs have voted for themselves such lucrative salaries and benefits that vying for elected positions has become a very serious business. Many candidates take out cooperative and other loans or sell property to raise funds for their campaigns. Judging by the campaigns during the 2002 general elections, the campaigning process in Kenya has also become very sophisticated with websites, media – electronic, print and posters – songs, rallies and transport by helicopters and small planes the preferred mode of campaigning. This encourages corruption and, further, the pressure to win elections to secure the repayments of loans also encourages

voter bribery and corruption as a means of ensuring that the investment pays dividends in the form of election victory.

Political parties are not publicly funded nor are there limits to how much candidates may spend on elections. Resource mobilisation and fundraising for political parties remain problematic. Therefore, since financing an election is such an expensive affair, any person who is rich, irrespective of gender or leadership qualities, is a naturally successful candidate. Parties are not driven by ideology and are identified with their key financiers and the leaders who 'own' them. Naturally, few women can afford to 'sponsor' political parties or own them. Indeed, it is alleged that public and ministerial appointments after NARC's election victory, besides being based on the erstwhile NARC MOU were driven by material and financial contributions to presidential and party campaigns.

The leadership structure of political parties is devoid of women, mostly by design and because of history. Attitudes and role stereotyping do not seem to have helped the situation. Women occupy minor positions such as 'gender officer' or 'entertainment' in the leadership hierarchy of parties and it is rare to find a serious political party whose chair, secretary general, organising secretary or director of elections is a woman. Conversely, it is difficult for a political party to nominate women for serious elected positions.

The fact that parties do not encourage and actively ensure that women candidates are nominated for positions during party or general elections means that fewer women contest the general elections. The political playing field is still not level and favours men, who already enjoy numerous advantages over women. Men have access to networks and patronage, which are still out of reach for women. Men still control political structures, which are based on a patron-client relationship and traditionally favour them and their preferred candidates, who are always men – it is an exclusive network which continues to be impenetrable by women.

Women's involvement in seeking political power is still viewed with reservation; it is not considered glamorous or ladylike to plunge into the murky waters of politics. Furthermore, many political parties do not view women as 'strong winning candidates'. As a result, political parties will only nominate women candidates in constituencies where they are absolutely certain that they stand a very strong chance of winning, for instance constituencies which have traditionally been represented by women. For example, in 2002, a woman candidate who sought nomination from NARC to contest a parliamentary seat in Westlands constituency in Nairobi was prevailed upon to withdraw in favour of a male candidate although she was a strong and likely winner. In return she was promised that she would be nominated to Parliament<sup>3</sup>. In the event, she was indeed nominated and, in violation of the law, was appointed an assistant minister before she was even sworn in as a

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3 Many people claim that NARC declined to nominate her because of various coalition considerations but the fact that there had been a promise that she would be nominated seems to suggest that gender factors came into play.

nominated MP. Since she was a strong candidate NARC should have sponsored her for election and nominated the male candidate.

Women in Kenya continue to suffer both *de jure* and *de facto* discrimination. *De jure* refers to the legal framework such as the law on citizenship, which has the effect of allowing Kenyan men to confer citizenship on their alien / foreign women and the children of their unions. Citizenship is an important element of elections because it is the basis of qualification as a candidate and a voter. Also, Kenyan men who are married to foreign women stand a better chance of being appointed to governmental and inter-governmental positions<sup>4</sup> than Kenyan women married to foreigners because the man never loses his nationality while the woman is expected to. This is not only a disincentive to pursuing their own interests and preferences but also a stigma, which prohibits women from ascending to decision-making positions. *De facto* discrimination derives from the larger social, economic, political and cultural factors based on attitudes and stereotypes like physiological differences. As a result of this discrimination, women are denied equal access to the power structure that controls society and determines development issues and other policy-making processes.

How then do we ensure gender equality, balance, and gender mainstreaming in the activities of government, the opposition and Parliament and a genuine partnership between men and women?

### *Legal Framework*

One option is to create a legal framework to establish and institutionalise principles of gender mainstreaming and affirmative action.

The incorporation of these principles in the Constitution and in statutes creates legal structures, responsibility and a means of ensuring enforcement by the courts.

Another way is to establish institutions to facilitate women's access to and use of public resources as a means of dealing with past imbalances. The draft Constitution of Kenya creates opportunities for affirmative action which, when adopted, will help the government to do that.

The draft Constitution in its chapter on national values, goals and aspirations provides that *at least one-third* of all appointed and elective positions should be occupied by women. Affirmative action provisions throughout the draft not only deal with past imbalances relating to women but also aim to ensure justice and fairness for other disadvantaged groups, communities, minorities, the youth, people with disabilities, and other interest groups. The draft Constitution also provides for improved access to public resources by women and other disadvantaged groups and creates institutions and structures to enhance gender mainstreaming, for example, a gender commission.

<sup>4</sup> Inter-governmental positions include, for example, positions in the United Nations, African Union or regional parliaments where the appointing agency to those positions is the government of Kenya.

In Kenya, where convention is deeply rooted and various practices, beliefs and circumstances do not favour women, it is not enough to have laws that seek to address past imbalances and to enhance equality. There is a need for national machinery to oversee and take charge of the transition from gender inequality to gender equality and mainstreaming and to ensure that the trend is not reversed. This machinery, the Gender Commission, will support women's causes, oversee awareness and civic education and monitor the implementation of gender sensitive and mainstreaming policies and recommendations.

There is a need for a legal framework to support independent candidates. This will enable women to present themselves to the ECK without requiring endorsement by political parties, thus avoiding the situation in which, pursuant to the realities of *realpolitik*, the alleged art of the possible, political parties endorse a man in preference to a woman, offering aspirant women politicians no opportunity to convince voters of their leadership qualities and strategies.

Once the new Constitution comes into force it will deal with the question of how the government can ensure gender equality, balance, and a genuine partnership between men and women. Enabling legislation and institutions will arise out of the new Constitution to address issues of social justice.

### *Adoption of mixed member proportional representation*

As mentioned above, the electoral system in Kenya does not facilitate fair representation. The draft Constitution proposes a mixed member proportional representation (MMPR) system, which, while retaining the current system, creates proportional representation as a mechanism to ensure fair representation of women and people from marginalised communities. Proportional representation (PR) ensures the principle of one-person- one-vote where every vote cast counts towards representation. Although proportional representation is being resisted by delegates to the constitutional review conference, it is stated that the reason for the resistance is more a lack of understanding of how PR works than opposition to fairness and social justice. Many delegates are suspicious of political parties and believe that the parties will abuse PR by 'appointing' their friends and rewarding loyalty instead of addressing concerns about unfair representation. Other options, like the creation of special district seats and special interests seats, are being proposed.

It is the duty of the government to ensure, by means of awareness and civic education campaigns during the constitution review process required by the law, that all Kenyans, and especially delegates, understand the objectives of PR and appreciate its importance as a mechanism for ensuring fair representation.

### *Aggressive awareness and civic education campaigns*

The Constitution of Kenya Review Act (s 24) provides that 'the Constitution of Kenya Review Commission shall, during the entire period of its work, facilitate

and promote civic education in order to stimulate public discussions and awareness of constitutional issues'. In addition, the Electoral Commission of Kenya is obliged by s 42A(d) of the Constitution to promote voter education throughout the country. This obligation is based on the realisation by the government of the importance of civic/voter education. However, the Constitution of Kenya Review Commission (CKRC) does not, during the review process, provide for civic education, while the ECK is not involved in awareness creation with regard to the draft Constitution.

The CKRC conducted a civic education campaign before it elicited views from Kenyans but has since ceased to provide such education. Only civil society and its funding partners are providing civic and voter education to Kenyans and delegates to ensure that there is quality of debate and an understanding of the issues for discussion during the review process. Indeed, civic education to safeguard the democratic and other gains for Kenyans in the draft Constitution is provided by civil society organisations mentioned elsewhere in this paper.

Awareness and civic education campaigns are also tools for ensuring the eradication of electoral violence and malpractices which present serious barriers to women's effective participation in the electoral process both as candidates and as voters. The civic awareness campaigns must be accompanied by specific campaigns against violence, electoral corruption and bribery and other malpractice. The government and the ECK have a crucial role to play – efforts such as those seen in 2002, supplemented by civil society organisations and funding partners, are commendable and should continue even more aggressively. The government should provide security for women candidates especially during door-to-door night campaigning unless campaigning at such hours is banned and the bans are enforced.

It is the duty and responsibility of the government to provide civic/voter education to ensure gender equality in the activities of government and a genuine partnership between men and women.

### *Public funding of political parties and a ceiling for campaign expenditure*

To ensure gender equality it is necessary for legislative steps to be taken to limit campaign expenditure and to ensure fair representation of women. It is also important that the government provide public funding for political parties to ensure that they become institutions of democracy. The criteria for funding must include measures to ensure that women are fairly represented in key party and publically elected and appointed positions.

It is also necessary to ensure that parties are based on some credible ideology. Proposals for funding and campaign expenditure and monitoring of party democratic processes and management by the ECK are contained in the draft Constitution and the government must ensure that the draft Constitution is adopted and implemented at the earliest opportunity. Political parties must also ensure that they support women candidates and make party resources accessible to

women. Leadership qualities, not wealth, should be the basis for qualification for candidature. This should also be enforced by the government to ensure, among other things, the success of the fight against corruption.

*Supervision of political party elections and monitoring of their internal democratic processes by the ECK*

It is the responsibility of the government to ensure that political parties are managed democratically and that their internal processes conform to democratic principles. The current Constitution provides for such oversight. The government must ensure the effective implementation and enforcement of the law. Political parties should also provide civic education for their members to address stereotyping and deal with traditional attitudes that are harmful to women. Gender insensitive statements and utterances by politicians and public officials should be punished. Gender mainstreaming and equality in political parties should be recognised and, where possible, rewarded. Political parties need to develop and institutionalise rules, regulations and procedures to ensure the promotion and respect of democratic processes including elections, management of party affairs, and so on. The ECK and the government must set up certain benchmarks and indicators for monitoring and judging party performance. Political parties must hold regular elections and make annual returns and must adhere strictly to a code of conduct for political parties and, should they fail to do so, certain sanctions must be imposed and enforced.

*Involvement of women and nominated MPs in parliamentary committees and constituency activities*

Parliament has a crucial role to play in ensuring gender equality. It can do this in two key ways: by ensuring the passage of gender sensitive and fair legislation and by ensuring that women play a crucial role in the activities of Parliament, including its committees. This will enhance access to equal opportunities for achieving positions of authority and decision-making in Parliament. For example, in December 2003 Parliament passed a law enabling only elected MPs to decide on the composition of constituency committees and on the expenditure and projects for constituency development funds. Nominated MPs, the majority of whom are women, have absolutely no role to play in decisions about constituency funds. This further disenfranchises women. Nominated MPs also complain that they are not given any roles in parliamentary committees and do not participate effectively in parliamentary activities.

Parliament has a responsibility to ensure gender mainstreaming and equality in its activities. It is also possible to initiate special programmes and activities to ensure the effective involvement of women in sporting activities, inter and intra parliamentary associations, and so on.



*Review of parliamentary rules and standing orders to make them gender sensitive and realistic*

The parliamentary rules and standing orders are outdated, gender insensitive and unrealistic. A recent controversy provides a good example. Women Members of Parliament had to call a press conference to publicise their rebellion against a parliamentary order that does not allow them to go into chamber with their handbags. This may seem petty but it enables us to make the point. The rules and orders envisaged a male-dominated National Assembly, but circumstances have changed, necessitating a review that will include measures to ensure equal protection of human rights and equal access to the resources and conveniences of Parliament by women MPs.

*Civil society and the media*

Civil society, especially women's, democracy and human rights organisations, is the force behind the democratic and gender equality gains made in Kenya thus far. These achievements have been made possible through the implementation of projects, capacity building and strengthening, research and dissemination and awareness and civic education campaigns. Non-governmental organisations and their funding partners continue to spearhead the campaign to ensure gender mainstreaming, equality, equity, parity and sensitivity. To achieve their objectives, civil society organisations use the media – electronic, print, posters and the Internet – to reach their targeted audience. Much of the media used are paid for. The government needs to do more than just provide an enabling environment.

Mainstream media houses have also played a role in enabling access to information for women but they can do much more to ensure that their reporting and their language is gender sensitive. They can also boost the campaign for gender equality and mainstreaming by deliberate programming that does not perpetuate stereotypes but promotes positive gender images. The media houses can work with civil society organisations to create awareness and provide civic education to promote gender equality. They can also support women candidates and help break barriers in the process of election campaigns. As a community service the media need to develop and air programmes aimed at addressing social justice issues including gender inequality without demanding payment for such programmes.

## CONCLUSION

Political goodwill and an enabling environment are necessary to ensure a successful campaign for gender equality and the government, the opposition, and Parliament have an important role to play at different levels to facilitate and promote such an environment. A number of barriers still exist, the largest of which are stereotypes, attitudes and a lack of awareness. It is therefore imperative that the government,

the opposition and Parliament spearhead an aggressive awareness and civic education campaign while making resources available and accessible to women. Affirmative action measures are also crucial to ensure that past imbalances are redressed. In this regard, systems and mechanisms must be put in place. Although significant progress has been made, it is hardly commensurate with the efforts and resources invested in the campaign to ensure gender equality and mainstreaming. Government, the opposition and Parliament have a role to play beyond paying lip service and writing manifestos of intentions.

# THE DOMINANCE OF THE SWAZI MONARCHY AND THE MORAL DYNAMICS OF DEMOCRATISATION OF THE SWAZI STATE

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## ABSTRACT

*The struggle for independence in Swaziland contended with two important dynamics: (i) the emerging new ideology of party politics in Africa largely patterned after the Westminster model of parliamentary democracy; (ii) the ideology of traditionalism that centred all contestation of political power on the monarchy. I observe that over the years the dominant philosophical framework in Swaziland has been that all constitutional initiatives should take due regard of the history, culture, traditions and way of life of the Swazi people. While the need to harmonise traditional sensibilities with modern principles of constitutional and international law is underscored, there is no political will to forge such harmony. In the light of the historical processes that have taken place since the 1960s I argue that the ideology of traditionalism is under threat. Kingship as an institution is also threatened as calls for genuine democratisation of the Swazi state are made both from within and from without, in the latter case by the community of nations. I conclude by suggesting that unless adjustments are made to both the traditional and the modern political structures, Swaziland will continue to be a security risk in the Southern Africa region. It is imperative, therefore, to shift tradition from being an ideology of domination to one of a shared value system in a transitory state guided by the realities of a modern democratic society.*

## INTRODUCTION

Swaziland has been described as the last country in Africa with an absolute monarch. The notion of absolute monarchism can be traced to early European thought that held that the universe was a grand empire founded upon principles of divine Logos (Harding 1997).

Judeo-Christian beliefs underscored the centrality of royal authority and the notion of the divine appointment and nature of kings. Royal absolutism, therefore, implied that kings were God's representatives amongst nations. They commanded unsurpassed authority, and respect for them was demanded, not earned. Such demand was for the purpose of ensuring the celestial fiat of kings as the cornerstone of universal (and national) harmony. In Europe today notions of the divine authority and appointment of kings are no longer tenable, thanks to the tedious weaving in of democratic ideals over the centuries. On the other hand, it should be recalled that when European powers colonised Africa one of their priorities was to weaken traditional forms of governance by locating the locus of power and social control somewhere in Europe. Traditional forms of governance were thus secondary, only deriving their legitimacy from the consolidation of societies around age-old customs and traditions. The location of real political and economic power in Europe was not subject to local questioning or negotiation.

The eventual 'death' of African traditional authority suited the colonial masters for as long as colonialism lasted. When, towards the middle of the 20th century, calls were made for democracy the primary question was what should replace colonial governance. The idea of reverting to the glorious past of African kingdoms and chiefdoms as edifices of power was not an option, ostensibly because the colonial master still wanted to perpetuate his interests in Africa. British Africa was thus channelled to adopt the Westminster model of parliamentary democracy, while French Africa voted in 1958 for the so-called Fifth Republic of France, which was essentially a continuation of the French colonisation process. Did these replacement models work? Suggesting that they did not, Ali Mazrui (2001, pp 18-27) argues that it was Africa's fault for borrowing:

... Western tastes without Western skills, Western consumption patterns without Western production techniques, urbanization without industrialization, secularization (erosion of religion) without scientification.

Mazrui feels Africa would have thrived had it gone back to its 'own tastes ... retaining its own lower levels of skills ... [retaining] African consumption patterns'. The Western models were thus unsuitable for Africa and plunged it into an abyss of anarchy and tyranny. 'Anarchy was too little control; tyranny was too much.' (Mazrui, p 20). Mazrui does not, however, indicate what Africa should have done to respond to the complex web of problems inherited from the colonial past. For example, the new African nationalist leader, having successfully won leadership through the ballot box, found a ready-made infrastructure with all its colonial trappings. Contrary to inherited forms of leadership in the traditional superstructure, Africa's fighters for independence were charismatic individuals who were not voted into their roles, but filled them as part of the historic process of the Promethean quest for freedom. After winning independence, the nationalist

leaders were thus the new celebrated heroes who had suffered callously under colonial regimes.

Invariably, most of them were Western educated. They spoke English or French. They inevitably used some of the value systems they learned from the West as their tools in the liberation struggle. The political liberation ethic and democratic ideals they cherished were imported from the West, and there was little time for indigenising these concepts in an Africa faced with the challenges of modernity and development. But it soon emerged that the nationalists could not practise at home what they had learnt from the West. The exigencies of development in the process of decolonisation took priority over matters of democracy and human rights. Dissenting voices and calls for periodic elections were considered disruptive and counterproductive. Most independence constitutions were shelved, and laws that had been used to sustain the colonial state were retrieved and applied with impunity. The end result was not development but rampant corruption, the looting of state resources by the powerful elite and the creation of the ruthless African dictator.

In differentiating between the ultimate goals of democracy and the steps necessary to achieve them Mazrui draws a distinction between fundamental rights and human rights, seeing the latter as instruments for achieving the former. This leads him also to distinguish between democracy as a means and democracy as a goal:

Firstly, to make the rulers accountable and answerable for their actions and policies. Secondly to make the citizens effective participants in choosing those rulers and in regulating their actions. Thirdly, to make the society as open and the economy as transparent as possible; and fourthly to make the social order fundamentally just and equitable to the greatest number possible. Accountable rulers, actively participating citizens, open society and social justice – those are the four fundamental ends of democracy.

(Mazrui, p 18)

Lintz and Stepan (2002, p 10) identify five conditions necessary for consolidating democracy:

- Conditions must exist for the development of a free and lively civil society.
- Political society must be relatively autonomous.
- All (leaders and followers) must be subject to the rule of law.
- There must be a state bureaucracy that is usable by the government of the day.
- Economic society must be institutionalised.

Conditions of democracy necessarily imply that a transition process that sought to bring about a new social order must have taken place. It is only after the old social

order has been removed that it is possible to establish and consolidate democracy (Lintz and Stepan 1997 and 2002).

This study will indicate the problems of democratisation Swaziland has faced since 1968 in the context of a monarchical political regime. Swazi kingship is not absolute in the Western sense, but has a rigid structure of checks and balances all meant to consolidate power in the monarchy. It is this concept of the centrality of the monarch that explains the nature and fundamental function of security.

### TRIUMPH OF TRADITION

Swaziland's dominant cultural text is characterised by an ideology of traditionalism (Mzizi 2002) which is the cornerstone of the attempts to consolidate the modern superstructure. This ideology, according to Macmillan (1985), started to emerge in the 1920s and 1930s as Swazis tried to come to terms with the social dislocation created by colonialism. Traditionalism as an ideology seeks to preserve symbols of the past in the economy of legitimating modern systems in the socio-cultural and political community. While agreeing with Macmillan that, like culture, traditionalism – which is culture's functional expression – is dynamic in both form and content, Mzizi (2002, p 168) argues that:

This [dynamism] is a natural phenomenon true of all social facts, but the uniqueness of the Swazi scenario lies in the fact that the Swazi cultural reality falls into the trap of being used by the dominant group to legitimate the status quo. The most dangerous scenario is when the gullible masses are unaware that what they have always held to be culture and tradition is being used to subjugate them in whatever form. In this scenario, traditionalism falls into the trap of social class, serving the whims of the dominant class in their agenda of power wielding and self-preservation.

Swazi kingship survived the hardships of colonialism thanks to the formidable and gallant attempts first of Queen Regent Labotsibeni Mdluli and later of Sobhuza II, her grandson. The Queen, while sensitive to the inevitable processes of change, asserted a strong regency that prepared the new King to fit into both the old and the new worlds with an agenda to either strike a balance between the two or to employ elements of the old to dominate the new. In a 1933 memorandum (Macmillan 1985, p 651) Sobhuza expressed his reasons for detesting missionary education.

- [It] causes the Swazi scholar to despise Swazi institutions and his indigenous culture.
- [It] causes him to be ill fitted to his environment.
- [It] releases him from the wholesome restraints, which the Swazi



indigenous method of education inculcated, and does not set up any effective substitutes for them.

The colonial government had recognised Swaziland as a chiefdom under a paramount chief, as was common throughout British Africa. Sobhuza II was thus allowed by British colonial practice to be in charge of all traditional institutions except for those that fell within the jurisdiction of the Resident Commissioner, the Crown's Representative. Sobhuza II used this leverage to consolidate his power base, fighting off all colonial tendencies that threatened traditional institutions. This was to be the case from the time he began to tackle the land question to the period of the 'winds of change' in the 1950s and 1960s. The struggle for political independence in Swaziland had to contend, on the one hand, with the new emerging ideology of party politics favoured by the British, and, on the other, with the traditional ideology that centres all power in the monarchy (Mzizi 1995, p 172). Sobhuza II had warned in 1959 that if the British championed a constitutional dispensation that would undermine traditional authority a constitutional crisis would result (van Wyk 1965, p16).

The greatest threat to traditional authority, Sobhuza II believed, was the universal franchise. However, his attempts to win independence on the basis of a purely monarchical system failed and in 1964 he was pushed to establish a royal political party, the Imbokodvo National Movement (INM).

The power base of this movement was the monarchy and its institutions, represented by the charismatic personality of Sobhuza II himself, who commanded unquestionable allegiance from the entire population. Thus traditional sensibilities were used successfully to counter the threatening foreign ideology that maintained that power should be contested. Sobhuza II did indeed contest power and emerged with a sweeping victory as if to prove to the colonial detractors that kings in Africa had inherent powers. On National Flag Day, 25 April 1967 (Kuper 1978, p 29), Sobhuza II derided party politics in Africa in the following terms:

This is a day of rejoicing ... It is the tradition of all African Kingdoms that their Kings are leaders as well as Kings. It is also true for Swaziland. Now rightly or wrongly some people have mistaken this dual capacity as dictatorship. I would like to assure you here and now that the King both leads and is led by his people. I am my people's mouthpiece ... There can be no peaceful progress without cooperation and unity of the people.

The socio-political dynamics that made Sobhuza II address so vehemently the issue of the leadership of kings are obvious. He was constrained by the swelling tides of Pan-Africanism on the external front, and the impatience and restlessness of the educated elite on the home front who were exploiting the issues of labour to advance reasons for a representative grassroots political democracy. The Pan-African forces

within Swaziland, although waning as the race to independence matured, did not attempt to reject kingship, but, as the British had willed, kingship was to be constitutionally entrenched, and not politically contested. The true value of kingship in national identity could only be properly celebrated if it remained within the confines of the traditional superstructure, the heart and soul of Swazi hegemony. Sobhuza II and his Swazi National Council felt otherwise. To them kingdoms could not be half republics and half kingdoms. The authority of the king could in no way be compromised. This view was to have far-reaching consequences.

Political Parties, especially the Ngwane National Liberatory Congress (NNLC) led by a Swazi Medical Doctor, Ambrose Zwane, espoused a Pan-African ideology. Its appeal to the working class threatened the dominance of the King's Party in the 1972 elections. The eventual winning of a meagre three parliamentary seats by the NNLC signalled the end of multipartyism in Swaziland, and the beginning of a long drawn out process of constitution making that has been ongoing ever since. Believing that the political pluralism provided for in the independence Constitution could, in the long run, jeopardise the dominance of the monarchy, Sobhuza II banned political parties on 12 April 1973. He thus succeeded, by using extralegal traditional powers, in asserting himself as political as well as traditional leader (Wanda 1990). In a well-prepared proclamation, he argued that:

- the Constitution had failed to provide for the machinery of good governance and the maintenance of peace and order;
- the Constitution was the cause of growing unrest, insecurity and dissatisfaction and was an impediment to free and progressive development in all spheres of life;
- the Constitution had permitted the importation into the country of highly undesirable political practices alien to, and incompatible with the way of life in Swazi society and designed to disrupt and destroy its peaceful and constructive and essentially democratic methods of political activity. Increasingly this element engendered hostility, bitterness and unrest in a hitherto peaceful society.

