

# JOURNAL OF AFRICAN ELECTIONS



JOURNAL OF AFRICAN ELECTIONS

Vol 4 No 1 June 2005



Promoting Credible Elections and  
Democratic Governance in Africa

Volume 4 Number 1 June 2005

---

# Journal of African Elections

## ARTICLES BY

Debie LeBeau  
Bertha Z Osei-Hwedie and David Sebudubudu  
Wiseman Chijere Chirwa  
Gilles Cistac  
Joseph Topangu  
Victor Shale  
L Amédée Darga  
Denis Kadima and Roukaya Kasenally  
Claude Kabemba

Published by EISA  
2nd Floor The Atrium  
41 Stanley Avenue  
Auckland Park  
Johannesburg  
South Africa

P O Box 740  
Auckland Park  
2006  
South Africa  
Tel: +27(0)11 482 5495  
Fax: +27(0)11 482 6163  
e-mail: [publications@eisa.org.za](mailto:publications@eisa.org.za)

© EISA 2005

ISSN: 1609-4700

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written permission of the publisher.

Copy editor: Pat Tucker  
Printed by: Global Print, Johannesburg

Cover photograph: Reproduced with the permission of the  
HAMILL GALLERY OF AFRICAN ART, BOSTON, MA, USA



[www.eisa.org.za](http://www.eisa.org.za)

## EDITORS

Denis Kadima, EISA, Johannesburg  
Khabele Matlosa, EISA, Johannesburg

## EDITORIAL BOARD

Tessa Bakary, Office of the Prime Minister, Abidjan, Côte d'Ivoire  
David Caroll, Democracy Program, The Carter Center, Atlanta  
Luis de Brito, EISA Country Office, Maputo  
Jørgen Elklit, Department of Political Science, Aarhus University, Copenhagen  
Amanda Gouws, Department of Political Science, University of Stellenbosch  
Abdalla Hamdok, International Institute for Democracy Assistance, Pretoria  
Sean Jacobs, Department of Political Science, University of Cape Town  
Claude Kabemba, EISA, Johannesburg  
Peter Kagwanja, International Crisis Group, Southern Africa Project, Pretoria  
Peter Katjavivi, University of Namibia, Windhoek  
Abdul Rahman Lamin, Department of International Relations, University of the Witwatersrand, Johannesburg  
Tom Lodge, Department of Politics and Public Administration, University of Limerick  
Robin Ludwig, UN Dialogue with the Global South, New York  
Robert Mattes, Department of Political Science, University of Cape Town  
Yvonne Muthien, Corporate Affairs, MTN South Africa  
Eghosa Osaghae, Igbinedion University, Okada, Nigeria  
David Pottie, The Carter Center, Atlanta  
Ben Reilly, Asia Pacific School of Economics & Government, The Australian National University, Canberra  
Lloyd Sachikonye, Institute of Development Studies, University of Zimbabwe, Harare  
Jeremy Seekings, Sociology Department, University of Cape Town  
Timothy Sisk, Graduate School of International Studies, University of Denver, Colorado  
Gloria Somolekai, Democracy Research Project, University of Botswana, Gaborone  
Roger Southall, Human Sciences Research Council, Pretoria

The *Journal of African Elections* is an interdisciplinary biannual publication of research and writing in the human sciences, which seeks to promote a scholarly understanding of developments and change in Africa. Responsibility for opinions expressed and for the accuracy of facts published in papers, research notes, review articles and book reviews rests solely with the individual authors or reviewers. Contributions are referred to specialist readers for consideration, but the Editor is responsible for the final selection of the contents of the Journal.

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:

# CONTENTS

Multiparty Democracy and Elections in Namibia <i>Debie LeBeau</i> .....	1
Botswana's 2004 Elections: Free and Fair? <i>Bertha Z Osei-Hwedie and David Sebudubudu</i> .....	27
Malawi's 2004 Elections: A Challenge for Democracy <i>Wiseman Chijere Chirwa</i> .....	43
Justice and Electoral Disputes In Mozambique <i>Gilles Cistac</i> .....	61
Post-Election Prospects for Burundi <i>Joseph Topangu</i> .....	90
The 2005 Lesotho Local Government Elections: Implications for Development and Governance <i>Victor Shale</i> .....	100
The Electoral Reform Process in Mauritius <i>L Amédée Darga</i> .....	117
The Formation, Collapse and Revival of Political Party Coalitions in Mauritius: Ethnic Logic and Calculation at Play <i>Denis K Kadima and Roukaya Kasenally</i> .....	133
Transitional Politics in the DRC: The Role of the Key Stakeholders <i>Claude Kabemba</i> .....	165
Review <i>State of the Nation South Africa 2004-2005</i> .....	181
Contents of Previous Issues .....	184
Notes for Contributors .....	190

# MULTIPARTY DEMOCRACY AND ELECTIONS IN NAMIBIA \*

By  
Debie LeBeau \*\*

Dr Debie LeBeau is Senior Research Associate, University of Namibia  
PO Box 25193 Windhoek, Namibia 9000

Tel: +26461 248 483

email: [lebeau@mweb.com.na](mailto:lebeau@mweb.com.na)

## ABSTRACT

*This paper examines the most recent round of elections in Namibia – those held in 2004. For those elections the Electoral Commission of Namibia (ECN) succeeded in re-registering almost one million voters, conducting by-elections, administering local, regional, national and presidential elections, as well as providing voter education at national and grassroots community levels. Of course the ECN did not complete these endeavours alone: the democratic process in Namibia is a cooperative (and sometimes competitive) effort between government, donors, non-governmental organisations (NGOs), civil society and political parties. In 2004 11 political parties were registered with the ECN – a high number for a country with only 977 742 registered voters. The major issues in the 2004 election were economic growth, poverty, unemployment, land reform, agriculture, infrastructure, the eradication of corruption, education, health care, social welfare, gender equality, good governance, moral values and HIV/AIDS. With all parties focusing on the same issues and in the absence of viable policy alternatives, ethnicity, liberation struggle credentials and individual personalities within and between parties play a role in voting decisions.*

---

\* Acknowledgements: Meme Fransina Ndatelela Kahungu helped collect data from various NGOs, donors and governmental organisations. Edith Dima drafted sections of the original publication upon which this article is based. The author would like to extend a special thanks to Christiaan Keulder of the Institute for Public Policy Research (IPPR) who provided us with transcripts from interviews and data on the elections. However, most importantly, Christie devoted much time and attention to critically reviewing this paper, and to many discussions about theories and concepts relating to the consolidation of democracy – how extraordinary to find someone with such depth of knowledge who is so readily willing to share.

\*\* An American by birth, Dr LeBeau has been living and working in Namibia for the past 15 years. She obtained her PhD from Rhodes University, South Africa. She is currently a senior researcher in the Gender Training and Research Programme at the University of Namibia and taught for eight years in the Department of Sociology. She has authored many books and chapters in books on Namibian issues. Her most recent co-authored book, with Eunice Iipinge, is the SADC publication *Beyond Inequalities: Women in Namibia*. Much of her work has focused on gender issues and HIV / AIDS-related topics.

## INTRODUCTION

In line with international trends, the most recent figures on voter turnout show that turnout for local authority (45%) and regional council elections (53,5%) in Namibia were lower than that for the National Assembly and presidential elections (85%). This apathy is disconcerting given that most people in Namibia have only had the vote for 15 years.

In any given society conflict surrounds power and political decision-making. Democracy, by its very nature, entails a certain level of development built through conflict. There are still some contested domains within the area of the electoral system itself, including those relating to the use of party lists and the Proportional Representation (PR) system. The 50/50 campaign which advocated 'zebra'-style lists, alternating women and men candidates for all elections so that half of the candidates put forward are women, was rejected on a technicality by a parliamentary standing committee.

Two significant conflicts centred on power sharing arose within political parties in the run-up to the 2004 elections. The first related to the ruling South West African People's Organisation Party's (SWAPO) selection of a new candidate for president, the other resulted in a split within the Democratic Turnhalle Alliance (DTA). In the run-up to the 2004 elections and during the post-election manoeuvring points of contention arose between political parties. In general these issues related to opposition parties confusing the government with SWAPO. When irregularities occurred during the process, political parties tended to attribute these to SWAPO rather than to government officials. The vast majority of election-related complaints centred on the mechanics of voting and the Electoral Commission of Namibia (ECN), although several members of opposition parties were not satisfied with the voting process and some opposition parties contested the 2004 presidential and National Assembly election results, winning the right to have the count verified by an independent auditing body.

In mid-March 2005 the court found that there had not been enough irregularities in the election process to warrant the outcome being set aside but that there had been sufficient irregularities in the counting process to order the ECN (not an external body) to recount the votes. The recount was only slightly different from the original count, with no change in the overall outcome. Although there were some alleged instances of political parties inciting their members to violence against opposition party members, probably the most common form of political violence was occasioned by members of opposing parties getting carried away with election fever. There was no evidence that the parties themselves had orchestrated the attacks.

One area in which it was hoped that political status might shift was in the domain of women's representation at the various levels of political decision-making. This was, however, not the case after the 2004 elections. Although women scored an early victory, with 43,4 per cent representation at local levels of government,

they did not fare as well in the National Assembly and Regional Council elections where women's representation increased by less than 1 per cent, from 26,4 per cent to 27,3 per cent.

Probably one of the most significant contributions to the consolidation of democracy in Namibia is the ESC, a collaborative body consisting of donor organisations, NGOs and government. It is through such collaborative efforts that democracy can be consolidated in Namibia.

Bilateral donors, NGOs and civil society contribute in other ways to the democratic process in Namibia. Many of them work directly on issues relating to democracy, while others strive to develop the social, economic and educational lives of Namibians. Namibia is still a country with serious political and ethnic divides, as well as a general lack of understanding and acceptance of democracy: factors that could be a potentially serious obstacle to democratic consolidation. However, there are also positive attributes such as the country's high literacy rates, good levels of trust in representatives and a strong belief that the process is responsive to the needs of the people – all of which are conducive to the consolidation of democracy.

It seems that to continue to consolidate democracy Namibia will have to face voter apathy, rising rates of tolerance for other forms of government and plummeting voter confidence in the very officials the voters have elected. Probably one of the best ways of consolidating democracy is through civic and voter education, which should not be viewed as being necessary only at election time but should be an ongoing process that reinforces citizens' as well as politicians' demands for democracy.

## BACKGROUND

At independence Namibia adopted a Constitution as the fundamental law of the country. The Constitution characterises the country as a republic, that is, 'a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all'. It further states that: 'All power shall be vested in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State' (GRN 1990, Ch 1 Art 1). To date there has been one amendment to the Namibian Constitution: in 1999 article 29(3) was amended to allow President Sam Nujoma to run for a third term of office.

The President is elected by 'direct, universal and equal suffrage and can serve for a maximum of two five-year terms' (GRN 1990, Ch 5 Arts 27/28). Presidential elections are based on a simple majority, whereby the candidate with the most votes wins provided that candidate has more than 50 per cent support (Hopwood 2004, p 28). If no candidate receives a 50 per cent majority, further balloting will be held until one candidate does so (Hopwood 2004, p 30).

The legislature consists of the National Assembly with 72 members elected for a five-year term, as well as six non-voting members who are appointed by the



President. The National Assembly is vested with the power to pass laws based on a two-thirds majority vote. A proportional electoral system is used to elect members of local authorities and the National Assembly (LeBeau & Iiping 2004, p 80). In the PR system political parties put out a closed list of candidates, with party leaders determining the order of names on the list. Voters do not vote for individual candidates but for the party of their choice and each party receives a percentage of seats equal to the percentage of votes received (GRN 2003).<sup>1</sup> The PR system benefits small parties – many of which are ethnically based – because seats are divided according to the proportion of votes, making it possible for small parties to gain a seat even if they have not won a full quota of votes (Hopwood 2004, p 29).

The National Council is made up of two representatives drawn from each of the 13 geographical regions of the country who are elected for a six-year term from among the various regional council members (GRN 1990, Chapter 7). The plurality (first-past-the-post – FPTP) electoral system is used to elect members of the regional councils and indirectly to elect National Council representatives (GRN 1992). In this system, political parties put up individual candidates to be elected in designated constituencies.

## ELECTION ADMINISTRATION

Namibia, like most Southern African Development Community (SADC) countries, has an independent election management body, the Electoral Commission of Namibia. The ECN is guided by the Electoral Act 24 of 1992 and is responsible for the registration of voters and of political parties, as well as for supervising, directing and controlling elections (GRN 1992, Article 13). The ECN is tasked with informing all citizens 18 years and older of their democratic rights, as well as registering them to vote (EISA 2004, p 22). The ECN also oversees civic and voter education even though this task is not mandated by any electoral act; this responsibility falls within the SADC principles for electoral bodies (EISA 2004, p 22).

The law requires the ECN to re-register all eligible voters on a general voters' roll or voters' registration roll for regional, national and presidential elections every 10 years as well as to declare occasional supplementary registration periods. In addition the ECN must keep a voters' registration roll for local authority elections. This means that the commission was required to re-register almost a million voters. On the whole, the 2004 ECN voter registration exercise was completed satisfactorily,

---

<sup>1</sup> Electoral Amendment Act No 7 of 2003. Namibia's version of PR is calculated by dividing the total number of votes cast by the number of seats so that each seat is represented by a specific number of votes cast (the 'quota of votes' per seat). The number of votes cast for a party is divided by the 'quota of votes' for each seat to determine how many seats each political party is awarded. Because the number of votes received by each party does not necessarily divide exactly into the quotas some seats remain unallocated. These unallocated seats are then allocated to parties with the largest number of votes remaining, even though that number may not have been enough to fulfil the 'quota of votes' for an extra seat (Hopwood 2004, p 29).

an achievement helped by the acquisition of modern equipment. The ECN estimated that between 85 and 90 per cent of those eligible were registered to vote and political party representatives expressed general satisfaction with the process (Pitkanen 2004, p 6). Although there are inconsistencies in the general voters' roll, the proportion of these errors compared to the volume of the list (over 900 000 people) is probably insignificant. In addition, the enormity of the task – to register all eligible voters nationwide with a total population density of 2,1 persons per km<sup>2</sup> (2001 Census) – attests to the ECN's overall success rather than to its few failures.

The ECN is part of a larger Electoral Support Consortium (ESC) funded by international donors and consisting of the government, in the form of the ECN, and several NGOs. The ESC was established to encourage voters to participate in elections and to help them make informed voting decisions (Somach et al 2004, p 1). The ESC is unique in that it brings together international donor agencies, the government (through the ECN) and civil society (through the LAC, NID, IPPR and secondary partners) (Somach et al 2004, p 1).<sup>2</sup>

The ECN, as part of the ESC, provides a civic and voter education programme and focuses on creating voter awareness and ensuring the active participation of community members in the democratic process. Although the election laws do not specifically task the ECN with civic and voter education, given Namibia's history of disenfranchisement of the majority of the population, the ECN has determined that civic and voter education is essential for creating public awareness about the political process as well as for educating voters about how to participate in this process – especially in the light of the rising tide of voter apathy (ECN 2004, p 15).

The ECN began its voter education programme in 1992 and established a Democracy Building Unit (DBU) in 2001, which is responsible for civic and voter education as well as for the dissemination of electoral information (ECN 2004, p 15). In an effort to promote civic and voter education, the DBU has trained one regional voter educational officer for each of the country's 13 administrative regions.<sup>3</sup> The work of these officers is to organise regional training workshops and meetings and to assist in the dissemination of voter education material produced by the DBU. The DBU also promotes voter education materials through national radio and television programmes (ECN 2004, p 15).

---

2 Funding partners include the governments of the Netherlands and Sweden as well as the United States Agency for International Development (USAID). Implementing partners include the ECN (which coordinates the overall programme), the Namibia Institute for Democracy (NID), the Legal Assistance Centre (LAC), and the IPPR. Recently a secondary consortium of partners was added to the Civic and Voter Education programme, namely, the Namibian School Debating Association, the Service Centre for the Visually Impaired, and the Namibia Community Radio Network. In addition, Sister Namibia – although not a formal ESC or secondary consortium partner – also runs civic and voter education activities focusing on improving gender equality in political participation.

3 Pitkanen (2004, p 5) notes that this title is misleading because these officers also provide civic education.

## THE POLITICAL PARTIES IN 2004

In 2004 11 political parties were registered with the ECN (Hopwood 2004, p 43). Such large number of parties in a voting population of only 977 742 is high. One possible explanation for this is the desire of individuals for power. In addition, the ethnic base of most parties promotes a tendency among them to view the country's leadership as being under the control of a particular ethnic group – this factor can negate democratic growth. Table 1 shows the number of seats won by political parties in the 2004 elections.

**Table 1**  
**Political party representation in the 2004 elections**

Party	National Assembly	Regional Council	Local Authority
Congress of Democrats (CoD)	5	0	32
DTA	4	2	31
Monitor Action Group (MAG)	1	*	*
Namibia Democratic Movement for Change (NDMC)	0	0	2
National Unity Democratic Organisation (NUDO)	3	3	9
Republican Party (RP)	1	0	7
South West African National Union (SWANU)	0	1	*
SWAPO	55	96	168
United Democratic Front of Namibia (UDF)	3	5	25
Local associations	*	*	7
<b>Total</b>	<b>72</b>	<b>107</b>	<b>281</b>

SOURCES: ECN 2004,p14; *THE NAMIBIAN* 23 NOV 2004; *NEW ERA* 3 DEC 2004; *NEW ERA* 14 DEC 2004

\* INDICATES THAT THESE PARTIES DID NOT PARTICIPATE IN THAT PARTICULAR ELECTION

The major issues of focus during the 2004 election were economic growth, poverty, unemployment, land reform, agriculture, infrastructure, the eradication of corruption, education, health care, social welfare, gender equality, good governance, moral values and HIV/AIDS. NUDO considered instituting a government of national unity, while MAG had no interest in forming a government. However, most political parties did not summarise and articulate the issues clearly enough to make them easily understood across the spectrum of voters.

The most notable aspect of the election manifestos is that there were no significant differences between the ideology and policy issues presented by the majority of parties, so voters were presented with limited choices. Opposition parties failed to present realistic alternative approaches to policy issues under consideration. There are some interesting (if not amusing) slight differences in some party manifestos. For example, the RP did not do its homework before writing its manifesto because it contains at least two factual errors (about abortion and same-sex relationships) and the DTA wanted to utilise the environment to the fullest, while applying environmentally friendly conservation. Several other parties based their manifestos on ideologies such as socialism (SWANU) or religion (RP and MAG). Otherwise, the voters had little to go on when choosing between parties. This view is supported by Keulder and Soiri's (2004, p 47) survey of the 2004 local authority election candidates which showed minimal differences between the views of party candidates.

In the absence of viable policy alternatives, ethnicity, liberation struggle credentials and individual personalities within and between parties play a role in voting decisions. Most notably, voters often vote in what Keulder (2004, slide 30) terms ritual partisans (where voters vote for a particular party out of habit) and cognitive partisans (where voters vote for the same party out of choice, but with a high awareness of what they are doing and why).

As voters become more educated and exposed to global trends and as a new generation of voters grows up, its members born after independence and thus with no affinity to struggle credentials, they will begin to demand that parties provide more sophisticated platforms. If current parties do not provide meaningful manifestos the way could be open for new parties to lure away voters, leaving older parties having to entrench their hold on power through non-democratic means (as has occurred in Zimbabwe, for example). Eventually parties have to mature or they will lose their voter base (as with the CoD, which is non-ethnic based) or they have to have some other method of consolidating power (as with Mugabe in Zimbabwe).

What emerges from the 2004 regional council elections is a hint of sustained ethnic voting patterns, with SWAPO's decisive wins in the Oshiwambo-speaking northern regions and an extension of its influence to the Kavango and Caprivi regions. (SWAPO's influence in Kavango and Caprivi might be due to the absence of other strong contending ethnic political formations in these two regions.) Both NUDO and SWANU won in traditional Otjiherero-speaking areas and the UDF

won in its home of traditionally Damara-speaking areas. The parties without an ethnic constituency – or ‘national parties’ (such as the CoD) – failed to win any seat in the regional council elections; the assertion that voters take an ethnic view when selecting which party to vote for therefore seems reasonable.

### VOTER TURNOUT

Table 2 shows voter turnout since independence. In the 1994 National Assembly and presidential elections, voter turnout was still high: 76 per cent (497 508) of the 654 189 registered voters cast their ballots in the presidential and National Assembly elections, but with 1 per cent (7 863) of National Assembly votes and 2 per cent (12 213) of presidential votes spoilt (Hopwood 2004, p 38). However, the accuracy of the voters’ roll and the system of tendered balloting were questioned when some northern constituencies recorded more than 100 per cent turnout.

Although the DTA challenged the results in the respective constituencies in court, the case ‘fizzled’ out some months after the election. Two opposition parties, the CoD and the RP, challenged the validity of the 2004 National Assembly elections. The court found that the voting process was upheld but that there were sufficient irregularities to order a recount of votes cast. However, this recount did not change the status quo, given the large margin by which SWAPO won. The implication here is that there is increasing voter apathy as a result of a loss of confidence in the integrity of the ECN to conduct free and fair elections. Even if more civic and voter education is done, a loss of faith in the system would have a negative impact on democracy building in Namibia. For example, Table 2 shows that voter turnout in the 1999 National Assembly and presidential elections declined to 61 per cent of registered voters, despite a lively election campaign.

In 1992 Namibia organised its first regional council and local authority elections, which took place simultaneously in the 13 regions and 48 local authorities. A new voters’ roll contained 534 437 registered voters and a turnout in excess of 80 per cent was recorded in both ballots (Hopwood 2004, pp 34-35). The ECN reports that regional and local elections have been hardest hit by voter apathy, especially in the urban areas (ECN 2004, p 12). There was a sizeable drop in voter turnout in the second regional council and local authority elections in 1998, with 40 per cent turnout for the regional elections out of 534 278 registered voters (excluding uncontested seats), and 34 per cent for the local elections out of a possible 188 302 registered voters (Hopwood 2004, p 38). The drop in voter turnout was ascribed to various causes such as lack of party mobilisation for support, voter dissatisfaction with the parties on offer, registration card confusion and people failing to register after moving to new towns (Hopwood 2004, p 35). This low voter turnout did not stop SWAPO from dominating the election, winning almost 60 per cent of the vote in the local authority elections and 69 per cent in the regional council elections. However, residents’ associations gained control of Rehoboth and Otavi (Hopwood 2004, p 35).

The 2004 local authority elections were organised separately from the regional council elections and took place in May, while the regional council elections were held on 29 and 30 November, after the National Assembly and presidential polls. Only 45 per cent of the 359 152 registered voters (excluding those in uncontested areas) voted (Hopwood 2004, p 38). Voter apathy persisted even after the ECN voter education programmes for 2003, although the turnout was slightly higher

**Table 2**  
**Voter turnout at elections from 1989 to 2004**

Year	Registered voters	Votes cast	Turnout %*
<b>National Assembly**</b>			
1989	701 483	680 787	97
1994	654 189	497 508	76
1999	879 222	541 114	61
2004	977 742	829 269	85
<b>Presidential</b>			
1994	654 189	497 508	76
1999	879 222	545 465	61
2004	977 742	833 165	85
<b>Regional Council</b>			
1992	470 006***	381 041	81
1998	534 278	213 789	40
2004	977 742	523 746	54
<b>Local Authority</b>			
1992	156 663	128 973	82
1998	188 302	63 545	34
2004	363 548	163 999	45

SOURCE: HOPWOOD 2004, P 38; ECN 2004, P 11; 3 DEC 2004; *NEW ERA* 14 DEC 2004.

\* Voter turnout is calculated here as a percentage of those people who registered to vote. This figure is slightly deceptive because there is a percentage of people who were eligible to vote but who did not register. Thus a more accurate reflection of voter turnout would be to calculate the percentage of people who voted against the total number of people who were eligible to vote. This method would yield a smaller voter turnout percentage but would more accurately reflect the percentage of Namibian citizens who voted. However, these figures were not available to the author.

\*\* The 'National Assembly' votes of 1989 were in fact the Constitutional Assembly.

\*\*\* Excludes registered voters in uncontested constituencies and local authorities.

than that of the 1998 local authority elections when only 34 per cent of registered voters cast their votes (ECN 2004, p 12; Hopwood 2004, p 38). Although there was a national average voter turnout of 45 per cent for the 2004 local authority elections, voter apathy was more notable in larger urban local authorities (ECN 2004, p 12).

The new voters' roll used for the 2004 National Assembly and presidential elections recorded 977 742 registered voters. The results indicate an improvement in voter turnout for the presidential elections. A total of 833 165 votes (85%) was cast, with 14 770 spoilt ballots, leaving 818 395 valid votes. A recount also showed an 85 per cent voter turnout, with 829 269 votes cast, 10 830 spoilt papers and 818 439 valid votes.<sup>4</sup> However, the delay in counting and announcing the results of the National Assembly and presidential polls caused concerns about fairness and called into question the abilities of election officials and the quality of their training (*The Namibian* 18 November 2004). Voter turnout for the 2004 regional council elections was 53,5 per cent, an increase of 13,5 per cent over that in 1998.

In line with international trends, the most recent figures on voter turnout show that turnouts for local authority and regional council elections are lower than for National Assembly and presidential elections. This apathy is disconcerting, given that most Namibians have only had the vote for 15 years. In 2004, the local authority elections were held in May, while the regional council elections were held in late November, only after the National Assembly and presidential elections.

There are various theories about why there is a lower level of voter turnout for elections for lower levels of government. One of these is that because the regional council elections were held after the national elections voters may have believed that their job was done and therefore felt no obligation to vote in the regional elections; although this theory would not hold for the local authority elections, which were held first. However, the answer may be found in the perception that national and presidential elections are more important than regional and local elections. Regional councils are largely undefined and local authorities are seen as not wielding any power. Interviews with community members also show that some communities have experienced less development and thus people do not see the need to vote because they feel it will have no effect on development. Other community members believe that polling stations are too far away or that they do not have time to go back to their home constituencies to vote. Some people also explain that elections are sometimes held at month-end (which is when the majority of Namibians get paid); this means that people have other tasks to attend to and thus do not have time to vote (*New Era* 3/12/04).

---

<sup>4</sup> Spoilt ballots may indicate one of three situations: first, that voters deliberately miscast their votes as a protest; second, a lack of voter education with voters spoiling papers because they do not know how to vote; and third, that electoral administration errors result in papers being declared spoilt. Given the higher than usual number of spoilt ballots in the 2004 national elections, it could be argued lack of education cannot be the reason because the previous number of spoilt ballots was less than half the 2004 figure. Therefore, papers were either deliberately spoilt or there was some form of administrative error. Further analysis of the spoilt ballots would be required to determine the exact causes of the high number in 2004.

## CONFLICT AND ELECTIONS

In any given society conflict surrounds power and political decision-making. Democracy, by its very nature, entails a certain level of development built through conflict. In recent years conflict surrounding the democratic process has not been confined to African countries, the controversy surrounding the American elections both in 2000 and 2004 illustrates the competitive nature of democracy: as well it should, for competition creates the opportunity for governments to improve service provision in an effort to maintain their voter base. Namibia witnessed its share of competition and conflict around the 2004 local, regional and national elections. Indeed, with the 2004 elections being the first to be held with a newly proposed presidential candidate from the ruling SWAPO Party, this election was the liveliest since independence.

## CONFLICT AND THE ELECTORAL SYSTEM

There are still some contested domains within the electoral system itself which make some political analysts believe that it might be time for a change in the system. One long and considerably drawn-out dispute is the use of party lists which advantage older, more established party members while holding back disadvantaged groups (such as women and the disabled) as well as making it more difficult for younger politicians to move up the political ladder, or to advance other than through the 'grace' of older, entrenched party members.

One of the longstanding areas of contention is the party list system whereby parties put forward their list of candidates for the National Assembly and local authority elections and candidates are selected from these lists and ranked by their parties. Among the shortcomings of the list system is the fact that the lists are arranged by strong political officials; that candidates are loyal to their party rather than to their constituency and that lists give too much power to senior members of a party, entrench those already in power and can be used as a system of reward and punishment for those who do not toe the party line (Hopwood 2004, p 31). However, it has also been argued that the list system is preferable because the number of seats a party wins is a direct reflection of the number of votes it receives and that the list system is a simple, straightforward election method for voters who only have to choose their political party

Table 3 shows how National Assembly seats were allocated after the 2004 election recount. First the total number of valid votes (818 439) was divided by the number of National Assembly seats (72) so for every 11 367 votes a party received, it won one seat. This meant that 67 seats were allocated. The remaining five seats went to the five political parties with the largest number of unallocated votes (the 'largest remainder'). Thus, although the MAG did not have enough votes to win a seat it was awarded one because it had the fourth largest number of unallocated votes.



**Table 3**  
**Allocation of NA seats using PR and 'Largest Remainder' Method**

Party	Total NA Votes	Seats for every 11 367 votes	Votes not allocated to a seat	Seats to 5 parties with largest remainder	Total no of seats
CoD	59 464	5	2 629	–	5
DTA	42 070	3	7 969	1	4
MAG	6 950	0	6 950	1	1
NDMC	4 380	0	4 380	–	0
NUDO	34 814	3	713	–	3
RP	16 187	1	4 820	–	1
SWANU	3 610	0	3 610	–	0
SWAPO	620 609	54	6 791	1	55
UDF	30 355	2	7 621	1	3
<b>Total Valid Votes</b>	<b>818 439</b>	<b>68</b>	<b>–</b>	<b>4</b>	<b>72</b>

SOURCE: *NEW ERA* 17 MARCH 2005; *THE NAMIBIAN* 17 MARCH 2005

The PR system as it is practised in Namibia has several shortcomings. These include the fact that it encourages small political parties and favouritism because even small parties without a substantial constituency base may win a seat in the National Assembly, and personalities wishing to sit in the National Assembly can break away from political parties, form their own party and stand a chance of winning a seat (LeBeau and Iipingwe 2004, p 80). In fact, the government funds political parties according to the number of seats they have in Parliament. Thus, once a small party has a seat, it is able to advance itself through government funding. This is true because, unlike many other countries, Namibia does not have a legal 'threshold' (suggested as 5%) for representation whereby parties must have a minimum level of support in order to have a seat in Parliament. Indeed, the threshold is lower for parties at National Assembly level (1,39% of votes) because of the number of seats (72) available (Keulder 2004). This lack of a legal threshold may be seen to encourage ethnic differentiation in political parties because parties need a voter base of only a few thousand people – and thus only seek support from their core base rather than attracting members outside of their core area of support (Hopwood 2004, p 29). The result is that the PR system discourages true multiparty competition in addressing policy-based issues because parties can rely on their ethnic base.

In rewarding small parties the system also discourages alliances of smaller parties to form larger coalitions, which might become an effective opposition to

the majority party, SWAPO. In addition, the Namibian PR system leads to fewer women in the National Assembly because the leaders of the political parties are men and small parties that are awarded only one seat or win only a few seats are unlikely to appoint a woman to those seats.

Although Namibia has made significant strides in formal legal reforms in the area of gender equality, much of this progress has not translated into action when it comes to women in the democratic process. One area where law reform has been proposed but not accepted is the 50/50 campaign and its resultant 50/50 Bill, which has been presented before Parliament. The 50/50 campaign in Namibia began in 1999, but is a global effort aimed at achieving gender equality in political representation. The campaign advocates 'zebra'-style lists which alternate women and men candidates for all elections so that half the candidates put forward are women (Namibian Women's Manifesto Network 2003).

The Women's Manifesto, developed in 1999-2000 in collaboration with stakeholders, created the Namibian Women's Manifesto Network which identified amendments to the Namibian electoral Acts (currently referred to as the 50/50 Bill) that were supposed to ensure a gender balance in political power structures (Khaxas and Frank 2003, pp 5-6). The 50/50 Bill went before Parliament and was referred to a standing committee for review. Despite intense lobbying and popular support from non-governmental organisations (NGOs) and women's groups in Namibia, the standing committee rejected the Bill and ruled that a procedural mistake had been made because all other avenues for submission of a Bill had not been exhausted. Some women's organisations argue that the government is not being held accountable to women because government officials are accountable to their political parties and not to their constituents (Khaxas and Frank 2003).