*The King's Proclamation to the Nation*, 12 April, 1973 s 2(a), (b) and (c)

The constitutional crisis that Sobhuza II had predicted in 1959 had indeed come to pass. To him, full freedom and independence would only be achieved when a home grown Constitution that would guarantee peace, order, good governance, happiness and the welfare of the Swazi nation was crafted. The assertion was a clear rejection of the Westminster model Constitution promulgated under Act 50 of 1968.

It is important to note that when Sobhuza II repealed the 1968 Constitution, he assumed all executive powers previously granted to the prime minister and Cabinet by the Constitution. He could now act at his own discretion, consulting

whomsoever he wished without being bound by law. He gave himself the power to detain without charge for a renewable sixty days any person he deemed a threat to the peace, and the courts had no jurisdiction to hear cases of detention. Meetings of a political nature, including processions and demonstrations, were to be censored by the commissioner of police. Thus traditional sentiments had triumphed over modern political initiatives (Mzizi 1995, p 176). B P Wanda (1990) comments as follows with regards to the King's action:

The legality of the King's action in repealing the Constitution, prompted and fuelled by a resolution of Parliament, is questionable ... the resolution of Parliament advising the King to repeal the Constitution was neither necessary nor adequate in itself; at best the resolution was only evidence of the subordinate status of the legislature in relation to the position of the King, and affirmative of the King's underlying claims that his powers and authority proceeded not from the Constitution, but outside it.

Sobhuza II recreated himself as an absolute monarch who, between 1973 and 1978, ruled the country with a Council of Ministers which, according to the Legislative Procedure Order of 13 April, 1973, had no say on any legal Bill except to draft it and hand it to the King to pass as a Kings-Order-in-Council (Mzizi 1995, p 177). Baloro (1991) noted that the net effect of the April 1973 events was to enable the King to complete the full circle of transforming himself from a formal constitutional monarch with relatively broad executive powers to an absolute executive monarch unbridled by the limitations of any constitutional provisions.

The Umbutfo Swaziland Defence Force (USDF) was formed during the turbulent 1973 crisis with the sole mandate of defending the institution of kingship from internal challenges. Umbutfo is a siSwati word for regiment, and, according to tradition, regiments are established and named by a king for the purpose of protecting kingship. Regiments in the traditional sense must undergo a period of royal training that involves painstaking discipline, a ritual from which they graduate with an insignia of special beads called *simohlwana*. While undergoing the initiation process they must demonstrate unflinching love for and loyalty to king and country. The expression they use after graduation is: *tsine sigane iNkhosi* (we are married to the King). Thus it was that the first 600 recruits into the USDF were drawn from strong able-bodied young and middle-aged men who had passed the traditional initiation at different times. They were now ready to defend the King, not with the traditional shield and battleaxe, but with the barrel of a gun.

It has been argued that Sobhuza II had the best of intentions in 1973. Hilda Kuper (1978, pp 336-337), the late King's official biographer, sees the 1973 events as a turn from 'nominal political independence into a full sovereignty under a leader who had proven his wisdom and moral courage over the years, a man ready to listen to all sides before making a decision, a King who was not a tyrant, a King

inspired by ideals of the best in a traditional African monarchy in which there was the interplay of councils and the King the mouthpiece of the people'. Kuper's hallowing remarks are based on the traditional role of Swazi kings that had no concept of absolute authority (Booth 1983, Hlatshwayo 1994) since various councils (*emabandla*) were put in place to check and balance the powers and decisions of the monarch.

These councils were established on the principle that they were representative. Hence selection to their membership was not arbitrary. But the King's position in 1973 was that henceforth he would rule with his Cabinet, and he assumed supreme powers and placed himself at the centre of the entire political machinery. Clearly he had taken charge of every facet of Swaziland's political life, both in the traditional domain and in the modern governance sector.

### FROM A WESTMINSTER MODEL TO A HOMEGROWN CONSTITUTIONAL DISPENSATION

In the aftermath of the 1973 events Sobhuza II set up a Royal Constitutional Review Commission. Membership and the terms of reference were wholly determined by him. The terms, which were never gazetted, included a provision to inquire into the broad parameters upon which Swaziland's Constitution should be based. The commissioners were to craft this philosophical framework taking due regard of the history, culture and way of life of the Swazi people 'and the need to harmonise these with the modern principles of constitutional and international law' (Kuper 1978, p 338). The report of that commission, including its *modus operandi*, was never made public but a logical assumption is that the Kings-Order-in-Council 23/1978, which established Parliament, was a consequence of the Royal Commission. The Order not only established the procedure for election, but also retained the powers of the King to make laws by decree and cemented the 1973 Proclamation as the Supreme Law of Swaziland subject only to amendment or repeal by the King after a 'new Constitution for the Kingdom of Swaziland has been accepted by the King and the people of Swaziland and brought into force and effect'.

Commenting on the tensions in Swaziland since 1973, B Khumalo (1996, p 13) writes:

One reason for the escalation in the nature of the constitutional tensions arising from the dual system operating in Swaziland since the introduction of Tinkhundla in 1978 has been the manner in which this system attempts to consolidate traditional authority structures within a predominantly modern system of government. Prior to the repeal of the constitution in 1973, the traditional structures were given recognition, but at a separate level of the administration. In this way, although some tensions were inevitable, they were much more confined than they have been since 1978. The question which arises, therefore,

is how can we address the tensions in view of the fact that there will always be some interaction between the traditional and modern sectors?

The search for a truly Swazi philosophical framework was a plausible idea, but the exercise was stalled by a dilemma about how to go about it and perhaps its focus in the first commission was derailed. The male dominated commission comprised unapologetic royalists in the persons of Polycarp Dlamini (former secretary to the Swazi National Council), Chiefs Sifuba and Ndleleni Gwebu (members of the Swazi National Council), R P Stevens, who seconded the parliamentary motion to repeal the 1968 Constitution, David Cohen (the Attorney General, who read the decrees in the King's Proclamation of 1973) and Authur Khoza (the King's Private Secretary, who had defected from the NNLC). It would appear that the motive behind the composition was to put together a team that would carry out an already predetermined task. These men knew that the axis of Swaziland's constitutional framework had to be the monarchy.

The weakness of the 1968 Constitution was that it had enshrined the powers of the King at two significant levels. First, the King could not act arbitrarily on the appointment and operation of the Prime Minister and the Cabinet. The elected House of Assembly was expected to be the base of the power and legitimacy of the Executive. Secondly, by being a constitutional monarch, the King was not above the Constitution.

Although it was traditionally believed that the King has limitless powers, this notion is incorrect – the checks and balances provided for Swazi kings and queens in effect meant that they could not do as they pleased. To be 'the mouth that tells no lie' meant to be the mouthpiece of the entire nation; the epitome of national aspirations and visions on all critical issues. The King speaks within the limits of instructions given to him by the various councils (Booth 1983, pp 45-46).

The commission did not entertain the issue of multiparty politics but instead focused on laying the groundwork for an electoral system that would be controlled and superintended by chiefdoms, and ultimately by the King through royally appointed committees. According to the 1978 Order elections were to be conducted for the purpose of establishing an Electoral College, the body that would elect members of Parliament. Nominations for Parliament were made in secret, much removed from the public eye. After deliberating for weeks, the Electoral College would announce the successful candidates. Quite clearly this was a way of ensuring that Parliament was comprised of the right candidates who would enhance the power of the King. Although Sobhuza II had indicated that the 1978 reforms were an experiment, the executors of the experiment believed otherwise, regarding it as a permanent arrangement worthy of being safeguarded by hook or by crook. There was much national consternation about the unrepresentative nature of Parliament; the seemingly uncouth methods of selecting candidates for the Electoral College and the eventual voting by an open single file in the manner of cows bound for a dipping tank. Defenders of the experiment held that it was the most traditional



way of doing things but one thing was certain: the power of the monarch over the modern political process remained intact. This was considered the primary motif that would hold the nation together and ward off so-called foreign ideologies.

Sobhuza II died in 1982 during the first phase of an experiment that was already sending signals of political corruption and abuse in the name of the King. Booth (1983, p 46) explains the functions of the *Liqoqo* prior to and in the aftermath of Sobhuza's demise thus:

In times past, the *liqoqo* and *libandla* were the only means by which the King received public counsel to guide his rule, the true 'voices of the people'. Those were times when communications were slow and vital issues were not as numerous, complex, or rapidly developing as they are now. From independence to the early 1980s, the national Parliament became the forum for debate over modern issues of governance. During the interregnum after Sobhuza's death, however, events have turned the *liqoqo* into the main policy making body, with Parliament's powers correspondingly diminished. *Liqoqos* have tried to take on this role in the past, notably following Mswati's death, fortunately without lasting success.

The *Liqoqo* was announced as the Supreme Council of State soon after Sobhuza's demise. It started by amending the Sedition Act of 1938, coming up with the 1983 Sedition and Subversive Activities Amendment Act. Opposition to the *Liqoqo* was considered a seditious act and carried a maximum prison term of twenty years. The regency left by Sobhuza II was thrown into turmoil as the *Liqoqo* wielded unbridled power, creating self-serving legislation.

The final showpiece of the *Liqoqo* was the dethronement of the Queen Regent for failure to accede to some of the fast lane innovations. But internal power struggles weakened their resolve and, by 1986, the *Liqoqo* had disintegrated. Mzizi (1995, p 185) writes: 'Yet it was all the more clear to any intelligent observer that the country was reaping the fruits of Sobhuza II who had by example, weal and woe, taught that political power was sweetest in the absence of opposition'.

Mswati III, Sobhuza's son and successor, has made three major attempts at reform. The methods he has chosen, for good or bad, hinge on the doctrine of consolidating royal power. Instead of taking a neutral position and letting Swazis debate the nature of the monarchy they desire, the King, like his father, has been in control of all the efforts. Mswati III set up the first commission in 1990 as an outgrowth of his traditional kraal meetings, dubbed 'the people's parliament' by the media. A senior prince who had served in the Sobhuza II Cabinet was appointed to take the wheel. This commission had a loose structure and non-formal mandate, hence its report was verbally presented at the kraal with no attendant pomp and circumstance. The King must have learned his lesson from this loose structure that had encountered procedural problems as people talked about anything under the



sun, and the media were there to report on every public meeting. For that reason, he set up the Tinkhundla Review Commission (TRC) by Decree 1/1992 more to focus on the electoral system than on the constitutional question *per se*.

Once again the normative factor was injected in s 3(b)(iv) of the terms of reference. The commission's mandate was to receive views regarding 'the way in which Customary Institutions in the Kingdom of Swaziland should and/or could be accommodated in the political system of the Kingdom of Swaziland in view of their important constitutional and social role in terms of Swazi Law and Custom'. Khumalo (1996, p 9) remarks as follows on the limitations placed on the commission:

First, the investigation into the structural arrangement of the constitution was necessarily limited. The monarchy, for instance, and its role in the constitution was presumed to be beyond question ...  
Second, the initial presumption appears to be that the customary institutions must be accommodated in any future constitution.

According to Khumalo, the question of monarchical support should have been put to the public. Had this route been followed, different opinions would have emerged and a fresh concept of the monarchy would have been possible in a new constitutional dispensation. Secondly, the reference to customary practices was a clear mandate to expand and refine the Tinkhundla philosophy of 1978, hence the official name of the commission. Khumalo agrees that while Tinkhundla as a system 'provides a useful method of delineating constituencies, what is wrong is the attitude that because they are presented as *customary* institutions, they automatically deserve to be protected, regardless of the views of the public'.

The commission reported that Swazis had rejected the return to party politics. This was obviously noted because of its importance in the determination of the strategic direction Swaziland was to take in the envisaged dispensation. Executive authority was to be vested in the King who would continue to appoint a prime minister and a Cabinet (in consultation with the prime minister). In relation to electoral procedure the commission recommended two elements: that representation to Parliament should be direct, and elections should be by secret ballot. These two elements were incorporated in the *Establishment of Parliament Order*, 1992. But again the supremacy of the monarchy over the entire system was spelt out in s 55 as follows:

The King may require the Prime Minister and other Ministers to consult with him on any matter relating to the Government of Swaziland, and the Prime Minister shall keep the King fully informed concerning the general conduct of the government of Swaziland and shall furnish him with such information as he may request in respect of any particular matter relating to the government of Swaziland.

In addition, s 51(2) stipulates that the King may remove the prime minister or any other minister from office at any time, and is not obliged to give reasons for his actions. The King's decision cannot be challenged in a court of law. Although the TRC (1992) report recommended that Swaziland craft a constitution with a Bill of Rights, four years passed before a Constitutional Review Commission (CRC) was set up. Like all previous commissions, the CRC was directly stage-managed by the King through a prince.

As in 1992 there was an attempt to appoint a broad-based commission but the non-representative clause in the terms of reference fuelled suspicions and this, together with other precipitate factors, caused some progressive and enlightened commissioners to abandon the exercise. One commissioner, Mandla Hlatshwayo, a known political activist belonging to the Peoples United Democratic Movement (Pudemo), withdrew from the 1992 commission, citing a conflict of interests. This was a landmark case of humble disobedience to the machinations of the monarchy, which, since the days of the late King, Sobhuza II, has been perceived to be using the tactic of 'open-yet-controlled' policy of accommodation in order to legitimate monarchical motivations. The 1996 attempt again included Mario Masuku, president of Pudemo, who withdrew for the same reasons as those of his counterpart in 1992. The 1996 Commission was very large, composed mainly of a cocktail of individuals perceived to be supporters of the monarchy, but with no understanding of the task before them. Many of the commissioners, while glorying in the fact that they had been royally appointed, saw their new task as an employment opportunity.

The intentions of the paymaster (the King) had thus to be protected. Internal debates and bad blood within the commission resulted in the resignations of the vice-chairman, Jeremiah Gule, an academic; the secretary Nkonzo Hlatshwayo, an advocate and academic and Mhawu Maziya, an advocate and academic. Zombodze Magagula, a legally trained company executive, never effectively resigned, but cited work pressure as the reason for his non-participation. Deviating from its original mandate to produce a draft constitution within two years, the commission managed only to come up with a shoddy report three years after the deadline. On the role of the King, the CRC (2001, pp 77, 82) states:

All powers of governing (ruling) and reigning over the Kingdom must remain entrenched in the Ngwenyama, according to Swazi law and custom and existing laws; if the King is not there, in the Ndlovukazi, and if both are not there, in the Authorized Person ... The nation further insists that the King's Office must be established, be autonomous, be strong and be a microcosm of the various government ministries, departments and sections. The office must also include the King's legal Adviser ... Parliament must work to perpetuate the Tinkhundla System of Government. Members of Parliament have a dual role: to pass laws and be development officers. The King should continue to appoint and dismiss a Prime Minister and any other Minister. The independence of

the judiciary should be maintained as it is, but the Courts must perform their functions with due regard to the customs and traditions of the people of Swaziland.

The CRC, like the 1992 TRC, commented on the question of multiparty politics:

An overwhelming majority of the nation recommends that political parties must remain banned. They do not want political parties in the kingdom. There is an insignificant minority which recommends that political parties must be unbanned. The recommendation is that political parties must remain banned in the Kingdom. The existing laws regarding this position must be enforced.

(p 95)

King Mswati III's attempts at reform have been marred by a litany of problems. First, he is aware that he has no option about whether he should be seen to be responding to the calls for democratisation. Secondly, internal pressure, although officially ignored, continues to disrupt the royal agenda of how change should be managed. The dissenting voices are heard far and wide, thanks to the international media and access to the Internet. Faced with these realities, the King has landed himself in further trouble by assigning unto himself the prerogative to manage change virtually on his own terms. This *modus operandi* creates problems of legitimacy because of his inherent vested interest in the outcome of the process. Holding unequivocally to the strategy and philosophy of his late father, King Mswati III desires to see a constitutional dispensation that will endorse him as unbridled superintendent of all the modern and traditional socio-cultural and political institutions. He thus elects to go about this exercise in ways that are self-serving, nursing a hope that he has the majority of the population behind his efforts.

His commissions, because of their chronic failure to demonstrate scientifically how they reflect public opinion, can be seen as tools for repeating, at best, what they perceive he wants to hear and, at worst, what he tells them in regular closed consultative meetings. The mutations and redefinitions of tradition by the ruling elite have been reconfigured and, with little regard to the complexities of the implications, impose traditional elements on every facet of Swazi life. This has caused problems in governance and the rule of law, as will be shown in the next section. On the question of individual liberties and fundamental freedom, the CRC (2001, p 83) reported:

The nation recommends that rights and freedom which we accept must not conflict with our customs and traditions as the Swazi nation. Agreements with other states and international organizations which deal with rights and freedoms must be submitted to the nation (at Tinkhundla) before such agreements become law in the Kingdom.

## STATE OF THE OPPOSITION

The banning of political parties in 1973 in effect meant that any organised opposition to the operation or processes of government was circumscribed. The major opposition to the King's Party was the NNLC, whose popularity increased in the run-up to the first elections of 1972, and which was probably the target of the ban. The King's Party continued to exist, but in name only, since the machinery of government was manned by officials who had been sponsored by or had materially supported the INM in the 1967 elections. The enactment of draconian legislation to enforce the King's Proclamation to the Nation killed the ethos and spirit of opposition politics so vital for emerging democracies and good governance in general. Dr Ambrose Zwane was detained and harassed and used the gap between the expiry of his detention order and its renewal to elude the police and escape to neighbouring Mozambique, eventually seeking refuge in Tanzania. Zwane's escape did not please Sobhuza II, who, despite the views he expressed at home about the important role played by tradition in developing innovative political strategies wanted to be viewed as a supporter of Africa's liberation. In addition, Zwane's ancestors and other close relatives had traditionally been connected to Swazi royalty and had played very significant leadership roles and functions. He therefore reverted to diplomacy to secure Zwane's return, on condition that he would make no further attempts to disrupt the status quo, while Sobhuza undertook never again to detain Zwane. Zwane returned to the kingdom a sickly and frail man. The ordeal had taken its toll on him, and Sobhuza had succeeded in killing off the NNLC.

During the Liqoqo era a group of university students responding to the widespread violations of human rights in general and the deposition of the Queen Regent in particular launched Pudemo. Pudemo's programme expanded from these primary concerns to address the core of the problem, namely, the absence of an official opposition. The detention without charge law was used to deal with Pudemo malcontents, but their voices were heard far and wide because their concerns resonated with popular public sentiment both within and outside the borders of Swaziland. In a letter to the King written in 1994 (Mzizi 1995, pp 188-189) Pudemo clearly spells out its demands.

- The 1973 State of Emergency and all other representative laws should be repealed.
- The unconditional return and indemnification of all political exiles should be gazetted.
- An interim government should be established to administer the process of democratic change.
- The Tinkhundla government is squandering public funds and further fails to properly manage the country's economy ... A government that is not democratic, transparent and accountable to the masses but is controlled and

directed by secret cabals. A government where those government officials who were found guilty of corruption and treasonable acts are rewarded with promotions. A government which does not listen to the voices of the toiling masses.

Apart from issuing statements and organising marches, Pudemo has not embarked on an aggressive strategy to force government to the negotiating table. Police torture and harassment, self-exile and death from natural causes of members of the original leadership succeeded in killing the initial enthusiasm. Through its youth wing, the Swaziland Youth Congress (Swayoco), Pudemo has continued to apply pressure by appealing to external forces to join in the call for the democratisation of Swaziland.

The Swaziland Solidarity Network, operating from Johannesburg, South Africa, is one such body that continues to make periodic attacks on the Swazi government. Police harassment and charges against the leaders of Pudemo serve to enhance the body's political image as well as to rekindle public memory of the party both internally and externally.

Alongside Pudemo, the Swaziland Federation of Trade Unions (SFTU) was also making calls for democratisation, using both internal and external mechanisms. Internally, SFTU would call for workers' meetings and announce an agenda with a distinctly political inclination. The police would pick this up and either call off the meeting or infiltrate it. The SFTU's policy document indicates a resolve to fight for citizens' rights; human rights; political, cultural, and economic rights.

We are convinced that workers' rights and Trade Union Rights are inseparable from human rights, and that one needs to be a human being first before he can be a worker if they are lucky to have a job as such workers' rights cannot exist where human rights are taboo.

The SFTU has exploited its status in the International Labour Organization (ILO) to make a strong case for Swaziland. Its technique is to quote an oppressive law and pinpoint a corresponding ILO convention violated by the law, thus making workers' rights untenable in Swaziland. Cases of police harassment of SFTU members and other workers are carefully documented to support the charges. As a result of SFTU's sustained complaints, the ILO has deployed no fewer than three missions since 1998 to review the status quo in Swaziland. This is usually very embarrassing for the government who have charged that the SFTU has a secret agenda to overthrow the state (Mzizi 2002, pp 210-213).

This strategy has kept the Swazi Government on its toes, since the repercussions of losing the export benefits made available through the Generalized System of Preferences (GSP), and other import/export privileges, are too severe to contemplate. Swaziland's textile industry and sugar export trade will only be sustainable if these trade benefits continue to exist.

The SFTU's credo clearly records its wider agenda:

- We believe people should govern and this can only happen where the political environment is democratic.
- We believe that all people have the right to self-determination, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.
- We believe that everywhere, workers are a vehicle for social transformation.
- We further believe that workers have a duty to fight for democracy because even workers' rights are stifled under a non-democratic system of governance.
- We also believe that silence where workers' and human rights are systematically and brutally assaulted and mutilated makes the silent party equally guilty with the perpetrator, in fact the silent party becomes an accomplice.

Other formations that have been calling for democratisation include the Council of Swaziland Churches through its Peace and Justice Department, the Human Rights Association of Swaziland, Lawyers for Human Rights, and the Swaziland Democratic Alliance. Each of these formations has made its voice heard at various stages of Swaziland's contemporary history. They have all been systematically ignored by the powers-that-be. However, a landmark process, first mooted by government in the late 1980s, finally saw the light of day in 1997 when various stakeholders were assembled to craft a vision for Swaziland in 2025. What emerged from the deliberations was the National Development Strategy (NDS) Document (Swaziland Government 1997). Chapter Eight of the NDS concerns 'Governance and Public Sector Management'. The opening paragraph underscores the progressive notion that good governance is the collective responsibility of the entire society. Referring directly to the effects of the 1973 events, the NDS posits: '...The separation of powers between the three arms of government, particularly the role of the judiciary was compromised. The lack of a participatory process, specifically in the political sphere, led to the progressive erosion of a national set of values and vision around which the citizens could be mobilized'. Although it appeared after the CRC had been set up, the NDS suggested some strategic objectives that would make the envisaged constitution widely acceptable. According to the NDS (p 66) a constitution:

... which will be the supreme law of the land, ensuring the separation of powers of the three arms of government (the executive, legislature and judiciary), defining the universally accepted tenets such as a Bill of Rights guaranteeing freedom of association and speech; rule of law; freedom of the press; protection of disadvantaged groups; equality and protection against all forms of discrimination.



The NDS recognised that a viable constitution-making process should take place in an enabling environment where free political expression is guaranteed and mechanisms for wider representation are respected. 'Establish structures for promoting broad participation in the politics of the land to ensure full participation of all social formations in the formulation of a constitution or set of national conventions.'

When the King launched the NDS in 1999, the government had been pressured to doctor the original document by removing all references to political issues. The explanation given was that the CRC was working on those matters. However, it was not indicated what harm political issues would cause to a long-term national strategy such as the NDS. In the light of the history, an intelligent guess can be made that the fear was that if it included political issues, government would be perceived to be removing the process from the sole jurisdiction of the King. The legal ramifications were perhaps exaggerated, for no national strategy or development plan carries any force of law. The NDS was nothing more or less than a guide.

A series of blunders that have compromised the judiciary since the late 1990s have resulted in yet another formation: The Swaziland Coalition of Concerned Civic Organizations (SCCCO). Launched on 2 January 2003, the SCCCOC comprises the Federation of Swaziland Employers, the Swaziland Chamber of Commerce and Industry, the Association of Swaziland Business Community, the Swaziland Federation of Trade Unions, the Swaziland Federation of Labour, the church, the Law Society, The Coordinating Assembly of NGOs and the Swaziland National Association of Teachers.

Expressing similar sentiments to those of earlier formations and calls made in the past two decades, the SCCCOC was:

....concerned with the disastrous state of affairs prevailing in the country, breakdown in the rule of law, deepening bad governance, deteriorating economic environment and growing threat to the country's trade privileges i.e. GSP and AGOA and absence of convincing political direction, attendant fear and uncertainty to the social and business environment.