### CONFLICT WITHIN POLITICAL PARTIES

Two significant conflicts that arose within political parties in the run-up to the 2004 elections centred on power sharing within the parties: the first was related to SWAPO's selection of a new candidate for president, the other resulted in a split within the DTA. Although such inter-party reorganisation is not new to politics, the flurry of attention and the results – especially for the DTA, which lost considerable power – will shape the Namibian political landscape for years to come.

Probably the most publicised conflict occurred within SWAPO and concerned the selection of a successor to President Sam Nujoma, who had announced that he would not run for an additional term. In April 2004, SWAPO's Central Committee met and three names were put forward as candidates for the party's presidential nominations: Hidipo Hamutenya, the Minister of Foreign Affairs; Nahas Angula, the Minister of Higher Education, Training and Employment Creation and Hifikepunye Pohamba, the Minister of Lands, Resettlement and Rehabilitation. Delegates to SWAPO's Extraordinary Congress were to choose which of the nominees would run for the party in Namibia's next presidential race.

Until the SWAPO Party Congress late May, each candidate and his supporters lobbied quietly in an effort to sway party members to support his bid for the presidency (Sherbourne 2004). Minister Pohamba was favoured by the President and was considered to be the closest in political outlook to Nujoma and the candidate least likely to effect changes. Minister Angula enjoyed support among younger, more educated members while Hamutenya – although not backed by the President – enjoyed a large following among many top SWAPO officials. However, the President dismissed Hamutenya as Minister for Foreign Affairs (as well as Hamutenya's deputy minister) four days before the congress (Sherbourne 2004, p123). Hamutenya, however, refused to step down as a candidate. In the first round of voting he came second to Pohamba, but with no clear majority. A run-off vote saw Angula step down and throw his backing behind Pohamba, who won 341 votes to Hamutenya's 167 (Sherbourne 2004, p123).

This conflict continued for some time: several Hamutenya supporters have lost their jobs or other positions since the congress, giving rise to allegations that they are being targeted. At a SWAPO Party meeting in October 2004 to elect the party's National Assembly candidates, a list containing the names of 35 people who had supported Hamutenya's bid for the presidency was circulated. The President said the list was not sanctioned and was the work of 'reactionaries' who wanted to divide the party. Regardless of the origins of the list, most of those on it lost votes for the National Assembly party list and thus were not in positions to win seats in the National Assembly (*The Namibian* 8 December 2004). Events after the SWAPO Party extraordinary congress are seen as originating from tribalism and disunity in the party's ranks, an example of what has been termed 'ethnic entrepreneurs at work in a hegemonic formation' – meaning that an ethnic voter base tends to keep the politics of race alive, therefore ethnic-based political parties are not healthy for democracy building in the country (du Pisani in *The Namibian* 18 February 2005).

Major conflicts have also been rife within the Democratic Turnhalle Alliance for some time.<sup>5</sup> In 1998 the DTA ousted its president, who was suspected of plotting a coup in the Caprivi region and subsequently many Caprivi region DTA supporters stopped voting or turned to SWAPO (Hopwood 2004, p 49). A further blow to the DTA support base came when the party's administrative secretary resigned. The final blow occurred in 2003 when NUDO and RP party members spilt from the DTA alliance. The centre of contention seems to have been in the RP, which claimed that the DTA had not promoted national reconciliation and that it now lacked credibility with voters; while NUDO members claimed that the DTA had been 'riding' on the Herero vote (Hopwood 2004, p 49). The viability of the DTA, RP and NUDO are now in question.

---

5 The DTA was formed in 1977 as an alliance of 11 ethnically-based parties, including NUDO and the RP, which had walked out of the Turnhalle constitutional talks over the demand of the National Party to retain some apartheid legislation (Hopwood 2004, p 46).

Within the DTA there are also sites of contention, with some former NUDO members claiming that Chief Riruako did not have the legal right to split from the DTA and call the party NUDO. The DTA took NUDO to court, but NUDO won and was allowed to register and take part in the elections. Such splits bolster the contention that the PR system encourages small political parties, especially where voters are used to voting along ethnic lines, when a spilt based on policies and programmes could be more beneficial to Namibian citizens. Indeed, the DTA made an exceptionally poor showing in the 2004 elections, losing seats in all areas: in the local authority elections it lost 14 of its 16 seats; in the National Assembly it dropped from seven to four seats and it only won two seats in the regional councils. Of the two parties that spilt from the DTA, NUDO was the more successful, out-performing the DTA in some elections. This means that the DTA has now lost its status as the official opposition party and may even be set to lose further ground in subsequent elections (*New Era* 8 December 2004).

### CONFLICT BETWEEN POLITICAL PARTIES

In the run-up to the 2004 elections and the post-election manoeuvring, a few points of contention arose between political parties. In general these issues related to opposition parties confusing the government with the ruling SWAPO Party. When irregularities occurred within the process, parties tended to attribute these to SWAPO rather than to government officials.

During the campaign phase of the election there were instances of party members deliberately interfering with other political party rallies, sometimes with violence erupting. For example, at a CoD rally held in Swakopmund, SWAPO supporters were accused of holding their own rally within 500 metres, which is the specified limit parties are supposed to respect when other parties hold rallies. This incident resulted in physical confrontations between party members.

In another incident, after the National Assembly and presidential elections valid, filled-in ballots were 'discovered' dumped on the roadside under the Swakop River Bridge near Okahandja. Although the ECN (as a branch of government) was in charge of the elections and thus was ultimately responsible for this possible irregularity, some opposition parties accused SWAPO of having orchestrated the disposal of opposition votes. On 3 December 2004 SWAPO took out a full-page advertisement in the *New Era* (and published one in its own newspaper, *Namibia Today*) defending itself against these accusations. The advertisement stated that there was no proof linking SWAPO to ballot dumping and that SWAPO was not affiliated with the ECN and thus could not have been responsible for any election irregularities that might have occurred.

Despite months of discussion, media reports, accusations (and counter-accusations) as well as a police investigation the matter has yet to be resolved. The ECN alleges it has evidence that opposition party members planted the ballots in an effort to discredit the election results, while opposition party members claim

that the ECN manufactured the allegation to defend itself against a pending court case requesting that there be an external audit of the results or that the results be set aside and new election take place – the investigation is still underway.

### CONFLICT SURROUNDING ELECTIONS

Even before the voting was over some critics predicted a low voter turnout or that the fragmentation of the DTA would lead to a fragmentation of votes between opposition parties as well (*The Namibian* 15 November 2004). Although the vast majority of election-related complaints centred on the mechanics of voting and the ECN, there were one or two instances where individual candidates were accused of attempting to influence election outcomes. One such example came from the Caprivi region where the National Society for Human Rights (NSHR) witnessed a candidate for the regional council handing out money to party agents, police officials and election officials (*The Namibian* 18 November 2004). The candidate concerned was elected to the regional council. An NSHR election observer also reported a 'dancing and drinking' party going on at one polling station in this area while voting was still taking place.

In the wake of the national elections there have been accusations about problems with ballot counting as well as other irregularities, particularly aimed at the ECN. The core of most of these complaints has been the fact that the ECN, although an independent body, is run by government, which is dominated by SWAPO, with opposition parties claiming that there is no provision for them to audit voting outcomes (*The Namibian* 18 November 2004). However, the Electoral Act of 1992 clearly stipulates conditions under which political party members can register with the ECN to observe the vote count, and the count for the 2004 national elections was witnessed by political parties and foreign observers.

Probably one of the more glaring problems that caused the ECN to come under fire from opposition parties is the fact that it took far longer to count the national election ballots than projected, causing some opposition party members – as well as members of the public – to question the counting procedure. As party members nervously awaited the results the ECN postponed the deadline for the release of the first results. One reported cause of the delay was the tendered ballot system which allowed voters to vote at any polling station, not merely the area in which they lived. One ECN official explained that because ballots were not necessarily cast in the voter's own constituency, all the ballots had to be sorted and each had to be allocated to its constituency (Kuteeue for Reuters 18 November 2004).

Some accusations of irregularities centred on procedures that had not been followed at polling stations; for example, that infrared lights were not used to detect the ink marks identifying a person as having voted, or that some people were able to wash the ink off their hands and thus vote again (*New Era* 8 December 2004). ECN officials said they would address this problem in future by marking two fingers in a place that was more readily visible and where it would be more difficult to

wash the ink off (*New Era* 26 November 2004). The ECN's response to accusations of ballot boxes being stuffed with extra ballots was that this was not possible because there had been government security officials at all polling stations (*The Namibian* 18 November 2004). Other, although infrequent, problems raised were claims of intimidation and claims that people had been told for whom they should vote (*New Era* 8 December 2004). A further point of contention was the fact that 1,8 million ballots were printed for only 977 742 registered voters. Questions were raised as to why so many ballots had been printed and what had happened to the unused ballot papers (*The Namibian* 18 November 2004).

After the National Assembly and presidential election results had been released, some opposition parties questioned how in some constituencies (even the smaller ones) more voters turned out than were registered to vote. The ECN claimed that this inconsistency was caused by the tendered ballot system. Some opposition members also questioned the unusually high turnout rate for the national elections. However, the ECN said it viewed the high voter turnout as a positive, not negative attribute of the elections because it showed that there was no political apathy in Namibia (*The Namibian* 18 November 2004).

Concerns have also been expressed about the number of spoilt ballots (11 405) in both the presidential and National Assembly elections. In the 1999 presidential and National Assembly elections only about 1 per cent of papers were spoilt (6 617 and 5 078 respectively) (*The Namibian* 8 December 2004). In the local authority elections, too, there was an increase (of 50%) in spoilt ballots in 2004 compared to 1998 (Hopwood 2004, pp 38-39).

Controversy continued to surround the 2004 National Assembly and presidential election returns when the ECN announced it had made a mistake in rejecting ballot papers as spoilt because they did not carry the prescribed 'secret mark or stamp'. The ECN required each election official to place this secret mark on voters' ballots, but after a higher than expected number of ballots were rejected for not having the mark, an internal investigation was ordered, whereupon it was discovered that some election officials had failed to use the prescribed stamp. This led the ECN to conclude that about half of the 11 405 votes that had been declared invalid were, in fact, valid. The Director of Elections admitted to 'human error' and said that the officials in question would be demoted. He added, however, that he did not suspect foul play (*The Namibian* 8 December 2004). Opposition parties reacted negatively to the news of the spoilt ballots, with the RP saying it reflected 'inefficiency' on the part of the ECN for not having trained staff properly or provided enough voter education. The ECN retorted by reminding political parties that they too bore responsibility for educating voters.

Several members of opposition parties were not satisfied with the voting process and some parties contested the 2004 presidential and National Assembly election results and lodged an application with the courts to have the count verified by an independent auditing body (*New Era* 25 November 2004; *The Namibian* 8 December 2004). Representatives from the CoD and the RP said that, given several

irregularities in the voting process and queries about the post-voting procedures, they wanted the voters' roll, tender ballots, spoiled ballots and ballot books re-examined (*New Era* 25 November 2004). Opposition parties were granted a High Court order allowing them to inspect the ECN election documents. When this was done several irregularities were discovered (*New Era* 14 December 2004).

However, even though opposition party members were able to show irregularities in the voting procedures, if they were to win their bid to have the National Assembly elections set aside they would have had to show that these irregularities were of such magnitude that they affected the election results and even then all the court could do would be to order a full external audit of the outcome or a ballot recount. As it turned out, in mid-March 2005 the court found that there had not been sufficient irregularities in the election process itself to warrant the outcome being set aside but that there had been enough irregularities in the counting process for it to order the ECN (not an external body) to recount the votes.

The recount differed only slightly from the original count (818 439 versus 813 955). SWAPO lost 178 votes and the CoD lost one while the DTA gained 356, the MAG 30, the NDMC 242, NUDO 940, the RP 222, SWANU 172 and the UDF 1 019. The most contentious issue of the recount was that the 935 votes from the Ohangwena region were damaged by rain, thus preventing them from being recounted (*New Era* 17 March 2005; *Namibian* 17 March 2005).

### *Interpersonal Politically Related Conflict*

Although there were some alleged instances of political parties inciting their members to violence against opposition party members, probably the most common form of political violence occurred when members of opposing parties got carried away with election fever and attacked each other. For example, a report from the Kavango Region on 18 November claimed that a SWAPO supporter hit a CoD candidate during a SWAPO political march. The police reported that marchers shouted 'down with CoD' as they marched past the CoD candidate's shop and the candidate responded, which led to the CoD candidate being hit on the head. SWAPO, it was reported, was sending a regional coordinator to investigate the incident (*The Namibian* 18 November 2004). The CoD believed this was a political attack on the party's candidate, while SWAPO maintained that the CoD candidate had provoked the SWAPO Party members. Although this was only an isolated incident of interpersonal violence possibly motivated by political affiliation, it does serve to show that political parties did not orchestrate the attacks.

### REPRESENTATION OF WOMEN

One area where it was hoped that there might be a shift was that of greater women's representation at the various levels of political decision-making. However, this was not the case after the 2004 elections. Although there has been a slight increase in the

number of women in some decision-making bodies, the proportion is far below the 30 per cent that Namibia agreed to when it signed the SADC Declaration on Gender and Development. Although women scored an early victory, with 43,4 per cent representation at local levels of government, they did not fare so well in the National Assembly and regional council elections. The local election results were achieved largely by affirmative action measures to promote women, which require political parties to place a given number of women on their lists.

In the end, women's representation increased by less than 1 per cent – from 26,4 per cent to 27,3 per cent (*The Namibian* 24 November 2004). In the National Assembly, 27,3 per cent of SWAPO representatives are women, 40 per cent of the CoD and 33 per cent of the UDF, while the DTA, NUDO, MAG and the RP have no women representatives (*The Namibian* 24 November 2004). The low level of representation of women at national level stems from the fact that although all the political parties had more than 30 per cent women candidates on their lists, the women's names were placed too far down for them to get seats in the National Assembly (*New Era* 25 November 2004). As mentioned above, women's low representation in the National Assembly can be attributed partly to the *type* of political systems used in Namibia to decide who sits in the National Assembly. For instance, the system of 'largest remainder' results in small political parties that are likely to win only a few seats tending to place men in the winning positions on their lists. As the above figures indicate the only three of the seven parties represented in the National Assembly who have women representatives are among those which won the most overall seats. The only exception is the DTA, in which women have consistently been under represented.

In 2004 107 regional councillors were elected. In 6 of the 13 regions there are no women councillors and only three (23,1%) women have been appointed regional governors. Women's representation in the National Council increased from 7,7 per cent in 1998 to 26,9 per cent in 2005. However, the deputy chairperson of the National Council (a woman), who was in line to take over as chairperson of the House, was passed over in favour of another member (a man). It had been hoped that the deputy chairperson would have become the first woman chairperson of the National Council (*The Namibian* 13 December 2004). Although the regional councils are sending more women to the National Council, women are still seriously under-represented at regional level. Given that in all cases political parties either nominate candidates for election or put them on party lists, this poor showing rests squarely with the decision-making wings of political parties (*The Namibian* 24 November 2004).

## DEMOCRATIC CONSOLIDATION IN NAMIBIA

This paper has examined various democratic processes and the consolidation of democracy in Namibia with specific reference to the most recent elections. The data indicate that Namibia is on its way to being a strong democracy, although the



democratic process in the country faces challenges that could threaten the consolidation of democracy. Given that Namibia has been independent for only 15 years, democracy is in its infancy and needs to be nurtured lest it fall victim to alternative forms of government such as dictatorship or military rule. Some of the more formidable challenges facing the democratic process in Namibia are discussed below.

### THE NEED TO SUPPORT THE CONSOLIDATION OF DEMOCRACY

There are some 'products', even in a capitalist economic system, which cannot be independently economically sustainable. Many of these, such as law reform, advancing minority rights (eg, women or the disabled) and support for the democratic process relate to the 'public good'. Many 'products' have a price which people are willing to pay, but how much would – or could – each citizen contribute to, for example, civic and voter education or to the printing of ballot papers? Without support most aspects of the democratic process such as political parties and voter education would not be available and thus there would be no democracy. The government, NGOs, and donors put substantial human and economic resources into the implementation of the election process. This expenditure of human and economic capital is necessary given that democracy can best be viewed as a 'common good' (or common product) that is owned by none, but shared by all. Therefore, it is the responsibility of government, as well as civil society, to protect and encourage this 'common good'. It is only through the efforts of those such as the ESC, the government, bilateral donors and civil society that democracy can be said to be consolidated in Namibia.

### ISSUES AROUND THE 2004 ELECTIONS

The run-up to and preparations for the 2004 elections in Namibia witnessed conflict at various levels. Pre-election conflict centred on issues of obtaining greater women's representation, the possible bias of the media and, importantly for this election, conflict within political parties. The majority of physical and interpersonal violence tended to stem from over-exuberant party supporters; while political mud slinging came from parties dissatisfied with the election results.

The most recent elections have seen a realignment of political personalities both within and between political parties. The split of two factions from the DTA (the RP and NUDO) has created more divisions, leading to SWAPO's consolidation of power in several regions and sectors: this fracture split votes for the DTA, resulting in its losing to the CoD its status as the official opposition.

Another disconcerting issue in Namibian politics is the tendency of SWAPO to deal harshly with internal dissent even when the competition was originally sanctioned within party structures. Although the question within the party of who was to be its presidential candidate was resolved (and indeed the SWAPO

presidential candidate has been elected as the next Namibian president), the fallout of the conflict surrounding the nomination at the party's congress continues to be felt even after the elections. Several SWAPO stalwarts have resigned, lost their positions or been demoted – with widespread speculation that these actions have been taken against Hamutenya supporters as a result of the candidacy nominations.

### ATTITUDES TO DEMOCRACY

Recent research has found that there is a growing tendency for people to be disenchanted with the form of democracy in Namibia, a trend discernible in the extent of voter apathy. Research has shown that more people are beginning to believe that alternatives to democratic rule might be acceptable or that the multiparty system does not function well. Some of this disillusionment is a result of the country's slower than anticipated economic and social progress. Some of this slow pace of development can be attributed to an unfortunate twist of historical fate – Namibia became independent at the same time that AIDS was tightening its grip on the Southern African region and Namibia's independence allowed for the free movements of people within and between countries, exacerbating the spread of HIV infections.

Given the challenges facing a new country that has risen from the ashes of more than 100 years of colonial rule, the additional burden of the AIDS pandemic has seriously impinged upon government's development efforts. Several parties have used the social and economic challenges still facing Namibia as a basis on which to formulate their platforms; however, most political parties not only fail to offer implementable alternatives to the ruling SWAPO Party policies and programmes, they fail to identify mechanisms to fund their proposed policies. Despite these issues, however, people generally still have an overall positive feeling about Namibian democracy, although this is beginning to change.

### DO ALL DEMOCRATS WANT DEMOCRACY?

Many democratic countries assume that what everyone else in the world wants is more democracy. Often democrats are so busy trying to promote democracy by converting non-democratic countries and reinforcing democratic principles in countries that already have democracy that they fail to ask if this is really what everyone wants. Indeed, Western style democrats are so fundamentally opposed to Marxism, socialism and communism that they forget that their style of democracy might, firstly, not be the only option, and secondly, not be the choice of other people in other forms of democratic processes. There is a growing trend for Western democrats to become frustrated and want to attack as undemocratic non-Western style democracies, while not acknowledging other possible forms of governance (which do not have to be undemocratic just because they are un-Western). Indeed, the Greeks did not have a 'true' form of democracy because women and slaves did

not have the right to vote; and women's suffrage came to most Western countries only after the first half of the 19th century. This is not an argument for disenfranchising certain groups of people but an acknowledgment of the possibility that other people may not see Western democracy the same way Westerners do.

The research discussed above indicates that the attitudes and behaviours of the youth do not necessarily reflect a strong affinity with democracy, nor do the youth particularly participate in the democratic process. Are these trends peculiar to the youth or is this a general trend in Namibia? The most recent IPPR *Afrobarometer* data indicate a growing trend in Namibia to wonder whether democracy is right for the country. This 2003 research shows that the proportion of Namibians who said they preferred democracy had dropped from 57,3 per cent in 1999 to 54,4 per cent, while the percentage of people who believe that a non-democratic government might be preferable or that the type of government does not matter to them has steadily increased (Keulder 2004, slide 7). This data may not seem too disconcerting unless certain other facts are taken into account, such as the fact that these figures represent a drop of 3 per cent in three years, implying a 1 per cent drop a year, which is especially worrying in light of the fact that Namibia has been independent for only 15 years.

In fact, Keulder (2004, slide 8) found that the preference for all types of non-democratic options has risen since 1999, with single-party rule and military rule leading the field in the 2003 data. Van Zyl and Keulder (2001, p 11) state that democracy cannot exist unless the majority of citizens prefer it to other forms of rule. They go on to explain that in newly established democracies the preference for democracy is neither uncontested nor consolidated and that democracy can only be considered consolidated when most of the citizens and the elite are committed to it and are of the opinion that democracy is always best (Van Zyl and Keulder 2001, p 12).

## WERE THE 2004 ELECTIONS FREE AND FAIR?

This paper has examined traditional views of political participation, as well as conflicts surrounding the 2004 electoral process.

Despite a number of problems with the democratic process and some election-related conflict, most political observers believe that the elections were not only free and fair, but that they should be held up as the benchmark for free and fair elections elsewhere in Africa (*The Namibian* 18 November 2004). Both EISA and the SADC Parliamentary Forum observer missions to Namibia observed that the National Assembly and presidential elections went peacefully and reasonably smoothly, with the head of the EISA team stating that the Namibian elections were some of the best he had witnessed, with everything going 'according to the rules of the game' (*The Namibian* 18 November 2004). Indeed, international election observers believe that election strategies for other Southern African countries should be based on the Namibian example. Many election monitors commented that they were

accorded unhindered access to polling stations and vote counting halls, which they believed was crucial for transparency in the election process (*The Namibian* 18 November 2004). Although there have been accusations of intimidation and other poll irregularities, the missions to Namibia reported that they saw none of this at the polls they monitored. If such behaviour did occur, it was probably based on individual initiatives and not on some form of organised political intimidation.

Irrespective of the typical conflicts and complaints that accompany any election of national import, most political parties expressed satisfaction with the voting process (*The Namibian* 18 November 2004). One opposition member said that although he was frustrated by the lack of training received by some election officials, his party in principle endorsed the outcome of the National Assembly and presidential elections (*New Era* 26 November 2004). For its part, ECN representatives have also expressed their satisfaction with the voting process and stated that: 'All Namibians have once again proven to the rest of the world that elections can be held in an atmosphere of calmness, peace and tolerance' (*Pretoria News* 18 November 2004).

In 2004 the ECN succeeded in re-registering almost one million voters, conducting by-elections, administering local, regional, national and presidential elections, as well as providing voter education at national and grassroots community levels. Given the massive task of re-registering almost one million voters, organising three rounds of voting and educating the general population on voter procedures, the ECN – with its associated support systems – has done an acceptable job of contributing to the democratic process. Of course, it did not achieve this alone: the democratic process in Namibia is a cooperative (and sometimes competitive) effort between government, donors, NGOs, civil society and political parties.

It is hoped that the ECN has learned from some of its mistakes, which contributed to the problems and irregularities described above, and that it will undertake to resolve these issues so the democratic process runs more smoothly and appears more professional.

The outcome of the court case in which some opposition parties alleged mass irregularities in the National Assembly elections and the resultant recount (conducted in only four days) speaks volumes for the health of Namibia's democratic process. The fact that opposition parties could challenge the election outcome (which it would be impossible to do in some countries) shows that in Namibia one can still question the democratic process. Furthermore, the similarity in results between the first count and the court-ordered recount indicates that, although problems were experienced, the ECN did succeed in its stated objective of holding credible elections in 2004.

## THE FUTURE OF DEMOCRACY IN NAMIBIA

Probably one of the most significant contributions to the consolidation of democracy in Namibia is the ESC. Other contributors to the democratic process include bilateral

donors, NGOs and civil society – many of which work directly on issues relating to democracy, while others strive to develop the social, economic and educational lives of Namibians, and thus also prepare the stage for a greater understanding of and participation in the democratic process. Educating and raising the social status of the general Namibian population, as well as exposure to globalising trends, will mean a more sophisticated Namibian electorate. This should push the consolidation of democracy in the country to an advanced level where policies and programmes influence the way people vote more than ethnicity, liberation credentials and charismatic personalities.

SWAPO is in conflict because of the fission between Pohamba and Hamutenya. One political option could be to appoint to the National Assembly some SWAPO Party members who have been alienated from the party over the presidential candidate race, thereby attempting to bridge the divide. If the party does not try to make some gesture towards this group of alienated party members, it could split, which would mean it would no longer be guaranteed such high rates of support in the future. It should be noted, however, that SWAPO Party officials say there is no tension within the party, only ill feeling; and if there are 'witch-hunts' these should be stopped because they will cause disunity in the party (*New Era* 13 December 2004). Indeed, SWAPO members have made several published statements stating that no party member should sow discontent within the party and that anyone doing so could face expulsion (the terms of which are laid out in the party's code of conduct). In what could be seen as a move by the outgoing president to quell dissatisfaction – from both inside and outside SWAPO ranks – the President has called on all Namibians to embrace national reconciliation and unity, stating that: 'Together we must build a truly united country, a prosperous Namibia in which the future generations will enjoy human dignity, equality and freedom.' (*The Namibian* 13 December 2004; *New Era* 13 December 2004).

Namibia still has serious political and ethnic divides, as well as a general lack of understanding and acceptance of democracy: these factors could be a potentially serious obstacle to democratic consolidation. However, there are also positive attributes such as high literacy rates, good levels of trust in representatives and a strong belief that the process is responsive to the needs of the people – all of which are conducive to the consolidation of democracy (Keulder 2002, p i). It seems that if it is to continue to consolidate democracy Namibia will have to face voter apathy, rising rates of tolerance for other forms of government, and plummeting voter confidence in the very democratic officials they have elected. Probably one of the best ways of consolidating democracy is through civic and voter education, which should not be viewed as being necessary only at election time but should be an ongoing process that reinforces citizens' as well as politicians' demands for democracy.

— REFERENCE —

- Du Pisani, A. 2005. 'Towards a vision of a just society'. *The Namibian* 18 February 2005.
- ECN. 2004. *Annual Report 2003-2004*. Windhoek: ECN.
- EISA. 2004. *Principles for Election Management, Monitoring and Observation in the SADC Region*. Electoral Handbook. Johannesburg: EISA.
- ESC. nd. Voter education discussion paper. Windhoek: NID.
- Government of the Republic of Namibia (GRN). 1990. *The Constitution of the Republic of Namibia*.
- . 1992. Electoral Act No 24 of 1992.
- . 2003. Electoral Amendment Act No 7 of 2003.
- Hopwood, G. 2004. *Guide to Namibian Politics*. Windhoek: NID/IPPR.
- Keulder, C. 2002. *Perceptions of Human Rights and Rights-Related Issues among Namibian Youth: Results from Focus Group Discussions*. Windhoek: IPPR/NID.
- . 2004. *Afrobarometer, Namibia 2003*. Windhoek: IPPR.
- Keulder, C & I Soiri. 2004. *Local Authority Representation in Namibia: Results of the 2004 Representatives Survey*. Windhoek: IPPR.
- Khaxas, E & L Frank. 2003. *Promoting Women's Participation in Politics and Law Reform by Collectively Developing Specific Demands for Affirmative Action Legislation with regard to Elections at all Three Levels of Government*. Windhoek: Sister Namibia.
- Kuteeue, P. 2004. 'Namibian election results delayed'. Reuters 18 November.
- LeBeau, D & E Ipinge. 2004. 'Women and power-sharing: Namibia's progress towards gender equality'. In C Lansberg & S Mackay (eds). *Southern Africa Post-Apartheid?: The Search for Democratic Governance*. Cape Town: Centre for Policy Studies (CPS).
- Namibian, The*. 2004. 'Politics – the business of the elders'; 'Where could Namibia be heading?: An analysis of the parties' manifestos', 15 November.
- . 2004. Vote buying alleged in the Caprivi; Observers happy with poll, 18 November.
- . 2004. 'MPs for 2005-2010'; 'Swakopmund attack claimed to be "political"', 23 November.
- . 2004. 'Women main poll losers', 24 November.
- . 2004. 'Swapo sweeps the board: DTA loses 14 seats'; 'Another top Windhoek municipality official quits', 3 December.
- . 2004. 'ECN admits ballot errors'; New board for NamPower'; 'Angula resigns from cabinet', 8 December.
- . 2004. 'Women presence up in new RC', 9 December.
- . 2004. 'SWAPO wields whip in regions'; President preaches unity', 13 December.
- . 2005. 'ECN gives vote verdict', 17 March.
- Namibian Women's Manifesto Network. 2003. *50-50: Women and men in Local Government – Get the Balance Right!*. Pamphlet. Windhoek: Sister Namibia.

- New Era*. 2004. 'Parties cry foul over candidates' gazetting'; 'Pohamba speaks on cabinet'; 'ECN can't wait for big day'; 'DTA youth have misgivings', 26 November.
- . 2004. 'Women overlooked'; 'Opposition to sue ECN', 25 November.
- . 2004. 'SWAPO Party press statement on the alleged dumped ballot papers at Okahandja'; 'The final tally, SWAPO sweeps the landscape'; 'Allegations of unfairness emerge'; ' "No development" blamed for voter apathy', 3 December.
- . 2004. 'Helmut Angula calls it a day'; 'Kaura fears losing constituencies'; 'SWAPO's Ojimbinde candidates cry Foul', 8 December.
- . 2004. 'Nujoma urges reconciliation'; 'Angula unhappy', 13 December.
- . 2004. 'Elections 2004: The final tally', 14 December.
- . 2005. 'SWAPO still winner', 17 March.
- Pitkanen, P. 2004. *Joint Civic and Voter Education and Voter Registration Programme in Namibia*. Windhoek: ESC.
- Pretoria News*. 2004. 'Namibian elections viewed as successful', 18 November.
- Sherbourne, R. 2004. *After the Dust has Settled: Continuity or Stagnation?* IPPR Opinion No 16. Windhoek: IPPR.
- Somach, S, D LeBeau & J Mindes. 2004. *Gender Mainstreaming and Disability Sensitization in Civic and Voter Education in Namibia*. Washington, DC: USAID.
- Van Zyl, D & C Keulder. 2001. *Youth and Democracy in Namibia: Results of the Youth and Politics 2000/01 Survey*. Windhoek: IPPR.

# BOTSWANA'S 2004 ELECTIONS

## *Free and Fair?*

By  
*Bertha Z Osei-Hwedie and David Sebudubudu*

Bertha Z Osei-Hwedie is Senior Lecturer, University of Botswana  
P/B UB 00705 Gaborone Botswana  
Tel: +267 355.2733; Fax: +267 3170706  
e-mail: [OSEI-HWE@mopipi.ub.bw](mailto:OSEI-HWE@mopipi.ub.bw)

David Sebudubudu is a lecturer at the University of Botswana  
Tel: +267 355.2732; Fax: +267 3170706

### ABSTRACT

*The paper analyses the freeness and fairness of Botswana's 2004 elections. It argues that although Botswana's multiparty democracy has lasted longer than any other in Africa its elections are free but not very fair. The fairness of Botswana's elections has been an issue of controversy that has led to calls from the opposition for political reform. The problem lies in the fact that the election system, the electoral body and the political field work to the advantage of the party in power. The paper concludes that until these issues are addressed, the fairness of Botswana's elections will remain problematic.*

### INTRODUCTION

Botswana's 2004 general elections, the ninth since independence, once again returned the Botswana Democratic Party (BDP) to power. The BDP won 44 of the 57 seats in Parliament, with the opposition Botswana National Front (BNF) and Botswana Congress Party (BCP) securing 12 seats and 1 seat respectively, giving the opposition a combined total of 13 seats. The BNF was confirmed once again as the country's major opposition party and the BCP as a one-seat party. The overwhelming win affirmed the BDP's dominance and the weakness of the opposition parties. The BDP has won all nine multiparty elections since 1965, making Botswana a one-party dominant state in which competitive multiparty elections are tolerated and held regularly every five years in a free and relatively fair manner. Botswana stands out as the only country in Africa that has enjoyed an unbroken record of democratic rule.