*Swazi Observer* 3 January 2003, p 4

The factors that have given rise to the formation of the coalition are: the non-observance of the rule of law by the Swazi Government; the intended purchase of a jet aircraft for the King, costing more than half-a-billion Rands and the resignation of all the judges of the Appeal Court. All these factors are blamed on the fact that '... government has failed in its responsibility to ensure justice, peace and stability for all citizens. The magnitude of the problems is being caused by Swaziland's system of governance.' SCCCOC complains about a lack of fiscal discipline, loss of investor confidence, deteriorating economic environment, threats to job security,

the growing budget deficit and the loss of competitive edge in the region. Since the formation of the SCCCO the Prime Minister has continued to make arrogant remarks that fuel the body's anger and frustration, making it lose all faith in government's political will to put things right. The Prime Minister has continued to ignore calls for him to respect the rule of law. When government ignored the SCCCO's deadline of 20 January 2003 to restore the rule of law by repealing the Prime Minister's 28 November 2002 statement in which he had not only derided the judges of the Court of Appeal but categorically spelled out government's resolve to disregard the court's judgements, the coalition resolved to march on Parliament to deliver a petition spelling out its concerns. Of particular note are the solutions suggested. Reverting to the NDS, the coalition notes that a lasting solution to Swaziland's problems lies in the crafting of a democratic constitution that will enshrine:

- a justiciable Bill of Rights;
- separation of powers;
- establishment of an independent electoral commission to ensure and guarantee free and fair elections;
- codification of customary law;
- provision of the role of the monarchy;
- establishment of the office of the public protector.

To put pressure on government, the coalition threatened to disrupt the SMART Partnership International Dialogue scheduled to take place in Swaziland in August 2003. Although government appeared unperturbed by this threat, it knew that if it was carried out by the coalition, the bulk of whose membership was material to the success of the summit, the consequences would be far reaching and dramatic.

Not only would investor confidence continue to nosedive, Swaziland would be put under the spotlight as an intransigent country unworthy of receiving benefits from the African Growth and Opportunity Act (AGOA), the Generalised System of Preferences (GSP) and the New Partnership for Africa's Development (Nepad).

The coalition's march on Parliament was followed by two days of mass action called by the two workers' federations and the teachers' and civil servants' associations on 4 and 5 March 2003. The issues that precipitated the mass action are the same as those raised by SCCCO. The peaceful demonstrations revealed unprecedented support for the issues at stake. As the Prime Minister continued his smear campaign against the 'nefarious intentions' and 'lack of success' of the action, the King was reportedly very worried and had every reason to be so because the image of the country and royalty were at their lowest ebb (see *The Swazi News* of 8 March and the *Sunday Times* of 9 March 2003). He is reported to be losing confidence in the bodies and individuals that advise him.

The Swaziland authorities have thrived by showing arrogance in the face of any opposition and ignoring with impunity all calls for meaningful and participatory change. Those who call for an inclusive plural society are labelled anti-Swazi or

anti-monarchy. These labels are used to repel even the most genuine of voices that purport to support the dominance of the monarchy in the political community save only for a few necessary adjustments in the area of political participation. Sive Siyinqaba, Sibahle Sinje was one such organisation. Setting itself up as a cultural formation it commanded respect from royalists and former members of the Imbokodvo National Movement but, by 2002, the tone of its demands for political reform were in tandem with those of the known progressive formations.

It is becoming increasingly clear that the ideology of traditionalism is under severe threat. Unless adjustments are made to both the traditional and modern political structures, the winds of change might shake the foundations of kingship and compromise the [false] peace and stability Swaziland has been known for since independence. The trend is for basic tenets of modern governance to supersede the traditional notions that have only succeeded in silencing dissenting voices and have provided fertile ground for corruption and political failure.

To the traditionalists, Sobhuza II's concept of the dual role of the kings of Africa who ruled and reigned needs to be preserved and entrenched. The competing view is that such a role is dangerous for the continued existence of the monarchy itself, hence it is imperative to respond to modern democratic processes. As the tensions rage between the old and the new, matters of national security cannot be ignored. The preservation of the old, as indicated above, received the military touch in Swaziland in 1973 when the Swaziland Umbutfo Defence Force was crafted along the age-old regimentary system. Notwithstanding what has happened in the army since 1973 there has generally emerged an amorphous re-creation of tradition and attendant institutions that pretend to respond to modern democratic ideals as defined by the ruling elite. The major players in the process of selecting and adapting what should be nationally accepted are the ruling elite, who, as has been argued above, use their individuated understanding of tradition as a yardstick both in the selection process and the adaptation agenda. Any attempts to establish national consensus on fundamental issues are usually motivated by forces external to the dominant group that also determines not only the *modus operandi* but also the outcome of the exercise. The dominant group uses its power to edit the final product so that it confirms and conforms to its own values and aspirations. It is not overstating the case to say that Swaziland was colonised at two levels: externally by a foreign power that lasted effectively until 1968; internally by forces that predated European colonialism, with a mission to perpetuate the Dlamini aristocracy beyond independence from Britain. The intentions may be for the common good and stability of the nation, but the lack of openness gives rise to suspicions and allegations of dictatorship.

### CONCEPTION OF SECURITY: A CASE OF COMPETING POSSIBILITIES

... the really significant formal feature of the State which seems to have most continuity and certainty, is that it is a relatively continuous

public power. For Vincent (1987: 21) 'this public power is formally distinct from both ruler and ruled. Its acts have legal authority and are relatively distinct from the intentions of individual agents or groups'. (This is not to say that specific members of a group cannot control the state.) Thus, the state – as public power – embodies offices, rules, coercive power, ideologies, and institutional practices which carry (or purport to carry) the authority of the state.

Du Pisani 2002, p 50

The idea of public power as a constitutive element of state legitimacy perhaps raises the question: What is the primary source and function of such power? In other words, is the power imposed or contested, and who finally reaps the benefits of the whole economy of power display? It is less complex to answer these questions in working democracies for there the location of power is invariably the electorate. But of course it cannot be assumed that all democracies are always like that. When power is willingly transferred from the electorate to the rulers, the assumption is that such power can automatically be withdrawn if it is no longer serving the intended purpose. The reality, however, is that elected leaders may, for various reasons, refuse to give up power and then rule without a public mandate. This corrupts the whole notion of, and assumptions about, public power. For Thomas Hobbes, as for Plato, the state was the epitome and symbol of virtue. The function of state (public) power was to maintain order. Even if the state is indeed the embodiment of virtue, it must still be asked, from where states draw that function?

Peter Amato (1997, pp 79-80) identifies the fundamental differences between Plato and Hobbes on this question. Hobbes's *Leviathan* concept sought to describe states with their requisite components, namely, equity, laws and sovereignty, as naturally ordained to protect and defend the subjects. The commonwealth, to Hobbes, is not served by separate orders or classes of people, as Plato would argue. 'In Plato, social order conceived as harmony was to be established between unequals and aimed at an all-encompassing conception of the good or virtuous life. What makes Hobbes so strikingly modern by contrast is that he proposes that the commonwealth is instituted to maintain an asocial peace between equals in a universe that reason knows only as matter in motion.'

Hobbes's *Leviathan* principle supported the theory of the divine nature of kings, who are answerable only to God. It would appear that it is this Hobbesean mentality that underpins Swaziland's conception of traditional authority and then, in turn, complicates the concept of national security. To the extent that the head of state is regarded as the embodiment of virtue, and as such inseparable from the state, Swaziland's dominant philosophy is Hobbesean. The head of state defines public order and determines the mechanisms for maintaining that order. The purpose of Parliament, and indeed of all state institutions, is to serve the head of state, and therefore, the state. The monarchy, in this regard, becomes the principle and the rule.

What happens then if this notion of, and dialectic between, state and head of state is no longer shared by the majority of the citizens? Should it be imposed and enforced with impunity? The doctrine of separation of powers presupposes that no one organ of state may hold sway and control over all others. Secondly, no organ of state may interfere in the operations of another. That means that, as a servant of the state, the king cannot be the state, for he is only transient and mortal, subject to imperfections and evil. Former monarchical states in Europe, and, to a lesser extent, in Africa, removed for various reasons the executive authority of kings, and retained only their symbolic functions. The dividend reaped was increased civil participation in the political community. Public officers executed delegated authority and were therefore easier to monitor and bring to order. It is these developments that have prompted scholarship on conflicts in Africa to suggest political systems that guarantee competition and periodic elections (see Abdulla Bujra 2002, pp 37-38). Competitive political systems ensure, among other things, extensive devolution of power; eradication of corruption of any nature in the political community; principles of good governance and the extensive involvement of civil society in the monitoring of policy and implementation and service delivery.

It can generally be argued that states develop policy for the purpose of dealing with friends and enemies. There are perceived benefits in adopting a particular policy. Most of these benefits have to do with self-preservation, survival and duplication. A state duplicates itself when its policy is positively copied and adopted by another in the whole economy of cementing bilateral relations. But in matters of national security, the primary motif is inward looking. There are perceived outside and inside threats that necessitate the formulation of a national security policy.

Whereas one agrees with Hobbes that states serve the function of defence against foreign and local injuries, one has to contend that as state power grows, the state may become a source of threat against its own citizens. The maximal model of state argues that the state is more than the sum total of its constituent parts, and as such, has interests of its own. Theoretically, therefore, the state stands above the purview of its citizens, but plays the role of protecting the same citizens (and itself) from both external and internal threats. The inherent danger is that the state can easily be detached from, and legitimately unresponsive to, the individual security needs of its citizens.

In the Swazi situation, the state manifests itself in the head of state, the King, who is the embodiment of national virtue in the Hobbesian sense. Everything else is therefore subordinated to the state. The head of state is automatically elevated to the position of an independent force that asks for opinions knowing that it will not be bound by them, for it demands total obedience. One of the interviewees for this study reasoned thus:

Therefore the national conception of security in Swaziland centres around the conservative ruling elite whose philosophy is to safeguard the King's authority and the attendant rituals like the Incwala, King's

birthdays and independence celebrations. All these and other ceremonies are for the ritualization of kingship which is the centre and axis of Swazi socio-political and religious life. Active security measures are taken to protect these ceremonies that extol the Head of State as custodian of Swazi ethos.

Rousseau's social contract would hold that since Swazi citizens accept their nationhood it follows that they agree to be subjects of the King. They must therefore confirm their nationhood by participating in all national ceremonies. By so doing they renew their allegiance and loyalty both to the head of state and to the state.

Nevertheless, as indicated in this study, the civil discontent that manifests itself in mushrooming formations and the declarations they make suggests that the idea of national security is strongly contested. On some occasions, the powers-that-be try to make concessions, however inadequate and clumsy, for the sake of maintaining the [false] peace and the make-believe sunshine policy that change in Swaziland is by national consensus. This study indicates that, in practice, national dialogue is more idealistic, and therefore ideological, than empirical. National policy on matters of security thus hinges on the ideology of domination first coined by Sobhuza II. Sobhuza philosophised that he had no enemies because he believed in dialogue. This has become Swaziland's quasi-national policy in matters of conflict resolution. Yet in reality, as another interviewee indicated, '... this is seldom the intention in Swaziland. Dialogue to us means monologue with *an italic 'd'*, for when issues are of a political nature, the monarchy resorts to heavy-handed tactics in order to deter dissenting opinion and deflate militant malcontents.'

Swaziland does not have a written security policy. It is assumed that every soldier will know what it is he must protect the minute the gun is thrust into his hands. Internal security policy is determined on a case-by-case basis, largely influenced by personal considerations.

An informant from the Intelligence Department of the Umbutfo Swaziland Defence Force (USDF) explained this point thus:

The head of state determines the approach to be taken whenever there is an internal security issue. The antagonizing forces are identified in terms of leadership and then appropriately targeted. As such it is not the issues these leaders raise that matter, but themselves as frontline players. Therefore, policy directives are engaged based on personalities rather than the issues at hand.

The processes followed in deciding security policy are as follows: First, the Commissioner of Police identifies a problem and gathers intelligence information to support his case. He then takes the matter to the King with all the facts he has obtained. The King summons the heads of the army and prisons, who, naturally, cannot hold opinions contrary to those of the Commissioner of Police. The King



then takes the matter to his various advisory bodies, most, if not all of which have no expertise in matters of security. The resultant action is taken based on the advice given by these advisory bodies. But it must be underscored that as Chief of Command the King takes charge of all operations in which the army is involved. The Defence Council exists only in name, according to most of the key people interviewed for this study. The rules of procedure for the council are neither here nor there. A well-trained senior soldier responded to the question on intelligence as follows:

Most national security related actions taken in this country are more reactive than proactive. This has largely been influenced by members' fears of being the harbinger of bad news. The system has an in-built tendency to shoot the messenger rather than address the issue. Therefore people are loath to offer proactive advice. In addition to this, such offer may show a relatively advanced knowledge of security matters which in turn may be interpreted as a threat by the powers-that-be.

Regionally, Swaziland's strategic position was seriously tested during the liberation wars waged by the ANC and Swapo in the 1970s and 80s. During that time the nine Southern African Development Coordinating Conference (SADCC) member states were involved in an economic campaign to reduce their dependence on the South African economy. R H Davies et al (1985) argue that the fact that Swaziland's governing clique had secret links with the apartheid leadership compromised the political independence of Swaziland to judge regional issues as a sovereign state. Secondly, the conservative nature of the Swazi political regime gave credence to a silent legitimization of the apartheid state.

The liberation movements were seen as a threat to Swaziland's peace and stability because of the political party motivations in the country. Finally, the SADCC and Frontline states made particular demands that Swaziland would find very difficult to accept. It was precisely for these reasons that prior to 1974 the Swazi regime consistently refused to give open support to the liberation movements, especially the ANC and Frelimo. There was no open support for Swapo either. The major reason for this position is, of course, the economic risk the country would have suffered if it had supported any war, particularly against South Africa. The SADCC option was not viable enough, nor was the South African Customs Union link that became high profile in the post-independence years. On the other hand, any open support of the apartheid regime would have been equally destructive. The Swazi monarchy was reluctant openly to denounce the activities of the ANC because it claimed that it was involved in the formation of the movement in 1912 and had retained some sentimental attachment to it. It should be noted that in the 1960s and the early 1970s there was less cooperation with the apartheid regime. For instance, in 1969, Swaziland signed the Lusaka Manifesto, which spelt out clearly

that South Africa had to be isolated save only when matters of power transfer in that country were to be discussed.

In 1970 Swaziland joined Lesotho, Ivory Coast and four other countries in abstaining from condemning Pretoria for the 'dialogue offensive' adopted by the John Vorster regime. Practically, the Swazi regime was opposed to the continued occupation of Namibia (the then South West Africa) in the face of numerous UN resolutions condemning it, and, surprisingly, South African refugees were received and tolerated. But as the war raged in the mid-1970s, the Swazi regime came under extreme pressure from Pretoria, which demanded that Swaziland impose restrictions on refugees 'and act with greater vigour against any real or imagined attempts by ANC guerrillas to traverse Swazi territory'. During this period the apartheid state was hell-bent on using its poorer neighbours to act as policemen for Pretoria. The dangled carrot was economic support, including various handouts and perks that would come with the proposed Constellation of Southern African states (Consas). Swaziland, like all the affected parties, refused to recognise the Consas. This led to a direct and cruel onslaught on refugees and alleged guerrillas in the region.

## CONCLUSION

As a kingdom that has vested all executive authority in the monarchy, Swaziland is unique in the SADC region. The system has been imposed by the monarchy itself, playing on the notion that tradition does not recognise power contests. However, increasingly, there are voices in the kingdom calling for the redefinition and re-conceptualisation of kingship and traditional authority. If the monarchy elects to remain in the mainstream body politic, how far can it accommodate these dissenting voices? Arguments based on tradition are of course dismissive of such voices because the King has unlimited political power and his authority is beyond challenge. As a result, much effort is wasted on attempts to silence the voices and on sponsoring the illusion that a king can also be an agent of meaningful change. The result is that any change is either deliberately gradual, and therefore irritating to the progressive elements, or non-existent, and therefore frustrating and confusing.

Swaziland needs to solve the fundamental issues raised in this study, namely, to shift 'tradition' from an ideology of domination to a shared value system in a transitory situation dictated by modern imperatives of an ideal society. Khumalo (1996) argues that a meaningful strategy on the route to a constitutional dispensation is to determine the nature of the interconnections between the traditional and modern structures in a particular unit. Once the links have been identified, the tensions caused by the competing elements of modernity and traditionalism may be minimised. Khumalo's proposition has been raised by several other voices since the 1996 project, but agreement on the best way to find appropriate definitions is neither here nor there. It would appear that if the ideological roles of tradition could be eliminated as the search for appropriate solutions continues, the process would be relieved of the excess baggage that results in stops, starts and false starts.

The voices calling for meaningful democratic change are growing louder, and the attention and role of the international community cannot be ignored. Recently the Commonwealth, the European Union, the International Bar Association and the International Commission of Jurists have sent missions to assess and report on the rule of law crisis in Swaziland. In addition, international and regional missions have been sent to assist in the constitution drafting exercise as well as monitoring the 2003 national elections, adding their voices to that of the ILO, whose interventions are cited in this study.

Swaziland might be in danger of being isolated by the international community. The diplomatic interventions of some SADC heads of state as well as the demands that will come from states participating in trade initiatives like those of Nepad are all indicators that if Swaziland continues to be intransigent and deceptive in the project of democratisation it might qualify sooner rather than later as a security risk to the region.

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# POST-CONFLICT ELECTIONS, PEACEBUILDING AND DEMOCRACY CONSOLIDATION IN SIERRA LEONE

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## ABSTRACT

*The viability of long-term peace and prospects for the consolidation of democracy in Sierra Leone is dependent on a number of internal and external factors. After two successful elections since the end of conflict in 2002, it is fair to suggest that the country is on the path of consolidating 'democratic gains'. A third successful multiparty election, in 2007, would go a long way to affirming the notion that Sierra Leoneans are becoming comfortable with the idea of electing their representatives through competitive elections.*

## INTRODUCTION

On 22 May 2004 Sierra Leoneans went to the polls to elect local government officials. Although at the time of writing the full results had not been announced by the National Electoral Commission (NEC), early indications suggest a mixed outcome. On the one hand, projections indicate that the ruling Sierra Leone Peoples Party (SLPP) may end up securing control over a majority of the new local government councils; on the other it appears that the main opposition All Peoples Congress (APC) may have performed unexpectedly well in some key areas, foreshadowing what could turn out to be a fierce contest between the two long time rivals in 2007, when parliamentary and presidential elections will be held.

The local government elections are quite significant in that Sierra Leone has taken the first step in more than three decades toward decentralising power; a process designed to give local authorities a direct stake in governance. The elections are also significant because they come two years after post-war multiparty elections were successfully conducted in 2002. After more than a decade of brutal armed

conflict, Sierra Leoneans went to the polls in May 2002 to elect a president and a Parliament. Those elections marked the official end of the eleven-year conflict. Between 2002 and 2004 the SLPP-led government signalled its intention of decentralising power by embarking on an approach of 'taking the government to the people'. During this period, a number of Cabinet meetings were held in key provincial towns and communities, enabling ordinary citizens to meet and interact with their leaders, who have historically paid very little attention to the concerns of the people.

It is, however, important, as one celebrates the move toward decentralisation, to interrogate the true impact of this democratic gain on the quest for sustainable peace. While one might be tempted to assert that the Sierra Leone experience of conflict resolution is instructive for other societies making the transition from war to peace, particularly in the West African sub-region, such optimism must be tempered by certain fundamental realities that could potentially undermine the success achieved thus far. The fragile nature of the peace building process in Sierra Leone itself, coupled with shaky civil-military relations and events in the wider sub-region, could all be potential powder kegs waiting to explode, and consequently undermine the country's democratic experiment. This paper therefore seeks to put recent events within a much broader context, to promote a better understanding of the situation in Sierra Leone and the greater Mano River Union (MRU) sub-region of West Africa.

After giving a brief political history of Sierra Leone, the paper traces the evolution and struggle for democratic governance between 1991 and 1999 and analyses the 2002 post-war elections. A preliminary assessment of the potential impact of the prospective local authorities on governance is then offered. The paper concludes with some reflections on the broader issues of peace building and consolidation of democracy in Sierra Leone and, indeed, in the MRU. Special attention is paid to structural issues such as corruption and civil service reform, as well as to the prospects of an alternative political movement that could in future challenge the two dominant political parties, and the role of civil society.

### A BRIEF POLITICAL AND ELECTORAL HISTORY OF SIERRA LEONE

The history of elections in Sierra Leone can best be described as one that has at times produced controversies, and at other times engendered hope for the future. In the run-up to independence in 1961, the country's political elites had an opportunity to serve in colonial governing institutions such as the Legislative Council and the Protectorate Assembly. Indigenous Sierra Leoneans were offered the opportunity to serve in these bodies either through appointments by the colonial authorities or, in some cases, through direct elections. This move was clearly a reflection of the colonialists' gradual acknowledgment that independence for former colonies was waiting to happen. For instance, in the former British colonies, as the decolonisation struggle began taking shape in the late 1940s and early 1950s colonial



administrations across the continent began laying the foundation for the eventual transfer of power to Africans. This was accomplished through the amendment and in some cases repeal of ordinances and policies that had been in place since 1885, when the Berlin conference 'legitimised' the 'scramble' for and 'partition' of Africa.

In 1947, the colonial governor of Sierra Leone, Sir Hubert Stevenson, embarked on the first major step towards ending the longstanding feud between representatives of the protectorate and those from the colony.<sup>1</sup> Stevenson proposed constitutional changes that would ultimately guarantee a majority for protectorate representatives in the Legislative Council. Creole representatives in the Legislative Council were opposed to the amalgamation plans for fear that the balance of power in the run up to independence would shift to their counterparts from the protectorate, since the latter were demographically far more dominant than the Creoles. Ironically, there was also a rift between the protectorate's educated elites and traditional rulers who had been dominant in the Protectorate Assembly prior to 1947. The educated elites from the protectorate, like the Creoles from the Colony, feared being marginalised by traditional chiefs, who, though uneducated, maintained tremendous influence in their respective communities (Cartwright 1970, pp 43-54).

Given the acrimony in these two cases it took a few more years of back and forth negotiations and political mudslinging before the matter was finally resolved, with the adoption of the 1951 Constitution. Under that Constitution, Sierra Leoneans gained more representation in the Legislative Council and, for the first time, four 'unofficial' members were given the opportunity to serve in the Executive Council (Cartwright, pp 55-63). Sir Milton Margai, who had spearhead the formation of the first national political party, the SLPP, was designated Leader of Government Business in the Legislative Council. By 1954 he had been appointed Chief Minister, a position he used skilfully to bring his political enemies closer to form a 'United Front' in preparation for independence. By the time independence was attained in 1961, the SLPP and Sir Milton Margai had established themselves as the governing party and leader of the nation respectively. That the party inherited power from the colonial authorities and Margai emerged as the first Prime Minister of post-independent Sierra Leone derives in large part from the political manoeuvrings that started with the constitutional review process set in motion by Stevenson in 1947.

Margai's reign as Prime Minister was short-lived; he died of natural causes in 1964. His younger brother, Sir Albert Margai, an astute lawyer and a somewhat

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1 Until 1896 when the British colonial authorities declared a protectorate over the hinterland of Sierra Leone, the capital city area known as the colony was administered as a separate entity from the provincial areas. Following the 1896 declaration of British authority over the protectorate both areas became part of one territory administered by a colonial governor. There were tensions and rivalries between inhabitants of the colony, the Creoles, who were mostly descendants of freed slaves from Europe and the Americas, and indigenous Africans who inhabited the hinterland.

radical personality, took over the leadership of the party and was sworn in as the country's second Prime Minister later that year. Because of his combative approach and flamboyant attitude to power, some commentators have suggested that the foundation for Sierra Leone's political woes was laid during his brief tenure.<sup>2</sup> It has, for instance, been contended that corruption as a practice in government was first introduced into public life during Sir Albert's tenure (Cartwright 1978, pp 100-111). He has also been accused of sowing the seeds of ethnicity as a destructive force in the country's political life. Given all these negatives, it is perhaps not surprising that the ruling SLPP narrowly lost the 1967 elections to the opposition APC, which had broke ranks with its former ally shortly after independence.<sup>3</sup>

The events of 1967 indeed helped shape the political landscape of Sierra Leone, apparently in the wrong direction. Following the announcement of the result of the election, which the APC is believed to have won, the military, led by Brigadier David Lansana, a close ally of Sir Albert, intervened to stop the swearing in to power of the designated APC leader, Siaka Stevens. Lansana's coup was, however, short lived, as he himself was subsequently overthrown by junior officers in the military. Stevens, the APC leader, who had fled to exile, returned to Sierra Leone a year later to take power from the military junta which had agreed to return to the barracks.

Between 1968 and 1985, during Siaka Stevens's rule, events took a completely negative turn. Stevens's rise to power foreshadowed a tragic future for the country. Instead of pursuing reconciliatory politics, as Sir Milton had done prior to independence, he opted for an 'all or nothing' approach designed to exclude and marginalise the official opposition. The institutionalisation of political violence and the legitimisation of corruption became the order of the day under Stevens.<sup>4</sup> By 1971 he had transformed the country into a republic, with wide powers reserved under the Constitution for the Executive President. By 1973, the official opposition, the SLPP, had all but disappeared into oblivion, when the leader of the party, Salia Jusu Sheriff, boycotted the elections of that year in protest against violence and intimidation meted out against his supporters by APC operatives. Following the 1977 elections, which were marred by gross vote rigging and political violence, Stevens moved quickly to impose one-party rule on Sierra Leone in 1978. With the one-party legislation signed into law by the President, all existing political parties were outlawed and every other avenue of free political expression was vigorously

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2 For more on the leadership style of Sir Albert Margai, see Cartwright 1978, pp 100-111.

3 Siaka Stevens, who later became leader of the APC, was a close ally of Sir Albert Margai long before independence. Margai left the SLPP and joined Stevens's breakaway party, the Peoples National Party (PNP) in 1958, in protest against Sir Milton Margai's conservative approach to the politics of independence, and his close alliance with the traditional chiefs.

4 A popular Krio slogan during the Stevens years was *usai den tie cow, nar dae e dae eat*. Literally it means a cow grazes wherever the cowherd decides to take it to on any given day. Translated in social terms, it means there is nothing wrong with an individual siphoning off part of the public resources entrusted to his or her control. Because civil servants and public officials were poorly paid, they used this slogan to justify the embezzlement of public funds.

monitored by the state and its notorious security apparatus.<sup>5</sup> It took eighteen years – until 1996 – for the people of Sierra Leone to get another opportunity to elect their leaders in multiparty elections.

Stevens's tactics of violence and intimidation<sup>6</sup> seemed to have worked well for him during the years of one-party rule, as opposition members, including former SLPP leader Jusu Sheriff and the party's current Chairman, Sama Banya, all became card-carrying members of the APC. To justify their shift in allegiance these politicians repeatedly argued that it was impossible to fight the APC from outside so the only alternative was to join them and seek to make changes from within. Sadly however, many of the APC 'converts' ended up perpetuating the culture of political corruption and violence once they had been compensated with ministerial posts.<sup>7</sup> The space for effective agitation for political pluralism and democratic expression was, therefore, limited and is now occupied largely by university students and, to a lesser extent, by trade union activists.

### THE STRUGGLE FOR DEMOCRACY AND THE WAR YEARS, 1991-1999

The struggle for democracy in Sierra Leone predates 1991. Following the imposition of one-party rule by Siaka Stevens in 1978, students, particularly those at Fourah Bay College (FBC), once the 'Athens of West Africa', became the main advocates of popular participation in governance. The FBC Student Union (SU) government became the forum through which young people expressed their disaffection with Stevens's corrupt and repressive regime. Student politics had been radicalised in 1977 when Hindolo Trye, President of the FBC Student Union government, led a nationwide protest against the violence that preceded the elections of that year. The protest was also designed to register students' displeasure with Stevens's attempt to impose a one-party Constitution on the nation. Although the APC eventually succeeded in passing the One-Party Bill in Parliament in 1978, the events of 1977 had profound impact on state-society relations for years to come.

While Trye and his colleagues, including veteran journalist Pios Foray, later fled Sierra Leone for fear of being killed by the APC, memories of their heroic efforts in 1977 were passed on from one generation of student leaders to the other. For instance, in 1985 when Ali and Haroun Boima became President and Secretary General of the SU government respectively, they drew inspiration from memories

5 In the mid-1970s Stevens established a paramilitary force known as the Internal Security Unit. This was later replaced by the Special Security Division (SSD), referred to disparagingly as Siaka Stevens Dogs. Members of this group were responsible for numerous human rights abuses committed against civilians, in the name of state security.

6 For more on the turbulent years of political violence in Sierra Leone, see Aminatta Forna 2003.

7 One example is James Musa Gendemeh, a ruthless politician from Kenema district who won a parliamentary seat in 1982. Upon assuming office Gendemeh became very critical of APC policies, but abandoned that strategy once he was appointed to a deputy ministerial post by President Joseph Saidu Momoh.

of the Trye years, in confronting the dictatorship of Stevens's handpicked successor, Joseph Saidu Momoh. Although Kabba and Boima, along with other student radicals, were expelled from the university and the SU government was outlawed by the APC regime, this only succeeded in strengthening the resolve of the next generation of student leaders, to fight 'the system'.<sup>8</sup> In the circumstances it is not surprising that by the late 1980s and early 1990s students had begun to demand the restoration of their banned government and further agitated for the reintroduction of multiparty rule in Sierra Leone.<sup>9</sup> Student unrest on FBC and other campuses around the country prompted the authorities to lift the ban on student politics in 1989. Further agitation by students, invoking the memory of 1977, forced former President Momoh to appoint a Constitutional Review Commission in 1990, headed by Dr Peter Tucker, to review the 1978 One-Party Constitution and make recommendations for the institution of multiparty rule. Because of their agitation, students were represented on the commission by the President of the FBC Student Union government, Mohamed Pateh Bah. This constitutional review process culminated in the repeal of the 1978 Constitution and the adoption of the 1991 multiparty Constitution. The ban on political party activities was subsequently lifted in the same year, as new parties were registered and old ones such as the SLPP re-emerged. However, the proposed elections, scheduled for 1992, never occurred, as radical events overtook the nation.

In April 1992, the APC government was overthrown in a coup d'état led by young military officers. Many of the coup plotters had served in the Sierra Leone contingent of the Economic Community of West African States (ECOWAS) Ceasefire Monitoring Group (ECOMOG) that was deployed on a peacekeeping mission in Liberia in 1990. It is believed that the idea of staging a coup in Sierra Leone was conceived during that mission.<sup>10</sup> The head of the junta, Captain Valentine Strasser, was only 27 years old when he took power. He accused the deposed regime of corruption and a lack of commitment to prosecute the war, which was already in its thirteenth month. Strasser declared in his first radio address to the nation that the main priority of his National Provisional Ruling Council (NPRC) government was to vigorously prosecute the war, fight official corruption and return Sierra Leone to civilian democratic rule.

Domestic and international reaction to the NPRC coup was generally positive. After decades of one-party rule, characterised by massive corruption and nepotism, many Sierra Leoneans saw the coup as the only viable means of achieving democratic transformation in their country. As paradoxical as that may sound, especially in light of the contention that the APC regime had already initiated a

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8 For more on student politics and radicalism at FBC, see Ismail Rashid 2004, pp 66-89.

9 This writer was among the group of student leaders who advocated the restoration of SU government activities in 1989. In 1991 he became Secretary General of the FBC SU government and was in the frontline of the call for the replacement of the Momoh government with an interim administration that would lead Sierra Leone to multiparty democratic rule.

10 Author's interview with former NPRC officials who prefer anonymity, Freetown, Sierra Leone, 1992.

transition to multiparty rule, and the general trend of pluralistic reforms sweeping across Africa at the time, the fact is, many Sierra Leoneans simply viewed the APC with great distrust and believed it to be devoid of any credibility to oversee democratic reforms in their country. The fact that the NPRC came to power at a time when most Sierra Leoneans were desperately clamouring for a peaceful means to replace the APC was indeed a dream come true.<sup>11</sup>

Externally, the NPRC regime quickly received recognition from states and international organisations both in Africa and beyond.<sup>12</sup> It is not far-fetched to suggest that the international support accorded the regime was informed in large measure by the widespread domestic support the coup received in Sierra Leone. Despite the fact that the regime came to power through the barrel of the gun, it was arguably impossible for the international community to ignore the fact that the majority of Sierra Leoneans at the time saw it as a genuine opportunity to reform the political process. The fact that the international community embraced the NPRC regime at a time when a 'wave of democratisation' was gradually becoming the global norm should be seen not only as an indictment of years of APC misrule in Sierra Leone but more importantly as an affirmation of the Sierra Leonean people's aspirations for genuine pluralistic reforms.

### TRANSITION TO DEMOCRATIC RULE, 1992-1996

Between 1992 and 1996 the conflict intensified as the NPRC government lost territory, including the lucrative diamond-mining regions of Tongo Field and Kono, to the rebel Revolutionary United Front (RUF). The fall of Kono in particular to rebel forces, in mid-1993, created tremendous panic among a civilian populace that was already beginning to lose confidence in the NPRC's ability to prosecute the war vigorously and manage a peaceful democratic transition and marked a turning point in the struggle for democratisation. The event inspired an already worried civil society to accelerate its agitation for political pluralism. The national support for political reform was undoubtedly a repudiation of the NPRC's tenure in office; an era marked by the reckless display of wealth on the part of senior military leaders, and the harassment of innocent civilians by rogue elements in the national army.<sup>13</sup>

Mounting domestic agitation, coupled with intense international pressure for democratisation, forced Valentine Strasser to announce in 1994 that his regime would embark on a speedy transition to civilian democratic rule. After receiving

11 The general populace was also motivated to support the NPRC because the coup was bloodless.

12 Although the US and other Western nations evacuated their nationals from Sierra Leone immediately after the coup, they did not sever diplomatic ties with the new NPRC regime. In September 1992, barely five months after taking office, Captain Valentine Strasser addressed the UN General Assembly in New York as President of Sierra Leone and received a warm reception from the delegates present.

13 For specific allegations of human rights abuses by senior NPRC officials, see, for instance, *Liberty Voice*, a local newspaper established in 1992.



recommendations from the National Advisory Council, established by the NPRC in 1992, Strasser announced the appointment of an Interim National Electoral Commission (INEC) to oversee the transition to multi-party elections.<sup>14</sup> After months of preparation, INEC announced in 1994 that multiparty presidential and parliamentary elections would take place in February 1996. This was the first time in almost thirty years that Sierra Leoneans would have the opportunity to choose their leaders in a democratic fashion.

Repeated attempts to get the RUF to participate in the 1996 elections were rebuffed by the rebel leadership. In fact, in the weeks and months leading to the poll, the rebel group embarked on a series of atrocities against civilians, code-named 'Operation No Living Thing' and 'Operation Pay Yourself'. These tactics were clearly intended to deter the civilian population from exercising their constitutional rights at the ballot box. In addition to these scare tactics, a month before the elections a palace coup took place in which Brigadier Julius Maada Bio, Vice-President of the NPRC, replaced Strasser as head of state. Bio's first task upon taking power was to reach out to the RUF and agree to a truce that would end the fighting. Bio's coup has been described as a deliberate attempt by the junta to short change the democratic transition that the NPRC itself had initiated. It was widely reported in the local press that on the day of the elections indiscriminate shootings, thought to have been carried out by disgruntled soldiers, took place in Freetown and other provincial towns.

In spite of all those threats, Sierra Leoneans turned out in their thousands to vote on election day. On 17 March Ahmad Tejan Kabbah, leader of the SLPP, was declared winner of the presidential election after receiving a majority of the votes in run-off elections held on 15 March.<sup>15</sup> In addition to winning the presidency, the SLPP also won the majority in the parliamentary elections, thus giving the party an opportunity to shape the country's post-election legislative agenda. The election of Kabbah was politically significant in the history of Sierra Leone not only because it was the first time in nearly three decades that Sierra Leoneans had elected their leader in free and fair elections, but also because it gave the new President the legitimacy needed to seek a peaceful resolution to the on-going conflict, and promote national reconciliation. In keeping with the spirit of reconciliation, and as a mark of goodwill, Kabbah appointed opposition politicians to his first Cabinet, announced shortly after he was sworn into office.<sup>16</sup> In doing so, the new President was essentially repudiating the 'winner-take-all' system and the politics of exclusion, all too common in Africa.

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14 Captain Valentine Strasser appointed current President, Ahmad Tejan Kabbah, as Chairman of the National Advisory Council in 1992, after the latter's retirement from the UN, where he had served as a bureaucrat and administrator for more than two decades. Strasser also appointed Dr James O C Jonah, another retired senior UN official, Chairman of INEC in 1993.

15 For the official election results, see The Africa-American Institute 1996.

16 In that Cabinet, one of the most senior ministerial portfolios, Finance, went to the late Thaimu Bangura, the leader of the opposition Peoples Democratic Party (PDP), otherwise known as *Sorbeh*.



In his inaugural speech to the nation, Kabbah defined his immediate objectives as being to bring the conflict to an end and embark on socio-economic reconstruction. In view of his long career as an international civil servant dealing with global development issues many observers were convinced that, given the chance to govern in a peaceful domain, Kabbah had the potential to institute meaningful economic changes in Sierra Leone.

It was against this backdrop that the new government immediately embarked on a diplomatic offensive between March and November 1996, designed to secure a peaceful resolution to the conflict. Of course one should emphasise that prior to Kabbah's ascension to power the NPRC regime, under Maada Bio, had already made attempts to reach out to the RUF to make peace. Bio's goodwill gesture to the RUF led to the first direct meeting, in Côte D'Ivoire, between a sitting Sierra Leonean head of state and rebel leader, Foday Sankoh. President Kabbah later translated this early diplomatic breakthrough into an official truce when he and Sankoh signed the Abidjan Peace Accord on 30 November 1996, barely eight months after the multiparty elections. The Abidjan Peace Accord, brokered by former Ivorian President Henri Konan Bedie, had the moral backing of both the United Nations and the Organisation of African Unity (OAU).

### THE EVENTS OF 25 MAY 1997 AND THE CONAKRY PEACE PROCESS

On 25 May 1997 Kabbah was overthrown in a military coup that forced him and other senior government officials to take refuge in neighboring Guinea. The coup took place barely six months after Kabbah and Sankoh signed the Abidjan Peace Accord, thus shattering every hope for the return of normality to Sierra Leone. The coup leaders, who were mostly junior officers of the Republic of Sierra Leone Military Forces, quickly announced the formation of the Armed Forces Ruling Council (AFRC). The new AFRC leadership also extended an olive branch to the RUF to join their government in Freetown, confirming long-held suspicions that the army and the rebels had in fact always been partners in crime, and not enemies at war.<sup>17</sup> Major Johnny Paul Koromah, who had been serving a prison term for participating in an earlier aborted coup against Kabbah, was appointed Chairman of the AFRC, and he, in turn, designated RUF leader Foday Sankoh as his deputy, even though the latter was already incarcerated in Nigeria.<sup>18</sup>

The AFRC/RUF reign was marked by utter ruthlessness and gross human rights abuses committed against civilians. Incidents of widespread looting and summary executions were commonplace after the coup. However, despite the tactics of intimidation employed by the junta, the coup was overwhelmingly rejected by

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17 The term *Sobel*, meaning 'soldiers by day and rebels at night', was coined during the conflict to describe members of the military who conspired with rebels to abuse civilians and loot their belongings.

18 Sankoh was detained in Nigeria in 1997 on charges of violating that country's weapons laws.

the majority of Sierra Leoneans both at home and abroad.<sup>19</sup> Throughout the AFRC's nine-month tenure, a nationwide civil disobedience campaign remained in place.

Internationally, the regime was roundly condemned and completely isolated from the rest of the world.<sup>20</sup> On 8 October 1997 the UN Security Council imposed comprehensive economic sanctions and an arms embargo against the regime and authorised ECOWAS to enforce those measures.<sup>21</sup> In fact, a few days after the coup – and even before international sanctions were formally imposed – a military confrontation ensued between AFRC forces and ECOMOG troops stationed in Sierra Leone.<sup>22</sup>

Repeated efforts by regional and international mediators between May and September 1997 failed to persuade the military junta to relinquish power peacefully. Surprisingly though, on 23 October 1997, just two weeks after the UN had imposed sanctions on the AFRC regime, an agreement was reached between junta representatives and ECOWAS officials in the Guinean capital, Conakry. Among other things, the Conakry Peace Accord called on the AFRC to relinquish power and pave the way for the reinstatement of President Kabbah by no later than 22 April 1998. The agreement also set specific deadlines for disarming combatants and repatriating and resettling refugees and internally displaced persons as well as guarantees for broadening the political power base upon the restoration of the elected government. Interestingly, in February 1998, barely two months before the scheduled deadline set out in the Conakry Accord, ECOMOG troops dislodged junta forces from the capital, effectively bringing AFRC rule to an end. This development, in turn, expedited the President's restoration to office on 10 March 1998.

What is strikingly absent from the Conakry Peace Accord, as from the previous Abidjan Peace Accord, is the lack of emphasis on accountability and justice. The Accord grants a blanket amnesty to the AFRC and its allies for atrocities committed during junta rule. It specifically states, in Article 8, that 'unconditional immunities and guarantees from prosecution be extended to all involved in the unfortunate events of 25 May 1997 with effect from 22 May 1998'. In analysing the reasons why the parties to the Conakry Peace Accord failed to push for accountability, one needs to emphasise the political context. The most significant issue is the absence of Kabbah or any of his representatives from the Conakry peace negotiations. Although the

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19 A group of Sierra Leonean activists in the United States, including the writer, formed The Coalition for Democracy in Sierra Leone (CODISAL) immediately after the coup to advocate the restoration to office of the democratically elected government.

20 The coup was condemned by the US and UK governments as well as by leaders of the UN, OAU and ECOWAS.

21 UN Security Council Resolution 1132 authorised ECOWAS to enforce land, air and sea blockades against the military junta in Sierra Leone. It also authorised the body to enforce an arms embargo against the regime.

22 The governments of Sierra Leone and Nigeria had a Status of Forces Agreement (SOFA) that allowed either state to come to the defence of the other in the event of an armed attack.

agreement was meant to resolve the impasse that eventually guaranteed Kabbah's return to power, his government was not officially represented at the Conakry talks and the negotiations took place mainly between the ECOWAS Committee of Five Foreign Ministers – from Nigeria, Guinea, Ghana, Liberia and Gambia – presumably acting on Kabbah's behalf, and representatives of the AFRC. In fact, Kabbah's government was not even a signatory to the Conakry Accord, raising doubts about the legality of the agreement.

It is perhaps not surprising that, when asked about their reaction to the Accord, Kabbah government officials responded with some ambiguity. On the one hand, the government embraced the agreement, as the President himself noted during a speech to the Commonwealth Heads of State Summit in Edinburgh, Scotland, in 1997. 'Any measure which restores constitutional rule in Sierra Leone is welcome,' Kabbah declared. On the other hand, the government expressed reservations about certain provisions of the Accord, especially those dealing with amnesty and the proposed timetable for the restoration of constitutional rule. Sierra Leone's then foreign minister, Shirley Gbujama, even questioned the legality of the Conakry Accord when she suggested at the same Commonwealth Summit that: 'I can't say at this time that the agreement has been signed,' cautioning the international community to refrain from unconditionally embracing it.

The implications of the above controversy are twofold. First, it undercuts, or, at best, raises serious questions, about the legitimacy of the Kabbah government during its time in exile. Although the record clearly reflects that Kabbah retained both empirical and juridical legitimacy even after he was deposed and forced into exile, it is extraordinary that he or his representatives were excluded from the Conakry peace process and yet were compelled to respect the tenets of the Accord. Second, and perhaps most important, the agreement reinforces the precedent that was set in 1996 when the Abidjan Peace Accord granted unconditional amnesties for atrocities committed during the conflict. Whether or not the Kabbah government would have pushed hard for accountability had it been present at the Conakry talks is a matter of conjecture. What is clear, though, is that the tolerance of impunity in both the Abidjan (Article 14, 1996) and Conakry (Article 8, 1997) Peace Accords foreshadowed the terrible tragedy that befell Sierra Leone on 6 January 1999, paving the way for the transformation of war criminals into statesmen.

### THE ROAD TO LOMÉ: TRANSFORMING WAR CRIMINALS INTO STATESMEN

On 6 January 1999, a combined force of RUF and AFRC combatants invaded Freetown, killing thousands of civilians, amputating the limbs of hundreds and abducting many more, including women and children (see Human Rights Watch 1999). For nearly two weeks after the invasion it was unclear who actually controlled the capital. Although ECOMOG forces were already based in Freetown at the time of the invasion, it appeared they were taken completely by surprise, as some of their units retreated from strategic locations, making it possible for the invaders to

occupy large parts of the city for almost two weeks. In fact, President Kabbah and his Cabinet – who had relied heavily on ECOMOG for their security since returning from exile in 1998 – were evacuated to Lungi International Airport, across the estuary from Freetown. However, with troop reinforcements from Nigeria, ECOMOG finally gained control of Freetown as the retreating rebels set buildings ablaze and destroyed considerable parts of the city. The partial stabilisation of the situation in Freetown set in motion a flurry of political and diplomatic activities that produced a ceasefire agreement between the government and RUF.<sup>23</sup> That ceasefire agreement in turn cleared the way for direct negotiations between the two sides.

After nearly two months of negotiations, President Ahmad Tejan Kabbah and RUF leader, Corporal Foday Sankoh, signed the Lomé Peace Accord, brokered by Togolese President Gnassingbe Eyadema, on 7 July 1999. Article IX of the Accord granted 'absolute and free pardon' to all combatants for acts committed during the conflict. The agreement also offered the RUF four ministerial posts as well as four deputy ministerial positions in the government as part of a power-sharing model designed to accommodate the need for broad-based governance in Sierra Leone. The Accord further provided for the appointment of rebel leader Foday Sankoh as chair of a newly created Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD), with the rank of Vice-President. The commission, the equivalent of a super ministry, was established to oversee the activities of the entire mining industry of Sierra Leone. In return for these concessions the RUF agreed to have all its combatants disarmed, demobilised and eventually reintegrated into society. To facilitate that process, the Accord provided for the establishment of a 'neutral and independent' force to assist the government with its Disarmament, Demobilisation and Reintegration (DDR) programmes.

On 22 October 1999, the UN Security Council authorised the establishment of the United Nations Mission in Sierra Leone (UNAMSIL) to help implement the disarmament process. UN Secretary General Kofi Annan subsequently announced the appointments of Indian General Vijay Kumar Jetley as force commander and Nigerian diplomat Oluyemi Adeniji as the UN Special Representative to Sierra Leone. By the end of 1999 more than half of the 6 000 troops initially authorised by the Security Council were already in the country to begin the difficult task of disarming ex-combatants. Initial troop-contributing countries included Bangladesh, India, Jordan, Kenya, and Zambia. ECOMOG troops from Nigeria, Guinea and Ghana, already based in Sierra Leone, were integrated into the UN force, fulfilling a key provision of the Lomé Peace Accord. To encourage continued sub-regional participation in the peacekeeping mission, a Nigerian, Major General Mohammed Garba, was appointed Deputy Force Commander of UNAMSIL.

In May 2000, the Lomé Peace Accord collapsed after the RUF abducted more

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23 Rev Jesse Jackson, Special US Envoy for Democracy and Human Rights in Africa in the Clinton administration, brokered the ceasefire agreement in the Togolese capital of Lomé on 18 May 1999.

than 500 UN peacekeepers and killed six in the strategic northern town of Makeni. The incident was triggered by the RUF's refusal to grant UNAMSIL personnel access into the territories it controlled, including the lucrative diamond-mining district of Kono. The incident raised very serious questions about the UN's peacekeeping capacity in Africa. Coming in the wake of the withdrawal of a large contingent of Nigerian troops from Sierra Leone, this episode undoubtedly put to test the organisation's traditional approach to peacekeeping and seriously undermined the notion that the end of the Cold War had ushered in an era where the UN would exert unparalleled and uncontested global influence on security matters. After weeks of uncertainty about the fate of the UN mission the situation only stabilised after the deployment of a contingent of British troops to help secure Lungi International Airport and evacuate British nationals from Sierra Leone. The arrival of the British forces and the subsequent capture of Foday Sankoh by civilians immensely helped UN military commanders reassess their overall strategy in Sierra Leone.

#### FALLOUT FROM THE COLLAPSE OF LOMÉ: RESCUING THE PEACE PROCESS

Between the collapse of Lomé in May 2000 and the official declaration of the end of the war in January 2002, a number of important developments occurred that are worth recounting. First, at the Security General's request, the UN Security Council hurriedly approved an increase in the size of UNAMSIL from 11 100 to 13 000. In February 2000 the Security Council had authorised an increase in troop size from the initial 6 000 to 11 100. The troop size was further increased to 17 500 in 2001 – the largest United Nations peacekeeping force in the world – and stayed at that level until the May 2002 elections.<sup>24</sup> The Security Council also agreed to strengthen the mandate of the mission allowing the use of force if necessary to protect civilians from armed combatants.

Reacting to an August 2000 letter from President Ahmad Tejan Kabbah, the UN Security Council also authorised the Secretary General to negotiate an agreement with the Sierra Leone government to establish a Special Court to prosecute perpetrators of war crimes and crimes against humanity in the country. The Special Court, formalised by an agreement signed on 16 January 2002 between the Sierra Leone government and the UN, operates under both Sierra Leonean and international law (Lamin 2003, pp 295-320). With pressure from UN and ECOWAS leaders, the RUF appointed Issa Sesay interim leader. Upon taking the position Sesay sent emissaries to Abuja, Nigeria, where, on 10 November 2000, they signed a new ceasefire agreement with representatives of the Sierra Leone government.