Since the 1990s, especially with the introduction of multiparty elections in one-party regimes and efforts to universalise democracy, the international community has increasingly put African elections under scrutiny to ensure that



they are conducted freely and fairly. The Southern African Development Community (SADC) election guidelines of 2004 and international observer and monitoring missions are directed at the promotion of free and fair elections. Opposition parties in both transitional and one-party dominant systems have become vocal in their demands for and insistence on free and fair elections. Most of the SADC countries have abided by this provision and, as the Electoral Institute of Southern Africa (EISA) (2004, p 3) correctly observes, 'most SADC countries have committed themselves to upholding the fundamental rights and freedoms embodied in their constitutions as well as to multiparty elections that are free, fair, credible and legitimate'.

Nevertheless, elections that are free, fair, credible and legitimate remain a thorny issue in the SADC countries, especially in those like Zimbabwe, where the March 2005 parliamentary elections raised many questions, and the Democratic Republic of the Congo, where the civil war is yet to be fully resolved. Even beyond SADC, the recent political instability in Togo stems from allegations of irregularities and claims of not-so-free-and-fair elections. In Botswana, elections have been conducted in accordance with the electoral law but their fairness has been a subject of controversy. It is in this context that this paper discusses the 2004 elections, gauging their freeness and fairness by analysing the electoral system, election administration and party competition. The primary aim is to highlight how these three factors affected the elections.

### FREE AND FAIR ELECTIONS

The words 'free and fair' have been the key among both contestants and the international community to judging the credibility and legitimacy of elections and are considered to be the basis of good governance. The requirement of free and fair elections is relevant both to Third Wave democratising countries and to stable and longstanding democracies like that of Botswana. Free and fair elections are important and necessary if the results are to have credibility among losers and opposition parties as well as international donors. In Botswana the issue of donor finance is not a pressing one but free and fair elections are necessary to the enhancement of the democratisation process, particularly at a time when the country's status as the 'shining star' of Africa's democracy is being questioned and subjected to scrutiny (Taylor 2003; Good 1997).

Free and fair applies to the whole democratic process, from the announcement of the election date through registration of voters and compilation of the voters' rolls, nomination of candidates, campaigning by candidates and parties, the secret ballot, the vote count and the announcement of results. This suggests that for free and fair elections to take place, certain conditions have to be fulfilled. These, according to Geisler (1993), include the right of the electorate, candidates and parties to participate, the right to freedom of expression and information, the right to a secret ballot, and the right of the winning candidate and party to assume power.

In practice, these conditions require that there should be no problems with voter registration and rolls and nomination of candidates, no intimidation and violence, and no buying of votes, tampering with ballot papers or switching or meddling with ballot boxes (Geisler 1993).

A much more recent requirement is the need for elections to be certified as free and fair by international observers and monitors. Forje (1997) and Touraine (1997) identify more conditions which have to be satisfied to ensure free and fair elections. They state succinctly that free and fair elections entail equal opportunities for both parties and candidates to campaign and compete; easy access by the electorate to polling stations, with no long queues; ensuring that elections are free of fraud, irregularities and rigging; and safeguarding proper counting and announcement of votes to reflect the voters' preferences.

Geisler (1993) raises pertinent issues and controversies surrounding the notion of free and fair elections. She draws our attention to the difficulty of gauging whether conditions for freeness and fairness have been fulfilled, especially in Africa, where, for example, demographic statistics make it difficult to verify the accuracy of voter registration and rolls, inadequate infrastructure compromises the work of polling agents, and illiteracy stands in the way of a secret ballot. Also, mutual distrust between the ruling and opposition parties automatically makes the electoral process flawed. While cognisant of lack of agreement on what constitutes a flawed election, Geisler (1993, p 613) identifies two major threats to free and fair elections: lack of 'commitment of African leaders to democratic standards' and 'the use of state machinery' in favour of the leader and his or her party.

Elklit and Svensson (1997) acknowledge the difficulty of providing precise guidelines for assessing elections. Nevertheless, they suggest a 'checklist' for the assessment of elections as free and fair, including, among other points, freedoms, the election act and electoral system, an impartial election commission, access to public media and polling stations by both voters and candidates, no misuse of government resources for campaigning, and timely and impartial counting and announcement of results. The checklist includes all events before, on and after polling day (Elklit and Svensson, 1997). They stress conformity to electoral laws and regulations as one of the yardsticks for the acceptability of elections. Free and fair elections are even more difficult to assess in a one-party dominant system like that of Botswana because of the advantages of incumbency and unequal competition between parties which makes it almost impossible to replace the party in power.

While Botswana qualifies as a liberal democracy because it has had relatively free and fair elections since independence and there is multiparty competition, the rule of law and universal franchise (Doorenspleet 2003; Molomo 2003; Venter, 2003; Van de Walle 2002), it fails the crucial test of alternation of power. The electoral predominance of the BDP that has resulted in a lack of alternation of power has prompted Przeworski et al (2002) to disqualify Botswana as a democracy. Similarly, Botswana fails the consolidation test required by Huntington's, quoted in Bratton (1998), two-turnover test, which requires a change of leadership in successive

elections. Botswana is neatly characterised by Bratton's (1998) remarks that in countries where the incumbent party retains power, it is hard to judge the extent to which elections contribute to consolidation of democracy, and whether a smooth transfer of power would take place if the opposition were to win an election. This suggests that elections in Botswana have become a ritual and routine way of legitimising the ruling party, which is guaranteed a win. However, other factors, like good economic management and a fragmented and weak opposition, have endeared the BDP to voters in spite of glaring socio-economic inequalities.

The situation in Botswana is not exceptional – the predominant party system seems to be the trend in Southern Africa, as shown in Zimbabwe since 1980, Namibia since 1990, Zambia since 1991 and South Africa and Malawi since 1994. Thus, the insistence by these authors and others like Lodge (1999) on alternation of power as the best measurement of consolidating democracy suggests that the prospects for deepening and sustaining democracy in the region are dim (Venter 2003).

### THE ELECTORAL SYSTEM

Electoral outcomes are largely determined by the electoral system. Since independence Botswana has used the first-past-the-post (FPTP) or simple majority electoral system to determine the winners of elections. In terms of the FPTP system, elections are contested on a ward or constituency basis. The candidate who obtains a simple majority in a ward or constituency wins the seat. The system, which attaches representatives to constituencies, thus ensuring accountability, is credited with producing predominant party systems and stable governments. However, it also has the negative effect of sidelining opposition parties (Molomo 2000) and it alters the relationship between seats won and the votes each party received (Jackson and Jackson 1997; See also Table 1). Elklit and Reynolds (2002, p 104) contend that in Botswana 'the electoral system over-represents the governing BDP, under-represents the fragmented opposition and fails to provide the space needed for new parties to insert themselves into the political discourse'.

For example, in the 2004 elections, the BDP won 53 per cent of the vote but 77 per cent representation in Parliament; the BNF won 23 per cent of the vote and was allocated 21 per cent of parliamentary seats and the BCP won 18 per cent of the vote and only one per cent of the seats (IEC 2004; *Botswana Guardian* 5 November 2004, p 3). However, according to Elklit and Reynolds (2002, p 104) 'unease with the electoral system has not been translated into dissatisfaction with the administration of elections themselves'.

The predominance of the BDP is largely the result of an electoral system which favours the winner and excludes the losers, mostly opposition parties, and punishes women candidates most because they do not fare well at the polls. The four BDP women in Botswana's Parliament represent 9 per cent of the 57 members of Parliament, well below the 30 per cent SADC requirement for women in political and decision-making positions by 2005 (SADC 2001, p 54).

**Table 1**  
**Percentage of Seats and Votes Won by Parties in Elections in Botswana, 1965-2004**

	1965		1969		1974		1979		1984		1989		1994		1999		2004	
	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes
BDP	99	80	77	68	84	77	91	75	82	68	91	65	67	55	83	54	77	53
BNF			10	14	7	12	6	13	15	20	9	27	33	37	15	25	21	23
BPP	0	5	3	6	2	4	0	4	0	3	0	2	0	4				
BIP	0	5	3	6	2	4	0	4	0	3	0	2	0	4				
BAM															0	5	0	
BCP															2	11	2	18
NDF																	0	1
Other	0	1	0	0	0	1	0	0	0	2	0	2	0	0	0	0	0	
<b>Total</b>	<b>99</b>	<b>99</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>95</b>	<b>100</b>	<b>95</b>

SOURCE: ADAPTED AND RECALCULATED FROM MOLOMO (2003); *BOTSWANA GUARDIAN* 5 NOVEMBER 2004; IEC, 'ELECTIONS 2004', [HTTP:// WWW.IEC.GOV.BW/](http://www.iec.gov.bw/)

However, an opposition party, if it is sufficiently strong and effectively challenges the ruling party, can win elections under the FPTP electoral system as examples within the SADC region, for instance, Zambia, illustrate. Thus, electoral alliance and reform alone are no panacea and cannot guarantee a win for the opposition if they suffer from credibility problems in the eyes of voters. The only argument for the reform of the FPTP system, which has worked so well since independence, is the need for increased inclusion of the opposition and women in the political system, as is the case in other SADC countries. This is contrary to the view that the opposition is a government in waiting.

The proportional representation (PR) system, which many are advocating, has its own disadvantages which are detrimental to democracy. Jackson and Jackson (1997, p 374) maintain that it 'has the potential to destroy democracy from within by creating a fragmented, multiparty system ... may also give rise to extremist or narrow-interest parties ... all cabinets must be based on fragile coalitions of parties ... [it] promotes cabinet instability and increases the possibility of government problems'.

The 'unfairness' of the FPTP system prompted the opposition in Botswana to lobby the government to reform the electoral system. Thus, while the BDP's manifesto was silent on electoral process, those of all the opposition parties made it their priority. The Pact proposed the use of PR and the BCP and the New Democratic Front (NDF) a blend of FPTP and PR (BCP Manifesto 2004; BDP

Manifesto 2004; NDF Manifesto 2004; and Pact Manifesto 2004, p 4). The Pact argued that FPTP 'does not reflect the political preferences of the electorate and thereby creates a feeling of exclusion amongst those who vote for the opposition (Pact Manifesto 2004, p 4). At the All Party Conferences in 2000 and before the 2004 elections the opposition made representations to the President for electoral reform, with no success. The BDP government has thus far not seen the need to change the electoral system. According to Molomo (2000), the faction of the BDP that is opposed to reform and wants to retain the FPTP electoral system appears to be led by Ian Khama, vice-president of Botswana and former Chief of the Botswana Army. He is also Paramount Chief of the biggest ethnic group in Botswana and the current chair of the BDP, as well as the first-born son of Botswana's first president, the late Sir Seretse Khama. Thus, he commands a lot of influence and authority.

### ELECTION ADMINISTRATION

For free and fair elections to become a reality, an independent and neutral administration is essential (Elklit and Svensson 1997). Equally important is an independent judiciary capable of resolving election conflicts impartially by upholding the Constitution, including the electoral laws, without siding with the incumbent leadership (Forje, 1997; Touraine 1997). Elements of electoral administration that guarantee the legitimacy of an elected government have been present in all elections conducted since independence. The Electoral Act guides electoral administration and adheres closely to the 2004 SADC electoral guidelines ('SADC' 2004, p 12), with important variations in relation to public funding for political parties, access to state media and counting of votes.

The 2004 election was the second administered by the Independent Electoral Commission (IEC), the first being in 1999. The seven commissioners of the IEC were appointed by the Judicial Service Commission (JSC) from a list of names recommended by the All Party Conference, a loose body that promotes an exchange of ideas between all political parties.

However, the appointment of the second IEC was surrounded by controversy as the main opposition parties boycotted the All Party Conference that recommended the names to the JSC. Only the BDP and two smallest parties, the Botswana Labour Party (BLP) and the Marxist Engels Leninists and Stalinist Movement (MELS), were present at the conference. The basic problem is that the Constitution does not provide for a quorum and the number of parties that should take part in the All Party Conference (*Constitution (Amendment) Act 1977*). Therefore, the 2004 All Party Conference did not violate the law and the appointment went ahead despite the reservations. Since the IEC was appointed by the Judicial Service Commission according to the law it is legitimate. In spite of the existence of the IEC since 1998, the President has continued to issue the Writ of Elections, much to the chagrin of opposition parties who, in 2004, accused him of advantaging his party by delaying the announcement of elections.

The independence, legitimacy, credibility and capacity of the IEC are important in a democratic process to ensure fairness. Particularly important is the capacity of the IEC to adhere to the electoral rules regarding voting and counting procedures and avoiding irregularities. In discharging its mandate, the IEC is guided by the Electoral Act, which, to date, it has abided by wholly. However, capacity is key to IEC operations. In spite of having senior and middle management, and support and temporary staff (Questionnaire to the IEC 11 November 2004) the IEC is constrained by inadequate human resources. Most of its staff comprises former government employees who are already skilled as information or education officers or administrators. What remains unclear is their skill in election administration, which, in essence, raises the question of the ability of the IEC to administer elections effectively and efficiently. However, the IEC managed to staff all polling stations.

Because of the shortage of staff, the IEC depends heavily on government employees, especially district commissioners, as returning officers to conduct elections. This calls into question its impartiality, thereby undermining its credibility as the neutral administrator of elections. The other concern is whether temporary staff members are given sufficient training to administer elections effectively and efficiently. In terms of training, the IEC maintained that it prepared guides for returning, presiding and polling officers in line with relevant sections of the Electoral Act (Questionnaire to the IEC 11 November 2004). The IEC also conducted workshops for polling officers in different constituencies to prepare them for the running of the 2004 elections (*Mmegi* 20 October 2004; *Mmegi* 26 October 2004).

In addition, as a way of improving its electoral administrative and delivery capacity, the IEC has principal elections officers who are responsible for the coordination, direct monitoring, supervision and evaluation of electoral activities within constituencies, and who identify all electoral materials and distribute the materials as required (Questionnaire to the IEC 11 November 2004). In spite of the shortfall in staff, the 2004 elections, like those in the past, were not characterised by vote rigging and conflict, with the exception of a few cases that were resolved by parties not contesting the results. Although the judiciary was not involved in 2004, to date it has acted independently and in accordance with electoral laws in adjudicating electoral disputes (very few and not of great significance), and no political party has questioned its conflict resolution role. Elklit and Reynolds (2002, p 104) acknowledge that 'Botswana is notable for actually putting into practice and accepting judicial review of election disputes'.

Unlike the BDP, which is happy with the 1998 reforms of election administration in terms of the replacement of the Supervisor of Elections with the IEC, the opposition remains suspicious of the IEC and continues to question its independence and impartiality in a number of areas. The fact that the President appoints the Secretary and that IEC employees are subject to government regulations and are recruited from the government raises questions about the impartiality of the body.

Election observers added their own views on the lack of independence of the IEC, thereby buttressing those held by opposition parties. For example, some of

the SADC election observers pointed out that IEC employees are governed by government general orders (Radio Botswana News, 27 October 2004). However, the IEC believes that it is independent, as it does not take instructions from any person or authority in discharging its duties (Questionnaire to the IEC, 11 November 2004).

Undoubtedly, voter apathy disenfranchises voters and constrains the functioning of the IEC. Voter participation in Botswana is lower than in other countries in the SADC region that have recently introduced multiparty democracy (IEC 2002). This apathy is likely to threaten the enhancement of democracy. Voters are generally dissatisfied with the representative role of almost all politicians (except the President, who, according to the Afro Barometer Research, received a positive rating). Voter apathy disenfranchises voters because the electoral system creates a disproportionate relationship between votes and seats; constitutional exclusion of a large number of people who are expected to be politically neutral and non-partisan; lack of funding for political parties, which limits the ability of the opposition parties to reach out to all voters countrywide; and absence of fixed terms of office for MPs and councillors as voters see the same candidates contesting every election even when they do not deliver on promises made during campaigns (IEC 2002, pp 6-7).

The problem of voter apathy contributes to the rising costs of conducting elections in Botswana as the IEC is forced to spend a considerable amount of money and time on voter education. For the 2004 elections, the IEC conducted voter education in partnership with local civil society organisations and external organisations and donors. With the financial support of the Fredrich Ebert Stiftung, the IEC conducted a Faith Sector workshop to persuade churches to impress upon their followers that they should vote. Similarly, with financial sponsorship from the British High Commission and the Electoral Institute of Southern Africa (EISA), drama performances were staged in various places throughout the country. The British High Commission financed 14 such drama programmes (Questionnaire to the IEC, 11 November 2004). These concerted efforts at voter education and extension of voter registration paid some dividends and were an improvement on past efforts. However, in spite of all these efforts at combating apathy, a few days before the elections some voters were still doubtful about voting. One of the major reasons for this lack of interest is that politicians, irrespective of their party affiliations, are perceived by the voting populace as self-seeking individuals.

Although the IEC reported that there was an improvement in voter turnout, with 76 per cent of registered voters casting their votes in the 2004 general election (Questionnaire to the IEC, 11 November 2004), it seems that their efforts in regard to voter education and supplementary registration did not decrease voter apathy and disenfranchisement: of the estimated 920 000 eligible voters only 552 849 registered to vote and, of these, only 421 272 cast their vote (Republic of Botswana, 2004). The only consolation was that the number of registered voters, 552 848, surpassed that of 1999, which was 459 662 (Tsie 2002). Similarly, the election results revealed that most parties had registered a decline in the popular vote, with the

major opposition party recording a significant drop. For example, the BDP's support declined from 192 598 votes in the 1999 elections to 192 020 in the 2004 elections, a drop of 578 votes. The BNF vote fell from 87 457 in the 1999 elections to 84 987 in the 2004 elections, a huge difference of 24 470. Only the BCP increased its support, from 40 096 in 1999 to 63 911 in 2004, an increase of 23 815 (*Botswana Guardian* 5 November 2004).

Administrative errors also contributed to voter apathy and disenfranchisement. The accuracy of the voters' roll and problems associated with it were issues of concern. For example, in September 2004, the magistrates court in Selibe Phikwe disqualified and removed some voters from the voters' roll as they were not properly registered. The disqualified voters faced possible prosecution in line with s 144 of the Electoral Act that makes it an offence for a person to give wrong information to a registration officer (*Dailynews* 2004). Similarly, a day before the poll, a magistrate court in Gaborone affirmed that 16 people were not lawfully registered and their names were struck off the Gaborone Central constituency's voters' roll (*Mmegi* 29 October 2004). However, the IEC pointed out that there were few cases of irregularities in voter registration and that the incidents that resulted in the disqualification of voters were primarily cases of voter trafficking – registration of voters in areas other than their residences (Questionnaire to the IEC 11 November 2004).

Voting procedures, especially easy access to polling stations and the absence of long queues, create an atmosphere conducive to free and fair elections. Elections in Botswana, in general, are peaceful, and free and fair in so far as they conform to the country's electoral laws. The 2004 elections were no exception. Undoubtedly, the elections were conducted in a cordial atmosphere and were devoid of intimidation or violence. However, two hitches seem to have occurred during the 2004 elections, which were not characteristic of past elections. The first was the long queues. A local newspaper quoted one voter as saying that he had spent six hours and twenty minutes in the queue (*Mmegi* 2 November 2004). In another instance, one voter spent one and half hours in a queue, and another four hours in the queue before voting (Interviews 2004).

The reason for the long queues was delays caused primarily by the fact that presiding or polling officers had to explain to voters the procedure involved, first in the case of parliamentary elections, then in that of the council elections. Section 55(b) of the Electoral Act authorises election officers to assist a voter by 'informing him of the procedure he should follow after entering the polling booth' (Electoral Act, CAP 02:09:27). The provision allowing voters to be helped is a catch-22: on the one hand it assists the 'illiterate' voter to make a choice, on the other, as Geisler (1993) vehemently contends, it undermines the freeness and fairness of the vote. Elklit and Svensson (1997), however, support assisted voting as long as it is impartial. Still, questions remain. How free and fair is the vote of an aided voter? How impartial is an assisted vote when there is a possibility of the helper influencing the voter? Unfortunately, long queues tend to discourage people, especially young ones with



little patience, from voting and contribute to voter apathy and disenfranchisement, as people are likely to leave the queue and not return to vote later. Since election day was not a public holiday many were forced to leave to return to work before they had a chance to vote (*Mmegi* 2 November 2004).

The cost of voting for residents outside the country was prohibitive, which excluded potential voters. External voting was held on 16 October 2004. Of the 2 430 external voters, only 1 207 managed to cast their votes (*Monitor* 25 October 2004). Unfortunately, the IEC, partly due to resource constraints, could not provide the number of polling stations required by voters outside the country. This led to complaints from voters, especially in the United States, where they were allotted only two polling stations, a clearly inadequate number given the size of the country.

Delays in the voting process and the announcement of results and the contestation of some results reflect negatively on the capacity of the electoral commission to administer elections expeditiously and effectively as well as efficiently. The announcement of results ended on the Monday, two days after the voting, a delay not experienced in the past. The main reason for the delayed results was that votes were counted manually and at designated points, as provided for in the Electoral Act, CAP 02:09. It is also possible that the increase in the number of constituencies from 44 in the 1999 elections to 57 in 2004 added to the burden of counting and tabulating results.

For the rest, as in previous elections, there were a few alleged irregularities. For example, the BDP claimed irregularity in the Gaborone Central constituency, where its candidate lost by a narrow margin of 91 votes, with 101 votes allegedly unaccounted for. Similarly, the BDP alleged irregularities in the counting of votes in council elections in the Maun West constituency, where its candidate lost to the Pact (Botswana Alliance Movement (BAM)) (*Mmegi* 2 November 2004). Interestingly, it was the ruling party, not the opposition parties, that complained of irregularities, which in itself would seem to attest to the autonomy of the IEC.

Asked to comment on complaints of irregularities in the administration of the 2004 elections, the secretary of the IEC responded that he would deal with the BDP's complaint when it was presented to the IEC or the High Court. The BDP subsequently withdrew the complaint after the losing candidate was appointed a specially elected MP and a Cabinet minister. The secretary also admitted that a few isolated cases of irregularities related to the interpretation of the Electoral Act were reported by some political parties after polling day and that a 'procedural case' related to the counting process and the announcement of results. Some parties disagreed with sections of the electoral law, resulting in misunderstandings with returning and polling officers. Other minor problems were delays in the finalisation of the voters' roll and the long queues on election day.

The IEC's belief that the elections were free and fair, an observation supported by different observer mission statements (Questionnaire to the IEC 11 November 2004), was not endorsed by opposition political parties, which, at a workshop designed to evaluate the IEC's performance during the 2004 elections, reiterated

that the IEC was not independent and that the elections were not fair (*Botswana Guardian* 26 November 2004). However, the 2004 elections appeared to reflect the people's preferences and bore out the predictions of both local newspapers (*Midweek Sun* 27 October 2004; *Monitor* 25 October 2004) and the mid-2004 opinion poll conducted by the Democracy Research Project (DRP) of the University of Botswana, that the BDP would win (*Mmegi* 24 June 2004).

## PARTY COMPETITION

Botswana's multiparty system is characterised as a dominant one-party system, with a multiplicity of registered opposition parties – twelve in all. The large number of opposition parties, the lack of alternation in government, and voter apathy because opposition supporters see the electoral process as a closed one with little chance of their parties forming the government, partly explain why the ruling BDP has been returned to power with a substantial majority in every election since independence. Six political parties contested the 2004 elections. They were the BDP and five opposition parties, the BCP, BNF, Botswana Alliance Movement (BAM), Botswana People's Party (BPP) and the New Democratic Front (NDF). The BNF, BAM and BPP formed a Pact and agreed not to challenge each other. The other two opposition parties opted out of the Pact.

The BDP fielded candidates in all 57 constituencies, as has been its practice in every election, and had the maximum number of candidates for all 490 council seats. Two major opposition parties fielded the highest number of candidates ever – 54 for the Pact and 50 for the BCP. The NDF fielded 12 candidates. Members of Parliament indirectly elect the president. Only four presidential candidates were nominated in the 2004 elections: F Mogae by the BDP, O Koosaletse by the BCP, O Moupo (who is BNF president) by the Pact, and D Bayford by the NDF. In addition to being presidential candidates, Koosaletse, Moupo and Bayford stood as parliamentary candidates. They all lost to BDP candidates. Their defeat raised questions about their leadership credentials in the eyes of voters. The Chief Justice declared F Mogae the winner, for his second term, when the BDP secured 32 of the 57 constituencies.

One of the requirements for free and fair elections is a level playing field for parties, allowing them equal opportunities to campaign and compete. This means that competing parties should have adequate resources to campaign and equal access to the public media (Elklit and Svensson 1997). With regard to party campaigns, the issuing of the Writ of Elections by the President riled the opposition, who accused him of advantaging his party by delaying the announcement of the date of the elections.

Botswana's elections have not been characterised by violence and the 2004 elections were no exception. This is largely attributable to the Tswana culture, which does not condone extremes. Holm (1996) argues that the Tswana culture rests on community consensus, which is based on non-violence, moderation and public

discussion. That said, elections in Botswana have not been entirely conflict free. For example, in the last few days before the 2004 elections the BDP accused certain opposition parties, especially the NDF, of intolerance over the use of a freedom square (Diswinking) in Gaborone South Constituency. The BDP reported the matter to the IEC. However, the IEC has no powers to deal with such cases. The BDP brought the same matter to the attention of the SADC observer team. A similar incident occurred in 1999 when members of the BNF clashed with BDP supporters over the use of the same freedom square (*Botswana Guardian* 29 October 2004).

Such confrontations, which have never resulted in serious clashes and have been quite rare, are compounded by the fact that political parties do not require a police permit to hold a political rally once a Writ of Elections has been issued. Before the writ is issued, political parties are required to apply for a police permit to hold a political rally. These permits regulate the schedules of political rallies and normally do not allow them to go on later than 6 pm. However, once a writ has been issued, rallies can go on into the night.

In 2004, as in all elections, the ruling BDP's strong resources, both financial and organisational, gave it the advantage over its opponents in electoral campaigns, the distribution of its party manifesto, mobilisation of voters and its ability to sponsor candidates in all constituencies (Osei-Hwedie 2001). However, there are several indications that the organisational and financial capacity of the opposition parties had improved tremendously by 2004, hence their confidence that they could secure enough seats to form the next government. Opposition parties fielded higher numbers of candidates in 2004 than they had in any past election and were able to mount huge billboards and posters in the Gaborone area. For the first time in Botswana's electoral history, three things happened which suggest a more level playing field: more parties presented their manifestos to the electorate, the electoral alliance of opposition parties remained united, and the media covered the electoral campaigns of all political parties. This is in line with Bratton's (1997) requirement for improvement in the quality of subsequent elections.

Although the BDP, BCP, the Pact and the NDF all presented manifestos to the electorate only the BDP was able to produce enough copies of its manifestos (in both English and Tswana) to circulate throughout the country (IEC 2002). This undoubtedly gave the BDP an edge over the opposition parties. In the 1999 elections, only two other parties produced manifestos, while prior to that no opposition parties had done so. The BDP's 2004 campaign was fought under the slogan 'There is still no alternative'. The BCP used the slogan 'Botswana can and must be better' to woo voters to its side; the Pact, 'Together we shall deliver'; while the UDF had no specific slogan. The manifestos had one thing in common: all parties aspired to national unity, greater economic growth and sustainable development for Botswana.

In the 2004 elections the Pact remained coherent, with a single presidential candidate and agreement on the distribution of constituencies among Pact members, although the numbers favoured the major opposition party, BNF, which contested a total of 41 out of 54 seats (*Botswana Guardian* 8 October 2004) and fielded the

highest number of candidates relative to the other opposition parties. This contrasts sharply with the 1999 elections when BAM, an electoral alliance of opposition parties, failed to co-opt the BNF to contest the elections on a common platform.

Unlike in previous elections, media coverage of the 2004 election campaign was accommodating of opposition parties. In an effort to avoid and respond to the opposition parties' criticisms and accusations of a BDP monopoly, the government allowed the public media to cover both the ruling and the opposition parties. For example, radio discussions involved candidates of all political parties, enabling them to address their constituents; Botswana Television broadcast rallies of both the ruling and opposition parties and debates and the presentation of the views of representatives of most political parties, and the government *Dailynews* covered opposition parties' activities as well. However, the BDP continued to get most of the coverage by virtue of its incumbency, as the government owns and controls the public media.

The private media covered opposition campaigns and were instrumental in exposing scandals involving BDP officials, for example, the land commission and recent reports of the financial woes of the BDP's secretary general. However, there were times when the government influenced the stories covered by the private media by threatening to sue or to withdraw advertising from media that carried stories critical of the government and the party. Limited circulation and the fact that most of the private media are English language publications limits the role of the private press as appropriate sources through which opposition parties can transmit their ideas to voters.

The issue of public funding, though controversial, is seen to be critical to levelling the playing field and is said partly to determine the nature of Botswana's multiparty system as lack of resources undermines the opposition by weakening their organisational and campaign capability. Funding is of central importance in an electoral contest because 'without money in politics, competitive multiparty democracies could not function, nor could their governments operate. Like a form of free speech, political finance is linked to the health and strength of a democracy' as it 'affects the equilibrium of democracy' (United States Agency for International Development 2003, pp 1, 7).

In Botswana, the law does not provide for public funding of political parties but it does not prevent parties from soliciting funds from both internal and external sources. The absence of public funding of elections, together with apathy and good economic management by the BDP, have prevented the opposition from mounting an effective electoral challenge. The IEC (2002, p 7) concludes that lack of public funds for the opposition results in leaders 'owning' parties and in poor party governance. This, according to Sebudubudu (2003), is primarily because the ruling party has access to a variety of sources of funding while opposition parties are under-resourced and their sources of funding are frequently unreliable. The opposition parties, through the All Party Conference and direct appeals to the President, pressured for the introduction of public funding. However, the BDP has

so far resisted as it has plenty of resources and benefits from the current arrangement. Interestingly, unlike in previous elections, there were no revelations of any party receiving external funds for the 2004 electoral campaign. Even so, the BDP was able to buy some 57 vehicles for use in its campaigning (*Botswana Guardian* 30 July 2004). The local media failed to reveal what opposition parties had spent on their campaigns.

With respect to the nomination of candidates, fewer women and youth were nominated in the 2004 elections than in previous elections, with only 16 women parliamentary candidates among a total of 178. The BDP fielded the highest number – 8, the BCP 2, the NDF 1, the BNF 4 and MELS 1. The remaining parties did not nominate any women. The marginalisation of women and youth is strongly rooted in the patriarchal culture of a society that excludes them from politics and is reinforced by the intra-party democratic dispensation, the primary elections. All parties have free contests during primary elections, with no quotas or special dispensation for women and youth. Indeed, the BDP's 'Bulela Ditswe' (open to all) policy reduced the number of women candidates, especially where more than one woman contested a particular constituency during the primary elections.

In addition, the fact that the media failed, as they had in the past, to give special coverage to the campaigns of female candidates or to interview them, further reinforced their marginalised status. The head of the Media Institute of Southern Africa (MISA), Botswana, admitted on national television that his organisation had not yet covered women candidates, instead it had focused on male candidates of all political parties, with a bias towards BDP male candidates (*Botswana Television news* 2004). The same treatment was accorded to young candidates. Furthermore, the constitutional provision that bars civil servants from contesting political office unless they resign their posts, reduces the number of female and youth candidates.