<sup>24</sup> In his fourteenth report to the Security Council, Kofi Annan proposed a phased-out withdrawal of UNAMSIL forces from Sierra Leone. For more on Annan's report, see [<http://www.un.org/Docs/sc/reports/2002/679.html>]. In his fifteenth report to the Council, the Secretary General provided specifics of his plan. See [<http://www.un.org/Docs/reports/2002/987.html>].



The agreement was designed to jump-start the disarmament process that had been interrupted by the events of May 2000.

Furthermore, the international community focused its attention on the link between the illicit diamond trade and the conflict in Sierra Leone. An Expert Panel appointed by Annan on 2 August 2000 to study that subject concluded in a report presented to the UN Security Council in December 2000 that there was a direct connection between illicit diamond smuggling, illegal arms trafficking and armed conflict in West Africa, and Sierra Leone in particular (UN Report 2000, Para 19). The panel accused Liberian president Charles Taylor of being the main figure in the international criminal network that includes high-ranking Burkinabe and Togolese officials as well as several shady business enterprises in the Ukraine and other East European countries, where most of the arms used by the RUF were purchased. The panel recommended comprehensive sanctions against Liberia, and, in particular, the Taylor government. On 23 March 2001, the UN Security Council implemented the recommendation by imposing a one-year international travel ban on senior Liberian government officials and restricting the sale of arms to the Monrovia regime. Those sanctions were renewed for another year in March 2002.

In September 2000 clashes between Guinean dissidents and Liberia-backed RUF rebels on the one hand, and the Guinean army on the other, flared up into a serious conflict along the border of the three countries, comprising the MRU basin. This led to a major humanitarian catastrophe, according to UN and other international relief agencies. In spite of the official end of the war in Sierra Leone in 2002, the border regions of all three countries remains a significant flashpoint. For instance, the fighting that broke out in Liberia in 2001 between Liberian government forces and two rebel groups, Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) only subsided in 2003 after Taylor resigned and fled into exile in Nigeria.

## THE 2002 ELECTIONS AND THE POLITICS OF PEACE

After two postponements of presidential and parliamentary elections, mainly for security reasons, multiparty elections were finally held in Sierra Leone on 14 May 2002, almost five months after the war officially ended. Under the 1991 Constitution the President has the power to request parliamentary extension of his government's tenure if the country is at war; and the evidence clearly shows that President Kabbah invoked his constitutional authority on both occasions. Prior to the announcement of an election schedule, several opposition politicians had called for the formation of an interim government, while others vigorously advocated convening a national conference to debate the country's political future. Following the official declaration of the end of the war, and with an election schedule in place, the NEC embarked on a nation-wide voter registration exercise beginning on 18 January 2002. During that exercise, according to the NEC, an estimated 1.5- million eligible voters were registered. In looking back at events leading to the elections concern was expressed



in some quarters about the dangers of conducting elections too soon. For instance, in December 2001, the Brussels-based watchdog, International Crisis Group (ICG), published a report questioning the timing of the elections (ICG 2001). Among other things, the report expressed serious doubts about the prevailing security situation in the country, given the 'unfinished peace process', as well as the confusion associated with the district block voting system recommended by the NEC. These concerns, the authors suggested, were key reasons why the authorities in Sierra Leone and their international partners needed to proceed with caution. Although the report stopped short of recommending a further postponement of elections, it was very clear in its argument that unless certain benchmarks were met prior to May 2002 the whole process might turn out to be an exercise in futility.

In a similar vein the Freetown-based non-governmental organisation, Campaign for Good Governance, released an opinion survey conducted in Freetown during the early part of December 2001. Although the survey did not necessarily represent the views expressed by a majority of Sierra Leoneans at the time, the authors nevertheless suggested that it gave some indication of reactions to the peace process in general, and the elections in particular. According to the survey, a substantial majority (56.74%) favoured postponing the elections, while 37.97 per cent were comfortable with the May 2002 date. On the question of the District Block Voting System proposed by the NEC, only 17.61 per cent of those surveyed stated that they understood it, while the vast majority (81.93%) indicated a lack of understanding. We should, however, note that the former Coordinator of CGG, Zainab Bangura, was herself a presidential candidate in the May 2002 elections, thus raising a spectre of bias in the group's analysis of the polls in question.

With hindsight, however, it is clear that the above views were overly pessimistic about the prospects of the May 2002 elections legitimising the peace process in Sierra Leone. Given the peaceful atmosphere in which the elections took place and the generally positive reaction to the polls, the determination of Sierra Leoneans to close a dark chapter in their history cannot easily be dismissed.<sup>25</sup> One must acknowledge, though, that the peace achieved thus far is still tenuous. As legitimising as the elections might have been, there are still unanswered questions that will continue to test the durability of the peace.

## THE 2004 LOCAL GOVERNMENT ELECTIONS AND THEIR IMPLICATIONS

Without the publication of the full results it is impossible to make an informed analysis of the long-term implications of the local government elections on governance in post-conflict Sierra Leone. However, one needs to acknowledge that the mere attempt to decentralise power by means of a process designed to revive

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25 On elections day in 2002 many war victims whose arms had been amputated by rebel fighters went to the polling stations to cast their votes, as a mark of their determination to support the democratic process. The majority of them literally voted with their feet, since they had no arms with which to cast a ballot.

what were once dormant local governing institutions is indeed a positive development. With the exception of the institution of chieftaincy and other traditional authorities, governance in Sierra Leone has been heavily centralised for more than three decades.

During this time citizens have had to rely on the central government for everything from the issuing of passports to the provision of a piped water supply. As a consequence, the heavily bureaucratic and incompetent central government has never been as responsive to the needs of the people as a responsible government should. What we saw during this period was the complete retreat of government from large parts of the country, particularly the rural areas. The absence of government authority in these areas created a void that was later exploited by the rebels who waged war on Sierra Leone. It is therefore not far fetched to suggest that the movement toward decentralisation of power is meant to prevent a similar situation from occurring in future. Whether these new local authorities – once they are installed – prove to be efficient and whether they will get the support and cooperation of the central government remains to be seen. It is important at this juncture, though, to identify a few trends that occurred during the elections and use them to make some predictions about the future.

One of the key trends to have emerged is the continuing influence of ethnicity and regionalism in the politics of Sierra Leone. Early indications of the electoral outcome suggest that the support of the two main parties – the SLPP and APC – was largely driven by ethnic or regional considerations. In other words, both parties performed best in regions that have historically been considered their strongholds. For instance, in the returns released so far it appears that the SLPP's best performance was in the southern and eastern regions where the party's dominant ethnic base – the Mende – is situated. Similarly, the APC appears to have performed well in the northern region where it has its dominant ethnic base – the Temne. Although it appears that the SLPP may have made some gains in the APC stronghold of the north, generally speaking, the APC's performance in that region shows that it remains the party's political home.

However, in regions such as Freetown, the capital city, and its surrounding areas, where no one ethnic group can claim absolute demographic dominance, the outcome can best be described as mixed. While early indications are that the APC may have performed far better than the SLPP in Freetown and the Western area generally, it is perhaps too early to interpret that as a complete repudiation of the ruling party. It is hard to identify precisely why the SLPP performed poorly in the Western area, after dominating the region in the 2002 election. One possible explanation, however, could be the frustration of the citizens of Freetown and surrounding jurisdictions with the governing style of the ruling party. After promising improvement in the living conditions of the population in the aftermath of a decade of armed conflict, the fact is that the current ruling government has failed to meet expectations. Complaints about deteriorating living standards and corruption in high places can be heard daily from people of all backgrounds on the

streets of Freetown.<sup>26</sup> It is therefore highly possible that the voters of Freetown and the greater western area wanted to send the SLPP government a message to wake up and get its act together. If the projections about Freetown and its environs turn out to be true it will essentially mean that the APC will take over the responsibility of local governance in the capital city, thus offering the party a nationally visible platform. How it rises to this new challenge will go a long way to indicate things to come.

Another important trend that deserves close attention is the participation of independent candidates in the elections. Reports indicate that many of the candidates from both the SLPP and APC who participated as independent candidates did so because of a failure to secure party symbols from the leadership of their respective parties. Under the electoral code an individual can only run for public office on a party ticket if he or she is awarded a party symbol (Electoral Act 2002). An individual who does not secure a party symbol is free to run as an independent candidate. The fact that some individuals broke ranks with their parties and ran as independent candidates signals potential conflict within the two parties that have dominated the political life of Sierra Leone since independence in 1961. More importantly, it raises fundamental questions about the viability of the two parties. The question remains whether this potential rift created within the established parties can be exploited by a viable and credible third party movement that would articulate an alternative vision of politics for Sierra Leone.

## CONCLUSION

The twin problems of security and governance continue to pose a major threat to long-term peace building and democracy consolidation in the country. The free movement of armed fighters across the borders of Liberia, and Guinea remains a serious challenge to building lasting peace in Sierra Leone. Internally, there are strong indications that certain segments of the military still owe their allegiance to the fugitive AFRC leader, Johnny Paul Koromah.<sup>27</sup> The lack of loyalty to the state on the part of the military has long been a problem for stability in Sierra Leone, and was further compounded by years of armed conflict. Speculation that a military coup may take place after the withdrawal of UN peacekeepers from the country cannot be entirely discounted. In short, there is an urgent need to embark on a comprehensive programme designed to improve civil-military relations.

Poor governance and mismanagement of public resources remains a major challenge for post-conflict peace building and democracy consolidation. The prevalence of corruption in government has not only led to the impoverishment of the majority of Sierra Leoneans, it has the potential to sow the seeds of future discord.

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26 This was my general observation during a month long trip to Sierra Leone in January / February 2004.

27 This is not much different from the outcome of the 2002 elections, in which Koromah won a majority of the votes cast by members of the military.

While the government has taken some cosmetic steps to address this problem by establishing an Anti-Corruption Commission (ACC), a Civil Service Reform Commission, and creating the office of an Ombudsman, the feeling one gets in Freetown these days is of business as usual. It does not seem as if lessons from the past have been properly learned (Lamin 2004).

Finally, the outcome of the transitional justice processes – the Truth and Reconciliation Commission and the Special Court – initiated in 2002 could have a potentially explosive impact on peace building and democracy consolidation efforts. As the Special Court finally begins to prosecute indicted war crimes suspects there is a huge body of opinion in Sierra Leone that believes the ‘heroes’ of the conflict have been made scapegoats, while the true perpetrators have been let off the hook (Lamin 2004). The indictment of Chief Sam Hingha Norman, former head of the Civil Defence Forces and Minister of Internal Affairs, has drawn huge criticism from observers both inside and outside Sierra Leone (Lamin 2004; Gberie 2003, pp 644-646). How his supporters will react if the Special Court convicts him remains to be seen. What has become more evident now is that the institution of the Special Court process, along with that of the TRC, has ironically become a recipe for future disaster. There is an urgent need, therefore, to address this problem and weigh the advantages of continuing these processes – particularly the Special Court prosecutions – against the long-term interests of peace in Sierra Leone and the wider MRU region.

In conclusion, it is useful to mention a few words about the role of civil society and prospects for the emergence of a viable third party movement in Sierra Leone. Civil society groups, student organisations in particular and young people in general, have always been instrumental in engineering political change. The advocacy of these groups became even more visible during the years of armed conflict. Unfortunately, since the end of the conflict, it seems as if civil society groups have become less effective in the larger debate about the future of the country. While one cannot discount the reasons for this trend, it is important that these groups redefine their priorities and move aggressively to play the role they once played in the politics of Sierra Leone.

In the short term there is little likelihood of the emergence of a viable alternative political organisation to take on the status quo. There is an unproven notion among many that, given the dominance of the SLPP and APC in the political history of Sierra Leone, it is not likely that a third party movement, however credible it is, can easily displace the two established parties.<sup>28</sup> Proponents of this school of thought believe that the only way to create meaningful change is to infiltrate the two parties and then fight from within. This argument is certainly reminiscent of those advanced in the late 1970s and early 1980s, when opposition politicians and outspoken critics

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28 This impression was based on conversations with a wide range of civil society activists and opinion leaders both in Sierra Leone and in the Diaspora in the past few years.

of the APC justified their swift change of political allegiance. Given the negative impact of that strategy then, one is not convinced that, even if the same approach were adopted today, things would be any different. Perhaps it might make a difference if a critical mass of individuals committed to genuine transformation became members of these parties, as part of a team with clearly defined agendas rather than as individuals running for office only in furtherance of their own narrow political interests. At the moment, it does not appear that there is any serious debate about this. In the long run, though, it will be incumbent upon progressive minded individuals seriously to consider establishing a new political organisation that promotes an alternative form of leadership. It should be emphasised, however, that the building of such an organisation does not occur over night, hence it requires commitment, resources and sacrifice on the part of all who believe in the idea. It could take decades more to accomplish such a goal, but if a true grassroots political movement is to be built to serve the interest of the people of Sierra Leone, the effort may perhaps be worth the time and energy.

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# ZIMBABWE: CONSTITUTIONALISM, THE ELECTORAL SYSTEM AND CHALLENGES FOR GOVERNANCE AND STABILITY

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## ABSTRACT

*In February 2000 Zimbabweans went to the polls to vote on a draft constitution for their country. The draft contained some important provisions for, amongst other things, the reform of the country's electoral system. The draft was rejected and a bitter general election campaign ensued in the second quarter of 2000. The general election held in June 2000 and the presidential election in March 2002 were the most violent in Zimbabwe's electoral history. These developments raise significant questions relating to constitutionalism and the electoral process in Zimbabwe. They were an admission that both constitutional and electoral reforms were imperative and, indeed, overdue. A state-appointed Constitutional Commission (CC) was set up in 1999 after a civil society-driven one, the National Constitutional Assembly (NCA), had been founded earlier in 1998. In particular, the political developments since 2000 have highlighted the need to address the increasing deficit in democratic governance and stability in Zimbabwe. This paper attempts to assess critically developments relating to constitutionalism and the electoral system, the links between them, and their significance for governance and stability.*

## INTRODUCTION

This paper investigates the interconnectedness of processes of constitutionalism, the electoral system and democratic governance in Zimbabwe. It begins by outlining the post-independence political and constitutional history of the country and considers the significance for the political process after independence of the methods of coercion and violence inherited from the liberation struggle. The centrality of the Lancaster House independence Constitution in limiting the flexibility of the post-colonial state in the political and economic spheres is considered.

In the second section of the paper, the issue of constitutionalism is addressed, showing the absence of a participatory process in constitution making and the making of constitutional amendments. This is highlighted in the account of the debate in 1999-2000 over the process of constitution making.

The electoral system is then outlined, and its strengths and weaknesses assessed in the light of the elections held in the 1990s, in 2000 and in 2002. The reforms that were proposed to make the system transparent, autonomous, efficient and fair are examined next. There were conflicts generated in the system, especially in the 2000 and 2002 elections, but unfortunately constructive conflict management and resolution mechanisms have not yet been put in place. However, some comparative examples of such mechanisms drawn from the experiences of other countries are outlined as a first step in considering possible options. The last part of the paper considers the key challenges for democratic governance and stability in Zimbabwe in the light of the gaps in its constitutional and electoral systems.

### THE POLITICAL AND CONSTITUTIONAL BACKGROUND

Zimbabwe's political and constitutional history is largely textured by the form taken by the nationalism and liberation struggle in the 1960s and 1970s, and the constitutional settlement negotiated at Lancaster House in 1979. A conventional nationalist movement, which arose in the 1950s, was confronted by an obdurate white minority regime that refused to concede independence but instead went on unilaterally to declare independence in 1965. The regime used repressive means to try to contain African nationalism but was ultimately unsuccessful. The nationalist movement then mutated into a liberation movement that grew in strength and spread its tentacles in the 1970s and subsequently forced the minority regime to the negotiating table.

Analyses of post-independence political developments should not underestimate the role which violence and other forms of coercion played in colonial regime strategies to block independence, and in nationalist politics themselves. Detention, torture and killings were used by the colonial regime, but nationalists also utilised violence and intimidation in mobilising and competing for supporters (Ellert 1989; Sithole 1999). In the 1960s there was intense rivalry between the Zimbabwe African People's Union (ZAPU) under Joshua Nkomo and the Zimbabwe African National Union (ZANU) led by Ndabaningi Sithole. The liberation struggle itself, which commenced in the mid-1960s, claimed more than 30 000 lives and many were injured, traumatised and displaced. Violence thus became ingrained in Zimbabwean political culture and this would have long-term consequences for the shaping of post-independence politics. Just as state violence as a method of repression had been a prominent feature of the minority regime before 1980, so it would also be employed in the suppression of political dissent in the Matabeleland provinces in the early 1980s. Elections were also tainted by coercion and violence in the 1980s and 1990s, although the levels varied.

One explanation that has been proffered for the continued existence of a political culture of repression which relies on coercion and violence rather than the peaceful resolution of differences is that intense colonial repression and war ruled out

open, democratic practice and tolerance and alternative views. It fostered what could be termed a 'culture of authoritarianism' that was certainly compatible with state socialist ideology of nationalist leaders at the time, as well as a 'traditionalist' discourse which stressed strong leadership and unquestioning loyalty ... Violence in post-independence Zimbabwe was the consequence of a strong state, itself in many ways a direct Rhodesian inheritance, and a particular interpretation of nationalism.

Alexander, McGregor and Ranger 2000

This is, however, to anticipate the discussion in a later section on the electoral system and the coercion and violence that accompanied the key elections held in 2000 and 2002. What have been the principal developments in the political arena since independence in 1980?

The 1980 elections ushered in Zimbabwe's first black government, which was internationally recognised. The proportional representation (PR) system was used in those elections and a 5 per cent threshold was used in allocating seats in eight provinces. Three parties, the Zimbabwe African National Union-Patriotic Front (ZANU-PF) under Robert Mugabe, the Patriotic Front-Zimbabwe African People's Union (PF-ZAPU) under Joshua Nkomo and the United African National Congress (UANC), led by Abel Muzorewa, won the black-contested seats. ZANU-PF won 57 of the 80 common roll seats, PF-ZAPU 20 and the UANC 3. However, this was the last election in which the PR system was used. The subsequent elections, in 1985, 1990, 1995 and 2000 were held on a 'first-past-the-post' (FPTP) basis following an amendment to the Electoral Act. After further amendments to the Lancaster House Constitution itself, an executive presidency replaced the ceremonial presidency in 1987, and the 20 seats especially reserved for the white minority were abolished.

In the 1985 elections, ZANU-PF increased the number of its parliamentary seats to 64 while PF-ZAPU saw its own decline to 15 with ZANU-NDONGA winning 1 seat. As we observed elsewhere, the introduction of the FPTP system provided a clear advantage to ZANU-PF (Sachikonye 2001). However, the overall context in which political competition existed between ZANU-PF and PF-ZAPU was one of conflict in the form of a civil war in the Matabeleland and Midlands provinces between 1982 and 1987. A negotiated compromise was reached in 1987 to ensure a cessation of hostilities, and pave the way for a Unity Accord to cement a merger between the two parties. Following the merger in 1989, the new party, still called ZANU-PF, easily dominated in the elections in 1990 and 1995, winning 117 of the 120 directly elected seats in both those years. ZANU-PF had attained a dominant-party status but in the mid-1990s opposition political parties and civil

society organisations began to demand a review of the Constitution and electoral system. The decline in faith in the constitutional and electoral set-up was expressed in a boycott by some parties of the 1995 and 1996 elections.

Let us relate these political developments to the constitutional context. As we have already observed, Zimbabwe's independence constitution was negotiated and crafted at Lancaster House in 1979. It bore a resemblance to most independence constitutions that were the outcome of an agreement between a colonial power and representatives of the colonised peoples. There was no broad participation in this model of constitution making. Nevertheless, the Lancaster House Constitution was premised upon a recognition of liberal notions of constitutionalism. Hence its incorporation of the concepts of separation of powers, independence of the judiciary, supremacy of the legislature over the executive, public service neutrality and governmental accountability (Ncube 1991). The Constitution therefore sought to place extensive limitations on powers of government vis-à-vis individual rights, and sought to check the powers of the executive arm of the state.

A provision stipulated that the Constitution should not be changed substantially for 10 years after its inception. This was designed to ensure that the transition to independence would not entail a substantial shift in social and property relations. This provision was to have far-reaching implications especially in the realm of land rights for a country whose rural population constitutes about 65 per cent of the total population. In retrospect, the Lancaster House Constitution, like most constitutions, was no more than a compromise between competing interests. The absence of wider and popular participation in its making robbed it of broader legitimacy amongst most Zimbabweans. As it was later observed, while the Constitution served an important purpose in transferring power from a minority to a majority government, it was not necessarily a foundation for good governance (*Agenda* 1998). It has been described as 'an outdated, imposed and transitional instrument ... which does not represent the aspirations of the people for good governance and development' (Hlatshwayo 1998).

Clearly, there were notable imperfections in the Constitution with respect to the clauses relating to political and economic arrangements. At the same time, however, the post-independence government did not prove to be an ardent reformer in terms of democratisation. While majority rule extended voting rights to all Zimbabweans for the first time and enabled their participation in the electoral process, democratic values of tolerance and respect for the 'rule of law' were not strictly observed by the Mugabe Government. The emphasis of the ruling ZANU-PF party was largely on the consolidation of its hegemony over every layer of society. Dissent was frowned upon, if not crushed. It did not take long before a Government of National Unity collapsed under the weight of tensions between ZANU-PF and PF-ZAPU, resulting in the above-mentioned civil conflict between 1982 and 1987. Many human rights violations were committed during that conflict, in which thousands were injured, killed and displaced. The repressive tendencies of the post-independence government were given full vent during that period.

The quest for hegemony also took the form of an orchestrated campaign by ZANU-PF in the late 1980s for a *de jure* one-party state. This was aimed at self-perpetuation in power but was hardly original as most other African countries were then still under one-party rule. There was a strong constituency in the ruling party for this type of authoritarian political arrangement, and the political leadership pandered to this undemocratic sentiment. However, largely thanks to concerted opposition from civil society and opposition political parties, during which student and labour union activists were swept into detention, the one-party state project was shelved in the early 1990s (Mandaza and Sachikonye 1991). Nonetheless, through manipulation of the electoral system and monopoly access to state resources for campaigning purposes, ZANU-PF was successful in ensuring a *de facto* one-party state. By the 1990s political hegemony proved inadequate in creating the conditions for stability and economic growth and the economy began to decline precipitously. By the close of the decade a groundswell of opinion sought change from conditions of authoritarianism as encapsulated in the *de facto* one-party state and from the unmitigated economic decline. This was the broad context in which the movement for constitutional reform originated.

### CONSTITUTIONALISM: THE DEBATE OVER A NEW CONSTITUTION

The debate about constitutional reform was sparked by what was viewed as arbitrary amendments to the Lancaster House Constitution for the purpose of concentrating power in the presidency. The most far-reaching of these was the 1987 amendment which created the executive presidency. There was no participation encouraged in this process.

... the very centrality of the constitution would demand that the process of its development would be inclusive and truly 'national'. The process leading to the making of the Lancaster House constitution was widely perceived as weak ... As a result, numerous amendments were effected – many of which were also perceived to have largely entrenched the executive branch of government. It is significant that the people were never actively involved in any of the amendments since none of the 15 amendments were subject of official public discussion beforehand nor was there extensive debate in Parliament itself.

CDD 2000

It was against this background of dissatisfaction with the mode of approach to constitution making via executive amendment that the chorus grew for reform. In sum, the question raised was whether the idea of constitutionalism as a means of regulating and limiting the exercise of political power had found root in Zimbabwe's system of government (Ncube 1991).

As observed above, the ZANU-PF government approached the matter of the Constitution in a haphazard manner. By 2000 a total of fifteen amendments had been made, most of them aimed at centralising power within a powerful presidency. Among some of the far-reaching amendments were the following:

- The repeal of dual citizenship (1983).
- Award of powers to the President to appoint members of the Judicial Service Commission, the Electoral Supervisory Commission (ESC) and the Attorney-General (1984).
- The abolition of the Senate and the creation of a 150-seat Parliament of whom 30 members were appointed by the President (1989).
- The compulsory acquisition of land for resettlement (1990).

In particular, the President's powers of patronage and autocracy were enhanced with the provision enabling him to appoint up to thirty members of Parliament.

Although the provisions which restricted changes to the Lancaster House Constitution expired in 1990, the government was somehow not keen to change it to improve conditions for democratisation. There was no political vision relating to how to craft a more responsive constitution in the post-Lancaster House era. Issues such as electoral reform, land redistribution and gender equity were not addressed by means of a constitutional review during the early 1990s. This was partly explicable in terms of a weak political opposition in the aftermath of the merger between ZANU-PF and PF-ZAPU in 1989. Furthermore, civil society was not as active and strong as it would become in the late 1990s.

It was therefore not surprising that the initial clamour for constitutional review emerged from outside the ruling ZANU-PF party. Civil society organisations and opposition parties sought constitutional reform because they saw the existing Constitution as serving the interests of the elite in power. In their view, no significant political and social change could occur without the rewriting of the Constitution. Regionally, they saw progressive constitutions being crafted in such countries as Botswana and South Africa.

The first salvo was fired by a broad alliance of civil society organisations that founded the National Constitutional Assembly (NCA) in 1998. The NCA spelt out its objectives as:

- to identify shortcomings of the current constitution and to organise debate on possible constitutional reform;
- to organise the constitutional debate in a way that allows broad-based participation; and
- to subject the constitution-making process in Zimbabwe to popular scrutiny in accordance with the principle that constitutions are made by and for the people (NCA 1997).



Some of the more obvious shortcomings of the existing Constitution have been referred to in preceding sections. More specifically, the NCA singled out several clauses in the Constitution which, it argued, were not justifiable in a democratic society. It was observed, for example, that the protections in the Bill of Rights were not as wide as is desirable in a democratic society (NCA 1998). It was further argued that the electoral process as defined and prescribed in the Constitution was not conducive to the holding of 'free and fair elections'. The number of amendments that had been made to the Constitution in seventeen years undermined the Constitution, it was asserted. Against this background the NCA argued strongly that 'any changes or amendments to the constitution need the participation and approval of the people'.

How did the ZANU-PF Government respond to this growing pressure for constitutional reform? It was reluctantly persuaded that reform was overdue but its authoritarian tendencies made it difficult for it to craft a consensual approach to reform with other parties, including the NCA. Not surprisingly, the government sought to monopolise the process at every stage. There were at least three positions, at the beginning of 1999, on how constitution making should be conducted. Two of the positions emanated from within ZANU-PF itself. The first, termed the 'Mugabe Way', drew on President Mugabe's approach that:

The procedure which all along I thought we would adopt is one which would first enable our party at the provincial and then at Central Committee level to address the matter and come to some initial conclusions on the various parts of the constitution needing amendment. The views of other organizations will be collected in the process but only for consideration by us and in comparison with our own ...

Mugabe as quoted on 21 March 1998

Broadly speaking, this was the position and intention of the Zimbabwean leader and some of his party's top leadership on the constitution-making issue. It was a position which could be described as 'constitution making from above', a process that would largely be driven by the ruling party. A party congress resolution reflected this paternalistic sentiment.

A variant of this approach was the 'Zvogbo Way', named after the then leading constitutional expert in the ZANU-PF party, Eddison Zvogbo (Hlatshwayo 1998). The 'Zvogbo Way' sought to integrate the party congress resolution with a parliamentary resolution that called on the Executive to introduce a mechanism to review the Constitution. The position conceded that ZANU-PF should not monopolise the constitution-making process entirely but should allow other players to contribute. However, it was also a position which envisaged that ZANU-PF would still be the dominant player in the process. This left the NCA approach as the main challenge to the envisaged 'constitution making from above'. Arguing for a broader

participatory constitution-making process ('constitution making from below'), the NCA envisaged that the process would be inclusive and open. While there was basic agreement on the case for a new Constitution, there was polarisation of positions over the process to follow in crafting one. The resultant stalemate led to an unprecedented constitution-making exercise dominated by ZANU-PF and involving a government-appointed Constitutional Commission consisting of 400 members, of whom 150 were parliamentarians. The Commission gathered views from the public for six months in 1999 and then submitted its findings to President Mugabe. However, the provisions under which the Commission was set up still gave considerable powers to him to amend the draft Constitution and that is what subsequently transpired.

The NCA exercise involved an extensive civic education campaign to explain why it had begun to write a new Constitution. It identified the limitations of the Lancaster House Constitution and solicited suggestions and proposals about what a new Constitution should contain. Like the Constitutional Commission (CC) it also conducted an extensive outreach programme in different parts of the country on what should form the content of the new Constitution. Admittedly, the NCA outreach exercise was not as extensive as that of the CC but it had greater depth as a consequence of its preceding civic education programme. Indeed, there was a strong element of competition between the two outreach exercises in terms of gathering views. The findings of the parallel processes were subsequently woven into two different constitutional drafts.

Eventually, the credibility of the CC exercise was thrown into serious doubt when its draft omitted and misrepresented some of the citizens' views on what the new Constitution should contain. For instance, among the recommendations made was a recurring sentiment expressed in public hearings and in other submissions that the extensive powers of the President should be reduced considerably, that the legislature should be strengthened significantly, that the size of the Cabinet should be reduced to between 12 and 15 posts, and that an independent electoral commission should be appointed. Most of these recommendations were ignored or fudged, and the public and voters were not amused. To complicate matters, the President himself made critical statements about certain provisions, including those relating to land.

The CC's draft was decisively rejected in a referendum in February 2000. The NCA had contributed to that rejection through its 'no' campaign, which resonated with the electorate. What followed was a stalemate on the future direction of the reform process.

While ZANU-PF has now shelved the process, cynically stating that it is no longer 'a priority', the pressure for change is growing from the NCA and opposition parties, including the MDC. Constitutional reform cannot be postponed indefinitely. Sooner or later, ZANU-PF will have to respond to the intensifying pressure.

Several possible scenarios have been posited. One is that a bi-partisan committee of Parliament should be appointed to review the rejected draft and then

submit a revised draft to Parliament. Another is that, based on public debates on the draft, memoranda should be invited from the public to a representative committee with membership drawn both from Parliament and outside it. The committee would be tasked with producing a new draft within six months (CDD 2000). A third option would be the appointment of a new constitutional commission to start the process all over again.

## REVIEW OF ELECTION MANAGEMENT AND THE ELECTORAL SYSTEM

One of the principal arguments of those who advocate constitutional reform is that Zimbabwe's election management body (EMB) is defective and prone to patronage. Because it is part of the state bureaucracy, the election management body is viewed as being out of line with the trend towards autonomous election commissions in Southern Africa. However, we need to begin by outlining the main features of the EMB. As laid out in the Electoral Act, the principal institutional framework for election management comprises:

- the Delimitation Commission;
- the Electoral Supervisory Commission;
- the Election Directorate;
- the Registrar-General.

The Delimitation Commission, which sits at five-yearly intervals prior to a general election, determines the limits of constituencies in Zimbabwe. The commission submits to the President a report containing a list of constituencies delimited, with the names and boundaries assigned to each and a map showing the constituencies (Delimitation Commission 1995). In dividing Zimbabwe into constituencies, the commission takes into account, in respect of any area, its physical features, the means of communication in the area, the geographical distribution of voters registered on the common roll and the community of interest between them.

A major limitation of the Delimitation Commission is that there is no a constitutional provision for public participation in the delimitation process. The process therefore excludes any involvement by interested stakeholders, for instance political parties, civic groups, women's and youth organisations. The commission's report is submitted to the President who may raise objections if he is in any way dissatisfied with it, but the public is denied the same privilege (ESC 1997). In the same way and for the same reasons as voters' rolls are subject to public inspection, the commission's reports should be inspected and verified by members of the public before they are finalised.

A perennial problem encountered by delimitation commissions in their tasks has been that voters' rolls have not been up to date. This is a handicap in the drawing up of constituencies. There have therefore been several recommendations for improvements in the transparency and effectiveness of the Delimitation

Commission. First, the consultation process leading to the appointment by the President of the commission's members should be more broadly based. The Judicial Service Commission, rather than the Chief Justice alone, should be the body to be consulted. Second, a preliminary Delimitation Commission report should be published in the *Gazette* and be open for inspection and comments by the public before the submission of the report to the President. Third, the commission should be convened well in advance of a general election to allow sufficient time for proper performance of its functions with the participation of the public (ESC 1997). The credibility of future delimitation commission reports will hinge on whether they meet these basic conditions and expectations.

Unlike in other countries in Southern Africa, the Electoral Supervisory Commission (ESC) is a body with little power although it carries the responsibility for supervising the electoral process. Like the Delimitation Commission, it is appointed by the President and its functions are:

- to supervise the registration of voters and conduct of the election of the President, members of parliament (MPs), and of the governing bodies of local authorities; and
- to consider any proposed Bill or statutory instrument that may be referred to it and which relates to presidential, parliamentary or local authority elections.

The ESC is funded by Parliament through the Ministry of Justice, Legal and Parliamentary Affairs; its budget is thus determined by the ministry, which decides how the allocated funds should be used. At the end of each election the ESC submits a report to the President on the conduct and outcome of the election. Previous reports have covered such issues as voter registration, financing of campaigns, election monitoring, incidents of intimidation and violence, media coverage, vote counting and announcement of election results (ESC 1995).

Some analysts have argued that the ESC is largely impotent because it is given no executive power by the Constitution (Compagnon and Makumbe 2000). In view of its limited and ambiguous powers, meagre budget and resources, the ESC is constrained in exercising its supposedly 'supervisory role' in the electoral process. The powers, authority and resources that should have accrued to the ESC have instead been dispersed to the Election Directorate and the Registrar-General of Elections. In sum:

The ESC has been rendered useless in Zimbabwe as it only supervises and does not run elections. Election administration and management is split among many organs, which compromises co-ordination and the quality of the decision-making process. The election process is not managed, administered and controlled by the ESC, but by the Registrar-General. The impartiality of the Commission is compromised because

the President, a contestant in the elections, appoints and can remove members of the Commission...

ZESN 2002

This state of affairs runs counter to the SADC Parliamentary Forum's recommendation that complete independence and impartiality of any electoral commissions should be reaffirmed in the Constitution, with the commissioners selected by a panel of judges in consultation with all stakeholders.

The third component of the electoral system is the Election Directorate. Created in 1990, it consists of civil servants who operate under the chair of the Public Service Commission (PSC). Its responsibilities are:

- to co-ordinate the activities of ministries and departments of government in regard to delimitation of constituencies, the registration of voters, the conduct of polls and all other matters connected with elections;
- to give instructions and make recommendations to the Registrar-General in regard to the exercise of his functions under the Electoral Act; and other persons in the employment of the state for the purpose of ensuring the efficient and proper conduct of elections; and
- generally ensuring that elections are conducted efficiently, properly, freely and fairly

Electoral Act 1996

Clearly, the establishment of the Election Directorate added to the number of players involved in the electoral process, thereby splitting the responsibility further (ESC 1997). The independence of the Election Directorate has been questioned by some analysts (Compagnon and Makumbe 2000).

Finally, the Registrar-General of Elections is actually the key player in the electoral system and process. A public servant whose office falls under the Ministry of Home Affairs, his functions in the electoral process, however, entail being answerable to the Ministry of Justice, Legal and Parliamentary Affairs. The Registrar-General is responsible for the whole electoral process, which includes the following:

- the registration of voters;
- the provision of electoral staff;
- the declaration of election results; and
- the custody of election materials

Electoral Act 1996

These extensive functions make the Registrar-General of Elections very central to, and therefore powerful in the entire electoral process. This centrality is enhanced by other provisions in the Electoral Act such as the one that states that the Registrar-

General 'shall not be subject to the control of any person or authority other than the Election Directorate'. At the same time, any weakness or limitations in the discharge of these multiple functions has negative ripple effects on the rest of the electoral process. The impartiality and efficiency of the Registrar-General's office has been questioned by opposition political parties, NGOs and the media, especially with regard to its conduct of the 2002 election. An example of this criticism is that:

the transparency of the electoral process was fatally flawed by the refusal of the Registrar-General's office to make public, at any stage, a consolidated voters roll. This made it impossible for the public and political parties to inspect the roll and to raise objections, or even to assess the national electoral base. Such a fundamental failure in itself rendered the election open to abuse since it was impossible to identify voters or rectify the register.

ZESN 2002

The number of complaints about the conduct of the Registrar-General's office has been steadily increasing since the mid-1990s. They grew to a crescendo during the 2002 presidential election campaign, and this significantly undermined the credibility of the electoral process. Other factors that have contributed to the erosion of credibility are the strictures that have been placed on NGOs that provide civic and voter education, and those involved in election monitoring.

What attempts have been made to reform the electoral system? The attempts can be traced back to 1997 when the ESC itself, under the chairmanship of David Zamchiya, organised a workshop to consider possible areas of reform. The workshop considered a commissioned study which observed that:

The political, economic and social climate of present-day Zimbabwe and the interests to be served have evolved to levels which have led the ESC to consider whether or not the existing machinery that has been 'patched-up' here and there over the years still adequately meets the expectations of the people for a system capable of delivering elections which they will readily endorse.

ESC 1997

The 1997 workshop made several recommendations about overhauling the electoral system. In the main, however, it was argued that there be set up an 'Elections Commission' which would be independent and have the responsibility and authority for the entire electoral process. It was argued that:

an electoral machinery must, in a democratic system, ultimately be the tool of the people and in establishing it, no effort must be spared to avoid creating an institution which may be viewed as a tool of the



government of the day. There is need to dispel the perception that the government and the ruling party manipulate the system at the expense of democracy.

ESC 1997

In essence, a strong case was made for an autonomous Election Commission that would constitute a radical departure from the prevailing set-up. The workshop's recommendations were echoed in public hearings conducted by Parliament in 1997.

A second set of recommendations consisted of the provisions in the draft constitution crafted by the Constitutional Commission in 1999. They reflected broadly those made in the ESC workshop report and centred on the establishment of what was termed an Independent Electoral Commission. The envisaged commission would consist of six members appointed by the President. Its functions would be:

- to organise, conduct and supervise elections;
- to register voters and ensure the proper maintenance of voters rolls;
- to determine the boundaries of constituencies;
- to consider and advise on all proposals to alter the boundaries of wards or other electoral divisions of provincial council or authority areas; and
- to formulate and implement civic education programmes relating to elections.

Constitutional Commission 1999

Finally, electoral reform would have to address whether the present FPTP system should continue or whether it should be supplemented by a PR system. This was the recommendation in the Constitutional Commission draft. However, the NCA draft had recommended a total PR system. In a future review of the Constitution, a compromise would have to be sought between these two positions.

## THE ELECTORAL SYSTEM AND CONFLICT MANAGEMENT

As observed in the next section, the Zimbabwean electoral system and process experienced extreme forms of strains and stresses in the 2000 and 2002 elections. Their weaknesses became clearer with exposure to both domestic and international observers. There were unresolved conflicts over electoral procedures between the main contending parties, namely the MDC and ZANU-PF. Yet there were no tried mechanisms for resolving those conflicts:

There are presently no conflict-resolution structures on election-related issues at the ESC, Election Directorate and Registrar of Elections Office. Election petitions and grievances are made to the High Court.

ESC 1996

The High Court could be petitioned by another candidate or registered voter in a particular constituency on matters such as the undue election of a Member of Parliament on grounds of corrupt practice, illegal practice, disqualification, irregularity or 'any other cause'. Prior to 2000, the landmark case of a successful election petition was that brought by the then Harare South Independent candidate, Margaret Dongo, against Vivian Mwashita, who had stood on a ZANU-PF ticket during the 1995 elections. The case provided an opportunity to scrutinise the administration of the election. The pertinent issues which came under the spotlight were the state of the voters' roll, the definition of who is an eligible voter, and the management of the polling and counting processes (ZCC 1995). The case highlighted the need for an accurate voters' roll, which was absent in this particular instance. The election was re-run and won by Margaret Dongo, leading to the disqualification of Vivian Mwashita. This was the first time in Zimbabwe's electoral history that a challenge through an election petition had been successful.

The case was a harbinger of a spate of election petitions following the 2000 parliamentary election. More than 30 petitions, mostly against ZANU-PF candidates, were filed in the High Court by the MDC. Most petitions cited vote buying, intimidation and violence and flouting of electoral regulations. The high number of petitions underscored the lack of respect for the 'electoral rules of the game' and the absence of conflict mediation mechanisms. This is the context in which one international observer mission enjoined that:

an internationally accepted Code of Conduct needs to be developed for political parties and party candidates ... and that mechanisms for conflict management and conflict resolution need to be developed to resolve electoral violence, such as forums to encourage political party dialogue.

ECF 2000

More recommendations on possible ways to manage conflict emanated from bodies such as the Commonwealth Observer Group after the 2000 election. The case for a code of conduct was reinforced and it was pointed out that such a code should make a clear distinction between the executive and the ruling party, especially in the use of government resources for political activities (Commonwealth Observer Group 2000). Furthermore, any code of conduct should apply to media coverage and advertising during the campaign and election period either under a specially created independent body or an independent electoral commission.

These recommendations for conflict management and resolution mechanisms were ignored when the 2002 presidential election was organised. Disputes over electoral irregularities increased and cast a dark shadow over the election outcome, as did the 54 politically related deaths. This led to a rejection of the outcome by such influential observer groups as the European Union and the Commonwealth Observer groups and the SADC Parliamentary Forum. In particular, in its norms

and standards for free and fair elections, the SADC Parliamentary Forum stressed that it was imperative to institutionalise conflict management, mediation and resolution structures. Reiterating that there was little consensus about the major national issues involved in the way forward in Zimbabwe, one NGO recommended the establishment of an electoral tribunal that would deal with election cases and appeals (ZESN 2002).

One possible approach to conflict management is that embodied in political party liaison committees, which, in South Africa, operate during election campaign periods at national, regional and sometimes local levels. These are the first levels at which political parties can bring up complaints about each other's actions. However, if these committees are to function effectively, they should not become the main forums for resolving disputes. This role should be played by conflict resolution committees (CMCs) whose members include specialist NGO representatives, police and army officers and election commission staff and which are established in each province about a month before polling (Pottie 2001). Their role is to mediate in complaints and disputes brought by contesting parties. These CMCs and independent electoral commissions can play an important and pro-active role in initiating and sustaining conflict resolution mechanisms so as to reduce instances of mistrust, intimidation and violence during and after election campaigns.

### CHALLENGE FOR GOVERNMENT AND STABILITY

Thus far this paper has raised issues pertaining to constitutional and electoral processes and challenges. The issues of governance and stability have also been broached, but in an implicit manner. This section of the paper addresses the implications for democratic governance and stability of the constitutional and electoral shortfalls. In such a task it is vital to outline briefly the contemporary context of governance in Zimbabwe, how it can be improved, and other necessary measures for reform and reconciliation.

Democratisation is a concept that relates to the process of creating and sustaining structures of democracy in a particular society. Democracy itself has been defined as a system or form of regime whose legitimacy derives from the principle of popular sovereignty, that is, ordinary citizens are equally endowed with the right to rule themselves. The basic attributes of democracy therefore include the rights to vote, to belong to a party of one's choice, to freedoms of expression, movement and association.

As observed above, the conduct of free and fair elections on a regular basis is an indispensable ingredient of a democratic system. Broadly speaking, there needs to be a wide consensus on the 'rules of the game' of political competition so as to ensure the legitimacy and credibility of elections. Furthermore, the rule of law is an important foundation of democracy. However, by its very nature, democratisation is always a 'work in progress'. No society can claim to be completely democratised. Countries can be at different stages of democratisation. History, economic

development and culture make an imprint on the pace and quality of the democratisation process in a particular country.

The key attributes of democratic governance, therefore, include the right of citizens to hold decision-makers accountable; the existence of inclusive and fair rules, institutions and practices; the institutionalisation of gender equality in public and private spheres of life and decision-making; and freedom from discrimination based on race, ethnicity, class, gender or any other attribute (UNDP 2002).

In Zimbabwe, the conditions for democratisation appeared to have been improving between 1996 and 1999 against the background of the ferment in civil society for reform, and a certain level of tolerance on the part of the state. However, the conditions for reform were not sustainable. Authoritarian repression became pronounced in the run-up to the 2000 elections and it has not abated since.

In particular, the orchestration of intimidation and political violence, especially by ZANU-PF from 2000 onwards, reflected the slide into authoritarianism. This was consolidated by legislation passed in 2002 just prior to the presidential election. The legislation was the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), the Citizenship of Zimbabwe Amendment Act and the General Laws Amendment Act 2002. Modelled on the Law and Order Maintenance Act (LOMA) of 1960, POSA criminalised criticism of the President and required any organiser of a meeting to give four days notice in writing to the police or regulating authority.

POSA was extensively used during the 2002 election campaign to prohibit public meetings and demonstrations. It substantially curtailed freedom of movement, speech, expression and association, which are guaranteed under the Constitution (ZESN 2002).

Under AIPPA, foreign journalists were barred from working in the country, a new regime of licensing journalists was introduced and the freedom of expression of the media was threatened and curtailed.

The Citizenship of Zimbabwe Amendment Act outlawed dual citizenship and was largely seen as targeting whites, who were seen as supporters of the opposition (ZESN 2002). Such prominent democrats as the late Sir Garfield Todd and his daughter, Judith Todd, were amongst those denied the right to vote in the 2002 election.

Finally, the General Laws Amendment Act made it difficult for NGOs to register to provide voter education (which in itself infringed Section 20 of the Constitution). Significantly for the electoral process, the Act made members of the Public Service the only persons qualified to be appointed election monitors. This meant that ordinary persons recruited and trained by civic organisations could not be appointed as monitors but only as observers (ZESN 2002).

In combination, all these laws have narrowed down whatever democratic space had existed prior to 2000. The legislation had the effect of creating conditions for a dictatorship. Hence the campaign of resistance from both domestic and international forces. For instance, the credibility of the 2002 election is still disputed by domestic

organisations such as ZESN and the MDC, and such international organisations as the SADC Parliamentary Forum, the EU and the Commonwealth. The election outcome itself is being contested by the MDC in Zimbabwe's High Court. The immediate challenge for democratic governance in the country is the creation of an 'enabling environment' that creates a climate of confidence in which reform can take place. We saw how constitutional reform remained stalled, and how the credibility of the electoral process had declined. That confidence cannot be created and nurtured while repressive legislation remains on the statute books. As the Commonwealth Observer Group enjoined:

The provisions of the General Laws Amendment Act, POSA and AIPPA which impede the freedoms of association, movement and speech should be repealed.

Commonwealth Observer Group 2002

In sum, the preconditions for democratic governance in Zimbabwe include the scrapping of repressive legislation on which the current government has relied to contain the situation. But this will not be enough. A framework of trust and confidence needs to be built between the main political parties, namely the MDC and ZANU-PF. An initial attempt at an inter-party dialogue between them floundered because of persistent mistrust and continued state repression. It has been observed that election irregularities have sometimes led to serious instability, as in Côte d'Ivoire, Lesotho and Madagascar, amongst other countries. Several factors account for this, including disagreement over election rules and regulations, relative advantages of incumbents over opposition parties, and the sense of individuals and political parties that they do not own the electoral process (ACCORD 2002). These factors mar democratic governance in the Zimbabwean context, although thus far restraint has ensured that there has not been widespread violence and instability.

Clearly, an important pillar of democratic governance will be a reformed electoral system. As observed above there is consensus about the need, indeed there is even an outline for such reforms, to make the system transparent, fair and independent of political pressure. The writer concurs with the sentiment that:

Had a more transparent electoral process been established under a truly impartial authority, the credibility of the Presidential election could have been considerably enhanced.

Commonwealth Observer Group 2002

To restore the credibility of the electoral process in Zimbabwe, a number of pre-requisites have been identified. These are:

- An Independent Electoral Commission which is adequately staffed and

equipped to be fully responsible for all aspects of electoral administration and management.

- Legislation which provides for the publication of a preliminary and subsequently final voters' roll in sufficient time prior to an election.
- All parties should subscribe to a code of conduct governing the activities of political parties and candidates during the campaign and election period.
- Regulations governing the use of public media by the parties and a code of conduct on media coverage and advertising during the campaign and election period should to be revised.
- There should be a review of the constituency delimitation exercise and the number of polling stations attached to constituencies.
- There should be a well-organised and on-going voter education programme conducted by election officials, parties and civil society.

In addition, in the context of constitutional reform, the issue of a mixed system of FPTP and PR ought to be reinvestigated. Although the elections of 2000 and 2002 suggest that a two-party system appears to be emerging, the electoral system could benefit from a mixed system that allows the representation of smaller parties and minority groups.

By the beginning of 2003, the political climate in Zimbabwe had changed, unfortunately not for the better. Against the background of a deepening economic crisis, repression of political opposition and civil society activists intensified. Three senior MDC leaders were arraigned before a court for a plot to 'eliminate' President Mugabe. On the margins, there appeared reports of a proposal for 'a government of national unity' that would be preceded by Mugabe's retirement from office. An arrangement needs to be worked out that will provide a conducive environment for a national dialogue and reconciliation. Such an arrangement will necessarily require broad constitutional reform acceptable on both sides of the political divide, and a new electoral system under which a re-run of the presidential election would be organised. It has also been recommended that an independent body be set up to investigate the political violence of the past few years as part of a process leading to reconciliation and rehabilitation.