## CONCLUSION

The fact that the BDP has won nine multiparty elections in a row must be celebrated and commended, especially on a continent that is riddled with electoral conflicts. The elections were free from intimidation and violence, allowing the electorate and parties to participate unhindered, and were fair in so far as they were in accordance with the national electoral law and regulations. However, the 2004 elections confirmed that Botswana's political landscape is tilted in favour of the ruling party, which raises questions of just how fair they really are. The BDP reaped the advantages of incumbency, enjoyed the most coverage by the state media, attracted more funding and profited from the electoral system. These factors disadvantaged the opposition parties and contributed to their weakness, disorganisation and inability effectively to challenge the BDP. Further, the predominance of the BDP and the lack of alternation in power since independence cast a shadow over the process of consolidation of democracy. The inequality of competing parties highlights the problem of the quality of elections under a one-

party predominant system and the difficulty of assessing the freeness and fairness of elections; problems common to other Southern African countries. This suggests that there is a need for reform to level the political playing field and ensure that parties engage in electoral competition on an equal footing, not only in Botswana but in other Southern African countries as well.

## — REFERENCES —

### Publications

- Botswana, Republic of. 2004. *Parliamentary Results 2004*, <http://www.gov.bw/elections04/index.html>.
- Botswana, Republic of. *Electoral Act* Chapter 02:09.
- Botswana *Constitution (Amendment) Act*, 1999.
- Botswana Congress Party, *Manifesto* 2004.
- Botswana Democratic Party, *Manifesto* 2004.
- Botswana Guardian* 30 July 2004; 8 October 2004; 29 October 2004; 5 November 2004; 26 November 2004.
- Botswana Television news. Gaborone, 21 October 2004.
- Bratton, M. 1998. 'Second Elections in Africa'. *Journal of Democracy* 9(3). *Dailynews*. Gaborone, 18 October 2004.
- Doorenspleet, R. 2003. 'Political Parties, Party Systems and Democracy in Sub-Saharan Africa'. In MA Salih (ed). *African Political Parties*. London: Pluto Press.
- EAfrica* 2 September 2004. 'SADC Nails Flag to Polls: New Guidelines Set Higher Standards for Elections'.
- Electoral Institute of Southern Africa (EISA). 2004. *Principles for Election Management, Monitoring and Observation in the SADC Region*. Electoral Handbook. No 13. Johannesburg: EISA
- Elklit, J and P Svensson. 1997. 'What Makes Elections Free and Fair?'. *Journal of Democracy* 8(3), July.
- Elklit, J and A Reynolds. 2002. 'The Impact of Election Administration on the Legitimacy of Emerging Democracies: A New Comparative Politics Research Agenda'. *Commonwealth and Comparative Politics* 40(2).
- Forje, J W. 1997. 'Some observations on prospects of democracy in the contemporary world: Africa's transition to a democratic governance system'. In T Vanhanen. *Prospects of Democracy: A Study of 172 countries*. London: Routledge.
- Geisler, G 1993. 'Fair? What Has Fairness Got to Do with It? Vagaries of Election Observations and Democratic Standards'. *Journal of Modern African Studies* 31(1).
- Good, K. 1997. *Realizing Democracy in Botswana, Namibia and South Africa*. Pretoria: Africa Institute of South Africa.
- Holm, J. 1996. 'Development, democracy and civil society in Botswana'. In A Leftwich (ed). *Democracy and Development: Theory and Practice*. Cambridge: Polity Press.

- Independent Electoral Commission (IEC). 2002. *Voter Apathy Report: an abridged version*. Gaborone: Government Printer.
- Independent Electoral Commission (IEC). 2004. 'Elections 2004'. <http://www.iec.gov.bw>.
- Jackson, J and D Jackson. 1997. *A Comparative Introduction to Political Science*. New Jersey: Prentice Hall.
- Lodge, T. 1999. *Consolidating Democracy*. Johannesburg: Witwatersrand University Press.
- Midweek Sun*. Gaborone, 27 October 2004.
- Mmegi*. Gaborone, 20 October 2004; 26 October 2004; 2 November 2004.
- Molomo, M G. 2000. 'In Search of an alternative electoral system for Botswana'. *Pula: Botswana Journal of African Studies* (14)1.
- Molomo, M. 2003. 'Political Parties and Democratic Governance in Botswana'. In M A Salih (ed). *African Political Parties*. London: Pluto Press.
- Monitor*. Gaborone, 25 October 2004.
- National Democratic Front, *Manifesto* 2004.
- Osei-Hwedie, B Z. 2001. 'The Political Opposition in Botswana: the Politics of Factionalism and Fragmentation'. *Transition* 45.
- Pact, *Manifesto* 2004.
- Przeworski, A, M Alvarez, J A Cheibub and F Limongi. 2000. *Democracy and Development*. Cambridge: Cambridge University Press.
- Radio Botswana News 7 October 2004.
- Sebudubudu, D. 2003. 'Funding of political parties in Botswana: Democracy left to the market'. Seminar paper, Department of Political and Administrative Studies, University of Botswana.
- Taylor, I. 2003. 'As Good as it Gets? Botswana's "Democratic Development"'. In H Melber (ed). *Limits to Liberation in Southern Africa*. Cape Town: Human Sciences Research Council Press.
- Touraine, A. 1997. *What is Democracy?*. Boulder, Colorado: Westview Press.
- Tsie, B. 2004. 'Botswana's Electoral Politics in 2004'. *Election Talk*, 16 February 2004.
- United States Agency for International Development (USAID). 2003. *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies*. Washington: Technical Publications series.
- Van De Walle, N. 2002. 'Africa's Range of Regimes'. *Journal of Democracy* 13(2), April.
- Venter, D. 2003. 'Multiparty Politics and Elections in Southern Africa: Realities and Imageries'. In M A Salih (ed). *African Political Parties*. London: Pluto Press.

### Questionnaire

Questionnaire to the Independent Electoral Commission, 11 November 2004.

### Interviews

Interviews with voters after polling day, 1 November 2004.

Telephone interview with the IEC, 30 November 2004.

# MALAWI'S 2004 ELECTIONS

## *A Challenge for Democracy*

By  
Wiseman Chijere Chirwa

Wiseman Chijere Chirwa is a graduate of sociology, political studies, and social history. He is currently professor of social history at Chancellor College, University of Malawi, and was until recently Deputy Director at the Centre for Social Research, University of Malawi Faculty of Social Science, Chancellor College, University of Malawi, P O Box 280 Zomba Malawi  
Tel: + (265) 1 524 695 (O); + (265) 9 958 302/ 8 351 491 (M)  
Fax: + (265) 1 524 046/ 524 695  
e-mail: [wise@chanco.unima.mw](mailto:wise@chanco.unima.mw)

### ABSTRACT

*There is a growing academic interest in the connection between elections and democratic governance in Southern Africa, and Africa as a whole (see, for example, Asmal and De Ville 1994; Hyden 1997; Harris and Reilly 1998; Brito 2003; Darga 2004; Makoia 2004 and 2005; Matlosa 2003a, 2003b, and 2005). Scholars agree unanimously that regular elections are an important measure of democratic governance, though they do not necessarily constitute democracy per se (see Nzongola-Ntalaja 1997).<sup>1</sup> Periodic elections directly shape the nature of political representation by determining which groups and parties are included in political decision-making structures and institutions, and which are not.<sup>2</sup> They are a means of popular intervention and participation in the political process, hence they contribute to the entrenchment of democracy (Makoia 2005), while, at the same time, influencing 'fair' or 'unfair' representation of political groups in representative bodies. Elections are a key mechanism through which the public can influence the political process and keep public office holders in regular and periodic check. They provide opportunities for the electorate to make a retrospective assessment of government's (as well as the opposition's) performance, and exercise some degree of control over their representatives (Dulani 2005). The holding of periodic elections therefore provides a link between democratic politics and the public interest by ensuring that politicians, who claim to represent and speak for the public, are ultimately judged by the same public (Schumpeter 1942). However, it must be emphasised that elections, on their own, do not constitute democracy. They are*

---

1 For a slightly different view, see Bratton and Van de Walle 1997.

2 For details on these see Bakken 2005.



*simply among the major hallmarks of democratic politics (Przeworski et al 1996). Reducing democracy to elections would amount to what Larry Diamond (1996) calls the 'fallacy of electoralism'. This paper discusses elections and democratic governance in Malawi. It joins Robin Luckham and others (2003) who argue that although there have been numerous benefits of democratic transition there are, at the same time, some major 'democratic deficits' (see also Matlosa 2005). The paper argues that one of these deficits relates to the management of the electoral process, and others to the effects of the electoral event on democratic governance. The Malawi case is an example of these deficits.*

## INTRODUCTION

Malawi adopted multi-party democracy in 1993 after holding a referendum. Since then, there have been three presidential and parliamentary elections, in 1994, 1999, and 2004, and one set of local government elections, in 1999. Drawing evidence from the 2004 general elections, this paper argues that there have been some major democratic deficits in Malawi in relation to the management of the electoral process, the delivery of democratic outcomes, and the effects of the electoral event on democratic governance.

## ELECTION MANAGEMENT

The institution responsible for managing elections in Malawi is the Malawi Electoral Commission (MEC) set up under Chapter VII ss 75-77 of the Republic of Malawi Constitution. In addition to the Constitution, the Presidential and Parliamentary Elections Act and the Local Government Act define the mandate, powers, and functions of the Electoral Commission.

Key electoral functions of the commission include management of the voters' roll, provision of voter education, provision of electoral personnel and voting materials, supervision of the polls, and the announcement of results. It also has administrative functions that include determining constituency boundaries, reviewing existing constituency boundaries and determining electoral petitions and complaints. As Dulani (2005) has rightly observed, given the centrality and importance of elections to democratic governance, the impartial and professional management and administration of the electoral process is as important as the outcome of the electoral event itself. The account below indicates that the management of the 2004 Malawi general elections created major deficiencies in the country's democratic governance. In the first place, it compromised the constitutional provisions on the franchise. In s 77 the Malawi Constitution states that all persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum provided they are qualified to register as voters. The qualifications for registration are citizenship or continued residence in the country for a period of not less than seven years; an age

of 18 years or older and residence, birth, employment or operation of a business enterprise in the constituency where one wants to vote.

The management of the electoral process compromised the franchise in a variety of ways. To begin with, the voter registration process was marred by irregularities and logistical problems ranging from shortages of registration forms and equipment such as films, cameras, and batteries to transportation of materials to registration centres. The registration period was continually changed and extended because of logistical problems. According to the commission's calendar registration was initially scheduled for the period from 5 to 18 January 2004 but continued into February both for logistical reasons and as a response to civil society observations that the registration period was too short.

However, the extension of the registration period was not followed by the provision of adequate resources, thereby rendering it almost meaningless. As a result, in some constituencies, especially in the northern districts, some qualified potential voters did not register (*The Nation* 9 January 2004; *The Daily Times* 20 January 2004).

It is worth noting that the logistical problems and resultant mismanagement of the registration process were not unique to the 2004 elections. The 1999 elections suffered from similar problems (see Patel 2000 and Kadzamira 2000). This suggests a deep-rooted weakness in the management of Malawi's democratic elections. Dulani (2005) observes that the fact that the problems encountered in the 2004 registration exercise were identical to those experienced in 1999 suggests not only poor planning on the part of the MEC but also an abject failure to learn from past mistakes and to rectify them. This, in turn, not only undermines public confidence in the electoral body, but also has the potential to undermine confidence in the elections and their outcomes.

On its part, the commission argued that most of the logistical problems arose from poor funding and delayed and inadequate technical and financial support from donors. This argument, in itself, is a tacit admission of poor planning. It also demonstrates the extent to which democratic elections have not been institutionalised in the country. Had they been institutionalised they would have been a major component of the country's standard budget. Given that the Malawi Constitution clearly states that elections will be conducted every five years, issues of inadequate funding and delayed technical and financial support should not arise because the planning process should be institutionalised.

The franchise was also compromised by the mismanagement of the voters' roll. During the second week of April 2004, the MEC announced that 6,5 million voters had registered for the 18 May presidential and parliamentary elections.<sup>3</sup> Opposition political parties and other institutions in the country challenged this figure. Most critical was the National Statistical Office (NSO), which described the

---

3 Some records show a figure of 6,7 million registered at this time.

figure as 'bogus' because it did not conform to the country's natural demographic trends. 'It defies all logic,' observed the *Weekend Nation*, one of the country's leading weekly papers. A mathematician and statistician at the Polytechnic, one of the constituent colleges of the University of Malawi, who was also Director of Publicity for the opposition National Democratic Alliance (NDA), described the figure as 'absurd and a pointer to [election] rigging'.

In 2003, with assistance from the United States Bureau of Census (USBC), the United States Agency for International Development (USAID) and the United Nations Population Fund (UNPF), the Malawi National Statistical Office (NSO) projected that in 2004 5,5 million of the country's projected population of 12 million would be over 18 years old and thus qualified to vote. 'Our projections [based on the last (1998/99) national population census] are [that] the population has grown at an average rate of 3.2 per cent', observed the NSO. [sic]: 'But if you calculate the average rates at which the Commission's figures are based, you will find that they are way above the normal population growth rate,' the NSO argued.

The MEC registered some 5 071 822 voters for the 1999 general elections. The figure for the 2004 elections suggested an increase of 1 million, despite the fact that some 106 086 registered voters were reported to have died in the previous five years and had, it was claimed, been removed from the voters' roll. To some analysts, including the NSO, these figures just did not make sense, especially if they were broken down regionally. Malawi has three administrative regions: north, centre and south. Slightly more than 50 per cent of the country's population live in the southern region, and just about 12 per cent in the northern region, with about 38 per cent in the central region. The comparative figures for registered voters for the 1999 and the 2004 elections and the NSO population projections for those who would be 18 years and older were as follows:

**Table 1**  
**Projected Voter Registration, 2004**

Region	Registered Voters		NSO Projections
	1999	2004	2004
North	678 906	924 879	698 094
Centre	1 975 203	2 703 621	2 260 480
South	2 417 713	3 040 339	2 635 507
<b>TOTALS</b>	<b>5 071 822</b>	<b>6 668 839</b>	<b>5 594 081</b>

SOURCE: NSO/MEC/NATION NEWSPAPERS

Why, asked the NSO, 'should the northern region, all of a sudden, have over 200 000 more [voters] registered just in five years? In the south, can they [the MEC] explain how three million people registered when our projected adult population by June this year is only 2.6 million?' The number of registered voters in the northern region was 678 906 in 1999. It had risen to 924 879 in 2004, representing a 36 per cent increase. In the central region, 1 975 203 voters registered in 1999; 2 703 621 registered in 2004 – another 36 per cent increase. In the southern region, 3 040 339 voters registered in 2004, compared to 2 417 713 in 1999 – an increase of 25 per cent.

Many people argue that though an increase was indeed expected, given the natural increase in the country's population, the registration increase was just too high and warranted an explanation. The *Weekend Nation* (17-18 April 2004) commented:

either [the adult] population is unknown or 6.5 million voters are from Mars ... Even if the Commission assumes a 100 per cent registration rate – which is not possible even where people get punished for not registering – the 6.5 million figure cannot be accurate. There simply are not that many adults of 18 years and above in our country.

The management of the voters' roll was further criticised by donors who provided technical and financial support for the elections. The MEC decided to use two parallel voters' rolls: a computerised and a manual one. The donors had recommended that only a computerised system be used. The MEC argued that it did not have the capacity to manage such a roll efficiently. There would also be problems with using a computerised roll in remote rural areas, while the manual roll would be easy to use.

The disputed voters' roll created a crisis of confidence in the management of the electoral process, the elections themselves, and in the MEC as an electoral body. This undermined confidence manifested itself in two ways. The opposition parties interpreted it as an attempt by the governing United Democratic Front (UDF) to rig the elections. 'It shows how the ruling party has orchestrated rigging by inflating figures ... [and] creating polling centres just to increase the number of voters,' they argued. They accused the Electoral Commission of being used by the governing party to manipulate the voters' roll to enhance that party's chances of winning the elections (*The Weekend Nation* 17-18 April 2004; *The Nation* 9 January 2004; *The Daily Times* 20 January 2004; *Tamvani* 31 January-1 February 2004). The accusations included allegations that the UDF was trying to persuade some of its supporters to register more than once so that they could cast multiple votes in the elections (Dulani 2005).

There were also reports that the ruling party had embarked on a campaign to collect voting certificates in the guise of ascertaining its support base. A leading weekly paper reported: 'two days after the voter registration exercise closed,

irregularities [had] emerged with the ruling party being accused by civil society and opposition parties of offering jobs and money, distributing starter packs<sup>4</sup> in exchange for voter registration numbers' (*Weekend Nation* 31 Jan, 2004). The opposition parties and civil society organisations argued that the voters who lost their registration certificates in this manner, like those who did not register, were disfranchised. However, voting regulations in Malawi allow a person who has lost his/her voter certificate to vote for as long as he/she can be traced on the voters' roll on polling day, and if the person has authenticated identification or is positively identified by the polling staff and monitors. The issue here was more to do with fear on the part of those who had lost their certificates in this manner and believed that this meant they could not vote. It could also be a result of lack of understanding of the voting regulations.

A critical analyst would argue that if it were at all true that the UDF and the MEC had orchestrated the rigging, the formula used was extremely risky and had the potential to work against them. The increase in the numbers of registered voters was larger (by 36 per cent) in the northern and central regions, two regions generally regarded as opposition strongholds. The 25 per cent increase in the southern region would also work in favour of the opposition parties given that the governing party's candidate and two of the leading contenders in the presidential race were all from the same region. This would cause a spilt in the southern region votes, and the UDF had no guarantee of success in that region. The governing party could no longer bank on the regionalist-cum-ethno-linguistic bloc vote from the southern region.

The second manifestation related to the undermined confidence in the electoral database. Interestingly, in 1999 the NSO was criticised by academics and civil society organisations for 'inflating' the adult population of the southern region. This was interpreted as a move to facilitate the UDF's victory in the elections that year, given that the southern region was viewed as the party's stronghold. In 2004 the NSO used the same arguments against the MEC, either to save its own face or simply because the NSO itself had no confidence in the electoral database in general. It should be noted that the NSO's figures were, themselves, mere projections and were not based on a concrete recent national population census. The last census in Malawi was in 1998. This paper, therefore, contends that at the centre of all these controversies is the integrity of the demographic databases in the country. Whose demographic statistics does one believe: those of the NSO or those of the MEC? The lack of integrity of the NSO's demographic data is, itself, a major cause of lack of integrity of the MEC's voter's roll.

Also questionable was the integrity of the MEC as an election management body. Rocked by accusations and controversies, its professional management of the overall electoral process became somewhat suspect. Civil society organisations

---

4 These are agricultural inputs comprising fertilisers and seeds which are given to smallholder peasant farmers as start-up packages.

attacked it for 'overall inefficiency' and declared that they 'no longer [had] any trust' in it. A few months prior to the elections a number of civil society organisations attempted to have the MEC chair removed from his office for what they referred to as 'inefficiency'. Earlier in the year some opposition parties applied to the High Court to rule that the MEC chair was constitutionally unqualified for the post. The public image of and popular trust in the MEC was further eroded by some malpractice on the part of its top managers. The commission's auditor was being investigated for mishandling fuel coupons worth millions of Malawi Kwacha, while the Chief Elections Officer was suspended from his post following opposition accusations that his wife, who was standing as an independent candidate after losing in the primaries of the governing UDF, was using MEC vehicles for her political campaign.

The eroded confidence in the MEC also arose from debates about its independence. Although s 76(4) of the Constitution states that 'the Electoral Commission shall exercise its powers, functions and duties ... independent of any direction or influence by other authority or any person', the way the commission is appointed makes it susceptible to the influence of the Executive. Its chair is nominated by the Judicial Service Commission, but formally appointed by the President, who also appoints the other members, not fewer than six, in consultation with political parties represented in Parliament. In practice, the parties nominate their own representatives, who are formally appointed by the President. The President also has constitutional powers to remove a member of the commission from office on the recommendation of the Public Appointments Committee of Parliament on grounds of incapacity or incompetence. The dominance of the executive in this arrangement undermines the independence of the MEC. In the eyes of many it creates enough grounds for accusations and suspicions of manipulation by the Executive.

Evidence that the mismanaged registration process and the suspicious voters' roll created a crisis of confidence in the elections comes from the postponement of the voting date from 18 to 20 May 2004. The voting day for parliamentary elections in Malawi is fixed by s 67(1) of the country's Constitution. It falls on the third Tuesday in May in the fifth year after the election of Parliament.<sup>5</sup> The 2004 elections were postponed by two days in response to mounting criticism over the integrity of the voters' roll. The MEC was forced to carry out a 'cleansing' exercise of the roll to make it credible. A South African company was contracted to undertake the exercise just a few days before the elections and the work could not be completed in time for the voters' roll to be readily available in all the constituencies.

Opposition parties and civil society organisations sought the intervention of the courts to stop the MEC from proceeding with the elections on the appointed

---

5 The Constitution also provides that where it is not possible for an election to be held on the third Tuesday of May, it should be held within seven days from that Tuesday on a date appointed by the Electoral Commission.

day in order to give voters sufficient time to inspect the roll as required by the Presidential and Parliamentary Elections Act (PPE). The courts ruled in favour of the opposition parties.

The 'cleaning' exercise resulted in a reduction in the number of registered voters from the original 6,5 or 6,7 million to 5,7 million, suggesting that between 0,8 and 1 million 'voters' were indeed bogus or erroneously registered. The figure announced after the 'cleaning' exercise was closer to the NSO projection of 5,5 million by 2004.

**Table 2**  
**Voter Registration by Region 1999 and 2004**

Region	Year		Difference (Increase)	Difference %
	1999	2004		
North	675639	803874	128235	18,98
Centre	1965249	2325622	360373	18,34
South	2418848	2622532	203684	8,42
National	5059736	5752028	692292	13,68

SOURCES: MALAWI GOVERNMENT GAZETTE 2,758; PATEL 2000; DULANI 2005

Of particular interest is the increase in the numbers of registered voters in the northern and central regions, the areas regarded as opposition strongholds. If these were, indeed, such increases, there is a case for the argument that there was a potential threat to the governing party from the combination of the two regions, particularly in relation to the presidential election. An opposition candidate supported by all the voters from the two regions would win the election. This threat was real, given that at that time the opposition parties were contemplating fielding a joint presidential candidate and if it was perceived as real by the governing party the opposition argument that the original registration figures were an attempt to manipulate the voters' roll by skewing the numbers in favour of the southern region so as to give advantage to the governing party could be true. However, this might simply be a matter of speculation as there was no concrete evidence that such a 'plot' was indeed envisaged either by the governing party or by the MEC.

The courts' decision to order the postponement of the elections was based on the strength of the opposition parties' argument that the MEC had failed to comply with the sections of the PPE that provide for the verification of the voters' roll by the public. Though the MEC complied with the constitutional requirement to hold the postponed elections within the seven-day limit, these developments are a further

indication of its failure to operate within the prescribed electoral rules and regulations. As one analyst has argued, this highlights a critical failure on the part of the MEC to undertake its responsibilities in ways that would ensure a smooth electoral process (Dulani 2005). The fact that the courts had to intervene also suggests that the 2004 electoral process was managed by an electoral body that either did not know the rules that should have guided its operations or knew them but ignored them. This state of affairs only serves to undermine not only the credibility of the MEC itself, but also the election outcomes (see Chirwa 2004).<sup>6</sup> According to the official statement of the observer mission of the African Union (2004)

the controversy surrounding the voters roll not only exposed the weaknesses of the Malawi Electoral Commission in the management of the elections but affected the morale and conduct of the elections. The voters register is a very important document that determines who may vote in an election. The very fact that there were problems in reconciling the figures of eligible voters, that the voters roll had not been finalised early enough to allow for proper verification and resulting in court action and court order to change the election date, pointed to insufficient capacity of the Malawi Electoral Commission to adequately prepare for the elections.

The credibility of the electoral body was further eroded by its failure, on two counts, to create a level playing field for the electoral process. First, the MEC had no control over the election campaigns, although the law mandates it to do so. The legal requirement is that the election period should run for two months. Campaigning outside the official campaign period is an electoral offence. The official campaign period for the 2004 elections was from 16 March to 16 May. The governing party launched its campaign more than four months prior to the elections and the MEC failed to discipline it, despite many calls from various stakeholders and a court order. Electoral malpractices on the part of the governing party included the use of public resources. It drew resources such as vehicles from parastatal organisations for use in its campaigns.

The second problem was the governing party's monopoly of the public media: state radio and television stations, where it was accorded up to 93 per cent of all positive campaign coverage. The remaining 7 per cent, which was largely negative coverage, was shared between the various opposition parties (Neale 2004). In a statement issued at the beginning of February 2004, Malawi's major donors expressed concern about the fairness of the elections given this monopoly of the public media. 'Regrettably,' observed the donors, 'news broadcasted by MBC and TVM is dominated by reports that explicitly or implicitly favour the parties in

---

6 (Dulani (2005) makes these arguments strongly and also shows their implications for public confidence in the elections and their outcome.



government (*Weekend Nation* 31 January – 1 February).<sup>7</sup> The donors, academic analysts, opposition parties and civil society organisations concluded that the failure by the MEC to level the playing fields meant that although the opposition parties were allowed to contest, their chances of winning were significantly reduced in comparison to those of the ruling party. This, in turn, undermined the democratic credibility of the entire electoral process.

The monopoly of the public media by the governing party was not unique to the 2004 election campaign. It was a contentious issue in the 1994 and 1999 elections as well (see Article 19, 2000). A study by Article 19 of media coverage in the 1999 elections shows that there was a deliberate effort by the governing party to create a media disinformation campaign. A team of journalists and reporters was hired from media houses to distort opposition party election information, issue false reports, use inflammatory language, and provide positive coverage for the governing party only. When the party won the elections, the members of the media disinformation campaign team were rewarded with promotions, new jobs, and other material benefits.

### VOTER RESPONSE

The irregularities in the registration process and the mismanagement of the voters' roll may have affected the voters' response to the election. There was a much lower voter turnout for the 2004 general elections than there had been for the referendum of 1993 and the general elections of 1994 and 1999. Judging by the results of the presidential election, about 3,1 million voters (54% of registered voters) cast valid votes. Another 4 per cent of the votes were invalidated, making a total percentage poll of 58 per cent. The comparative figures for the other elections are as follows:

**Table 3**  
**Voter Turn-out as %**

Year	1993	1994	1999	2004
Turn-out	69	80	94	58

SOURCES: GOVERNMENT GAZETTE 16 JUNE 1993; GOVERNMENT GAZETTE 24 JUNE 1994 AND AUGUST 1999

In addition to the mismanaged electoral process, there could be other reasons for the sudden decline in the voter turnout. Kamchedzera (1997, p14) suggests that there is a general disenchantment with politics in Malawi. As a result, enthusiasm for public participation in the electoral process is waning largely because of growing

7 *The Weekend Nation*, January 31-1 February 2004, 'Donors uncertain about fair elections'.

public dissatisfaction and disquiet about the conduct of politicians. He argues that 'political power and influence are viewed merely as a means of access to comfort, wealth, self-aggrandizement and other egoistic pursuits ... Any benefits from politics that may accrue to the majority are merely incidental.' This observation has been made in a number of other studies (Chirwa and Poeschke 1998; Chirwa 2001, 2004a, 2004b, 2004c; Chining 2003).

Such views provide further evidence that elections in Malawi do not necessarily deliver democratic governance. There is also ample evidence suggesting that the political transition to democracy in Malawi has not translated into improved economic gains for the majority of the country's population. Levels of poverty have been on the increase over the last ten years, peasant agricultural incomes have fallen, wage employment opportunities have not increased, educational standards have gone down, and incidents of hunger are common. These have been against a background of a reduction in life expectancy due to the HIV/AIDs pandemic (Chirwa 2004d).

Since many Malawians do not derive material benefits from their political labour, it is not surprising that they choose not to take part in elections. The vote is seen to be of little value beyond putting people into positions where they can advance their own personal interests. It is one thing to use the vote as a means to hold elected representatives accountable to the public, it is another to translate the same vote into material benefits. It is therefore argued that if the outcomes of democratic elections are viewed not to deliver material benefits to the voters, the end result is a deficit in democratic governance.

### ELECTIONS AND DEMOCRATIC OUTCOMES

Also questionable are the democratic outcomes of the Malawi elections. The country uses the first-past-the post (FPTP) electoral system. An analysis of the votes in the presidential election illustrates the system's deficiencies in the delivery of democratic outcomes. Five candidates contested the 2004 presidential election. The governing party, the UDF, fielded Bingu wa Mutharika, who also represented that party's electoral partners, the Alliance for Democracy (AFORD), and the New Congress for Democracy (NCD). The Malawi Congress Party (MCP) fielded John Tembo, while a coalition of seven smaller parties fielded Gwanda Chakuamba of the Republican Party (RP) under the Mgwirizano Coalition.<sup>8</sup> The National Democratic Alliance (NDA) fielded Brown Mpinganjira. There was one independent candidate in the race, Justin Malewezi, former State Vice-President to Bakili Muluzi of the UDF.

---

8 With the exception of the MDP and NUP the coalition comprised predominantly new parties: the Malawi Forum for Unity and Development (MAFUNDE), the Malawi Democratic Party (MDP), the Movement for Genuine Democracy (MGODE), the National Unity Party (NUP), the People's Transformation Party (PETRA), the People's Progressive Movement (PPM) and the Republican Party (RP).

**Table 4**  
**Presidential Election Results**

Candidate	Votes Won	Votes Won as % of		
		Registered Voters	Total Votes	Valid Votes
Muthalika	1 195 586	20,79	35,02	35,97
Tembo	937 965	16,31	27,48	28,22
Chakuamba	836 118	14,54	24,49	25,16
Mpinganjira	286 320	4,98	8,39	8,61
Malewezi	67 812	1,18	1,99	2,04

SOURCE: GOVERNMENT GAZETTE 16 JULY 2004

The above figures show a narrow margin of victory between the winner and the first runners-up, and between the latter and the second runners-up. The combined total of votes received by the first and second runners-up is considerably higher than that of the winner of the election. The votes of all four losers combined total nearly twice those received by the winner, making it clear that Malawi has a minority president, who won the election but lost the vote. This outcome not only brings into question the legitimacy of the president, but also shows a discrepancy between the wishes of the majority of the electorate and the outcome of the election. This scenario, argues Dulani (2005), brings into question the effectiveness of the rules used to declare winners, which satisfy some of the cardinal principles of democracy, particularly, that of majoritarian rule (see also Chingaipe 2005).

Victory by candidates with minority support was also a characteristic of the previous presidential elections. For example, in 1994, Bakili Muluzi of the UDF won the presidency with only 47,16 per cent of the votes, against a combined 52,84 per cent for the three losing contestants. Again, in 1999, he won with less than 50 per cent, resulting in a protracted legal challenge by the losing candidates, who argued that the constitutional provision that a candidate should win with 'a majority of the electorate' meant 50 plus 1 per cent of those registered to vote. The courts ruled on the basis of the implications of not declaring a winner, rather than on the technical definition of an electorate. The ruling was that not to declare a winner would result in the extension of the term of office of the incumbent, thus creating a constitutional crisis. The 'majority of the electorate', in this case, was interpreted rather unsophisticatedly, as those who actually turned out to vote.

The problem of candidates losing the vote but winning the election also applied to the parliamentary elections. In 1999, 29 or 193 constituencies went to candidates who lost the vote. In 2004, minority-supported candidates won 103 of the 193 seats in Parliament, with the worst candidate opposed by 78.85 per cent of the voters.

'Consequently,' argues Chingaipe (2005, p 15), 'the concept of majority, which is a fashionable term and an indispensable factor in any definition of democracy, was defeated.'