## CONCLUSION

This paper has examined the electoral and constitutional systems and processes in Zimbabwe since independence, and the key challenges that the country faces in relation to democratic governance and stability. Zimbabwe finds itself at a crossroads in electoral and constitutional terms. There were half-hearted attempts at reform in the late 1990s but these were followed by a slide into authoritarianism that continues to block progress to democratic governance and both economic and social stability. The country continues to be in the regional and international spotlight largely



because of the concern that if reforms and political compromise remain elusive it could experience greater instability.

Zimbabwe's prospects for democratic governance and stability hinge on the introduction of both electoral and constitutional reforms based on a national consensus. Conflict management and resolution mechanisms will need to be built into the electoral and constitutional structures and processes if the country is not to become increasingly unstable.

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# LOCAL ELECTIONS IN THE SADC COUNTRIES

## *A Comparative Analysis of Local Electoral Institutions*

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### ABSTRACT

*With the recent wave of democratisation in Sub-Saharan Africa a new interest has emerged in elected local councils. The importance of elected local governments in promoting democracy is now emphasised by both national actors and the international community. It is also increasingly underlined by research, both from the field of development theory/politics and from comparative research on democratisation processes. These broader arguments are narrowed down by concentrating on local electoral rules. This contribution presents data for all Southern African countries on the types of elected bodies at sub-national level of government, the composition of local councils, the regularity and simultaneity of local and national elections, the electoral systems and the rules governing candidature at the local level. Electoral rules are just one set of institutions that matter in local politics, and there is no doubt that other variables (such as local administration, resource allocation or capacity-building) are equally important. But the assumption is that local electoral institutions are relevant for the democratisation of both local and national politics, and thus merit closer scrutiny. The comparative study of different countries offers additional insights into similarities or specific constraints and problems that countries face in organising local elections, as well as into the institutional solutions that they eventually opt for. The paper also explores some likely consequences and impacts of these (differing) rules on the respective political processes of these countries, and subsequently highlights several issues that may be of relevance to broader arguments about the viability and consolidation of democratic politics in the region, at both local and national level.*

INTRODUCTION<sup>1</sup>

Although local councils have existed in most African countries since colonial times, they have enjoyed a brief and fragile life as institutions of democratic representative government. African leaders – and political scientists – challenged their very existence, and councils were abolished, or, where they remained in existence, transformed soon after independence into bodies with very limited powers and autonomy. Local and regional councils were perceived as a political threat to national governments or as a barrier to the realisation of national development plans.<sup>2</sup> Many African central governments also intervened in the affairs of sub-national councils in response to allegations of corruption and inefficiency.

With the more recent wave of democratisation in Sub-Saharan Africa a new interest in elected local councils has emerged. Again, only when developments in the capital cities began to lose their relevance to the understanding of the politics of any particular country did social scientists begin to take an interest in sub-national problems and institutions. In recent years the importance of local governments in promoting democracy has been emphasised both by national actors and by the international community. It is also increasingly underlined by research, both from the field of development theory / politics and from comparative research on democratisation processes.

From the perspective of *development theory*, a democratic local political process is considered to be important for effective local governance (cf Wunsch and Olowu 1990; Mawhood 1993; Manor 1995; Rothchild 1996; Smith 1996; Olowu 1999). Substantial decentralisation efforts may be sustainable only if political mechanisms hold local officials accountable for their performance. The local political process provides an arena for political actors to explain and market their activities, to build support and raise additional resources (Wunsch 1998). When they fail in the eyes of the local community, the electoral process is the mechanism that replaces them. Within the literature on decentralisation one main difference between deconcentration and devolution (in the terminology first introduced by Cheema and Rondinelli 1984) is the political management of sub-national institutions by locally elected politicians instead of appointed administrators. Usually, a democratic local political process includes an active civil society, some general political

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1 This paper builds on empirical research made possible by a research grant from the German Research Association (DFG). The author visited South Africa, Zambia, Namibia, Malawi, and Mauritius. Previous versions of the paper were presented at a Workshop on Local Government held in Lilongwe, Malawi, in April 2002, and at the Annual Conference of the African Studies Association in Washington, in December 2002. My sincere thanks to all discussants and my colleagues at the Institute of Development Research and Development Policy in Bochum for helpful comments on these previous versions, to the Resource Centre of EISA for their help in the collection of additional data and to a reviewer of this Journal.

2 During the 1970s and 1980s various theoretical approaches similarly suggested a national framework for analysis in which sub-national councils would be viewed not by themselves but always in the context of their place within the larger and changing political systems or within the developmental setting of a specific region.

organisations, a legislative arena constituted in elections, and mechanisms to gather and spread information.

Comparative empirical research on democratisation processes has enormously expanded our knowledge of the role of democratic institutions in shaping political outcomes (cf Harris and Reilly 1998; Bunce 2000; Reynolds 2001). Much of this literature is based on the assumption that democratic governance and the conscious design of political institutions are key factors affecting the likelihood of democratic consolidation, political stability and sustainable settlement of violent conflicts.

In stark contrast to the euphoria over institutional engineering in Eastern and Central Europe and East Asia and the long-standing belief of Latin American elites that institutional reforms might indeed improve democratic performance and prospects of consolidation, the discourses on democracy in Africa tended to concentrate more on the quality of leadership and political elites (ie, actors) and on economic macro-structural conditions. Only recently did constitution makers and scholars start to think about reforms of the institutional arrangements put in place at independence or with democratisation (see Barkan 1996 and Reynolds 1999). Still, this body of literature focused exclusively on national institutions such as the presidency or the parliamentary electoral system (cf Nohlen, Krennerich and Thibaut 1999; Cowen and Laakso 2002).

Local politics and local democratisation have, by contrast, rarely been discussed in terms of specific institutional settings and designs. Decentralisation of political power and administrative competencies is certainly an established field of research, but analysis is concerned more often with administration than with politics, or, to put it differently, more interested in structures that can provide an effective 'output' (ie, delivering benefits to local populations) rather than a representative 'input' (guaranteeing effective political participation). The analysis of links between local and national politics is generally lacking in accounts both of democratisation and of decentralisation processes.<sup>3</sup>

The analysis of elected local and regional councils thus offers a focal point for the study of broader questions of political participation, representation and democratic consolidation (see also Atkinson 1997). In this paper these broader argument will be narrowed down in two ways: the concentration is on local electoral rules, and the geographical focus is on the countries of Southern Africa. Electoral rules are just one set of institutions that matter in local politics, and there is no doubt that other variables (such as local administration, resource allocation, capacity-building or local civil society) are equally important. But the assumption is that local electoral institutions matter for the democratisation of both local *and* national politics, and thus merit closer scrutiny. The comparative study of different

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3 One notable exception is Mamdani (1996), whose 'bifurcated' state captures the distinct trajectory of the urban 'citizen' state and the rural 'subject' state. Mamdani's interest is, however, in stressing the common legacy of African states. Consequently he downplays the institutional distinctions between different countries.

countries offers additional insights with regard to similarities or specific constraints and problems that countries face in organising local elections and the institutional solutions that they eventually opt for.

The next section presents data for all Southern African countries<sup>4</sup> on a) the types of elected bodies at sub-national level of government; b) the composition of local councils; c) the regularity and simultaneity of local and national elections; d) the electoral systems; and e) the rules governing candidature at the local level.<sup>5</sup> The collection of systematic and comprehensive up-to-date information on local electoral rules proved to be very difficult. Data presented are based on Sharma (1999) for Botswana; Wallis (1999) for Lesotho; Kaunda (1999) for Malawi; Weimer and Fandrych (1999) and Fandrych (2001) for Mozambique; Dukhira (1999) for Mauritius; Toetemeyer (1999) and Keulder (2002) for Namibia; Atkinson (1998); and de Visser et al (2000) for South Africa; Mukandala (1995); Mushi (1995) and Liviga and Mfunda (1999) for Tanzania; Maipose (1999) for Zambia; and Makumbe (1999) for Zimbabwe. These secondary sources were updated and cross checked with data provided by experts in SADC countries; new electoral and local government laws; the EISA Resource Centre in Johannesburg and the Internet. In five countries (South Africa, Namibia, Malawi, Mauritius and Zambia) interviews with councillors, mayors, administrators, the relevant ministries, and electoral commissions were used to further verify information. Factual errors and recent modifications of rules can however not be excluded.

In the remaining part of the paper some likely consequences and impacts of these (differing) rules on the political processes of these countries will be explored and several issues highlighted that might be of relevance for broader arguments about the viability and consolidation of democratic politics in the region at both local and national level.

## TYPES AND TIERS OF SUB-NATIONAL GOVERNMENT

Southern African states vary widely in their institutional arrangements at the sub-national level. Local and regional authorities differ substantially in population and area, resources and the extent of discretionary authority. They also differ – and this is the main focus of this paper – in the role given to elected institutions in sub-national government.

4. Southern Africa is defined here according to membership of the Southern Africa Development Community (SADC). Not included are Angola, Democratic Republic of Congo, Seychelles and Swaziland, where no local elections are held.

5. Additional electoral rules concerning the organisational aspects of elections at the local level and provisions for suffrage are not included. Suffrage is normally not an issue in debates about local elections. In many European countries local elections are used to experiment with a more liberal regulation of suffrage, ie, offering migrants who do not hold citizenship the right to vote, or extending the vote to people who have not reached the age of 18, but 16. For aspects of electoral organisation see Pottie (2001).



In the SADC countries the role of elected councils varies in two ways: the number of elected sub-national tiers of government and the uniformity of electoral rules across the rural-urban divide.

### *Number of elected sub-national tiers*

Most Southern African states have a single tier of elected sub-national authorities. The provincial and regional level may be important in terms of development planning and administrative deconcentration but it lacks separate representative institutions.<sup>6</sup> Only two Southern African states, Namibia and South Africa, have popular elections for representatives at both the local *and* the regional level: In South Africa, municipalities with elected councils exist side by side with the provinces, which have a quasi-federal status with their own legislatures and executives. Namibia created in the wake of independence new multi-ethnic regions bridging the former homelands and former exclusively white-controlled commercial areas. The Namibian population thus votes both for local councils (municipalities, towns and villages) and regional councils.

### *Territorial scope of elections*

The socio-economic and demographic disparities among urban areas and scattered rural settlements lead to differences in service needs as well as in availability of resources. Cities and urban settlements have thus historically been provided with special arrangements for their governance. Thus all SADC countries (with the exception of South Africa) have two or more classes of local authority, with urban authorities granted more power and responsibility than rural ones. Botswana, Lesotho, Malawi, Mauritius, Mozambique, Tanzania, Zambia and Zimbabwe follow this model, with the rural authorities called *districts*, and the urban ones *cities* and *towns* (and in some cases *townships*). There are important differences in the electoral constitution of these authorities. In Botswana, Malawi, Tanzania, Zambia and Zimbabwe, district (rural) and urban councils are both directly elected. Citizens living under the jurisdiction of cities and towns elect their urban councillors; people living in the rural areas elect their district councillors. The same electoral rules apply to both types of authorities and – with the exception of Zimbabwe – all district and urban councils (covering the entire national territory) are elected on the same day and in terms of the same electoral provisions.<sup>7</sup> In Mozambique and Lesotho only urban areas have elected councils, and so far elections have been held only in selected municipalities (Maseru in Lesotho and 33 of 544 municipalities in Mozambique). In both countries the population of rural settlements that do not meet the legal

<sup>6</sup> In some SADC states additional village or ward committees may be elected.

<sup>7</sup> In Mauritius the rural population elects village councils that, in turn, elect indirectly the district councils and chairmen. This system is currently under review and will probably be modified in line with local government systems in the other countries, ie, bigger districts with councillors directly elected by the population.

requirements (with regard to infrastructure, economic activity, population density, and so on) is thus deprived of any democratic representation at sub-national level.

Table 1 summarises the differences. It accounts for the distinction along the vertical axis (whether there are elected councils only at the local level or at both local and regional levels) and for the distinction along the horizontal axis (whether within the same tier there is a uniform approach to elected local government or whether elections are held only in urban areas).

We see that South Africa and Namibia have different elected institutions at the sub-national level. South Africa, since the transformation of local government in the late 1990s, has applied a relatively uniform classification of municipalities.<sup>8</sup> Apart from the seven metropolitan cities and some sparsely populated District Management Areas (DMAs) there is just one type of municipality governed by a single legal document.<sup>9</sup> Namibia, on the other hand, holds local elections only in municipalities, towns and villages. In Namibian terminology municipalities are urban areas that existed before independence in 1989 while towns were created in the former communal areas after independence.<sup>10</sup> The rural population is

**Table 1**  
**Sub-National Government Systems and Elected Councils<sup>a</sup>**

		Geographical Scope (Horizontal Dimension)	
		Uniform Approach <sup>b</sup>	Urban Approach <sup>b</sup>
<b>Intensity</b> (Vertical Dimension)	2 sub-national tiers elected	South Africa	Namibia
	1 sub-national tier elected	Botswana, Malawi, Mauritius, Tanzania, Zambia, Zimbabwe	Lesotho, Mozambique

a Local councils are not formally elected in Angola, DR Congo and Swaziland.

b Uniform Approach means that the national territory is divided in local governments all of which have elected councils governed by the same legal instrument. Urban Approach means that elected local governments exist only in urban areas while rural areas may have no local government at all or administrative sub-units without elected representatives.

8 For a summary of the process of local government transformation in South Africa see Atkinson (1998) and Götz (1996).

9 In local elections all citizens living in the metropolitan cities and municipalities elect their local councillors while the populations of DMAs vote their representatives to district councils which are then filled up by representatives of the municipalities within the particular district.

represented exclusively at the regional level (by the regional councillor for their constituency). These regional councils, in contrast to the district councils of the other SADC countries, are, however, not the exclusive representative institution of rural populations but a separate tier of government that represents both the rural and urban populations living in that region.

### ELECTED AND NON-ELECTED MEMBERS AND INSTITUTIONS

This section deals with two different aspects: which offices are filled in local elections and whether there are any non-elected members in otherwise elected institutions?

#### *Direct elections of mayors*

In most SADC countries the traditional British form of local government prevails: local elections are held in order to constitute a local council or representative organ, which, in its first session (or at regular intervals), elects a mayor or chairman from among the councillors. The mayor or chairman is the political head of local government while the direction of the local administration is left to a professional manager (called a town clerk or chief executive officer (CEO)). Political power and control reside with the council not the mayor or chairman.<sup>11</sup>

The direct election of mayors is therefore rare in Southern Africa, but was introduced in Mozambique (from 1998) and Zimbabwe (from 1995). Direct election of mayors is limited to the bigger cities (municipalities and cities in the Zimbabwean terminology, urban municipalities in Mozambique). In all other states there is an 'integrated' system of indirect election of mayors from among councillors. The direct election of mayors was a substantial issue, especially in the South African debate, but the proponents of indirect election (and political party control) prevailed and even in metropolitan cities such as Johannesburg or Cape Town the mayor is elected from among the councillors.

The importance of direct elections is closely linked to the type of electoral system applied, and to the effective power of the mayor, which – as outlined above – may vary considerably. In Malawi, both the direct election of the mayor by the population (and the merging of administrative and political functions within a unified executive) and the appointment of mayors by central government from among councillors was discussed, but was eventually discarded in favour of the present 'indirect election' model.<sup>12</sup>

10 The 'old towns' (municipalities) thus have established traditions of self-government and more administrative staff. In the 15 years since independence some of the new towns (for instance Rundu or Oshakati) have grown much bigger (in terms of population and financial resources) than most of the municipalities, but the Namibian government hasn't regrouped the urban areas yet (cf Simon 1996; Toetemeyer 1999; Piermay and Sohn 1999).

11 For an introduction to different local government systems see Olowu (1988) and Humes (1991). A brief overview of the different types of local government in Germany is given by Wolff (1995).

### *Non-elected councillors*

Most countries in the region have some elected councils at the local level. Indeed, any major reform of local politics that neglects popularly elected councils is hardly conceivable. But in a number of states, for instance Botswana or Zimbabwe, the central government may still nominate and appoint additional members to local councils, or specific social interests are represented in councils *ex officio*<sup>13</sup>. This practice may often be aimed at incorporating constituency MPs (elected to national parliament) or traditional ethnic community leaders into municipal councils, but sometimes party-political interests are dominant. In Botswana, the National Assembly empowered the President to appoint an unspecified number of additional councillors, thereby enabling the ruling Botswana Democratic Party to have majority control of any district councils captured by regionally-based opposition groups. Other considerations prevail in Tanzania where the national Parliament, in the light of the poor electoral success of women, introduced a provision in the law requiring the appointment of female candidates whose total number has to exceed 25 per cent of the total seats to be distributed in that local council. These women's seats are given to political parties in proportion to their share of seats in the respective local council.

**Table 2**  
**Non-Elected Members of Local Councils**

	Traditional Leaders	National MPs from Local Constituency	Women or Youth or Special Interest Groups
Botswana	x		
Lesotho	x		
Malawi	x	x	x
Mauritius	No additional members in local councils		
Mozambique	No additional members in local councils		
Namibia	No additional members in local councils		
South Africa	x <sup>a</sup>		
Tanzania		x	x
Zambia		x	

<sup>a</sup> Only in provinces that include former 'homelands'

12 I am indebted to my colleague Augustine Magolowondo for providing me with this information.

13 In most cases special interest groups and *ex officio* members have no voting rights.

## SIMULTANEITY AND REGULARITY OF LOCAL ELECTIONS

Most African countries organise separate elections to determine the composition of sub-national councils. Among the SADC countries only Botswana and Tanzania hold 'tripartite' elections, that is, the voters elect the President, the National Assembly and local councils on the same day, although there are separate ballot papers for national and local office holders. Other countries planned to do so, but in the case of Malawi logistical and administrative obstacles hindered the government from pushing through the idea both in 1999 (when national elections were held, but local elections were postponed to 2000) and in 2004, when it was decided not to go for tripartite elections but to postpone the local elections again to 2005. In Zambia local councils and the national Parliament have different terms of office (three and five years, respectively), but whenever the ends of the terms coincide, elections are held simultaneously. This happened in December 2001. All other SADC countries that hold sub-national elections have separate electoral processes. This is the case in Mozambique and South Africa. Namibia holds separate elections for regional and local councillors which, in 1998-1999, meant that the electoral commission had to organise three different ballots within less than two years.

Zimbabwe and Mauritius hold separate elections for the different types of local councils that exist in the country, that is, village/district councils and urban councils. As a rule, local elections are held throughout the country on a single day, and any deviation from this rule has to be justified by exceptional circumstances.

We also see from Table 3 that the electoral terms of local councils are much less regular than those of national parliaments and offices. There is hardly any African state where, for various reasons (eg, lack of legal regulations, lack of resources), local elections have not been postponed at some time. Reasons may be found in the lack of political interest of the ruling party, or lack of financial means or constitutional guarantees.

Most recently local elections have been postponed in Malawi (to 2005), Mauritius (to 2006), and Namibia (from February 2003 to February 2004 and then again to May 2004 – they were held on 18 May). The extension of terms often presents major challenges to the management of local development programmes, the budgeting processes, the availability and commitment of local councillors and the overall legitimacy of local democracy.

## ELECTORAL SYSTEMS AT THE LOCAL LEVEL

There is a huge variety of electoral systems at the local level and these are often more complex than those at the national level because local authorities are usually more heterogeneous in terms of number of inhabitants, size, structures, responsibilities, and functions.

International experience suggests that greater voter participation in the selection of political personnel is often more important at local than at national level, mainly

for two reasons. The first is that the reduced territory in which elections are held implies that the voter is more familiar with the political problems of, and possible solutions to, public affairs. Secondly, the characteristics of the candidate may be better known to voters and therefore influence their electoral behaviour more than they would in national elections.

**Table 3**  
**Simultaneity and Regularity of Local and Regional Elections**

	Angola	Botswana	Lesotho	Malawi	Mauritius	Mozambique
1990						
1991					Pa 15/9 L 27/10 <sup>a</sup>	
1992	Pr 29-30/9 Pa 29-30/9			Pa 26/6	L 30/8 <sup>b</sup>	
1993			Pa 27/3			
1994		Pa 15/10 L 15/10		Pr 17/5 Pa 17/5		Pr 27-29/10 Pr 27-29/10
1995			L 10-11/8		Pa 20/11	
1996					L 27/10 <sup>a</sup>	
1997					L 31/8 <sup>b</sup>	
1998			Pa 23/5			L 30/06
1999		Pa 22/10 L 22/10		Pr 15/6 Pr 15/6		Pr 3-4/12 Pa 3-4/12
2000				L 21/11	Pa 11/9	
2001					L 7/10 <sup>a</sup>	
2002			Pa 25/5			
2003						L 19/11
Next L	Unknown	October 2004	Unknown	Nov 2005	2006	2008

Pr = Presidential Elections

Pa = Parliamentary Elections

L = Local Elections

<sup>a</sup> Elections for Urban Councils

<sup>b</sup> Elections for Village Councils (and District Councils)

	Namibia	South Africa	Swaziland	Tanzania	Zambia	Zimbabwe
1990				Pr 28/10 Pa 28/10		Pa 28-30/3 Pr 28-30/3
1991					Pr 31/10 Pa 31/10	L 23-24/8 <sup>a</sup>
1992	L/R 30/11-2/12				L 30/11	
1993			Pa 12/10			L 26-28/9 <sup>b</sup>



	Namibia	South Africa	Swaziland	Tanzania	Zambia	Zimbabwe
1994	Pa 7-8/12 Pr 7-8/12	Pa 26-29/4 <b>R 26-29/4</b>		<b>L 30/10</b>		
1995		<b>L 1-2/11</b>		Pr 29/10 Pa 29/10		Pa 8-9/4 <b>L 28-29/10<sup>a</sup></b>
1996		<b>L 6/5+29/5</b>			Pr 18/11 Pa 18/11	Pr 16-17/3
1997						
1998	<b>L 16/02</b> <b>R 30/11</b>		Pa 14-28/10		<b>L 30/12</b>	<b>L 26-28/9<sup>b</sup></b>
1999	Pa 30/11 Pr 30/11	Pa 2/6 <b>R 2/6</b>				
2000		<b>L 2/12</b>		Pr 29/10 Pa 29/10 <b>L 29/10</b>		
2001					Pr 29/12 Pa 29/12 <b>L 29/12</b>	Pa 17/4
2002						Pr 9-10/3 <b>L 28-29/9<sup>b</sup></b>
2003			Pa 20-21/9			<b>L 30-31/8<sup>a</sup></b>
Next L	May 2004	Nov 2005	Unknown	Nov 2005	Dec 2004	Unknown

Pr = Presidential Elections

Pa = Parliamentary Elections

R = Regional Council Elections/Provincial Legislature

L = Local Elections

<sup>a</sup> Elections for Urban Councils. Elections for the City Council of Harare had been held on 9-10 March 2002

<sup>b</sup> Elections for Rural District Councils

In many Southern Africa countries the need to operate transparent and simple electoral systems at the local level has led to the introduction of the plurality (or first-past-the-post) system for wards, where the candidate who gets the most votes is elected. This system is normally applied within single-member constituencies.<sup>14</sup> In most cases the plurality system is also used for elections to the national parliament. It is thus no surprise that in Mauritius the plurality system in three-member constituencies used at the national level is also applied at the local level,

<sup>14</sup> 'Traditional' forms of voting (such as line voting, where voters gather in a public place and queue behind their candidate) are still used in the traditional Tinkhundla system of Swaziland.

**Table 4**  
**Features of the Local Government Electoral System in Southern Africa<sup>a</sup>**

	Term of Office	Electoral System for Councillors	Same Electoral System Applied in National Elections?
Botswana	5	Plurality in SMC	Yes
Lesotho	5	Plurality in SMC	No (MMP)
Malawi	5	Plurality in SMC	Yes
Mauritius	5	Plurality in MMC	Yes
Mozambique	5	PR	Yes
Namibia	5	PR/Plurality in SMC <sup>b</sup>	Yes/No (PR) <sup>b</sup>
South Africa	5	MMP <sup>c</sup>	No (PR)
Tanzania	5	Plurality in SMC	Yes
Zambia	3	Plurality in SMC	Yes
Zimbabwe	4	Plurality in SMC	Yes

MMC = Multi-Member Constituency

MMP = Mixed Member Proportional System

PR = Proportional Representation

SMC = Single-Member Constituency

- a In Angola, DR Congo, and Swaziland no local elections have been held thus far
- b For local elections a PR system is applied (Hare quota with largest remainder), for the regional elections a plurality system is applied in single-member constituencies. Thus Namibia has the same electoral system for national Parliament and local councils, but a different system for regional council elections.
- c Mixed Member Proportional System. Voters have two votes, one for ward candidates (50% of seats) and one for party lists (50% of seats). The total seat distribution is according to proportional representation. The constituency winners are then subtracted from the seat total of each party. Remaining seats are filled from the party lists. In local councils with fewer than seven councillors no ward candidates are elected, and voters have a single vote for a party list (PR). Within the PR calculation, Hare quota with largest remainder is applied.

although in constituencies of variable size and without the unique best-loser system that is employed for the national elections.<sup>15</sup> Mozambique uses the same variant of the PR system at both the national and the local level. This system provides for party lists in constituencies of different sizes, with voters voting for lists rather than for candidates. Seats are distributed to political parties according to the share of votes the party receives in a given constituency.<sup>16</sup>

Some countries have opted, at least temporarily, for a mix of electoral systems. In Namibia in the period following independence different electoral formulas were applied for regional and local elections. While the government for many years advocated the general introduction of majoritarian electoral systems at sub-national level, the status quo has been maintained at least for the elections to come: the plurality system for the regional councils; proportional representation for both the national elections to Parliament and for the local council elections. It has to be stressed, however, that the two PR systems are very different. At national level PR is applied, creating one national constituency with 72 MPs (and without any thresholds), whereas almost all Namibian local councils consist of seven councillors, thus strongly reducing the proportional effect of the PR.<sup>17</sup>

The 'majority-prime' system that is applied in some Francophone African countries – the party that wins most of the votes is automatically granted a majority of council seats and the remaining seats are distributed among other parties on the basis of proportional representation – is unknown in Southern Africa.

In post-apartheid South Africa a combined system of plurality in former 'township' areas and proportional representation in former white areas was initially applied in the 1995 local elections. The transformation of local government before the second local elections in 2000 also brought with it a change in the electoral

15 The best-loser system is a device to guarantee the representation of ethnic minorities in Parliament. Should the percentage of seats won by the different ethnic groups differ from the overall population share of this ethnic group the Electoral Commission will attribute up to 4 additional seats to those representatives of underrepresented minorities who won the highest percentage of votes in all constituencies without having been elected to Parliament (therefore: best losers). For more details see Mathur (1997). The Mauritian Parliament is currently considering a major reform of the electoral system. There is general consensus that the recommendations of an international expert commission (headed by South African Constitutional Court Judge Albie Sachs) to complement the current plurality system and additional best-loser seats (62+8 seats) with 30 seats elected from national party lists (with a threshold of 10%) should be accepted. Details are still being discussed in Parliament, and the local elections (originally scheduled for 2004) might have to be postponed to 2006 because of uncertainty about the electoral rules to be applied (ie, the extension of the new system also to the local level).

16 There are many different types of PR system: sub-types are distinguished according to the size of the constituency, the specific mathematical formula applied (divisor or quota systems), and the existence of artificial thresholds that exclude parties from seat allocation if they have not reached a specified percentage of the overall vote in the constituency. For a good introduction to the PR system see Nohlen (1996) and Farrell (2001). In Mozambique the d'Hondt electoral formula is applied to both the national and local elections.

17 Because constituencies are so small the seat share of parties might not reflect their share of votes, especially in the case of minority parties. For a more detailed discussion of the distorting effects of PR in small constituencies, with examples from Namibia, see the excellent contribution of Keulder (2002).

system. A so-called Mixed Member Proportional System was introduced whereby 50 per cent of the seats are elected in single-member constituencies by the plurality system and the remaining 50 per cent are filled from party-lists.<sup>18</sup> The overall logic of the system is proportional representation, as the party seats compensate for disproportionalities caused by the plurality system (see note c under Table 4 and the detailed analysis of the South African local electoral system given by de Visser, Steytler and Mettler 2000).<sup>19</sup> The seat calculation starts from the total share of votes received by political parties and their candidates in both the plurality and the PR elections, and is thus different from the additional party lists applied in some African countries such as Senegal and Tanzania.<sup>20</sup>

### REPRESENTATION AT THE LOCAL LEVEL

Who may run in local elections? Candidature provisions are often of decisive importance as they define who is admitted to participate in the local political competition. Generally some incompatibility rules apply, for example, rules preventing a person from holding several public offices simultaneously. Here it is of particular interest whether national *and* local offices must be compatible, and if there are any obligations with regard to residence in the municipality or district. Of major importance in some countries are formal educational requirements that are necessary to allow councillors to participate effectively in the council's decision-making. At the same time they may, especially at the local level, exclude the participation of potential popular candidates.

Elected local councils normally enter a political space which is already occupied by other established and relatively more powerful structures such as local party organisations, members of parliament for that constituency in the national legislature, field agencies of various ministries, traditional leaders, or local development committees in which party members and field officers of various ministries predominate over the representatives, if there are any, from district and urban councils. The roles in local political competition of two types of political actors – political parties and traditional leaders – differ considerably between SADC states and need to be analysed in more detail. In nearly all countries independent candidates may run in local elections, and/or political parties may present lists of candidates. In Namibia, political associations that do not fulfil the criteria required in order to be recognised as political parties may nevertheless run in local elections.

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18 Councils with fewer than seven councillors use a pure PR system.

19 The pure PR system currently applied to the national parliamentary elections in South Africa is deficient with regard to the accountability of parliamentarians and has therefore come under criticism (see the Report of the Van Zyl Slabbert Commission [Electoral Task Team] on the website of South Africa's Independent Electoral Commission).

20 In the additional party list system a defined quota of seats is distributed according to PR to party lists in one national constituency, while the majority of seats is elected from single-member (or multi-member) constituencies according to a plurality system.

In most of the countries considered here elected local government structures are entrusted with the control and/or management of resources, including land, and the provision of basic services to the communities. At the same time, nearly all these countries have traditional institutions operating at the local level as well. Both traditional and elected authorities have an interest in developing the local community. However, if their functions and duties are not harmonised, the conflicts between and overlapping of their activities can be extremely detrimental to the local community.

**Table 5**  
**Candidature Provisions for Local Councils**

	Role of Political Parties	Formal Role of Traditional Leaders
Botswana	Independent candidates allowed	Reserved positions, quota defined by the ministry, their number should not exceed those of elected councillors
Lesotho	Independent candidates allowed	Quota with separate election for reserved seats
Malawi	Independent candidates allowed	All chiefs hold <i>ex officio</i> seats in local councils, but without voting powers
Mauritius	Independent candidates allowed. At village council elections no formal party affiliation	No traditional leaders
Mozambique	Independent candidates allowed	None <sup>a</sup>
Namibia	Only political parties and local political associations	Allowed as candidates in regional elections, but not in local elections
South Africa	Independent candidates allowed	Quota of up to 10% of elected members
Tanzania	Independent candidates allowed	None
Zambia	Independent candidates allowed	None
Zimbabwe	Independent candidates allowed	Reserved positions, number not fixed; alternatively may abdicate and run as ordinary candidates

<sup>a</sup> Local elections are only held for urban councils; the institutional arrangements at the local level thus keep rural populations in the hands of central state agents – and of traditional leaders.

SADC countries have adopted different approaches (cf Hlatshwayo 1995).<sup>21</sup> There are either laws in place or strong sentiments against allowing traditional leaders to combine traditional and competitive political leadership roles. Such prohibitions were generally meant to prevent traditional leaders from abusing their positions to gain unfair political advantage.

Because traditional leaders are, by definition, linked to particular ethnic groupings, political cleavages along ethnic lines are likely to occur if they are given the freedom to engage in party politics. But that has not resulted in their exclusion from politics altogether. They can be elected by their peers to reserved positions or may be nominated to these positions, in countries where such provisions are in place (Botswana, Lesotho, Zimbabwe<sup>22</sup>, South Africa). Alternatively, they can abdicate their traditional leadership and compete as ordinary citizens (Tanzania, Zambia). In Namibia the Traditional Authorities Act explicitly states that traditional leaders are prevented from allowing their political opinions or allegiances to influence members of their traditional communities.

### *Effects of local election rules*

What is the benefit of studying these institutions in detail? Institutionalism assumes that such rules modify the political behaviour of actors and that one set of rules, by creating distinct institutional arrangements, sets specific incentives that differ from those of another set of rules. It is beyond the scope of this paper to analyse systematically the impact of the electoral rules on all Southern African countries. The impact of some recently modified institutions (especially electoral systems, but also the overall local government dispensation in South Africa) might also become more visible only in the future, when the specific incentives of new rules will have a more enduring impact on elite and voter behaviour.

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21 Regulated dualism occurs where traditional structures and elected councils exist, by law, side by side and are equal to and independent of each other, i.e., they operate parallel to each other (eg, Botswana with its three local government structures, namely tribal administration, land boards and district councils). Within non-regulated dualism neither the activities of traditional nor those of elected structures are regulated, or only the activities of one institution (usually the elected structures) is governed by law and the activities of the other institution are not, the law being silent on the matter. (In Zambia, although both the local government and chiefs' affairs portfolios fall under the same government ministry there is no relationship between chiefs and local government under current law. The immediate effect of this situation is constant overlap of leadership responsibilities between elected and traditional leaders in relation to local communities). Within the subordination approach either the traditional authorities (usually) or elected local authority councils or organs (rarely) are made subordinate and answerable to the other institution. One example is Namibia where, according to the Traditional Authorities Act of 1995, in cases of conflict between the traditional authority and a local authority council the powers of local authority prevail.

22 In 1995 the Local Government Minister in Zimbabwe appointed more than half the total number of chiefs in rural district councils. They also had the option to stand as candidates in the regular elections together with ordinary citizens.



The main purpose of this paper is to collect and making available comprehensive data on local electoral rules in the SADC countries that may serve as a basis for other researchers to study specific aspects and impacts on selected countries in more detail. In the remaining part of the paper these likely impacts are briefly presented as is the extent of the importance of local electoral institutions in specific country settings. The following are thus tentative conclusions that need further empirical investigation. The section looks at the impact on both local and national politics.

### LOCAL ELECTIONS AND LOCAL DEMOCRATISATION

What is the impact of local elections on political change at the local level? In countries that have deeply entrenched traditions of non-democratic rule, the mere fact of holding elections will not change the political culture within a short time. Elected councils will certainly have difficulty assuring their role in the presence of other powerful local actors who have no interest in social or political change. In some countries local elections will serve as powerful mechanisms for the adjustment and revitalisation of patronage and rent-seeking (Bierschenk 2003). The introduction of formal political participation in contexts of scarce resources and capacities will, in some cases, even strengthen non-elected bodies or lead to the fully-fledged re-centralisation of political decision-making at the national level. In some South African provinces the financial and management breakdown of municipalities has meant that provincial governments have successively – albeit temporarily – reassumed control over a number of local councils (cf Tapscott 2001).

But the institutionalisation of local elections might also represent a first step towards strengthening the principle of accountability in local government, the democratic constraints on political rule and the consolidation of local political communities. It seems that some of these processes are well under way in the countries of Southern Africa, and the debate about the relationship of traditional rulers and elected councils is just one example. The introduction of local elections is a major challenge to traditional rule, and even where chiefs have succeeded in securing their participation in councils the role of their institution will not be the same as it was before (cf Van Kessel and Oomen 1997; Hofmeister and Scholz 1997; Munro 2001). There are many signs from countries as different as Malawi and South Africa that chiefs are becoming politicised and will eventually lose some of the legitimacy that is inherent in their role.

The role of political parties in the African context will become much clearer if local democratic politics is maintained. National parties still dominate local decision-making processes – and decisions about the candidature of councillors and mayors are often taken in party headquarters or prime ministers' offices.

The indirect election of mayors in most countries may reflect their weak competencies, but it also reflects the interest of (national) political parties in monitoring the selection of the top management of urban areas. At the same time

there is a high number of independent candidates and an emerging role for locally driven political groups such as citizens' and ratepayers' associations that win seats in local councils (especially in South Africa, but also in Namibia and in Zimbabwe). The survival of these associations may prove that local civil society is better able to influence the course of events in democratised local politics than it has in national politics, where its political visibility in many countries has been sharply reduced in recent years. Plurality (ward) systems should generally make life easier for independent local groups, as it might be easier to get a popular candidate elected in a single member constituency than to assure representation in a PR election. In fact these groups are actually most successful in countries where PR systems are applied, largely because of the winner-takes-all character of plurality systems. Plurality systems in local elections may also lead to higher numbers of uncontested seats, which should be seen as inherently negative for the institutionalisation of democratic local politics.

While there is little doubt that the absence of elected local institutions makes devolution and democratic local governance illusory, it is much harder to prove empirically that the introduction of democratic local elections makes for better local governance. Even where democratic elections are held regularly (as in Mauritius) local councils may lack the competencies and resources to make a difference to the lives of their local populations. Or elected local councils may have the competencies, but lack the resources to actually implement policies in the area of their jurisdiction (Namibia). Such settings or contexts seriously undermine the legitimacy of elected institutions and hinder the emergence of effective local governance.

### LOCAL ELECTIONS AND NATIONAL DEMOCRATISATION

In the national democratisation process elections at the local level were rarely considered a priority and new local administrations were established without the consent of the population. Administrative decisions and legal rules were often enacted after considerable time, sometimes only after the second regular national elections held under the new constitution (as in Zambia or Malawi), or have still not been enacted (as in Lesotho). A slightly different case is Tanzania where the introduction of multiparty politics was tested in local elections in 1994 before being applied in the national elections of 1995.<sup>23</sup>

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23 Other priorities dictated the course of events in countries such as Uganda where populist regimes came to power through civil war or military coups. During the guerrilla war the National Resistance Movement had started to build up local administrations in the territories under their control and even held elections. Following the military victory they tried to establish this model (of holding regional and local elections) in the whole country as they were not sure they would be able to win in competitive national elections. The regular holding of local and regional elections thus served to build up new political movements that are able to compete with established parties. Revolutionary regimes in the SADC region, for instance those in Mozambique and Angola, did not follow this 'model'. Rwanda, however, did – national elections were introduced in 2003 after local and regional elections had already been held.

**Table 6**  
**Some Effects of Local Electoral Institutions**

Institutional elements	Intended effect	Real side-effects (tentative) <sup>a</sup>
Additional level of regional councils	Better coordination of development planning; higher degree of political inclusion and legitimacy	Political control of regions by opposition parties (NA)
Nation-wide approach	Strengthening of rural regions (psychological and material)	Breakdown of local government owing to lack of resources and capacities (SA)
Direct election of mayor	Accountability; political leadership	Institutional deadlock (ZW)
Non-elected councillors	Strong presence of traditional chiefs; better links with national MPs	Client relationship of local councillors to MPs (MW)
Simultaneity of local and national elections	No additional costs for local elections; competition over national issues	Political control of local and district councils by opposition (BO)
Irregularity of local elections	Low relevance of local politics	Low turn-out (MW; MU)
PR systems	Strengthening of parties and minorities	Boycott by political parties (MZ)
Plurality systems (in wards)	Weakness of (smaller) political parties; accountability	High percentage of uncontested elections (ZM)
Formal inclusion of traditional leaders	Consensual decision-making	Politicisation of traditional leaders (SA)

<sup>a</sup> BO = Botswana; MU = Mauritius; MW = Malawi; MZ = Mozambique; NA = Namibia; SA = South Africa; ZM = Zimbabwe.

It should, however, not be concluded that local elections are of little relevance. The non-holding or irregular holding of such elections can be explained by lack of resources and interest, but also by the political fall-out they might cause at the national (and local) level (see Weimer 1999 on Mozambique).

Local elections that are held separately from the national polls (as is the case in most SADC countries) might present veritable challenges to the government with regard to national politics. They may directly indicate the popularity of the government, especially when the total population votes in the local elections (the

uniform approach in Table 1) and at the same time party affiliation is indicated on ballot papers (as in Namibia or South Africa). The 'test'-nature of local elections is one major reason why they are often held one year after the national elections (Malawi, Mauritius, South Africa, Zimbabwe). The government may by then have consolidated its grip on the administration, and frustration over unfulfilled promises may still be relatively weak.

Elected local institutions may represent training grounds both for young politicians and for voters. In some countries in the region membership of councils and mayorship are decisive passages in political careers. This impact may be limited if different legal and educational requirements apply at local and national level (as is the case in Malawi). Voters may learn in local elections that their influence on local decision-making is much more immediate and that their vote matters. They may thus gain more trust in electoral processes in general.

Local elections might also be of importance in allowing the national opposition to control municipalities and regional councils (vertical power-sharing). This may enable opposition parties to gain access to resources, to prepare their personnel for assuming high public office, and, of course, to better challenge the government because they have shown a certain degree of legitimacy and support at the local or regional level (cf Botswana, Mauritius, Namibia, South Africa). The importance of local council domination may, of course, vary between different local councils. The local politics of the capital city is of crucial importance to the national government, especially where decentralisation has given municipal councils responsibility for the allocation of land and the distribution of water and electricity. The successful management of Cape Town by the national opposition Democratic Alliance (DA), for instance, hurt the ruling African National Congress much more than the DA's presence in the national Parliament. On the other hand, any government is probably well advised to 'grant' the opposition such minor successes and thereby integrate it (and probably also control it) into the political process without risking any loss of political dominance. In this regard, the lack of resources at the local level, underlined by donors and activists, may be the intentional outcome of incumbent central government strategies.<sup>24</sup>

## CONCLUSION

There is little doubt that the dynamics of national and local politics vary with factors that have less to do with electoral institutions than with the actual responsibilities of sub-national units of government (which may raise the stakes of competition) and with both the size and urban-rural setting of the country concerned. In small countries like Mauritius local government is strongly intertwined with national

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24 It might be added that even where local councils have access to their own financial resources budgets will still be approved by national government.

politics, while the rural and peripheral regions of Namibia or Mozambique are quite far away from the capital city and the political strategies of the main national actors.

Formal institutions are also complemented in many instances by informal rules such as the acceptance that powerful people will set the agendas or involve themselves in local politics even where they have no formal role (see Bayart 1993; Chabal and Daloz 1999; Bierschenk and Olivier de Sardan 2003). National members of parliament may thus become important stakeholders in local politics independently of their formal inclusion in local councils. Chief executive officers may dominate local decision-making beyond their administrative roles.

In many countries there is considerable mistrust about the skills and integrity of elected local councillors. Central ministry agents tend to argue that increasing the responsibilities and resources of local government should go along with limiting the patronage capacities of elected councils. From this perspective the accountability of local councils to both the coordinating and supervising central agencies and to their electorates become crucial issues. The precise solutions to these problems have to be sought, *inter alia*, in the electoral rules discussed in this paper.

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## REVIEWS

*South Africa's second democratic election 1999: An annotated bibliography*

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(Most of the following information has been taken from the book itself)

This English language bibliography provides references to material relating to an important event in the history of South Africa – the country's second democratic election on 2 June 1999. It covers the run-up to the election, the electoral process, the results and the outcome. Books, pamphlets periodical articles, reports and conferences are included, but newspaper articles are not.

In the months following the 1999 elections the Electoral Institute of Southern Africa (EISA) collected critical assessments, political analyses and academic meditations on the national and provincial polls. The bibliography is thus based on the stock of EISA's own library, reflecting its own focus and direction. Additional source material has been gleaned from the records of the Africa Institute, the Human Sciences Research Council, the South African Institute of International Affairs and the University of the Witwatersrand, as well as from relevant databases such as *African Studies* and *South African Studies*. Annotations derived from other sources have been acknowledged.

The book is divided into five sections, namely: Election 1999 Chronology, Bibliography, Author Index, Subject Index and Acronyms.

To provide a framework a brief chronology of salient dates is included, together with a map and a list of acronyms encountered in the preparation of this and other election related records. The text is arranged in numbered alphabetical sequence, by author, or title where no author is given. It is followed by an author index incorporating individual and corporate authors, compilers and sponsoring bodies, and a subject index linking terms and concepts to the numbered entries. The annotations are intended to show relevance to the main theme, to highlight special features and to reflect the attitudes and conclusions of the authors. They do not purport to provide complete summaries, only to give sufficient detail to indicate their possible usefulness to readers and researchers. No value judgements are made.

The literature reflects a renewed interest in the efficacy of the proportional representation system, in electoral system design and in the debates, both intellectual and empirical, surrounding electoral reform in South Africa. It also includes material on the political participation and representation of women, their achievements and objectives, and on gender issues in electoral context.

Other ancillary aspects include African National Congress dominance, dominant party systems, and the changing role and fortunes of the opposition and minor political parties. Comparisons are made with the 1994 founding election.

*Chronology*

The chronology starts with the events from August to December 1998, followed by those between January and June 1999. The events are listed by month and date with a brief statement of the specific issue pertaining to the date. The layout is spacious and easy to read.

*Bibliography*

Although the 850 entries are arranged alphabetically they are also numbered, a neat device that enables the reader to cross-refer efficiently from author to subject index and vice versa. The bibliographical information is followed by a paragraph summarising the contents of the publication. The main access points are highlighted by the use of bold capital letters, making them easy to find on the pages.

*Author Index*

This index is arranged alphabetically, with links to the numbers of the entries listed in the bibliography. This works quite well. All authors, individuals and corporate bodies are listed in one sequence. The index also includes some acronyms in cases where organisations prefer to use that form of name, or, alternatively, cross references from acronyms to the full forms of name.

*Subject Index*

In this very comprehensive index subjects are arranged alphabetically and are also linked to the numbered entries in the bibliography. Capital letters are used for lead terms, with one or two indentations underneath. All possible subjects covered by the sources are represented in the index. There are sufficient cross-references to guide the reader to specific, relevant subjects. Acronyms are not used as lead terms, but they are used in subheadings. Cross-references guide the reader.

*Acronyms*

The list of acronyms was compiled from background readings relating to both the 1994 and 1999 elections and comparisons between them. The acronyms are listed alphabetically with the full form next to each. If two organisations use the same acronym, or if there are variations of the same name, that is indicated. The list has the same spacious layout as the chronology.

This book reflects intensive research by Ms Strachan. It can be considered a valuable reference source on the specific topic.

*Marlene Burger*  
*Chairperson, Association of South African Indexers and Bibliographers*

*From Cape Town To Congo: Southern Africa Involving Security Challenges*

Edited by Mwesiga Baregu and Christopher Landsberg

Lynne Rienner Publishers

*From Cape Town To Congo* is an African interpretation of the changing nature of the political economy of Southern Africa and the way it is connected to the rest of the continent, particularly the African Union and other influential international organisations and states such as the European Union, the Commonwealth and the United States. The book is divided into four parts, looking specifically at governments, the economic and security challenges, the role of civil society organisations, the impact of HIV/AIDS and land reforms in the Southern African Development Community (SADC) region.

It is an outstanding collection of well-thought-out analyses of Southern African governance and military issues. The book uses South Africa's re-emergence on the international scene as the starting point in outlining the opportunities and threats that face Southern Africa. It poses critical questions about the economic and security relations between the powerhouse, South Africa, and the rest of the SADC, looking particularly at issues concerning economic relations, security and leadership in the sub-region, and it attempts to propose alternatives for achieving political stability and speeding up the integration process.

The book also enters the debate on democracy and security in Southern Africa, attempting to answer a critical question: Why, despite what seems to be a strengthening of electoral democracy and regional integration, does stability still elude the region? It further looks at the intriguing foreign policy links that have emerged since the early 1990s. These issues are discussed using historical perspectives to determine the meaning of what is happening and give future direction.

South Africa and Nigeria are discussed as the two most influential states on the continent, each of them facing two problems that affect their leadership position. The first is their determination not to be seen as imposing themselves, the second is resistance on the continent to accepting their status. The discussion does not pay much attention to the internal dynamics in the two countries that reduce their ability to project their power efficiently. There can be no meaningful discussion of foreign policy without an in-depth look at the national dimension. Also, the national interest that the two countries ought to secure by the pursuit of specific foreign policy options is not made clear.

A book on Southern Africa in this modern age would not be complete without an examination of the land issue and HIV/AIDS. The book discusses the former using both an historical and a theoretical approach, focusing specifically on Zimbabwe and South Africa. In the case of Zimbabwe it attempts to give a holistic picture, supported by historical facts, of the land question and the attempts at a solution that have, in recent times, divided both Zimbabweans and the rest of world. In relation to HIV/AIDS, the book outlines the social, economic, political and



security impact and challenges of the pandemic. It falls short of discussing the different strategies used by countries in Southern Africa to deal with HIV/AIDS and why South Africa was reluctant to roll out anti-retroviral treatment. Was it a political or ideological position or was it a governance and budgetary security issue? How can poor SADC countries sustain the provision of anti-retrovirals in the long run? These are questions that need to be debated and solutions proposed.

The book is also weak on the role of civil society in the changing environment of the region. The discussion is very thin and does not address the pertinent issues facing civil society on the continent, from funding to credibility and the management of its relations with state, regional and continental organisations.

The book ends with a set of recommendations for dealing with the many challenges facing SADC in its attempt to build a stable regional security edifice.

*From Cape Town to Congo* is a useful and well-argued document that makes a contribution to the debate about how to strengthen collective security based on shared values and regional economic integration and to build a peaceful SADC that interacts with the rest of the continent and engages the international community.

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