Equally worrying here is the size of the wasted vote (the vote that goes to a candidate who does not win the election), which results in losers winning votes but no seats. This scenario, argues Chingaipe, 'is tantamount to disenfranchisement. It also entails that votes are not treated equally'. For example, 3 122 637 valid votes were cast in the 185 constituencies contested in the 20 May 2004 parliamentary elections.<sup>9</sup> The total number of the valid votes that elected the 185 members of Parliament was 1 578 655 while a total of 1 543 982 valid votes were cast for candidates that did not win seats.

This means that the latter votes were wasted. They can also be treated as votes that were cast against the winners of the elections, and therefore could be treated as the votes that rejected the winners. This calls into serious question the idea of representivity. The voters who cast the wasted (or rejection) votes cannot identify with the winners of the election. Given the large number of these votes, it can be argued that the electoral system in Malawi does not adequately address the issue of representivity. The democratic choices of almost half the voters who cast the valid votes are not reflected in the representatives who were elected.

Among the major factors accounting for the split votes and the resultant minority-supported victories was the rise of independent candidates. This was particularly the case in the northern and southern parts of the country. Of the 1 267 candidates contesting parliamentary seats in 2004, 372 were independents. The majority of these were in the southern region, the stronghold of the governing UDF, where they also won the majority of the seats largely as a result of the attempt by that party to manipulate the primary elections. In a number of constituencies the party either imposed candidates from the top, or manipulated the primary election results to suit the candidates supported by the central executive, and particularly by the party president himself.

The rise of independent candidates was a protest against the manipulation and a desire to exercise some freedom. The same applied to some seats in the north, regarded as the AFORD stronghold. The manipulation of the primaries was therefore part of the strategy to secure the regionalist bases of the political parties by exercising stronger control over the choice of candidates. The regionalist support bases of the Malawi political parties give party leaders considerable influence over their supporters, who are drawn predominantly from the regions from which the party leaders come (see Chirwa 1994 and 1998).

---

9 Eight constituencies held by-elections for reasons ranging from the death of candidates to electoral irregularities, misprinted ballot papers, and court injunctions.

**Table 5**  
**Number of Party Candidates Elected and Seats Won by Region, 2004**

Party	Candidates	Seats Won By Region				%
		North	Centre	South	National	
	Seats won					Share
MCP	174	0	57	0	57	29
UDF	164	3	8	39	50	26
RP	110	6	0	9	15	8
NDA	187	1	0	7	8	4
PPM	112	5	1	1	7	4
AFORD	40	6	0	0	6	3
MGOE	22	3	0	0	3	2
CONU	2	0	0	1	1	0.5
PETRA	18	1	0	0	1	0.5
Mafunde	21	0	0	0	0	0
NUP	9	0	0	0	0	0
NCD	23	0	0	0	0	0
Others	3	0	0	0	0	0
Independents	372	6	5	28	39	20
Uncontested <sup>10</sup>	...	2	2	2	6	3
<b>TOTAL</b>	<b>1 257</b>	<b>33</b>	<b>73</b>	<b>87</b>	<b>193</b>	<b>100</b>

SOURCE: GOVERNMENT GAZETTE JULY 16 2004

On a positive note, the independent candidates provided the voters with a broader political choice and an alternative mechanism for holding their parties and party leadership accountable. The election of independent members of Parliament in the areas where the parties had imposed candidates shows the electorate's lack of confidence in imposed leadership. It could also be an indication that the electoral process allows voters to elect individuals who can put the public interest over and above their own or that of their parties. However, on a more serious note, this development raises questions about whether political parties are the appropriate institutions to contest elections. The popularity of the political party as the legitimate election-contesting institution is at stake, if not at serious risk.

<sup>10</sup> These are seats where elections failed for any one of several reasons ranging from the death of a party candidate to misprinted names on ballot papers and court challenges by candidates.

The results of the parliamentary elections also point to some deficiencies in the principle of majoritarian representation. Initially, nine parties won seats.<sup>11</sup> The party with the largest presence in the house was the MCP, with 57 seats, representing 29 per cent of the total capacity of Parliament. The UDF's share dropped from 93 seats in 1999 to 50 in 2004, representing 26 per cent of the seats, and making that party the second largest in the house. However, because the UDF won the presidency it was still regarded as the 'governing party' until the President resigned from it after some internal wrangles (Chirwa 2005a). These results indicate no clear majority in Parliament, necessitating the formation of a coalition. An attempt was made to form a coalition government of the UDF, AFORD, RP and MGODE, but when the President resigned and formed an alternative party outside the house, the coalition collapsed. The President's resignation from the minority 'governing' UDF further complicated the structure of Parliament, resulting in a 'hung Parliament' in which there was no clear indication of who had the mandate to govern the country, or who directed the business of the House.

The problem was compounded by the absence of regulations governing the procedures for declaring which party forms the government in Malawi. The conventional interpretation has been that the party that wins the presidential vote also forms the government. In both the 1994 and the 1999 elections this interpretation created no problems because the party that won the presidential elections also had the largest number of parliamentary seats. The results of the 2004 elections have unveiled serious weaknesses in this understanding.

The MCP, with the largest share of seats in Parliament, would have been better placed to form the government than the UDF, which only won the presidency. The current situation creates problems for democratic governance because it allows for weak minority-led governments, led by a president elected by a minority at the expense of parties that might have majority representation in Parliament. The end result has been political tension and legal contestation that pollute the democratic atmosphere.

Analysts have also argued that the results of both the presidential and parliamentary elections have failed to deliver democratic outcomes for Malawi (see Bakken 2005, Chingaipe 2005, Chirwa 2005b, Dulani 2005, Hajat 2005). They maintain that the principle of using a simple majority to declare a winner under the FPTP system has produced a president with a minority share of the vote, leaving him with a weak mandate. It also undermines the president's legitimacy and ability to govern effectively. At the same time, the system has yielded parliamentary results that do not tally with the share of the votes that parties received. The emergence of the MCP and UDF as the biggest and second biggest parties in Parliament illustrates the unrepresentative nature of the FPTP system. Assuming the people who voted for the UDF's presidential candidate also voted for the party's parliamentary

11 Some of the parties dissolved and merged with others, for example, the RP and MGODE merged with the newly formed Democratic People's Party (DPP), the NDA with the UDF.

candidate, a more proportional apportionment of seats would have seen the party and its alliance partners emerging with a corresponding 36 per cent of parliamentary seats (about 67 seats – 11 more than the 56 the UDF and its alliance partners managed to obtain). For its part, the MCP, whose presidential candidate secured 28 per cent of the valid votes, would have become the second biggest party in Parliament, with about 52 seats, five fewer than the 57 it in fact won (Dulani 2004). The unrepresentative outcomes of using the FPTP system have been echoed elsewhere in the Southern African region (see Matlosa 2004 and 2005).

### CONCLUSION

The above account demonstrates that Malawi has indeed made impressive progress towards democratic governance. The country has had regular elections in conformity with the national Constitution. There is no doubt that these have, to some degree, enabled Malawians to hold their elected representatives accountable. Representative bodies have been put in place and are functioning, albeit with some deficiencies. Political parties and independent candidates have increasingly contested elections since the adoption of multiparty politics in 1993, an indication that there is popular participation in political activities. Voter turnout, despite a sharp decline in the 2004 elections, is fairly high; more than 55 per cent of registered voters. This paper contends that despite these achievements there are still numerous democratic deficits. These relate, among others, to the mismanagement of the electoral process, deficiencies in the electoral system, and the inconclusiveness of electoral outcomes.

### — REFERENCES —

- African Union. 2004. *Statement of the African Union Observer Team on the May 2004 Presidential and Parliamentary Elections in the Republic of Malawi*, 23 May.
- Article 19. 2000. *Malawi At the Crossroads: Report of the Media Coverage of the 1999 Elections*. London and Johannesburg: Article 19.
- Asmal, K and J De Ville. 1994. 'An Electoral System for South Africa'. In Steytler et al (eds). *Free and Fair Elections*. Cape Town: Juta and Co Ltd.
- Bakken, M. 2005. 'Electoral Systems Design and Effects on Representation and Regionalization in Malawi'. PhD Thesis, University of Bergen, Norway.
- Bratton, B and N van de Walle. 1997. *Democratic Experiments in Africa: Regime Transition in Comparative Perspective*. Cambridge: Cambridge University Press
- Brito, L. 2003. 'The Electoral system and conflict in Mozambique'. *Journal of African Elections*. 2(2).
- Chingaipe, H.G. 2004. 'The Electoral system, mass representation and the substance of political liberalisation: the case of Malawi. Paper prepared for the Institute for Multiparty Democracy (IMD) Conference on Electoral Systems and Reform in Representation, Mangochi, Malawi, 29 June-2 July.
- Chining, B. 2003. 'Lack of Alternative Leadership in Democratic Malawi: Some

- Reflections Ahead of the 2004 General Elections'. *Nordic Journal of African Studies* 12(1).
- Chirwa, W C. 1994. 'The Politics of ethnicity and regionalism in contemporary Malawi'. *African Rural and Urban Studies* 1(2).
- . 1998a. 'Democracy, Ethnicity and Regionalism: The Malawi Experience, 1992-1996'. In K M Phiri & K Ross. *Democratisation in Malawi, A Stocktaking*. Blantyre: CLAIM.
- . 2000. 'Civil Society And Democracy In Malawi'. In M Ott, K M Phiri and N Patel (eds). *Malawi's Second Democratic Elections: Process, Problems, And Prospects*. Zomba: Kachere Books.
- . 2001. "'We Want Change": Transition Or Transformation? Democracy And Political Change In Malawi'. *Bwalo vol 2: Democratisation in Malawi*.
- . 2004a. 'Malawi: Opposition In Disarray'. In *Election Talk: A Fortnightly Policy Brief from the Electoral Institute of Southern Africa*, no 9 (February).
- . 2004b. 'Not All Is Well Between President And Party In Malawi: Election Post-Mortem'. In *Election Talk: A Fortnightly Policy Brief from the Electoral Institute of Southern Africa*, no 15 (August).
- . 2004c. 'Malawi's "Bogus" Voter Statistics'. In *Election Talk: A Fortnightly Policy Brief from the Electoral Institute of Southern Africa*, no 11 (May).
- . 2004d. 'Working Out of Poverty: Employment and Poverty Reduction in Malawi. Paper prepared for the Malawi Government for presentation at the AU Heads of State and Government Summit, Ougadagou, Burkina Faso, September.
- . 2005. 'Electoral systems and governance: Are reversals possible?'. Paper prepared for the Institute for Multiparty Democracy (IMD) Conference on Electoral Systems and Reform in Representation, Mangochi, Malawi, 29 June-2 July 2004.
- Chirwa, W C & Poeschke. 1998. *Socio-anthropological conditions for democracy in Malawi: Key Challenges*. Bonn and Lilongwe: GTZ.
- Daily Times, The*. 2004. 'Voter Registration Extended', January 20.
- Darga, A. 2004. 'Mauritius' Electoral Reform Process'. EISA Occasional Paper no. 24, September and in this volume.
- Daily Times, The*. 2004. 'Voter Registration Extended', 20 January.
- Diamond, L. 1996. 'Is The Third Wave Over?'. *Journal of Democracy* 7(3), July.
- Dulani, B. 2004. 'Delivering Democratic Outcomes in Elections: Opportunities, Lessons and Challenges from the 2004 Malawi General Elections'. Unpublished paper.
- Hajat, R. 2004. 'Electoral systems, election monitoring and observation: Good practices'. Paper prepared for the Institute for Multiparty Democracy Conference on Electoral Systems and Reform in Representation.
- Harris, P and B Reilly (eds). *Democracy in Deep-rooted Conflict: Options for Negotiators*. Stockholm: IDEA Handbook Series.
- Hyden, G. 1997. 'Democracy and the liberal paradigm in Africa'. *Africa Insight* 27(3).



- Kadzamira, Z. 2000. 'Management of the Electoral Process During the Second Multi-Party Elections'. In M. Ott et al. *Malawi's Second Democratic Elections: Process, Problems and Prospect*. Blantyre: CLAIM.
- Kamchedzera, G. 1997. 'Parliamentary Strike and Public Trust'. *The Lamp* 9, July–September. Balaka: Montfort Media.
- Makoa, F. 2002. *Elections, Election Outcomes And Electoral Politics In Lesotho*. Pretoria: Africa Institute of South Africa Occasional Paper no 66.
- . 2004. *Strengthening Parliamentary Democracy In SADC Countries: Lesotho Country Report*. Braamfontein: South African Institute of International Affairs.
- Malawi Government Gazette*. XXX, (40), 16 June 1993, 'Results of the Referendum'
- . XXXI, (40), 24 June 1994 and XXXVI, (44), 20 August 1999, 'General Election Results'.
- . XLI (34), 16 July 2004. 'The 2004 Presidential and Parliamentary General Elections Results'
- Matlosa, K. 2003a. 'Election Systems and Multiparty Democracy in Southern Africa'. Paper presented at the Africa Conference on Elections, Democracy and Governance, 7-10 April.
- . 'Review of Electoral Systems and Democratisation in Southern Africa. In *Electoral Models for South Africa: Reflections and Options*. Johannesburg: EISA.
- . 2004. 'Caught between transition and democratic consolidation: Dilemmas of political change in southern Africa'. In C Landsberg and S Mackay (eds). *Southern Africa Post-Apartheid? The Search for Democratic Governance*. Cape Town: IDASA.
- . 2005. 'Thinking about Elections and Governance in Southern Africa: Problems, Progress, and Prospects for Electoral System Reform'. Paper prepared for the Institute for Multiparty Democracy Conference on Electoral Systems and Reform in Representation, Mangochi, Malawi, 29 June-2 July.
- Nation, The*. 2004. 'Voters fail to register in Mzimba Centres', 9 January.
- . 2004. 'Three Fined for Registering Twice', 9 January.
- Neale, T. 2004. 'Malawi's Media – 2004 and Beyond'. Paper presented at the GTZ Conference on Power of the Vote, Blantyre, Malawi, 14–15 July.
- Nzongola-Ntalaja, G. 1997. 'The State and Democracy in Africa'. In G Nzongola-Ntalaja and M Lee (eds). *The State and Democracy in Africa*. Harare: AAPS Books.
- Patel, N. 2000. 'The 1999 Elections: Challenges and Reforms'. In M Ott et al. *Malawi's Second Democratic Elections: Process, Problems and Prospects*. Blantyre: CLAIM.
- Przeworski, A et al. 1996. 'What Makes Democracies Endure?' *Journal of Democracy* 7(1), January.
- Schumpeter, J. 1942. *Capitalism, Socialism and Democracy*. Reprint London: Allen and Unwin 1976.
- Tamvani*. 2004. 'Bungwe la EC Likukondera UDF- CHRR', 31 January-February 1.
- Weekend Nation, The*. 2004. 'Voter Registration Extended', 17-18 April.
- Weekend Nation, The*. 2004. 'The UDF Plot: CCJP, parties accuse UDF of buying certificates', January 31-1 February.

# JUSTICE AND ELECTORAL DISPUTES IN MOZAMBIQUE

By  
*Gilles Cistac*

Dr Gilles Cistac PhD magna cum laude, 1998, Toulouse University, is Professor of Law and Coordinator of the Master Course Program, Coordinator of the Research Centre on Public Administration and Local Development Faculty of Law University Eduardo Mondlane  
Av Kenneth Kaunda 960 CP 257 Maputo Mozambique  
Tel: (258) 21488882; Fax: (258) 21415364; Cell: (258) 823030520  
e-mail: [gilles.cistac@uem.mz](mailto:gilles.cistac@uem.mz)

## ABSTRACT

*A doctrinal practical study of the Mozambican electoral dispute procedure reveals some specific characteristics. Firstly, there is no precise correspondence between the procedure and electoral jurisdiction; what characterises the Mozambican electoral dispute procedure is the diversity of the procedures within the electoral process. Secondly, the dispute procedures are integrated because they cover pre-election and post-election disputes simultaneously. Thirdly, the structure is that of administrative dispute procedure. Finally, the authority of the electoral judge is an aggregate of both the control of the regularity of electoral procedures and the control of the veracity of the elections. Delicate questions, such as the scope of the powers of the Constitutional Council, the confirmation or not of the 'principle of sua sponte examination or evidentiary inquiry' and the position of the Constitutional Council in relation to the correction of the election results are still unresolved.*

## INTRODUCTION

If, in Mozambique, there are military, customs, administrative, maritime and labour law jurisdictions, why should there not be a system of electoral justice?\*

---

\* Translator's Note: The word 'justiça' as used in this paper does not have precisely the same meaning and usage as the English word 'justice'. The term 'justiça' in Portuguese connotes a system of justice, law, jurisdiction (power of a court or other body over particular subject matter). The word 'justice' in English (reflecting the common law system) currently connotes the fair administration of law and is also the title applied to certain types of judges, although historically, under feudal law, it meant jurisdiction, cognisance, and judicial power. To maintain the 'rhythm' of the author's usage of the term '*justiça eleitoral*', I have therefore used the term as directly translated when there is a general reference, that is, 'electoral justice', but not where the precise translated English meaning requires the usage of the terms: 'law', 'jurisdiction', 'system of justice', and so on.

The term 'electoral justice' does not formally appear in the Mozambican Constitution.<sup>1</sup> Art 167 of the Fundamental Law does not contemplate 'electoral tribunals' within the classification of the different state jurisdictions. But must this necessarily mean that there is no 'electoral justice'?

Could it be that all the elements and component parts of such an area of jurisdiction are, in fact, present in the Fundamental Law of the Republic and/or in other legislation that is relevant to the issue?

The specifics of the conflict resolution structure for electoral disputes, broadly construed, in Mozambique, lead to a study that is not limited to the question of the existence or not of an 'electoral system of justice'. Electoral disputes are part of electoral jurisdiction, but do not wholly fall within the system of electoral justice, whose make-up integrates a complex series of factors that make it unique and distinctive.

As a general rule electoral dispute procedures regulate the organisation and procedures within the system of electoral jurisdiction. In other words, they consist in 'the set of legal rules that regulate the production and development of the acts and formalities required for the achievement of the aforesaid aims' (Freire Barros 1998, p 18) and are 'the process for the resolution of differences with regard to the interpretation or application of the rules that govern the electoral process'.<sup>2</sup>

The doctrinal practical study of Mozambican electoral dispute procedures reveals some specific characteristics. Firstly, there is no precise correspondence between these procedure and electoral jurisdiction; what characterises them is the diversity of the procedures within the electoral process. Secondly, the procedures are integrated because they cover pre-election and post-election disputes simultaneously. Thirdly, their structure is that of an administrative dispute procedure. Finally, the authority of the electoral judge is an aggregate of control both of the regularity of electoral procedures and of the veracity of the elections.

### THE MULTIPLE FORUMS OF THE ELECTORAL DISPUTE PROCEDURES

In the electoral dispute procedures 'the law attributes the competence to decide complaints to diverse instances' (Constitutional Council Decision no\* 17/CC/04 of 3 June 2004). These 'instances' together form, within the Mozambican legal order, non-jurisdictional electoral dispute procedures and jurisdictional electoral dispute procedures.

---

1 This study was undertaken taking into account the law in effect until the entry into force of the new Constitution of 22 December 2004.

2 Electoral Dispute (*Contencioso electoral*), in the Glossary of legal terms used in the Electoral Law (Law 7/2004 of 17 June).

\* Hereafter referred to as Decision no ...

### *Non-Jurisdictional Electoral Dispute Procedure*

The non-jurisdictional electoral dispute procedure is made up of complaints and protests directed at and decided by the electoral administration as the competent administrative authority with the duty to guarantee the transparency and objectivity of the electoral process and the principle of equality.

In this regard, the role of the Constitutional Council is to give direction to the organisation of the non-jurisdictional electoral dispute procedure between the 'first instance' and the 'second instance'.

#### THE 'FIRST INSTANCE'

##### **Voting precinct board**

According to Decision no17/CC/04 of 3 June 2004, the voting precinct board, that is, 'the group of persons charged with the conduct of the tasks in each voting precinct'<sup>3</sup> has the competence to decide on complaints and protests about the general electoral activities conducted by the board (Art 78.1 of Law 7/2004 of 17 June and Arts 75.1 and 75.4 of Law 19/2002 of 10 October) and about the preliminary voting results (Art 89.1 of Law 7/2004 of 17 June; Art 87.3 of Law 19/2002 of 10 October).<sup>4</sup>

##### **The election boards at district and city level**

The district and city election boards, the 'National Electoral Commission support bodies', decide on 'the complaints, protests and counter-protests that are submitted' for the first time (Art 23 of Law 20/2002 of 10 October and Art 96.1 of Law 19/2002 of 10 October).

##### **Provincial election boards**

The provincial election boards, which are responsible for the determination of the voting results from the electoral precincts within a province (Art 97 of Law 7/2004 of 17 June) have the power to decide, in the first instance, on complaints, protests and counter-protests (Art 102 of Law 7/2004 of 17 June).

##### **The National Electoral Commission**

The National Electoral Commission, created by Law 20/2002 of 10 October, is the most important permanent electoral administration body and has the initial

---

3 See Glossary of legal terms in Law 7/2004 of 17 June. See also Art 56 of Law 7/2004 of 17 June.

4 Effectively, in the latter case it is assumed that the voting precinct board has taken a decision about the validity of the ballot.

administrative jurisdiction over electoral dispute procedures. This jurisdiction is based on the provisions of Art 7.2 of Law 7/2004 of 17 June, which stipulates: 'Without prejudice to the respective competence of the Constitutional Council, the National Electoral Commission has the competence to verify the regularity and validity of the acts of the electoral process.'

In addition to controlling and supervising the electoral process (Art 7.1 of Law 7/2004 of 17 June) the commission verifies its regularity and legality (Art 7.2 of Law 7/2004 of 17 June).

- Within the scope of municipal elections, the commission undertakes the verification of the candidates (Art 17 of Law 19/2002 of 10 October) and any rejection of candidates as provided in Art 19 of Law 19/2002 of 10 October.<sup>5</sup> As a general rule, any irregularities that occur during voting may be reviewed by the commission (Art 137.1 of Law 19/2002 of 10 October) in the 'first instance' and are part of the declaration of the results (Art 104.1 of Law 19/2002 of 10 October).
- In the general elections, the National Electoral Commission decides 'in the first instance' on the submission of candidate names for election to the legislature. It reviews the legality of the names, signs and symbols (Art 161 of Law 7/2004 of 17 June) as well as the submission of candidate lists by the competent officials of political parties or coalitions. During the general election and the election of the President of the Republic it also decides 'in the first instance' on any complaints or protests (Art 110.1 of Law 7/2004 of 17 June).

## THE 'SECOND INSTANCE'

Appeals to the instances *ad quem* (at the end of the process) are not clearly defined by the current legislation. For example, with regard to general elections there are no precise indications of the intention of the legislature in relation to appeals to the provincial elections board against decisions of district and city level elections boards or, in the case of municipal elections, the law permits an appeal to the district or city level election boards against the decisions of voting precinct boards.

In this regard, the interpretation of the electoral law is fundamental and the Constitutional Council is in the process of rationalising and providing coherence to the legal order in this regard.

The electoral legislation establishes a general principle in favour of appeal 'in the second instance' to the National Electoral Commission in the case of complaints and protests by the electoral process support bodies and officials. This general

<sup>5</sup> See, for example, the case of *José Manteigas Gabriel*, the candidate for the position of President of the Municipality of Mocuba, Decision no 3/CC/03 of 19 November.

principle is not exclusive and other mechanisms for review 'in the second instance' are permitted.

### **Appeal to the National Electoral Commission on Decisions Taken by Electoral Process Support Bodies and Officials**

Within the scope of its authority the National Electoral Commission has the competence, in terms of Art 7.2(g) of Law 20/2002 of 10 October 'to decide within forty-eight hours the complaints and appeals with regard to decisions taken by the electoral process support bodies and officials'.

The aforesaid bodies *a quo* (who act at the beginning of the process) are listed in Art 23 of Law 20/2002. They include the provincial election boards and the boards at district and city levels. These bodies have the competence, as defined in Art 96.1 of Law 19/2002 of 10 October and Art 102.1 of Law 7/2004 of 17 June, to decide on complaints and protests submitted to them.

These decisions may be appealed 'in the second instance' to the National Electoral Commission. However, the National Electoral Commission cannot, on its own initiative, review decisions of the voting precinct boards or the city election boards, which may decide whether or not the matter is appealed to the National Electoral Commission.

The Constitutional Council had the opportunity to decide whether or not the National Electoral Commission has such an initiative when it validated the electoral results for the interim election of the President of the Municipal Council of the City of Xai-Xai (Decision no 17/CC/04 of 3 June 2004). In that case it decided 'that the procedure adopted by the National Electoral Commission lacks legal foundation'. In addition, this decision damaged the 'principle of the progressive estoppel of acts'.

### **Specific Appeals 'In the Second Instance'**

In order to identify the specific appellate procedures 'in the second instance' – outside of the general rule stipulated by Art 7.2(g) of Law 20/2002 of 10 October – it is necessary to analyse the relevant electoral legislation.

In its decision no 17/CC/04 of 18 June, the Constitutional Council developed a system of appeals in relation to municipal elections which must be taken into consideration to establish a system for appeals in relation to general elections.

### **Appeals 'in the second instance' in relation to municipal elections**

During the interim election for the President of the Municipal Council of the City of Xai-Xai in 2004, which followed the death of the office-holder on 4 March 2004, the Constitutional Council defined its doctrine with regard to appeals, declaring that the 'voting precinct boards are competent to decide complaints and protests

that are submitted to them, *without prejudice to the appeal of their decision to the district or city election board* [author's emphasis]' (Decision no 17/CC/04 of 3 June 2004). Thus, the decisions of the voting precinct boards are subject to appeal to the city and district election boards in terms of the *binding decision* of the Constitutional Council (Decision no 17/CC/04, of 3 June 2004). 'The district and city election boards' established by the Constitutional Council 'are invested with decision-making power, both in the first instance and in the second instance, with regard to the complaints that are submitted to them' (Art 96.1 of Law 19/2002 of 10 October).

The only legal foundation for the decision of the Constitutional Council is the provision set out in Art 75.4 of Law 19/2002 of 10 October. However, the issue remains whether or not there is an appeal to the respective provincial election boards against the decisions of the district and city election boards. Law 19/2002 of 10 October does not make any formal mention of this possibility. During the intermediate phase of determining the vote, the law only establishes that: 'A copy of the minute of the intermediate vote determination is sent immediately by the chair of the district and city election board to the National Electoral Commission through the provincial election board who also keeps a copy of the minute in question' (Art 96.2 of Law 19/2002 of 10 October). It does not contain specific formal mention of whether or not the decisions of the district and city election boards may be appealed to the respective provincial election boards in the course of the vote determination process.

### **Appeals 'in the second instance' in respect of general elections**

Law 7/2004 of 17 June does not, in any of its provisions, provide explicitly for a system of appeals comparable to that established by Law 19/2002 of 10 October; that is, a general appeal mechanism to the district and city election boards against the decisions of the voting precinct boards, as provided for in Art 75.4 of Law 19/2002 of 10 October. As Justice João Nguenha wrote: 'Curiously, the law that we have been analysing has no provisions regarding the possibility of appeal of the decisions on complaints and protests issued by the voting precinct boards, which is not the case with Law 19/2002 of 10 October (...), whose Art 75.4 establishes expressly that the decisions of the voting precinct board on such matters are appealable to the respective election board' (Nguenha 2004, p 10).

Only Law 7/2004 of 17 June contains provisions relating to the organisation of the channelling of ballots which have been nullified or regarding which there are complaints or protests to the district or city election boards. According to this law these matters must be taken to the provincial election board, which, in turn, refers them to the National Electoral Commission (Arts 92 and 101 of Law 7/2004 of 17 June).

In addition, there is no provision for oversight by the district or city election boards of the decisions made by the voting precinct boards during the partial voting determination. There is only a requirement for inclusion in the minutes of the voting

procedures and the preliminary determination of the vote of decisions taken by the board during the electoral process (Art 94.2(d) of Law 7/2004 of 17 June) and of the number of complaints and protests (Art 94.2(j) of Law 7/2004 of 17 June).

These minutes are sent to the respective district or city election boards who should deliver them to the provincial election board. Thus, during the preliminary determination phase the legislator has not provided for any form of appeal against decisions made by the voting precinct boards to the respective district or city election board.

During the determination of the provincial vote the provincial election boards undertake the determination of the voting results at provincial level but the legislation makes no mention of any mechanism for appeals to the provincial boards against acts carried out by the district or city election boards.

Could it be that the legislator wanted to provide for the appeal against decisions taken by the bodies *a quo* (at the beginning of the process) to the bodies *ad quem* at a higher level? Could there be, as Associate Justice João Nguenha argues (2004, p 10), 'an omission that could be overcome by the application of the rule established in Art 75.4 of Law 19/2002 of 10 October'? Or could it be that the legislator has a plan other than a territorial one for the appeal procedure? The principle underlying a response to this issue could be taken from the legislative intent (*ratio legis*) with regard to appeals.

Within the context of general elections each phase of the electoral process is autonomous in terms of the treatment of appeals. The voting precinct boards must decide on the complaints and protests submitted (Art 78.3 of Law 7/2004 of 17 June). Similarly, provincial election boards must decide on complaints and protests submitted to them and concerning the conduct of the determination of voting at provincial level, the content of which is strictly defined (Art 102 of Law 7/2004 of 17 June); but all these decisions may be reviewed by the National Electoral Commission 'provided that the matter appealed has been the subject of a complaint or protest' (Art 173.1 of Law 7/2004 of 17 June).

Thus, with regard to the administrative (non-jurisdictional) dispute procedures for the general elections there would appear to exist a centripetal relationship in which the National Electoral Commission directly decides appeals against decisions of the voting precinct boards and the provincial election boards without there having been established an intermediate and higher appeal between the voting precinct board, the district and city election boards and the respective provincial election boards.

### **Second instance '*Sua Sponte*' (on its own motion)**

In the case of complaints about the vote count or the treatment of votes, for instance the nullification of a ballot, which is submitted and not responded to, and which is then referred to the National Electoral Commission, this body decides 'in the second instance' 'regarding the voting ballots in respect of which a complaint or protest



has been submitted' (Art 102 of Law 19/2002 of 10 October; Art 108 of Law 7/2004 of 17 June). In such cases the National Electoral Commission reviews and rules on the decision already made by the voting precinct board concerning the vote count or the treatment of a particular vote. Moreover, during the phase of verification of ballots that have been nullified (Art 102 of Law 19/2002 of 10 October; Art 173 of Law 7/2004 of 17 June) the National Electoral Commission may reconsider these ballots according to uniform criteria and may change the ruling of the voting precinct board. This is an example of the National Electoral Commission exercising 'on its own motion, the reconsideration of the ballots which have been challenged (...) and therefore being unnecessary for the complainant or person making the protest to interpose an appeal' (Nguenha 2004, p 11).

### JURISDICTION OVER THE ELECTORAL DISPUTE PROCEDURE

The control of electoral and electorally related political matters comes together in the authority given to the Constitutional Council to review decisions taken during the electoral process (Freire Barros 1998, p 23) and to decide on the regularity and validity of acts committed in the course of the electoral process. In effect, in terms of Art 181.2(c) of the Constitution of the Republic, the Constitutional Council has been given the competence 'to review, in the final instance, electoral claims'.

Expanding on what is established in the Fundamental Law, the legislature has applied these constitutional directions not only to general elections but also to local elections. Thus, in accordance with Art 8 of Law 7/2004 of 17 June, 'the Constitutional Council has the competence to review in the final instance electoral claims and appeals'. Similarly, with regard to disputes about candidacies submitted for local elections 'The decisions of the National Electoral Commission may be appealed to the Constitutional Council who will then decide in the final instance' (Art 20 of Law 19/2002 of 10 October). Again, 'The decisions taken by the National Electoral Commission on claims submitted may be appealed to the Constitutional Council' (Art 138.1 of Law 19/2002 of 10 October).

In addition, the Organic Law of the Constitutional Council details clearly that with regard to matters concerning electoral claims 'The Constitutional Council has the competence to review and decide, in the final instance, in accordance with the terms of the law, the electoral claims and appeals' (Art 75 of Law 9/2003 of 22 October). Therefore, the Mozambican legal order ordains in respect of both national and local elections a system of external electoral control with a jurisdictional character that is independent, exclusive, and impartial.

### THE MOZAMBIKAN ELECTORAL DISPUTE PROCEDURE: AN INTEGRATED PROCESS

The Mozambican electoral dispute procedure is an integrated process in the sense that it provides for dispute resolution procedures from the pre-electoral to the post electoral stages.

In effect, the jurisdictional activity of the Constitutional Council is carried out both at the level of the pre-electoral dispute procedure (disputes about the submission of candidacies and electoral disputes about electoral administrative acts) and at the level of the post-electoral dispute procedures (disputes about the election of the President of the Republic; disputes about the election of members of the Assembly of the Republic and disputes about the election of members of the local municipal bodies)<sup>6</sup>.

### *Pre-election Dispute Procedures*

The pre-election procedures correspond 'to the group of disputes that arise from preparation of the election from the moment of the opening of the election campaign, and which may concern controversies arising from the submission of candidacies, the party electoral lists, the organisation of the election campaign etcetera ...' (Freire Barros 1998, p 58).

These disputes concern acts which are based on the doctrine of the 'cascade effect'. This doctrine, which has been developed by the Constitutional Council in several of its decisions, gives force to the principle of the progressive estoppel of acts, pursuant to which 'the different stages of the consummated procedures which have not been contested within the time period allowed for such contestation may not during a subsequent phase of the electoral process be contested' (Decision no 3/CC/2005 of 12 January). In accordance with this principle and paraphrasing Manuel Freire Barros (1998, p 60), 'the procedural phase that has been concluded can nevermore be questioned'.

This type of dispute procedure is divided into two categories: the submission of candidacies and electoral administrative acts.

### **Disputes About the Submission of Candidacies**

The submission of candidacies follows an established sequence, both in respect of the municipal elections (Arts 13 et seq and Arts 16, 17 and 123 et seq of Law 19/2002 of 10 October) and the general elections (Arts 158 et seq of Law 7/2004, of 17 June).

Disputes about the submission of candidacies have, until now, constituted the majority of pre-election disputes<sup>9</sup>. This dispute procedure, which concerns the control of particular acts relating to the submission of candidacies, operates as 'a merely formal examination of the requirements of the qualification of the candidates for the election' (Freire Barros 1998, p 63).

<sup>6</sup> With regard to the theoretical distinction between these two types of disputes, see Freire Barros 1998, p 61 et seq.

<sup>7</sup> See, for example: Decision no 2/CC/03 of 19 November (rejection of the candidacies submitted by the PIMO Party, B.R.47, 19 November 2003, Series I); Decision no 3/CC/03 of 19 November (residence of candidate José Manteigas Gabriel, candidate for President of the Municipality of Mocuba (electoral

## Dispute Procedures Under the Electoral Administrative Acts

The control of actions of the National Electoral Commission in matters related to the electoral process is entrusted to the Constitutional Council.

As an example<sup>8</sup>, the case that culminated in the decision of the Constitutional Council no 3/CC/03 of 19 November as to whether or not José Manteigas Gabriel, candidate for the presidency of the municipality of Mocuba, had the essential requirement for determination of electoral capacity (residence of the candidate – Art 6.1 of Law 19/2002 of 10 October) also decided a question related to the challenge to an act of electoral administration.

However, it is an open question whether or not the National Electoral Commission can change the final lists of candidates that have already been published.

The Constitutional Council responded in the negative to this question, and provided the following reason: 'Once the final candidates' lists are issued, in accordance with Art 21 of Law 19/2002 of 10 October, the National Electoral Commission *cannot make any change unless there has been a challenge to the list by means of an appeal to the Constitutional Council*. This rule is imposed in order to guarantee the necessary transparency and stability to the process' [emphasis added].

The Constitutional Council focused on the system for proving the relevant facts during the process to conclude that the National Electoral Commission carried 'the burden of proof that the candidate did not reside in Mocuba. Since it did not carry this burden and since the Oath of Residence is a document with full presumptive evidentiary force, this presumption can only be overcome if demonstrated to be false.' However, the reasoning with regard to the legal impossibility of the National Electoral Commission altering the final candidate lists is very succinct – the basis is that 'this rule is imposed in order to guarantee the necessary transparency and stability to the process'.

The Constitutional Council could have examined the nature of the act that leads to the issuing of the list of candidates and could have considered all the

capacity)), B.R.47, 19 November 2003, Series I; Decision no 4/CC/03 of 24 November (candidacy of Ernesto Filipe Mause as candidate for President of the Municipal Council of Xai-Xai), B.R.51, 17 December 2003, Series I; Decision no 5/CC/03 of 25 November (candidacy of Castro Sanfins Namuaca for President of the Municipal Council of Nampula) B.R.51, 17 December 2003, Series I; Decision no 6/CC/03 of 27 November (candidacy of Alberto Fafetine Chicuamba for President of the Municipal Council of the City of Manhica), B.R.51, 17 December 2003, Series I; Decision no 7/CC/03 of 25 November (candidacy of José Junior Pene Pagula for President of the Municipal Council of Inhambane), B.R.51, 17 December 2003, Series I; Decision no.9/CC/03 of 1 December (candidacy of Djalma Luís Félix Lourenço for President of the Municipal Council of Beira) B.R.51, 17 December 2003, Series I; Decision no 27/CC/2004, 5 November (candidacies of PALMO Party for the Electoral District of Zambézia), B.R.47, 30 November 2004, Series I.

8 See also a decision of the Constitutional Council no 13/CC/04 of 2 January on the appeal against the decision of the National Electoral Commission of 1 November 2003 that approved the 'Instruction no. 40/GDG/STAE/03', entitled 'guide for the correction of material errors occurring during voter registration', in B.R.2, 14 January 2004, Series I; Decision no 20/CC/2004 of 22 September (decision of the National Electoral Commission which has as its subject matter an increase in the number of registration posts and voter registration brigade members).

consequences of changing or not changing the list. It cannot be forgotten that the dispute procedure for electoral administrative acts is essentially a *constitutional* procedure; this means that notwithstanding the fact that it is constitutionally determined, the nature of the procedure itself does not change. Those acts that are subject to the control of the Constitutional Council are acts of public administration, some of which have the characteristics of *administrative acts*. In this regard, the National Electoral Commission's act of issuing the lists of candidates is, undoubtedly, an administrative act.<sup>9</sup>

Thus, it is necessary to consider all the legal consequences arising from the administrative nature of the act, namely, in this particular case, the system applying to acts that create rights. More specifically, the principle that is established in Art 217 of the General Code of Conduct for State Employees (EGFE) under the title 'Alteration of acts' could serve as a basis for the decision of the Constitutional Council in this process as a 'General Principle'. According to paragraph 2 of Art 217, 'Acts that are manifestly or otherwise illegal, even if leading to the creation of a right, may be corrected, suspended or revoked, in accordance with the provisions of the preceding paragraph provided that such acts have not yet produced or taken effect'. This means that acts that are constitutive of rights, and, in the case of *José Manteigas Gabriel* there is no doubt about this question, it is clear that the acceptance of the candidacy changed the legal status of another and even if the underlying act was illegal, provided that it had produced such an effect it cannot be undone on the initiative of the perpetrator of the act or that person's superior. This means that any act that has been made public as a result of a formal announcement (Art 21 of Law 19/2002 of 10 October) limits the power of the National Electoral Commission, requiring it to respect the legal situation that its actions have created to the benefit of another.

#### *Post-Electoral Dispute Procedure*

The post-electoral dispute procedure deals with 'the disputes that arise during the election with regard to the regularity of the electoral act in its narrow sense and the determination and declaration of the election results' (Freire Barros 1998, p 58).

The post-electoral or *a posteriori* dispute procedure is limited to complaints and protests about irregularities that have occurred in the course of the election and the determination of the results (Freire Barros 1998, p 61).

As an example, in Case no 2/CC/2005 (in B.R.3, 19 January, Series I), the appellant, the Expanded Opposition Front Coalition (FAO), challenged a decision of the National Election Commission in relation to the result of the 2004 general election. The Constitutional Council reviewed the decision, taking into account the grounds put forward by the appellants.

---

<sup>9</sup> Regarding the general theory of what constitutes an administrative act see, for example, Caupers 2001, p 165 et seq.

Similarly, in Constitutional Council Decision no 4/CC/2005 (in B.R.3, 19 November, Series I) the Renamo-Electoral Union Coalition and its candidate, Afonso Macacho Marceta Dhlakama, appealed the decision of the National Electoral Commission denying its challenge to the release of the election results on the basis that the process for the determination of the results should be annulled and the elections be re-held. In this case, procedural impediments prevented the Constitutional Council from accepting the appeal.<sup>10</sup>

## THE ORGANISATION OF THE ELECTORAL DISPUTE PROCEDURE

The organisational structure of the electoral dispute procedure has a direct influence on the rules of the procedure.

### *– The Structure of the Electoral Dispute Procedure –*

#### **A Constitutional Administrative Procedure**

The electoral dispute procedure has the structure of an administrative dispute procedure. Nonetheless, this procedure is a 'constitutional administrative dispute procedure', to paraphrase the terminology of Jorge Miranda (in Freire Barros 1998, p 15), because the Electoral Act and its administration are established directly in the Constitution of the Republic. For this reason it is understood that the Electoral Act is removed from the jurisdiction of the Administrative Tribunal (Art 173 of the Constitution of the Republic). Similarly, it is understood that there are special procedural rules that derive from the principle of democratic participation.

In addition, analysing in more detail the subject matter of appeals within the electoral dispute procedure, the procedure is a legal act of the electoral administration in the widest sense, that is, it comprises 'the group of entities and bodies on which the law has conferred the power of certain legal acts, formalities and transactions that are prerequisites for the formation and expression of the will of the electoral community' (Freire Barros 1998, p 46). There is no difference between the nature of a final executable act by the Public Administration which is subject to the legal oversight of the Administrative Tribunal and the acts of the National Electoral Commission. There is also no difference between electoral administration and other areas of state administration. All are areas of state administration, for example, the National Electoral Commission 'is a State body' (Art 2 of Law 20/2002 of 10 October). The differences that do exist are of two types.

The first concerns the category or type of administration in question. The National Electoral Commission is a body that is 'independent of all other public authority' (Art 3 of Law 20/2002 of 10 October), that is, this body is outside the government hierarchy because its charter is based on a privileged link to the

---

<sup>10</sup> See, as another example, Decision no 15/CC/04 of 10 January 2004.

Constitutional Council ('There is an appeal to the Constitutional Council from the decisions of the National Electoral Commission' (Art 8 of Law 20/2002 of 10 October)) and to the Assembly of the Republic (Parliament) which appoints the members of the Commission (Art 5 Law 20/2002 of 10 October).

The second difference is that, in terms of the Constitution of the Republic and the relevant legislation (Art 244.2(d) of the Constitution of the Republic; Art 8 of Law 7/2004 of 17 June; Art 20 and Art 138.1 of Law 19/2002 of 10 October; Art 75 of Law 9/2003 of 22 October; Art 8 of Law 20/2002 of 10 October) jurisdiction over disputes arising from acts of the Commission is given to the Constitutional Council and not to the Administrative Tribunal, which has ordinary jurisdiction over the legality of the acts of the Public Administration.

### **The Theoretical and Practical Consequences of the Qualification that is Adopted**

The consequences of the structure of the electoral dispute procedure are not merely or exclusively academic, there are very significant practical implications, namely those which concern the underlying procedural law and its operational classification.

The current legal regime applicable to the political, electoral dispute procedure, whatever the type of election being held or the type of dispute, adopts an objective concept of the appeal procedure<sup>11</sup> that arises always as a procedure in response to an act, in this case, the decision of the National Electoral Commission, and not as litigation between parties (Supreme Court decision 13 August 1998). While there are some indications of subjectivity, these are insufficient to alter the fundamental character.

An illustration of this affirmation is reflected in the Supreme Court decision dated 4 January 2000 in Case no 9/RCE/99, *Appeal to the Supreme Court by the Renamo Party-Electoral Union Coalition*, B.R.1-3rd Supp, 7 January 2000, Series I. The Supreme Court, acting in its interim capacity as the Constitutional Council, attempted to clarify the question at issue. This type of examination would only be permitted under the umbrella of the inquisitorial principle, which, in turn, reflects the objective framework within which the dispute procedure is to guarantee objective legality. '*Sua sponte*, on our own initiative', the Supreme Court clarified in the case in question, 'and making use of the authority to supervise the electoral process in order to safeguard the public interest process, the tribunal heard testimony from the directors and technical personnel involved in the electoral administration operations at the central level.'

According to legal doctrine, this approach to the electoral dispute procedure would be classified as a 'full jurisdictional constitutional hearing' (Freire Barros 1998, p 149).

---

11 See, regarding the principal characteristics of the subjective dispute procedure, Pereira de Silva 1989, p 261 et seq; Vieira De Andrade 2000, p 39 et seq and p 45 et seq.

The necessary link between electoral law and democratic politics provides the explanation for why, as a general rule, electoral legal norms are considered to be rules of public order.<sup>12</sup> As Freire Barros (1998, p 121) writes: 'the public character of these rules determines the specific powers of the electoral judge whose duty is to ensure their application, even if not specifically requested by the electoral tribunal petitioner.'

During the voting phase complaints, protests and counter protests can be submitted to the respective voting precinct by any registered voter of that precinct; it is at this level that there is the widest range of active legitimisation activity, which confirms the objective character of the electoral dispute procedure.

All these elements taken together have a common objective – to ensure that the originality or particularity of electoral law is justified 'by its duty to make the democratic principle respected' (Masclat 1989, p 25). In effect, during an election it is important to consider the objective relevance of each voter's will to participate, which, in turn, contributes to the collective will, independently of the subjective motives (Freire Barros 1998, p 81). The direct consequence of taking this aspect into consideration is that only if the acts are invalid can they affect the result. It is not the validity of each individual act of voting that is relevant to the judgement about the validity of the election.

Appeals in electoral matters are not the exercise of a private right, they are acts in the public interest (Masclat 1989, p 336). The public nature of these norms defines the powers of the electoral judge as a duty to ensure their proper application, even if this duty is not specifically invoked by a party appealing to the Constitutional Council. The electoral judge should not be limited to the frame of the subjective interest of the appellant; rather the judge's review should have the more objective focus of the defence of liberty and the transparency of the expression of the will of the electorate. Consequently, it should be recognised that the judge may take the initiative to examine electoral irregularities (Loic 1962, p 75, cited by Freire Barros 1998, p 129).

This characteristic of electoral law is also reflected in the process of validating the electoral results. This was demonstrated by an extremely interesting debate which took place during the consideration of the election results by the Supreme Court (acting then in its capacity as Constitutional Council) and resulted in a minority dissenting opinion from two judges. This comment on the scope of the powers of the electoral judge is found in the decision of 13 August 1998 that 'Publishes the general determination of the voting results and the respective final tables of results of the Municipal Elections' of 1998.

The preliminary issue that became the focus of the debate was the boundaries of the examination undertaken by the Constitutional Council. In other words,

---

<sup>12</sup> See, for example, the application of the rules regarding ineligibility in the decision of the Constitutional Council no 5/CC/2003 of 25 November 2003.

whether the Supreme Court (in its capacity as the Constitutional Council) could decide facts that had not been specifically raised in the appeal by any of the electoral bodies, political parties, groups of citizens whether or not part of the electorate, candidates and their representatives or individual voters.

The majority of the Court considered that for the judges to decide outside this framework would be to apply these powers beyond their proper limits. The dissenting opinion, however, argued that: 'Contrary to the majority opinion [...] we consider that in the present situation, the procedural rules that confer on the examining judge the broadest power of review with regard to the grounds for its decision should be applied, including the faculty to order an additional examination and determination of the evidence, if considered necessary [principle rule of examination].'

Taking into account the control function of the electoral judge as expressed above, it can be concluded that the position of the majority of the Supreme Court was incompletely developed and did not take into account the particularity of electoral law which is 'to guarantee that the election results conform in fact to the will of the electorate and that this choice be expressed in a free and transparent manner' (Masclat 1989).

Effectively, the position of the majority of the Supreme Court is incomplete because it limited its review to the oversight of the strict regularity or legality of the pre-electoral dispute procedure (disputes regarding the submission of candidate names and the acts of electoral administration). However, this majority opinion did not take into account the fact that the electoral judge also exercises oversight over the liberty and transparency of the will of the electorate. As part of this duty, the electoral judge's objective is to guarantee that the electorate's will is expressed in a way that is sufficiently free and transparent. In this view, the electoral judge has a wide scope of review; as was argued with good reason in the declaration of the vote: 'Our position is based on the fact that the fundamental interest to safeguard in all of this process, and which is linked to the unquestionable right of the citizen and which is of an eminently public nature, is the holding of elections under the fullness of liberty, justice, precision and transparency, so that the State and its bodies, in particular in this case, those of the municipalities, are legitimated.'

The political electoral jurisdiction is notably objective and arises always as a procedure in response to an act – in this case it was the general determination of the vote and the respective final vote statistics for purposes of declaration of the election results – and not as voluntary litigation of the interests of different parties, as the Supreme Court recognised in the aforementioned decision ('Moreover, this arises in the specific context of the elections and not as a procedure between parties ...'). From this perspective, the powers of the electoral judge should be broadly characterised in order to fulfil the judge's duty to guarantee the liberty and genuineness of the determination of the collective will of the electorate.

Thus the electoral judge should not restrict the review to the subjective interests and facts raised by the proponents of the procedure, the goal and perspective of



the review should be the more objective defence of liberty and transparency of the expression of the will of the electorate. Consequently, the Supreme Court, acting in its capacity as the Constitutional Council, did have the faculty to examine on its own initiative the electoral irregularities and, *ex officio*, undertake the verification of the facts to determine the truth.<sup>13</sup>

The decision of the Constitutional Council no 16/CC/04 of 14 January 2004 regarding the validation and declaration of the results of the municipal elections of 19 November 2003 carries some indications of this view without committing to a conclusive, defined position regarding the interventionist powers of the electoral judge in such procedures.

Thus, in the aforementioned procedure, after undertaking a perfunctory analysis of the documentation, and having determined that there were errors and omissions, the Constitutional Council instructed the National Electoral Commission to correct the aforementioned errors and omissions. Further, and this is the most interesting part, 'The Constitutional Council held, on the eighth day of this month, in the installations of the National Electoral Commission, a meeting was held with this body and with officials from STAE [Elections Technical Administration Secretariat] to clarify certain doubts and errors, to coordinate certain aspects for the execution and preparation of the documentation required for the validation and declaration of the electoral results.' This decision did not detail the substantive aspects of these operations, namely those related to the process of clarifying some errors or the particular nature of these errors.

However, could it be that the Constitutional Council wished to confirm implicitly the 'principle of examination or evidentiary inquiry *sua sponte*' (see Declaration of the Vote, in Supreme Court Decision of 13 August 1998)?

### SOME RULES OF THE ELECTORAL DISPUTE PROCEDURE

The procedure governing electoral disputes inherited from the administrative dispute procedure simple rules, without the formality that burdens judicial procedure. These characteristics are particularly relevant to the appeal procedure, which is part of the electoral dispute procedure and is emblematic of that procedure.

The object of this examination is to take into account those decisions of the Constitutional Council which are particularly relevant to the strictly procedural point of view or to the rules governing this process. A particular focus will be the decisions of the Constitutional Council that analyse in detail the terms imposed by the law on the exercise of electoral jurisdiction, that is, the procedural prerequisites. However, not all the procedural requirements are given the same attention. The assumptions with regard to jurisdiction and competence of the Constitutional Council have not been questioned and thus will not be analysed in this paper.

13 Which the Supreme Court, acting in its capacity as Constitutional Council, effectively did in Case no 9/RCE/99 (decision of 4 January 2000).

The Constitutional Council has paid particular attention to those procedural requirements which have an impact on the subject matter of an appeal and the so-called 'non-specific' or 'atypical' procedures<sup>14</sup>. These procedural requirements are given special attention because they constitute authentic formal obstacles to any review and decision on the merits of appeals relating to the conduct of the electoral administration.

### *Requirements With Regard to Subject Matter*

What acts can be the subject of an appeal to the Constitutional Council? Narrowly defined, the only matters that can be appealed in an electoral dispute procedure 'are those that have as their subject the decisions of the National Electoral Commission and whose review and decision is given to the Constitutional Council ...' (Nguenha 2004, p 13).<sup>15</sup>

Thus it is this 'independent' (Arts 2 and 3 of Law 20/2002) body of the state that finalises or renders definitive the process of claims or protests that have been submitted. 'This appeal has as its subject matter the Decision of the National Electoral Commission that decided the claim of the present appellant ...' (Decision no 2/CC/2005 of 12 January) and 'The permissible subject matter and objective of this appeal is precisely to contest and to have annulled the decision taken by the National Electoral Commission' (Decision no 3/CC/2005 of 12 January. See also, Decision no 19/CC/04 of 11 August 2004; Decision no 20/CC/2004 of 22 September; Decision no 6/CC/03 of 27 November.)

It should be added that in the electoral dispute procedure this decision must have external impact, that is, the impact of the issue decided should be felt in the legal relationships between the National Electoral Commission and the parties who

14 As a general rule, the court-related procedural prerequisites are to be distinguished between those related to the appellants, the subject matter and those designated 'unnamed' and 'undefined'. (See, regarding the general theory, Ferreira Pinto & Dias Pereira 1992, p 43 et seq and concerning the electoral dispute procedure, Freire Barros 1998, p 86 et seq).

15 Nonetheless, the comparative study of the words used in the electoral laws and in the Constitution of the Republic could raise some doubts. Thus, the oversight exercised by the Constitutional Council is, in terms of the law, on the basis of a 'decision' of the National Electoral Commission (see, for example, Art 138.1 of Law 19/2002 of 10 October), while Art 181 of the Constitution of the Republic uses the word 'complaint'. A 'decision' is not the same as a 'complaint' in the narrow sense of the word. Art 138.1 of Law 19/2002 is perfectly clear in this regard when it provides that: 'From the *decisions* taken by the National Electoral Commission on *complaints* submitted are appealable to the Constitutional Council [emphasis added]'. Nonetheless, it can be concluded that at the end of the process it is the Constitutional Council that is going to decide on the substance of the 'complaint' submitted and the grounds there for, but only within the framework of an objective analysis, in the final instance, from a 'decision' of the National Electoral Commission and will not directly decide on the 'complaint'. It is only indirectly that the Constitutional Council judges, in such a case, the relevance of the 'complaint' submitted to the National Electoral Commission. In any event, as was acknowledged more broadly by Justice João Nguenha (2004, p 13): 'With regard to the subject matter of the electoral dispute procedure, our legislature apparently used the terminology "dispute procedure appeal" and "complaint" indiscriminately and without the requisite technical and juridical precision.'

are legitimately and currently part of the electoral dispute procedure appeal. Otherwise the decision of the National Electoral Commission would not be appealable. This can be deduced from Decision no 13/CC/04 of 2 January. In this decision the Constitutional Council established that 'it is because we were not presented with *questions regarding the internal organization* of the National Electoral Commission that it is fundamental that this type of decision be promptly communicated to all of the interested parties so that these can in an appropriate and timely manner exercise the rights of claim or appeal that the Law permits. This exercise of rights also depends on the due exercise of the competence of this Constitutional Council [emphasis added].' (See also Decision no 19/CC/04 of 11 August.)

The procedural measure is distinguished by the principle of progressive estoppel, in accordance with the ruling that 'the different stages of the process which have been completed and not timely contested cannot later, at a different phase of the electoral process, be contested' (Decision no 3/Cc/2005 Of 12 January). This principle results from the nature of the electoral process, which is delimited by a 'precise scheduling', intended to guarantee that electoral acts are efficaciously carried out.

In other words, the electoral dispute procedure appeal is only permitted if the so-called irregularities have been the subject of a complaint or protest submitted during and as part of the act which the complaint or protest concerns (Art 173.1 of Law 7/2004 of 17 June; Art 137.1 of Law 19/2002 of 10 October).

The object of this rule is to facilitate the conclusion of the administrative procedure, which should culminate with the decision of the National Electoral Commission on the complaints and protests. In other words, what is appealable is the final resolution of the National Electoral Commission as a final or definitive administrative act or 'final decision' in the words of the Constitutional Council in its Decision no 28/CC/2004 of 5 November, B.R.47-Supp 30 November 2004, Series I) which, at the same time, defined the legally permitted appeals of the particular situations which that case presented.

The Constitutional Council has, on several occasions, insisted on this rule. For example, in case no 2/CC/2005 of 12 January, it stated that:

Art 173 of Law 7/2004, of 17 June, the Electoral Law, establishes that the principle of prior contestation requires that the irregularities that occur during the course of the voting, during the preliminary determination of the voting may be reviewed through the instrument of a contentious appeal, provided that the subject matter of the appeal was first challenged or protested as part of the act with regard to which the appeal relates (...) If the appellants do not demonstrate in their papers that they had timely submitted to the National Electoral Commission a complaint or protest concerning the irregularities for the purpose of providing the National Electoral Commission with

notice and an opportunity to resolve the irregularity (...) the appellants cannot later challenge the decision of the National Electoral Commission when they had not timely protested nor complained regarding the irregularities (...) In conclusion, there is no reason to annul that Decision, since the irregularities invoked by the appellants were not the subject of any complaint or protest at the time when the irregularities occurred (...), There is therefore no decision from which the parties can appeal. The purpose of this rule is to guarantee the public interest of all the citizen electorate and not only the interests of the candidates or the political parties who are competing in the elections.'

### **Decisions nos 3/CC/2005 of 12 January and 4/CC/2005 of 15 January**

It is, on the one hand, National Electoral Commission decisions on the complaints and protests that may be appealed (see, for example, Decision no 13/CC/04 of 2 January) and, on the other, decisions made by the competent electoral process support bodies and officials (Art 7.2(g) of Law 20/2002 of 10 October).

In contrast, if the appeal was submitted without complying with these requirements, it will be denied at the outset on the basis of the lack of a procedural prerequisite or that the act that is the subject matter of the appeal is not appealable; as the Constitutional Council decided very clearly in Case no 29/CC/2004:

The appellant should have previously submitted a protest to the National Electoral Commission regarding the acts it is now alleging, in accordance with the aforementioned legal provision.

This legal prerequisite not having been complied with, the Constitutional Council cannot now accept this appeal for review

*Decision no 31/CC/2004 of 30 December, B.R.1, 5 January 2005, Series I;*

*Decision no 1/CC/2005 of 12 January, B.R.3, 19 January 2005, Series I;*

*Decision no 4/CC/2005 of 15 January.*

### **The Unspecified Prerequisites**

In common parlance, the term 'unspecified prerequisites' is used to refer to procedural requirements that do not warrant a specific designation or separate treatment (Freire Barros 1998, p 111). Examples of these are certain time limitations, location, and the format to be used in submitting the appeal petition.

#### ***Time limits***

In the electoral dispute procedure appeal the period within which the appeal must be brought is particularly short because:

In case of a dispute, what is important is that the actual result of the election is determined without delay so that no doubts remain regarding the election of those who were legitimately elected, or that those who were elected on the basis of irregularities are not permitted to remain for very long before their mandate is revoked. The respect for the right of suffrage, which is alongside the respect for democracy, requires the rapid correction of anomalous situations.

Masclat 1989, p 343.

Thus, Art 138.2 of Law 19/2002 of 10 October stipulates that 'the appeal is filed within a period of three days from the date of the notice of the Decision by the National Electoral Commission regarding the complaint submitted'. Similarly, Art 175.2 of Law 7/2004 of 17 June establishes that: 'The appeal is filed within a period of three days from the date of the notice of the Decision by the National Electoral Commission regarding the complaint or protest submitted.'

As an example, in the pre-electoral dispute procedure, which, as a general rule, is the basis of the largest number of disputes, complaints and protests, should be decided within a very short time in order not to delay the electoral process. According to Manuel Freire Barros (1998, p 60):

what is certain is that it provides the incontrovertible advantage of provoking an authentic cleansing of the electoral process, so that the voting phase takes place in a climate of certainty, and tranquillity, where there will necessarily result a smaller number of disputes and thereby, an 'amicable' relationship between the electoral judge and the electorate, and thus avoiding or reducing the necessity for the use of appeals as the solution to annul the election or alter the voting results...

Numerous cases have been decided by the Constitutional Council on the basis of time-related issues.<sup>16</sup> To give a few examples, in the case of the *National Party of Mozambique v National Electoral Commission*, decided by the Supreme Court, acting in its capacity as the Constitutional Council, on 30 September 2003 (Proc1/RCE/2003)<sup>17</sup>, the party challenged the decision of the National Electoral Commission, which refused to accept its candidates on the basis that the relevant documentation 'was submitted outside of the time period previously fixed'. The appellant had appeared at the Electoral Technical Administration Secretariat one hour after the period had expired for compliance with the documentation submission

<sup>16</sup> See, the decisions of the Constitutional Council regarding time limits: Decision no 2/CC/03 of 19 November; Decision no 4/CC/03 of 24 November; Decision no 5/CC/03 of 25 November; Decision no 6/CC/03 of 27 November; Decision no 20/CC/2004 of 22 September; Decision no 7/CC/03 of 25 November; Decision no 7/CC/03 of 25 November; Decision no 4/CC/2005 of 15 January.

<sup>17</sup> In B.R.46, 12 November 2003, Series I.

requirements. The Supreme Court verified the 'evident' non-compliance with the Law by the particular party and denied the appeal. In this case, the Supreme Court insisted that the dynamic of the electoral process requires 'speed in the execution of the acts which are part of that process that doubly requires compliance with legally fixed time limitations'.

In the case of the appeal submitted by the Renamo-Electoral Union Coalition against the National Electoral Commission Decision no 47/2003 of 22 October, one of the causes of action concerned the admission of a member of the coalition as a candidate for the Presidency of the Municipal Council of Xai-Xai (Constitutional Council Decision no 4/CC/2003 of 24 November). The fact that the appeal was submitted after the expiry of the time limit fixed by law (three days as set out in Art 138 of Law 19/2002 of 10 October) was a formal bar to a decision on the merits by the Constitutional Council and 'as a consequence of the decision not to permit the appeal, on the basis of late submission, the Constitutional Council did not recognise the merits of the appeal' (Decision no 2/CC/03 of 19 November; See also Decision no 4/CC/2005 of 15 January).

However, the Constitutional Council did create an exception with regard to the issue of ineligibility. In the case of *Renamo-Electoral Union Coalition v National Electoral Commission* (Decision No 5/CC/2003 of 25 November 2003), the Constitutional Council decided that 'Notwithstanding the untimeliness of the appeal, the Council considers that it should nonetheless review the issue on the merits since the issue is governed by the provisions governing incompatibilities as set out in Art 7 of Law 19/2002 of 10 October.' The basis for rejection is 'those which cannot be considered to have been cured by the lapse of time'. It is, in this case, a question of the application of the rule of truth – a rule of public order (Masplet 1989, p 246).

Previously, the Constitutional Council, in Decision no 1/cc/03 of 17 November in the case of *Frelimo Party v National Electoral Commission* (in B.R.47, 19 November 2003, Series I) regarding the candidacy of Verdiano Francisco Manivete for the position of president of the Municipal Council of Catandica took the opportunity to emphasise that the need for speed derives from the nature of the electoral process, thus maintaining the jurisprudential position of the Supreme Court in this regard (see, Supreme Court, Proc 1/rce/2003).

Nonetheless, in its first decision, the Constitutional Council resolved a legal question with significant practical impact – that of the formal omission of the time limit for the filing of an appeal against decisions of the National Electoral Commission regarding candidacies. Arts 20 and 24 of Law 19/2002 of 10 October do not lay down any time limits in such cases.

It is evident that if one starts from the supposition already confirmed regarding the 'speed of the electoral process' the Constitutional Council, in order to bring consistency to the application of this requirement, which is inherent to the electoral process, could not avoid deciding, clearly and definitively, the question of the time limit for filing an appeal and the concrete terms of such an appeal. By

analysing the grounds for the decision of the Constitutional Council on this material, it can be deduced that the Constitutional Council used a rationale based on analogy to solve the problem of the time limit and invoked explicitly the provisions regarding voter registration disputes<sup>18</sup> and electoral disputes which both provide for a period of three days for the filing of an appeal.

Another solution, perhaps more consistent, particularly in situations where two stipulated periods do not coincide, would be to resort to a broader conceptualisation of the electoral dispute procedure which would take into account all the different disputes that can arise from election matters and not only those that arise during the course of voting and the counting of votes. From this viewpoint, Art 138 of Law 19/2002 of 10 October could be a sound legal basis for determining the practice for filing an appeal on matters concerning disputes about the submission of candidate names.

As one can see in the decisions made by the Constitutional Council, the time limit for a contentious appeal is not treated as a procedural but rather as a substantive time limit. The period for appeal in an electoral dispute procedure includes public holidays, Saturdays, Sundays and other holidays. In effect, given its special nature, the electoral dispute procedure appeal does not admit delays of any type. The time limit runs from the date of effective reception of the decision by the appellant (Decision no 13/CC/04 of 2 January) and does not include the date of receipt of the notice of the decision (Decision no 4/CC/200515 January).

The period for the electoral dispute procedure appeal corresponds to the period within which the right of appeal may be exercised; as the Constitutional Council established (Decision no 4/CC/2005 of 15 January; Supreme Court Decision of 30 September 2003 (Case 1/RCE/2003)): 'The time limitation is compulsory. In other words, the passage of this time period extinguishes the right to exercise the act.' In addition to which, given that the time limit for appeal has a substantive character, the running of the time limit may be determined by judicial notice by the Constitutional Council.

### *The 'venue'*

The place of the submission of the appeal also came under the scrutiny of the Constitutional Council. Notwithstanding the errors committed by appellants with respect to the identification of the venue for the submission of the petition for appeal, the Constitutional Council has demonstrated its willingness to review the substantive claims, giving priority, above all, to respect for the principle of the right to present a defence.

In Case no 18/CC/2004 (Decision no 19/CC/04, of 11 August 2004) an appeal lodged by Renamo-Electoral Union Coalition against the National Electoral

---

18 For dispute procedures relating to voter registration see Nguenha 2004, p 5 et seq.

Commission Decision no 24/2004 of 21 July, regarding the registration of voters residing abroad was submitted directly to the Secretariat of the Constitutional Council (see also Constitutional Council Decision no 20/CC/2004 of 22 September).

This case provided an opportunity for the Constitutional Council to explain in detail its 'orientation' regarding the venue for the submission of an appeal petition. The 'orientation that has been unanimously determined' by the Constitutional Council is that 'an electoral dispute procedure case must be submitted at the Secretariat of the National Electoral Commission, the entity whose decision is being appealed'. The grounds for this 'orientation' are merely practical, seeking to carry out 'the procedure with the greatest efficiency and speed'.

The importance of preserving the right of appellants to present a defence was emphasised by the Constitutional Council in its decision. (See, in terms of comparative law, Masplet 1989, p 238.) 'Because the petition was submitted directly to the Secretariat of this Constitutional Council, it was necessary to notify the National Electoral Commission to comment, *given the necessity to observe the principle of the right to present a defence*' (emphasis added). Thus, the Constitutional Council instructed the National Electoral Commission to comment within forty-eight hours.

Even so, some incidents may affect the speedy handling of a case. For example, in Case no 11/CC/03 (Decision no13/CC/04 of 2 January), although the National Electoral Commission had referred the appeal to the Constitutional Council, the appeal file was not sent with its decision, which required the Constitutional Council to request the commission's comment on the appeal.

These decisions of the Constitutional Council make it clear that if an appeal is filed in a place other than that specified by the Constitutional Council this fact will not disqualify the appeal, or, consequently, the consideration of the merits of the appeal. This is an example of the use of the principle *pro accione* with the purpose of enabling decisions on the merit by means of application of the 'orientations' which are most favourable to the exercise of the right of appeal, which is logical, given the distinct characteristics of Electoral Law in its entirety (Masplet 1989, p 25 et seq).

### *The Content and Form of Presentation of the Petition*

The petition for appeal must be substantiated. The electoral legislation stipulates that a petition for appeal must specify 'the factual and legal bases, and must be accompanied by all elements of proof' (Art 174.1 of Law 7/2004 of 17 June).<sup>19</sup> With regard to a 'Contentious Appeal', the petition shall 'include a photocopy of the minutes of the assembly in which the irregularity has occurred' (Art 173.3 of Law 7/2004 of 17 June).

The Constitutional Council has, on several occasions, reminded appellants of the need to comply scrupulously with the procedural requirements. Thus, in Case

---

<sup>19</sup> See Art 24.1 of Law 19/2002 of 10 October with regard to the appeal against the admission or refusal of admission of candidates for the local municipal elections.



no 1/CC/2005 of 12 January, the council, after reviewing the legal bases of the requirements that determine the permissibility of an appeal (Art 173.3 of Law 7/2004 of 17 June), confirmed that 'we have a document in which the appellants do not present any factual or legal justification to substantiate the allegations made as the basis of the appeal'. The consequences of not having complied with this requirement were clearly set out. 'This petition is *ineptly* drawn and when the initial petition is inept, the appeal is void' (Constitutional Council Decision no 4/CC/2005 of 15 January).

In addition, the petition must be accompanied by the elements of proof, as stipulated in Art 173.3 of Law 7/2004 of 17 June and as stressed by the Constitutional Council in Decision no 3/CC/2005 of 12 January: 'The appellants have the burden of proof regarding the acts alleged.'<sup>20</sup>

In case no 1/CC/2005, the Constitutional Council noted that 'The petition of the appellants is also not accompanied by any element of proof.'

The jurisprudence of the Constitutional Council on this issue (Decision no 1/CC/2005 of 12 January; Decision no 3/CC/2005 of 12 January) has been uniformly that failure to submit the elements of proof required by the provisions of the electoral laws will determine the rejection of the appeal.

Another aspect that has been the subject of review by the Constitutional Council is that of the contradiction between the petition and the underlying cause of the petition. In other words, there is a contradiction between the grounds for the appeal derived from the illegality that applies to the act being challenged (cause of action) and the legal instruments required by the Constitutional Council (petition).

This issue was the subject of particular analysis in case no 4/CC/2005 in which the Constitutional Council determined that 'the appellants allege that they appealed against Decision no 1/2005 of 3 January of the National Electoral Commission because they did not agree with the decision. Arts 1 through 19 of this petition lay out the allegations against the decision which is being appealed, and conclude that "the National Electoral Commission was incorrect when it based its decision on the fact that the protest of the appellants was not timely or appropriate".' 'Thus', the Constitutional Council continues, 'the appellants do not request that the Constitutional Council should annul the Decision, but rather that it should order the correction of all of the irregularities, in order that the general elections of 1-2 December may be confirmed...'. The conclusion of the Constitutional Council was: 'This petition lacks foundation both in terms of the subject matter and in terms of the grounds for the appeal'; which determines that it is not appropriate since there is disjuncture between the petition and the underlying cause of action.

---

20 See also Decision no 19/CC/2004, 8 September: 'The appellant has the responsibility (...) to prove that the conditions for foreign voter registration were not created as required by Art 9.3 of Law 18/2002, of 10 October'; Decision no 15/CC/04 of 10 January 2004; Supreme Court decision of 4 January 2000 (Proc 9/RCE/99): 'It is not sufficient to allege the existence of fraud or illegality. It is necessary, as the law stipulates, to present the elements of proof that lead unequivocally to the conclusion that it is in fact true that the acts, which have been denounced, occurred as alleged.'

As a general rule, with regard to the basic principles that should guide the form and content of the presentation of the petition, Manuel Freire Barros (1998, p 60; see also Masclet 1989, p 232 et seq) instructs that: 'The presentation and argument of the underlying acts should not limit itself merely to the description of the cause of action. Rather the appeal brief should contain a detailed description of the facts and circumstances that readily demonstrates the existence of the basis for the appeal as well as the content, significance and implication of these grounds. The presentation and argument of the applicable law should set out the legal rules and principles which have been violated and the description of the specific acts that are thereby rendered invalid.'

### THE ROLE OF THE ELECTORAL JUDGE

The doctrine has emphasised, with good reason, that 'the most relevant characteristic of the electoral dispute procedure resides in the nature of the powers attributed to the judge of electoral disputes' (Masclet 1989). It could be stated that the electoral judge in Mozambique is at the same time a judge of legality and a judge of the freeness and fairness of the elections, but the distinction depends on the time of the electoral process at which the judge acts.

#### *The Electoral Judge as Judge of Electoral Legality*

Given the nature of the pre-electoral dispute procedure (disputes about the qualification of candidates and about administrative acts) it is generally accepted that the judicial review of these procedures adopts a standard of strict legality. This view has been reiterated by the Constitutional Council in various decisions with regard to the verification of whether or not the acts or procedures being challenged conform to the provisions of the election regulatory laws.<sup>21</sup>

Nonetheless, a simple irregularity is not in itself sufficient basis to determine the annulment of the election. The operative basis is the application of the rule of non-substantive (procedural) defects, according to which, 'for the purposes of annulment of the election, what is material are those irregularities which are susceptible to exercising a decisive or determining influence on the results of the vote' (Freire Barros 1998, p 122). This rule was confirmed unequivocally by Art 176.1 of Law 7/2004 of 17 June and Art 139.1 of Law 19/2002 of 10 October.

#### *The Electoral Judge as a Judge of the Freeness and Fairness of Elections*

With regard to the review of the freeness and fairness of the elections, the role of the judge in the electoral dispute procedure is less clear and is subject, at least

---

21 See, for example, Decision no 1/CC/03 of 19 November; Decision no 2/CC/03 of 19 November; Supreme Court Decision of 30 September 2003 (Proc 1/RCE/2003).

theoretically, to an open debate between at least two positions. On the one hand there is the position that the electoral judge should exercise strict control over the regularity of all the acts and procedures that form part of the electoral process and, on the other, there is the position that the electoral judge should limit the review to controlling and securing the liberty, genuineness and fairness of the expression of the will of the electorate (Loic 1962, p 68 et seq, cited by Freire Barros 1998, p 122).

In the case of the second option, the governing rule is not respect for legality in the strict, formal sense, but rather 'respect for the will of the electorate, in such a way as to guarantee that the electorate's will is expressed in a sufficiently free and fair manner' (Freire Barros 1998, p 122; see, also, Miranda 1998, p 891). In this case the electoral judge must be free to adjust the results of the vote and annul the election. In other words, the mission of the electoral judge is not to punish any and all types of illegal electoral acts but to guarantee the precision and fairness of the vote (Masclat 1989, p 245).

Mozambican law contains an identical provision, applicable to all types of elections, permitting the legislator to give priority to guaranteeing the will of the electorate:

The voting in any voting precinct will only be considered to be null when irregularities have been demonstrated that could materially influence the election results.

*Art 176.1 of Law 7/2004 of 17 June;  
Art 139.1 of Law 19/2002 of 10 October*

Thus, the annulment of a general or local election should never be seen as a sanction intended to punish the conduct of a particular party or candidate because the Constitutional Council may only sanction irregularities that could materially influence the results of the elections and then only for the purpose of guaranteeing the true expression of the will of the electorate.

It remains to be determined and defined just what are 'irregularities that could materially influence the election results'. From a theoretical point of view this is an indeterminate legal precept (Bergel 2001, p 115 et seq), that is, 'concepts whose concrete impact cannot be defined in advance, but rather are defined on a case by case approach on the basis of circumstances that have a current as well as a subsequent (...) application and from this point of view do not have a fair, single solution' (García de Enterría & Fernández 2000, pp 142-143).

This gives the Constitutional Council wide latitude in its review, from which it could be concluded that Parliament has opted for an oversight of the freedom and fairness of the election more than for strict control over the legality of the electoral process. From a comparative law standpoint there are very few situations in which an irregularity on its own results automatically in the annulment of an election. Some examples of cases in which there were found to be grounds for annulment are: the irregular composition of the voting board, the violation of the

secrecy of the vote and incontestable findings of fraud (Masclat 1989, p 250). The general rule is that the judge examines incidences of irregularity in the voting results and questions whether the result would have been different if the irregularities had not existed (Masclat 1989, p 250).

In other words, the irregularities must have been of such a nature as to affect materially the election results. Irregularities would be considered to meet this test if they were committed with the objective or had the effect of falsifying the election results, especially if they make an impact on the number of votes for each of the candidates or relate to the manipulation of the results.

Thus the electoral judge must take into account factors apart from the act of fraud itself, such as the difference between the number of votes received by the candidates, in order to evaluate the impact of the irregularity on the election results. The smaller the difference, the greater the latitude to determine whether the irregularity may have affected the result. If the difference in the number of votes is sizeable, the fraud or irregularity generally has no impact (Supreme Court Decision 4 January 2000 (Proc 9/RCE/99)). It should be acknowledged, however, that it is not always easy to make such an assessment and a simple violation of the law does not necessarily result in the annulment of an election, as was established by the Constitutional Council in case no 14/CC/03 (Decision no16/CC/04 of 14 January 2004), 'These illegalities, although warranting examination, did not affect irreparably the subsequent acts of the electoral process, nor influence the general election results for each municipal office' (see also Supreme Court Decision of 13 August 1998).

With regard to the powers of the Constitutional Council it is necessary to identify the solutions that are technically possible before looking at the positive law.

From a comparative law perspective, three solutions are technically possible: the electoral judge may confirm or annul the election or reform or correct the electoral results with all the consequences that this would elicit with regard to the declaration of the elected candidates (Masclat 1989, p 245).

With regard to the post-electoral dispute procedure, the current electoral legislation establishes a single form of sanction in the event of the determination of invalidity: the annulment of the election (Art 176 of Law 7/2004 of 17 June and Art 139 of Law 19/2002 of 10 October ) thus limiting the powers of the Constitutional Council to either confirm or annul the election?

This dilemma was raised before the Portuguese Constitutional Court, which opted for a decision in favour of correcting the results if that offered a possibility of 'saving' the election (Freire Barros 1998, pp 126-127).<sup>22</sup> However, even if one agrees with the final decision of the electoral judge, the decision raises the problem of the legal basis of the power to correct the electoral results.

---

22 It should be noted that Portuguese electoral legislation is identical to that of Mozambique: 'The voting in any voting precinct and the voting in any district shall only be annulled when there are found to exist illegalities that could influence the general results of the district elections', cf, Freire Barros 1998, p 124.

In this regard, doctrine insists on the principle of universal equal suffrage, which is demonstrated in the electoral process by the requirement that all phases of the electoral process occur simultaneously throughout the electoral territory, particularly the phase of voting. Freire Barros (1998, p 129) argues that:

It should be noted that the simultaneity of the voting process ... is an authentic corollary of another important principle of electoral law, which is that of equal self-determination for all citizens. Since the annulment of an election implies, compulsorily, its subsequent repetition, it is important to see that this fact will affect the principle of simultaneity and will always require an alteration of the terms of equality that should govern the electorate's exercise of its right of suffrage as well as the impact on the candidates affected by the repetition. On this basis it can be concluded that the electoral laws prescribing the annulment of elections in the event of an illegality that would be determinant of the election should be restrictively interpreted. This constitutes, in conclusion, the legal basis which not only argues in favour but requires the electoral judge to opt for a decision in favour of the reform or correction of the voting results (in case of error or illegality) instead of a decision in favour of the annulment of the election.

Until now the Constitutional Council has not made a decision requiring the correction or reform of voting results. Thus it is merely speculative to discuss the legal position of the Constitutional Council should it have to decide this question and whether or not it would decide in favour of the correction of the results.

Another issue, linked to this but with its own significance, is the extent of the power of the electoral judge to reform the election results.

In other words, should the electoral judge only undertake the correction of the election results in cases of voting illegality and material errors in the counting of the votes and in the determination of the results, as in the Portuguese legal system (Freire Barros 1998, p 13), or should the judge's power be viewed as broader, allowing him or her to declare the election of one candidate over another a result of the judgement of concrete circumstances of a particular election, as in the French legal order (Masclat 1989, p 225 et seq)?

These are currently merely highly speculative hypotheses but ones which, sooner or later, will have to be clarified by the Constitutional Council.

## CONCLUSION

The youthfulness of the Constitutional Council contrasts with the maturity of its decisions in electoral matters. Although it only came into being in 2003 the court has already demonstrated a mastery of electoral legal issues.

It should be praised for this performance, especially in an area of law that is known for its extreme technicality and complexity and in relation to which there are relatively few studies and works of quality.

However, this does not mean that all the legal and electoral problems have been resolved. Delicate questions, such as the scope of the powers of the Constitutional Council, the confirmation or not of the 'principle of *sua sponte* examination or evidentiary inquiry' and the position of the council in relation to the correction of election results are still unresolved.

It is lawyers who, even more than the electorate, eagerly await the next elections!

#### — REFERENCE —

- Bergel, J L. 2001. *Méthodologie juridique*. Paris: PUF.
- Caupers, J. 2001. *Introdução ao Direito Administrativo*. Âncora Publisher, 6<sup>a</sup> ed.
- Ferreira Pinto, F B and Dias Pereira. 1992. In G F Fonseca. *Direito processual administrativo contencioso*, 2<sup>a</sup> ed. Elcla Editora.
- Freire Barros, M. 1998. *Conceito e natureza jurídica do recurso contencioso eleitoral*. Livraria Almedina-Coimbra.
- García de Enterría, E and T R Fernández. 2000. *Curso de Derecho Administrativo*. Madrid: Ed Civitas, 10<sup>a</sup> ed.
- Loic, Ph. 1962. 'Les attributions et le rôle du Conseil Constitutionnel en matières d'élections et de référendums'. *Revue du Droit Public et de la Science Politique en France et à l'Etranger* 1 cited by M Freire Barros 1998. *Conceito e natureza jurídica do recurso contencioso eleitoral*. Livraria Almedina-Coimbra.
- Masclat, J C. 1989. *Droit électoral*. Paris: PUF.
- Miranda, J. Preface to M Freire Barros. 1998. *Conceito e natureza jurídica do recurso contencioso eleitoral*. Lisbon: Livraria Almedina-Coimbra.
- Nguenha, J. 'O contencioso eleitoral'. 2004. Presentation made during the Seminar on Electoral Law organised by Centre for Studies on Public Administration and Local Development (NEAD) of the Faculty of Law of the University of Eduardo Mondlane, 22-24 September. Pemba: photocopy.
- Pereira de Silva, V. 1989, *Para um contencioso administrativo dos particulares (esboço de uma teoria subjetivista do recurso directo de anulação)*. Lisbon: Livraria Almedina-Coimbra.
- Vieira De Andrade, J. 2000. *A Justiça Administrativa*. Lisbon: Livraria Almedina-Coimbra, 3<sup>a</sup> Ed.

# POST-ELECTION PROSPECTS FOR BURUNDI

By  
*Joseph Topangu*

Joseph Topangu is EISA's Representative in Burundi.  
P O Box 7417 Bujumbura, Burundi  
Tel. +257 977 694 or +257 251 857  
e-mail: [ktopangu@yahoo.com](mailto:ktopangu@yahoo.com)

## ABSTRACT

*Burundi has now held three elections in a bid to end the Transitional Government that has been ruling the country since 2002 following the signing of the Arusha Peace Agreement. It was not an easy task to hold elections in a war-torn country where no population census has been undertaken for decades and where scores of citizens do not have identity books. There was considerable uncertainty about how political parties would respond to the outcome of the elections since many of them had entered politics only a few months before and do not have a democratic culture. The success of the constitutional referendum on February 28 was put down to a lack of interest, with attention focused on the communal and legislative elections which were still to come. While the former was marked by some violence and contestation, the latter appeared even more challenging. Surprisingly, the legislative election went smoothly and now Burundi is poised to achieve a return to peace and stability. Yet there are problems the country has to tackle if peace is to last and national reconciliation become a reality.*

## INTRODUCTION

Burundi is seeking to hold general elections in an effort to end an eleven-year conflict that resulted from the killing of the first democratically elected Hutu President, Melchior Ndadaye, in October 1993. The Arusha Agreement, which brokered peace between half a dozen Burundian armed factions, originally scheduled the elections for November 2004, but they have been postponed several times. Some communal elections were held on 3 June 2005 and, at the time of writing, others are scheduled for 4 and 29 July, 19 August and 23 September.

In 1993 Burundians had managed to hold elections that were deemed free and fair by the international community, but not all the parties accepted the outcome. The assassination of Ndadaye by the military four months later sparked an unprecedented wave of violence from the Hutu majority, triggering a tough response from the national army, which was largely Tutsi-dominated. For a decade the country plunged into a bloody civil war that killed an estimated 300 000 people.

Burundi's circumstances give rise to many questions. Can the country manage full multiparty democracy? How much does politics in Burundi depend on ethnic membership? Can Burundi's Commission Electorale Nationale Indépendante (CENI) deliver free and fair elections? What are the obstacles to democracy in the country? What can be done to give democracy a chance? And, ultimately, what are the chances that a new electoral process will bring lasting peace?

## BACKGROUND

Burundi became independent from Belgium in July 1962. According to Article 1 of the Constitution, Burundi is an 'independent, sovereign, non-religious and unitary republic respecting its ethnic and religious diversity'. Article 6 states that the 'principle of the Republic of Burundi is the people's Government, by the people and for the people'. On the eve of national independence, in September 1961, a multiparty system was established for the country. However, most of the political parties that contested the first elections in 1961 were no challenge to the Union pour le Progrès National (Uprona) of Prince Louis Rwagasore. In the aftermath of the elections Jean Ntidendereza, leader of the Parti Chrétien Démocrate (PCD), plotted against Prince Louis, who was killed as he was holding consultations to set up the first post-independence Cabinet, plunging the country into its first political crisis and shattering national unity.

Between independence in 1962 and 1966 Burundi was a kingdom, ruled by Prince Louis's father, King Mwambutsa Bangiricenge. In 1966 the military overthrew the king and brought his son, Ndizeye Charles, to power. On 28 November 1966 the young King Ntare, as he was known, was overthrown by the same military and the kingdom was replaced by a republic. The coup d'état brought to power a young army captain, Michel Micombero, originally from the southern province of Bururi. By tradition and culture Burundians were bound to the king and in the beginning most citizens showed reluctance to adopt the new rule. In the wake of these changes, all political parties apart from Uprona were banned. The banning appeared to be a patriotic move necessary to safeguard this fragile national unity. However, six years later, national unity would suffer an even greater blow when a Hutu uprising killed several Tutsis and the Tutsi-dominated army responded excessively to the killing, setting off a chain of massacres that is believed to have caused in the region of 300 000 deaths (Agence France Presse 13 December 1972), mostly Hutu, between April 29 and August 1972.

In total, it is estimated that since independence in 1962 the various political conflicts in Burundi have caused the death of more than 600 000 people of all ethnic groups, or roughly 10 per cent of the present population of approximately seven million. After 1972, the national army consisted entirely of Tutsi soldiers. In November 1976, Micombero was deposed in a bloodless military coup that brought Colonel Jean-Baptiste Bagaza to power, where he remained until September 1987, when he was toppled by Major Pierre Buyoya.



Burundi remained a one-party state until 1992 when Buyoya, yielding to national and international pressure, undertook to restore multipartyism and re-legalise political parties. Amongst the parties to be legalised was the Hutu-dominated Front pour la Démocratie au Burundi (Frodebu) that would win the elections in June 1993. Four months after Frodebu's victory its leader, Melchior Ndadaye, was killed in a coup attempt led by Tutsi military. Ndadaye's assassination spurred a wave of violence throughout the country from the Hutu population. Thousands of Tutsi civilians were killed by their Hutu neighbours before the army intervened, using tough measures.

Burundi is a unique and interesting case study of the restoration of multiparty democracy. Of the 7,1 million Burundians, 85 per cent are Hutu, 14 per cent are Tutsi (who have dominated politics, the army and economy) and 1 per cent are Twa<sup>1</sup>. Obstacles to democracy and common well-being in Burundi include poverty, illiteracy, overpopulation and political divisions along ethnic lines. The country is facing a crucial electoral process in a bid to manage the transition to democracy and stability.

### POLITICAL ENVIRONMENT

The period before the restoration of the multiparty system was essentially marked by the Tutsi minority's domination of political life. From Micombero to Buyoya, the Hutu majority was noticeably under represented at all levels of responsibility. Sporadic rioting and protests would interrupt the seemingly peaceful atmosphere. Burundi is surrounded by three countries: Rwanda, Congo and Tanzania. While Tanzania is seen as a relatively stable democracy, the other two countries, which share a history and culture with Burundi, have experienced turmoil in every decade. Each time trouble erupts in one of these countries, especially in Rwanda, there are direct consequences for Burundi, and vice-versa.

During Micombero and Bagaza's era (1966-1987) the political environment in Africa favoured the single-party system with only a handful of countries, among them Senegal, adopting multiparty democracy. The general mood was in favour of single parties. In some countries, the then Zaire is an example, the ruling parties had been institutionalised as 'state parties', and some heads of states, like Idi Amin Dada in Uganda, had been declared presidents for life. Burundi followed a similar path. The country held no elections under Micombero, and Bagaza, after ruling the country for six years, was again proclaimed president in 1982 in an election in which he was the only candidate of the sole political party, Uprona.

At the start of the 1990s, in a sudden unforeseen rupture with the established one-party system, a few multiparty elections took place in Africa in a climate of

---

1 These figures are presumably outdated as they were set during the colonial time. But they may remain in use for a long time to come as Burundians are not likely to mention ethnic groups in the census.

intense, genuine competition. The process was encouraged by a general move towards transparency that emerged from developments in the international arena, such as the beginning of the Perestroika process in the then Union of Soviet Socialist Republics (USSR) and from a series of national conferences held throughout the continent, particularly in Francophone Africa. During a summit held in La Baule, France, which has a strong influence in French-speaking countries, of which Burundi is one, urged Africans to move towards democracy and transparency.

In 1992, like a few other African countries, Burundi took steps towards restoring a full multiparty democratic system. Political parties were made legitimate once again and the race for power was frantically launched. By that time a raging civil war had erupted in neighboring Rwanda, pouring hordes of refugees into Burundi.

### RESTORATION OF MULTIPARTYISM

On 28 March 1993 Buyoya took the first steps towards legitimising political parties and restoring multiparty democracy. Prior to that he had appointed a committee to 'study the question of national unity'. The committee had come up with the concept of a 'Unity Charter' covering social, political and religious activities in Burundi. The charter stipulated that 'no individual or group of individuals can undertake any activity in Burundi unless the activity conforms to the spirit of the Unity Charter'. A monument was built as a symbol of unity; ceremonies took place on inauguration day, 6 February 1992, and a 'Unity Anthem' was sung to seal unity among the citizens of Burundi.

Since the intention of the Unity Charter was to cement unity, it was intended to be regarded as an inviolable reference and the foundation on which the electoral process was to be based. When the presidential elections were held, Ndadaye and his party, Frodebu, won an overwhelming victory. Ndadaye with 64,7 per cent of the vote and Frodebu 72,5, compared with Buyoya's 32,4 per cent and Uprona's 21,8 per cent. The elections were declared free and fair by the international community.

Protestors, most of them Tutsi students, demonstrated against Ndadaye's victory, denouncing the election as a 'tribal census', suggesting that Ndadaye had won only because of tribal support. Indeed, it was evident that each of the two candidates had won overwhelmingly in the constituencies in which their respective ethnic groups made up the majority, even though the fact that Buyoya won 32 per cent of the national vote meant that countrywide more Hutus had voted for him than did or could Tutsis. Adding to the students' protests, influential voices appealed for a cancellation or at least a postponement of the parliamentary elections, which Buyoya reasonably declined on the grounds that he did not feel comfortable ruling the country after losing the election while the elected president was awaiting an Assembly to work with.

The parliamentary electoral campaign took place in an unwholesome atmosphere, with Frodebu candidates, supporters of the victorious Ndadaye, using

cynical, abusive language to mock the losers. This discouraged Uprona supporters, many of whom tore or threw away their voter cards, making it easier for Frodebu to win an absolute majority in the Assembly. In the case of at least one province, Karusi, it could be proved to the Constitutional Court that Frodebu had infringed the terms of the 'Unity Charter' by presenting a mono-ethnic list. Frodebu's list was consequently cancelled, thus allowing Uprona to win all the seats in that province. In another, Buyenzi (Bujumbura), Frodebu's list was also mono-ethnic, with the exception of one Tutsi domestic worker at the bottom of the list, perceived by the party's main opposition, Uprona, as not even a token Tutsi but as an insult.

It is noteworthy that Frodebu's overwhelming victory in the legislative elections was partly the result of a political swindle. Before the elections Frodebu had formed an alliance with six other mainly Hutu parties including the Rassemblement du Peuple Burundais (RPB), the Parti pour la Réconciliation du Peuple (PRP), the Rassemblement Démocratique pour le Développement (RADDES) and the Parti du Peuple (PP). They unanimously decided to support Ndadaye's candidacy in the presidential race, and campaigned jointly around the Frodebu symbol – a cock. After Ndadaye won the presidential election, Frodebu decided that it should run separately in the legislative election. This move severely disadvantaged the other parties. Having campaigned for the cock only a few weeks before, they encountered a strong scepticism from voters who could not understand why the same people who had exhorted them to vote for the cock in the presidential elections would ask them to vote for something different in the legislative elections. None of these parties won a seat in the Assembly.

So, from the start, Ndadaye's and Frodebu's victories had upset not only their Tutsi opponents in Uprona, but Hutus as well. These and similar cases set the scene for the trouble to come. Four months after taking office Ndadaye was killed in a coup attempt conducted by Tutsi soldiers. Then began an eleven-year civil war which ended with the signing of the Arusha Peace Agreement.<sup>2</sup>

### CONDITIONS FOR LASTING PEACE

Currently, laudable efforts are being made by various actors, national and international, to help Burundi succeed in building a system that will bring it in line with the global evolution of democracy. This ideal of democracy is being implemented in Burundi taking into account the strong numerical imbalance between the ethnic components of Burundian society where Tutsis, 14 per cent of the population, have dominated politics, the economy and the army.

There is no magic formula for representation of ethnic groups in the national institutions that would suit Burundian society. While the Arusha Agreement included quotas to ensure that ethnic groups are represented in a proportion that is

---

2 To date one rebel group, the Front National de Libération (FNL) has not joined the peace process.

acceptable to all, not every aspect of national life can be addressed with quotas or the provisions of the Arusha Agreement. Much more is needed for Burundi to establish a balance that will enable citizens to concentrate on the country's economic development.

Ethnic quotas are concealing problems that may hinder harmony and reconciliation between Burundians. There is a feeling that ethnic Hutu parties will win all the elections, given the proportion of Hutus (85%) in the whole population. The Hutu parties are somewhat reinforced by the division amongst Tutsis. More than seventeen parties signed the Peace Agreement; in ten of them Tutsis dominated and only in seven were Hutus predominant. Mathematically, this gives the latter a considerable advantage, with ten Tutsi parties representing 14 per cent of the population and seven Hutu parties sharing 85 per cent of the voters.

In reality, things are not that simple. The so-called Hutu parties all have Tutsi members. It can be expected that those parties will appoint Tutsis to high positions, which may lead to a situation where ethnic groups are all represented in the institutions, but political sensitivities are not. This situation, described by some observers as going 'from an armed conflict to a non-armed conflict', is one of the challenges likely to be faced by Burundi after the transition.

Not everybody is afraid of that eventuality, however. Some Burundians believe that situation could lead to stability, provided that the Tutsis in Hutu parties maintain their objectivity<sup>1</sup> so that they can play a buffer role, and that serious efforts are made by Hutu parties to avoid exclusion, the very reason for which Burundians took arms to fight a bloody eleven-year civil war.

The relative strength of the Hutu parties is partially the result of the weakness of the Tutsi parties, whose leaders have shown a remarkable reluctance to leave the political scene. Most notorious Tutsi parties are led by perpetual leaders, some of whom have been in politics for more than thirty years.<sup>3</sup> To counter them, the young parties seem to have found a language that might convince voters, regardless of their ethnic membership. In the referendum campaign, H Radjabu, one of the young leaders of the Conseil National de Défense de la Democratie-Forces de Défense de la Democratie (CNDD-FDD) was quoted as saying: 'when we were youngsters, Mr Manwangari (President of Uprona) used to tell us at political rallies "you are the future Burundi". Now, almost 30 years later, we want to run for elections, and Manwangari is still running for office. Can he say when is the "future Burundi" due to rule' (*Umuco*, February 2005)?

Another obstacle on Burundi's path to real peace is justice, without which lasting peace and reconciliation will only be unrealistic dreams. The various events that plunged Burundi into social and political crisis have not been investigated thoroughly to the satisfaction of the majority of the population. Recently, many voices have been raised to remind Burundians of the need for an international

---

3 In the past, Tutsis affiliated with Hutus had behaved badly toward fellow Tutsis and vice versa.

judicial commission on Burundi as well as a truth and reconciliation commission if peace is to last and reconciliation to become a reality.<sup>4</sup> It might have been better to hold elections after the publication of the reports of these commissions so those who committed crimes will not be part of the executive, and those who did not but were suspected of having done so will be cleared. In the absence of such an ideal solution, it should be required that any person suspected by the commission of having committed crimes be compelled to resign from public office.

Article 6 of the Preamble to the Arusha Peace Agreement ('Principles and measures relating to genocide, war crimes and other crimes against humanity') includes a 'Request by the Government of Burundi for the establishment by the United Nations Security Council of an international criminal tribunal to try and punish those responsible should the findings of the report point to the existence of acts of genocide, war crimes and other crimes against humanity'. In Arusha discussions were held on justice and the question of impunity but the participants came to the conclusion that they should first re-create a state before dealing with justice. They agreed on a 'provisional immunity' mechanism allowing refugees, politicians and combatants to come back to Burundi.

The provisional immunity was supposed to last for the transition period only. Now Burundians are holding elections without establishing responsibility for the various massacres in the history of the country, which amounts to turning the 'provisional immunity' into a 'definitive immunity'. If Burundi is to have lasting peace and reconciliation 'definitive immunity' is not the way to go. The country should painstakingly face its past and bring to justice those who may have played a role during the dark period of history.

Article 18 of the Arusha Agreement, entitled 'Combating impunity during the transition', states: 'In accordance with Protocol I to the Agreement, the transitional Government shall request the establishment of an International Judicial Commission of Inquiry which will investigate acts of genocide, war crimes and other crimes against humanity and report thereon to the Security Council of the United Nations'. And: 'In accordance with Protocol I to the Agreement, a National Truth and Reconciliation Commission shall be established to investigate human rights abuses, promote reconciliation and deal with claims arising out of past practices relating to the conflict in Burundi.'

For Burundians to achieve peace and justice the question of impunity should not be overlooked. Burundian civil society should do everything in its power to ensure that these issues receive attention. In the long run, justice and the question of impunity are more important for peace than the ethnic imbalance that is receiving so much attention, as the effect of the latter can be ameliorated with good governance and economic progress. Indeed, is it not preferable to have institutions that are somewhat ethnically imbalanced but qualified and competent rather than

---

4 In February the office of the President issued a communiqué appealing to Burundians to apply for positions on a 25-member truth and reconciliation committee.

institutions that are balanced but lack any capacity and will to serve? In Burundi, as elsewhere, are citizens more concerned about the ethnic origins of civil servants or about how those civil servants perform their duties (Nindorera 2005)?

Other problems that may hinder democracy and peace include the fact that there are too many firearms in the hands of the population. According to CNDD President Leonard Nyangoma (Author's interview, 16 March 2005) there are roughly 300 000 firearms among the civilian population, an unacceptably high figure for a population of 7,1 million. Even with the ceasefire holding firm since the Arusha Agreement the country has recorded an abnormally high rate of criminality involving firearms. Efforts should be made to recover these firearms and such efforts must be accompanied by noticeable progress in the peace process as a whole. There are doubts, for example, about the quantity and quality of firearms that were recovered from the army's main opponent, CNDD, whose troops are now being demobilised.

Another problem that needs to be solved in post-electoral Burundi concerns the Ganwa. The population of Burundi is actually made up of four, not three ethnic groups. These groups are the Hutu, the Tutsi, the Twa and the Ganwa. Numerically the Ganwa are an insignificant minority but historically they have played an important role in the history of the country. They are the descendants of the royal family and most of them are highly educated. In Arusha the Ganwa entity was recognised as being one of the four ethnic groups inhabiting Burundi but the final documents on which the elections are being based do not mention them. Charles Karabona, Vice-President of the Parti Monarchique Parlementaire (PMP) has raised concerns about the coming elections. He believes that fraudulent manipulation has led to the Ganwa being removed from the electoral and communal laws and that this might result in litigation that may hinder reconciliation.

The presence of Burundian refugee camps not far from the border, in neighbouring Tanzania, is also perceived as a possible destabilising factor. Some political leaders have made a point of the need to have the Burundians refugees living in those camps repatriated and relocated in their country before the elections. If this cannot be done these leaders suggest that the refugees be permitted to exercise their right to vote where they live. Excluding huge numbers of citizens from voting would give politicians who have ties with them the opportunity to argue that significant masses of their supporters were excluded from voting. With the supporters living in camps not far from Burundian borders the likelihood of unhappy politicians inciting people to violence or rebellion should not be underestimated.

The return of refugees and displaced people will inevitably raise numerous land issues that will put pressure on the administration of the state. Some refugees fled the country in the 1970s and their property was taken over by other citizens, who now view it as their own. With the current volume of unemployment in the country land is vital and its redistribution will be crucial both to the returning refugees and to the rest of the country's citizens.

An important, unspoken aspect that may hamper the success of the current electoral process is the role of the administration. Although elections are organised by the Commission Electorale Nationale Indépendante (CENI) and the Commission Electorale Provinciale Indépendante (CEPI), the administration will no doubt play a role in interacting with and channelling information between these bodies and the voters. The present administration is made up of approximately 40 per cent Uprona and 60 per cent Frodebu. These two parties are regarded by many Burundians as 'having blood on their hands'; Uprona for ruling the country during all the years when Hutus were killed (1965, 1972, 1988, 1991 and 1993), and Frodebu for conspicuously failing to appeal to the population for calm after Ndadaye's death, which would have prevented the killing of thousands of civilian Tutsis by their Hutu neighbours.

Burundians have repeatedly expressed concern that there is too much solidarity between Uprona and Frodebu. The two parties are believed to have agreed to act jointly in an effort to win elections and ensure that not only will they rule in perpetuity, but that justice will not be meted out to those among their leaders who are suspected of horrendous crimes. Burundian leaders are concerned that Uprona and Frodebu 'are being given undeserved credit' by the international community despite their role in placing the country in its current situation. One thing that would spell trouble for the present electoral process is if Uprona and Frodebu unconvincingly win a joint majority in Parliament and attempt to appoint people suspected of crimes to high positions in government.

It is very important that the international community observe the coming elections closely. The Coalition of Burundian Civil Society Organisations (COSOME) managed to observe 5 per cent of the voting stations on referendum day, 28 February. They have increased the figure to 20 per cent for the communal election and will attempt to increase it further for the legislative election. But what is really needed is the prominent presence of international election observers to obviate the possibility of fraud, intimidation and other misconduct, as well as to discourage undue complaints from those who may not be favoured by the final outcome.

## CONCLUSION

Appreciable efforts are being made by the international community to help Burundians finally turn the page on violence and build a democratic society. Among the solutions envisaged in accordance with the Arusha Agreement is ethnic quotas to address the strong numerical imbalance among the ethnic components of the population. However, the excessive attention paid to this imbalance is concealing the other problems outlined above: justice, land, the preponderance of firearms, the suspect Uprona-Frodebu alliance and the need for sufficient observers to ensure a free and fair election that will not be challenged by losing parties. If they are not addressed, all these issues have the potential to disrupt peace in a new, shaky democracy.

## — REFERENCES —

- Arusha Peace And Reconciliation Agreement For Burundi, 28 August 2000:  
[www.usip.org/library/pa/burundi/pa\\_burundi\\_08282000\\_toc.html](http://www.usip.org/library/pa/burundi/pa_burundi_08282000_toc.html))
- Braeckman, C. 1987. 'Le Burundi, au-delà de la "révolution de palais"'. *Le Monde Diplomatique*, 1987-1997.
- 'Constitution Interimaire Post-Transition de La République du Burundi', 4 Sep 2004: [www.reliefweb.int/rw/rwb.nsf/db900SID/EVIU-64ZFM?OpenDocument](http://www.reliefweb.int/rw/rwb.nsf/db900SID/EVIU-64ZFM?OpenDocument)
- 'Génocide au Burundi': [www.burundi-sites.com/genocide.htm](http://www.burundi-sites.com/genocide.htm)
- Kubwayo, F. 1993. 'Histoire Politique Du Burundi de 1958 à 1993':  
[www.burundi-sites.com/histoire\\_Kubwayo.htm](http://www.burundi-sites.com/histoire_Kubwayo.htm)
- Lemarchand, R. 2002. 'Le Genocide de 1972 au Burundi': <http://etudesafricaines.revues.org/document156.html>
- Nindorera, Eugene. 2005. 'Evolution du processus electoral II', March. Article distributed electronically by the author.
- Sinunguruza, T. 2004. *Les Elections au Burundi*. Bruxelles: Luc Pire.
- Tip, Ilona, Luiz de Brito, J Topangu. 2004. 'Report on a Fact-Finding Mission to Burundi, September 2004.
- Van Eck, Jan. 2005. 'The challenges facing a post-election Burundi: A formal new dialogue process needed after elections in order to deal with the unresolved issues'. Article published by the South African Institute of Strategic Studies, February.



THE 2005 LESOTHO  
LOCAL GOVERNMENT ELECTIONS  
*Implications for Development and Governance*

By  
*Victor Shale*

Victor Shale is the Director of the Conflict Management Education and Training Programme in Lesotho.

He has written and published papers in the area of Conflict Management and Diplomacy.

P.O. Box 15020, Maseru 100 Lesotho

Tel: +266 63070440 or +27 734970252

e-mail: [shalevictor@yahoo.co.uk](mailto:shalevictor@yahoo.co.uk)

ABSTRACT

*In April 2005 Lesotho held its first democratic local government elections since attaining political independence from Britain in 1966. Thus, over the past four decades, the country has used various unelected interim structures to carry out development activities countrywide; structures which were not built on democratic foundations. Consequently there are, understandably, high expectations for the new local government structures put in place through the April election. The Ministry of Local Government, charged with the responsibility for implementing local government in Lesotho, worked jointly with the Independent Electoral Commission (IEC) to manage and administer the elections. Both worked in earnest to take care of the logistical arrangements throughout all the stages of the election: pre-election, polling and post-election. One component of the vigorous debate that marked the election revolved around the fact that a proportion of the electoral divisions was reserved for women only, with a view to enhancing gender equality in the decision-making and development processes. Controversial as it proved to be from a legal point of view, politically this is a progressive step that conforms with the purpose of developmental local government, which is that of service delivery through active participation by all sectors of the community. This paper looks at the Lesotho local government elections and their implications for development and governance. The paper expresses the view that elections are not an occasion but part of the process towards sustainable development and democratic consolidation. Elections are, therefore, not an end in themselves but a means to an end: that end being development and governance.*

## INTRODUCTION

The Kingdom of Lesotho conducted successful National Assembly Elections in 2002 that were declared free and fair by election observers from the Southern African Development Community (SADC) region and from further afield. Despite the fact that the Basotho National Party (BNP) lodged a case in the High Court disputing the outcome, the election results were generally well received by opposition parties, unlike the conflict-ridden 1998 elections, which, as Matlosa (2003, pp 8-9) puts it, almost precipitated a civil war. The violent conflict that followed the 1998 elections was arrested by diplomatic and military intervention from Lesotho's powerful neighbour, South Africa, assisted later by Botswana in what was dubbed a SADC intervention force. Following that violent election and its calamitous aftermath, Lesotho embarked upon a comprehensive electoral reform programme in advance of the 2002 elections. Thus, the success of the 2002 elections is attributable, in part, to the adoption of the Mixed Member Proportional Representation model (MMP) that has put Lesotho on the map as a pioneer and a good example of transparent and democratic elections in Africa as a whole and the Southern African region in particular.

The consequence of this new model was an increase in the number of seats in Parliament. This increase has resulted in greater costs to tax payers in this tiny mountain kingdom – a situation that has been defended by the Prime Minister of Lesotho in a statement in which he asserted that 'there is no cheap democracy'. The National Assembly now consists of 120 members. Eighty of them are elected through the first-past-the-post (FPTP) system and 40 through the Proportional Representation (PR) system (for more on the electoral model see Shale 2004). Following the National Assembly elections, the government and Lesotho's Independent Electoral Commission (IEC) shifted focus from the national elections to the local government elections.

Although the 2005 local government elections were Lesotho's first, there has been some form of local authority in place since independence and the role of these authorities cannot be jettisoned. The paper, therefore, begins with a historical perspective on decentralisation in Lesotho, starting with the colonial era and moving onto the post-colonial era, looking at the period immediately after independence (1966 to 1992) and the contemporary period (from 1993 to 2005). The paper also discusses the inclusion of women through the allocation to them of one-third of the seats in the new councils.

## THE COLONIAL ERA

Local government can be traced back to the colonial era, during which time it went through various stages. Both development and governance issues, including dispute resolution, were dealt with through the traditional courts and Lipitso (public gatherings) presided over by the chiefs. The people were therefore able to participate

in the decision-making process so that they owned the decisions to a considerable degree. The system of Lipitso was, however, made unpopular by the colonial power, which turned it into a forum for making regulations and decisions that did not go down well with the majority of the people and, in fact, in most instances, went against the interests of the people. The colonial government later replaced the Lipitso system with the Basotho National Council (BNC), which was a consultative body. At this point the colonial administration existed side by side with the traditional rule of chieftaincy. According to Wallis (1999, p 93) the BNC established the District Councils (DCs) in an attempt to increase popular participation and promote its political acceptance by the people.

Following the 1959 Local Government Proclamation, certain powers were vested in the district councils, whose elected membership ranged from 15 to 28 people. As has been the case with the subsequent councils, chiefs were ex-officio members of the district councils. The councils did not have legislative or revenue raising powers and their role in delivery of services and the general development of their respective districts was limited. They had no autonomy in the recruitment or treatment of their own staff. This was done by the Local Government Service, which dealt with the appointment of staff, probation and confirmation, promotions and transfers, termination of the appointments and discipline as well as with the confidential reports of the employees (Local Government Orders 1965).

### THE POST-COLONIAL ERA

Lesotho became independent in 1966 and after independence the Basotho National Party (BNP)-led government retained the local councils, albeit for a short time. The Local Administration Repeal Act was passed in 1969 and the district councils were abolished on political grounds as the ruling party deemed them undesirable. The main reason for this decision was the competition for power between the ruling party and the Basutoland Congress Party (BCP), whose domain was local government. Nine of the ten district councils were controlled by the BCP and Wallis (1999, p 93) suggests that this was a recipe enough for conflict. Cooperation between the central and the district councils was problematic so the only logical option for the BNP government was to abolish the councils as a strategy to thwart any attempt by the BCP to entrench itself at grass roots level. Local administration became the responsibility of the then Ministry of the Interior (now Ministry of Local Government).

In 1970 the Constitution was suspended and all political activity was banned in Lesotho following the elections which saw the BCP emerge as victors. Their victory was short lived because of discrepancies which resulted in the government nullifying the elections. There were, however, clear signals that the polity was eager to participate in governance. Development, which was entirely the responsibility of the central government, was proving a fiasco, and this led to the establishment of village development committees, later to be converted to village development

councils, which are discussed below. The ban on political activity meant that the village development committees could not be democratically elected and were therefore not accepted by the communities as legitimate bodies. They were mainly seen as agents of the government and could not effectively deal with local development issues.

### MASERU CITY COUNCIL (MCC)

After 1970 the political climate in Lesotho was far from conducive to the establishment of local authorities, at least until after 1993. The BNP government had, however, realised that there was a need for a body that would be responsible for the development of the urban areas. In 1983 the Urban Government Act of 1983 was passed to address this need. Because of inadequate financial and human resources, the Act only came into operation in 1989 after donor intervention.

Elections for the Maseru Municipality were conducted on several occasions, with candidates standing for election in 16 constituencies, but when the council's term of office came to an end in 2000 it was suspended because the government felt it was not effective and had become too expensive to sustain. Despite the fact that no development had taken place councillors were demanding an increase in their allowances. The powers of the Mayor of Maseru have since been vested in the office of the Chief Executive and Town Clerk. Under this arrangement, the Town Clerk is an employee of the council and does not account to the residents of Maseru but to the Minister of Local Government. It was anticipated that having the Town Clerk at the helm of the MCC would be a temporary arrangement because the local government elections were planned for the end of 2003 or early 2004.

### THE VILLAGE DEVELOPMENT COUNCILS

The village development councils (VDCs) replaced the village development committees after the enactment of the Village Development Orders of 1981 and of 1986. These were rural based councils consisting of seven elected members and one gazetted<sup>1</sup> chief. During the period of military rule the VDCs were given a new mandate. The VDCs Order of 1991, which was subsequently amended in 1994 and 1995, provided that their functions would be as described in Table 1. Before the amendment, chiefs were ex-officio members and chairpersons of the councils.

By 2001 the tenure of office of all the village development councils had expired. At that point, most of them existed only in name because they had lost many members through migration and death and there was no mechanism for replacing the lost members. In addition, government had experienced problems with the

---

1 There are mainly two types of chiefs, namely gazetted and ungazetted. The former have their names published in a *Government Gazette*, receive monthly allowances and have decision-making powers in their area of jurisdiction.

councils and the councils were in constant conflict with chiefs, who were opposed to the amendment of the law which had resulted in their removal as automatic chairpersons of the VDCs as they believed that this took away their powers to perform their duties and to rule (Shale 2004).

**Table 1**  
**VDCs and Their Functions**

VDC Membership	Establish Law	Functions
7 members 1 gazetted chief	VDCs Order 1991 (amended in 1992, 1994 and 1995)	<ul style="list-style-type: none"> <li>• Responsibility for planning, formulation, implementation and maintenance of development activities.</li> <li>• Represent and guide the local community and identify community needs.</li> <li>• Raise funds for local development.</li> <li>• Inform government of local development priorities.</li> </ul>

### THE URBAN BOARDS

After the establishment of the VDCs throughout the country, there was a need to address the development imbalance between the rural areas and the district towns, other than Maseru, that had been created by the establishment of VDCs in the rural areas. In 2000, therefore, eleven urban boards were established under the Urban Government Act of 1983. The Ministry of Local Government demarcated the villages which fell under the urban areas into electoral divisions, from which nominees were to stand for election. The number of electoral divisions in each village ranged between ten and fifteen. Once this was done, the Minister of Local Government published in a *Government Gazette* his intention to declare the demarcated areas urban board areas.<sup>2</sup> Written public representations were invited, the areas were declared urban board areas and candidates were elected (in elections facilitated by

<sup>2</sup> These included the urban areas of Maputsoe and of Semonkong. The former surpasses some district towns in terms of economic activity even though it is not a district town, while the latter is a newly established urban area.

the ministry's personnel) by means of a ballot within the specific electoral divisions. The winners became members of the urban boards. According to the Ministry of Local Government (2003, p 5), these boards, which were charged with planning, development control, and responsibility for public stand pipes, public toilets and markets, operated their own bank accounts.

### THE INTERIM COMMUNITY COUNCILS

In 2002 the Ministry of Local Government put into effect s 7 of the Local Government Act 1997 as a provisional move towards the establishment of fully-fledged local authorities. The Minister of Local Government left it up to the communities to nominate their own representatives. Two hundred interim community councils and ten district councils were nominated, a move disputed by opposition parties who questioned the legality of the minister's action because the councils were nominated and not elected. These community councils were the last of the interim structures that preceded the new democratically elected councils.

The nomination exercise was conducted through public gatherings at which communities were invited to nominate their candidates and then elect finalists/councillors through a ballot system. The process was not accepted by the opposition parties and non-governmental organisations, who felt it was a breach of the provisions of the law. Opposition parties claimed that in some places the nominations were conducted among the members of the ruling Lesotho Congress for Democracy (LCD) only. The Ministry of Local Government asserted that this was a free and fair exercise done transparently with the local people. The interim structures were formally endorsed in 2002 by the government, despite the fact that they enjoyed little or no legitimacy among those outside the ruling party. This action, more than any other, destroyed the confidence of opposition parties in the future process of establishing local government and subsequent elections.

### THE 2005 LOCAL GOVERNMENT ELECTIONS AND THEIR IMPLICATIONS

Elections in Lesotho are enshrined in s 20 of the Constitution, which provides that every person has the right to take part in the conduct of public affairs directly or through freely chosen representatives. The Constitution of Lesotho further provides for the establishment by Parliament of local government. This is clearly set out in s 106, which reads as follows:

Parliament shall establish such Local Authorities as it deems necessary to enable urban and rural communities to determine their affairs and to develop themselves. Such authorities shall perform such functions as may be conferred by an act of Parliament.

The April 2005 local government elections have attracted a lot of attention from political analysts and academics, primarily because, despite the worldwide acclaim that greeted the 2002 elections where Mixed Member Proportional Representation system was used, the local government elections were conducted on a first-past-the-post basis. FPTP is seen by some people as negative, given its win-lose character. The use of the FPTP in the local elections has also been seen as a negation of the achievements of the country with regard to elections. Some argue that if the MMP has proved to be a solution to the country's long history of political conflict and that this has been acknowledged worldwide, it is schizoid to discard it when it comes to local government elections.

The pluralist systems, according to Hartmann (2004, p 178), lead to a high percentage of uncontested elections. Opposition parties objected to the use of FPTP and called for the postponement of the elections to allow for further consultations. When this call went unheeded they gave their followers what Kekeletso (2005, p 2) calls an 'orange light' to participate in the elections. As a result, many people stood for the elections as independent candidates instead of as political party candidates. Most of the independent candidates fared well, signifying the birth of new era in which voters are beginning to have confidence in individuals instead of political parties. The absence of serious political party competition made it easy for candidates of the ruling Lesotho Congress for Democracy to win the elections unopposed in many electoral divisions.

A look at the developments leading up to the local elections, starting with the establishment of the interim structures, shows that there has always been a stalemate between the government and opposition parties. There is a growing pattern in which government decides what it wants to do, and, despite the objections of opposition political parties, goes ahead with its plans. In this development, government somehow succeeds in relegating opposition parties to a status of insignificance where the people see them as opposed to democracy and development – the argument surrounding the reservation of seats for women being a case in point. Opposition parties are no longer seen as potential partners who have something to share with the government; both the opposition and the government are apportioned the blame for lack of development in Lesotho because of their failure to transcend their political differences and concentrate on the needs of the communities.

Another important issue as far as the Lesotho local elections are concerned is that there are 128 community councils, consisting of 1 272 councillors, as illustrated in Table 2.<sup>3</sup> The alarming rate at which people die of HIV / AIDS-related illnesses, as well as other factors like the rural-urban migration, means that the councils will lose members in large numbers. In fact, even before the councils begin to operate

---

3 Electoral divisions have been used as a basis for this figure. The assumption here is that there is a candidates for every electoral division. The figure, therefore, includes the electoral divisions which do not yet have councillors, as a result of failed elections and by-elections.

there were failed elections because some nominees had died before election day<sup>4</sup>. The IEC now has to make preparations for further nominations and must conduct elections in these areas. It must also hold fresh elections in a number of areas where the election result was a tie. All these activities have serious financial implications for the IEC and the already fragile economy of the country and its over-stretched budget.

**Table 2**  
**District and Community Councils**

District Councils	No. of Community Councils	No. of Councillors
Botha-Bothe	10	96
Leribe	18	178
Berea	10	104
Maseru	15	147
Mafeteng	12	116
Mohale's Hoek	14	140
Quthing	10	105
Qacha's Nek	11	103
Thaba-Tseka	13	127
Mokhotlong	15	156
<b>Total</b>	<b>128</b>	<b>1 272</b>

Another reason for the interest in the local elections is the amendment of the Local Government Act 1997 to include one-third representation of women in local government structures. In 1997, the SADC member states undertook to address gender inequality among public representatives. According to Letuka et al (2004, p 21) Lesotho reaffirmed its commitment by signing the SADC declaration, which requires the removal of all provisions in the laws of member states that discriminate against women. Another significant attribute of this declaration is the fact that the member states committed themselves to ensuring a minimum of 30 per cent representation of women in political leadership and decision-making by 2005.

Section 4 of the Local Government Act, which deals with the composition of councils, has been amended to include a clause that lays down that no fewer than one-third of seats in a council shall be reserved for women. The Local Government

4 Another reason for the failure of an election can be that there is no turnout during nominations. Statistics on the failed elections were not yet available when this paper was written.



Elections Act of 1998, which outlines the procedures, rules and regulations for the local government elections has also been amended to accommodate the election of women. The problem, however, is that neither Act specifies how the seats are to be reserved. Section 18(1A) of the Local Government Elections Amendment Act 2004 only provides that 'In accordance with the Local Government Act 1997, one third of the reserved seats in each Council shall be from every third electoral division'. The IEC has therefore adopted a multi-stakeholder strategy to determine the electoral divisions to be reserved for women.

Political parties were invited to take part in a random selection of the electoral divisions to be reserved. While this was done to legitimise the process, it did not cater for people who intended to contest elections as independent candidates because the political parties did not necessarily represent their interests in determining the electoral divisions.

**Table 3**  
**Electoral Divisions per District per Council**

District Councils	No. of Community Councils	No. of electoral divisions	No. of reserved electoral divisions
Botha- Bothe	10	96	30
Leribe	18	178	54
Berea	10	104	30
Maseru	15	147	45
Mafeteng	12	116	36
Mohales' Hoek	14	140	42
Quthing	10	105	31
Qacha's Nek	11	103	33
Thaba- Tseka	13	127	39
Mokhotlong	15	156	45
<b>Total</b>	<b>128</b>	<b>1 272</b>	<b>385</b>

SOURCE: INDEPENDENT ELECTORAL COMMISSION

Table 3 shows that 385 women have been elected to serve the local government councils. This constitutes one-third of the 1 272 councillors. After the nomination exercise a man from the Litjotjela Community Council area sued the government, saying his constitutional right to participate in the elections as per s 20 of the Constitution had been violated. His case was also based on s 18(3) of the Constitution, which states that no person shall be discriminated against because of

race, sex, and so on. His legal team argued that women should be empowered but their empowerment should not be at the expense of other people's constitutional rights, such as the right to stand for election. The decision of the High Court was that the law seeks to empower women and that fact overrides the question of whether the manner in which women are empowered is constitutional or not. The man's claims were therefore dismissed.

Lesotho should be commended for this bold step ensuring the participation of women despite many cacophonous utterances, particularly from conservative male folk around the country. The greatest challenge, though, is for the government to ensure that despite the absence of support from some politicians, the councils become credible institutions that can bring about development change in Lesotho. Reserving seats for women is not a new phenomenon. It has been done by other developing countries, like India. However, given the fact that India is a caste society, it may be expected that the problems likely to arise in Lesotho from this reservation of seats will be comparatively fewer than those that emerged in India. According to Poornima and Vinod Vyasulu (1999, p 1) India passed laws that made it obligatory for local governments to include women. One-third of seats in local bodies such as village councils (which are also called grams), municipalities, city corporations and districts are reserved for women and here women compete only against other women. The UNDP observes that the Indian experience is that most of the women become surrogates for their husbands, who are unable to contest elections because of the reservation.

A final reason for the interest generated by the elections is the general scepticism of the people about local government. People doubt that the newly elected local authorities will be any more effective than their predecessors (the interim community councils and the village development councils), which were never given the power to perform the functions they were expected to perform. These councils were also not accountable to the people and this undermined democratic governance. Statistics from the IEC regarding the elections indicate that there was a 30,22 per cent voter turnout in the entire country. In one electoral division, only 23 voters of a potential 2 053 (about 1,12%) voted.

The disappointing turnout has implications for development in terms of the likely lack of support for the councils. The councillors who have not been elected by the majority of the electorate face the daunting task of winning the support of the electorate after the elections. This is complicated by the fact that some members of the ruling party who were hoping to stand for election were disillusioned when the party chose different candidates. In some areas the nominated candidates were not accepted by the locals, resulting in some members standing as independent candidates against their party's candidates.

Table 4 illustrates this point with a look at eight major political parties and their performance against independent candidates. In Mokhotlong District independent candidates won 64 of 149 electoral divisions. This is very close to the 67 divisions won by the ruling party.

This indicates a loss of grip by the ruling party, which, in the 2002 National Assembly elections, won 79 of 80 national constituencies. The Mokhotlong District results are interesting to analyse because of the current tug-of-war between the LCD Member of Parliament and the party. The MP had been suspended by the party after apparently speaking out openly against senior party officials and some ministers who he accused of misusing resources. While this matter is still sub judice, the developments on the ground together with the election result suggest that the people in this district are prepared to cross swords with the ruling party. It remains to be seen whether the action that was taken against the MP for his alleged defiance will apply *mutatis mutandis* to those councillors who have defied the party by contesting elections as independent candidates. As was the case with the interim structures prior to the elections, the newly elected councils whose candidates have been imposed will indeed experience rejection by some of the people.

**Table 4**  
**Electoral Division Results per District per Political Party**

District	Independent Candidates	LCD	BNP	PFD	NNP	BAC	LPC	BCP
Maseru	24	112	1	2	1	–	–	–
B.Bothe	24	70	–	–	–	–	2	–
Leribe	29	135	7	2	–	1	1	–
Berea	10	76	2	1	–	1	12	–
Mafeteng	22	91	2	1	–	–	–	–
M.Hoek	26	109	2	–	–	–	1	1
Quthing	20	81	1	–	–	–	1	–
Qacha'sNek	9	91	1	–	–	–	–	–
Mokhotlong	64	67	14	–	–	–	2	1
Thaba-Tseka	23	101	10	1	–	–	–	–

SOURCE: IEC ELECTION RESULTS 2005

Table 4 shows that, apart from the Mokhotlong District, in almost all the districts independent candidates did well against political parties. This contrasts with the situation in the general elections, when political parties won more votes than independent candidates. Another conclusion to be drawn from Table 4 is that the LCD dominated the local government elections as it did the general elections.

The low level of participation in the elections is attributable to a number of factors. The elections were held on a Saturday, when many people had either gone to work as this was a normal working day or were busy burying their loved ones.

It is apparent that there was little pre-preparation for the elections in terms of voter and civic education and the pre-election phase did not conform with the fundamental principles of good governance because it was full of controversy.

It is, however, fair to acknowledge the role played by civil society groups, despite the alleged absence of cooperation from the government. The lack of cooperation is ironic given the growing importance globally of civil society and non-governmental organisations (NGOs) in development. Kabemba (2003, p 37) notes that, whether deliberately or by design, the exclusion of civil society results in development being a distant mirage. Despite the fact that civil society in Lesotho is not very strong, the Lesotho Council of Non-Governmental Organisations (LCN) and the Transformation Resource Centre (TRC) have been visibly involved in informing communities about the local government elections.

Inadequate time for election preparation was another issue of dissatisfaction among opposition political parties. They also pointed out that there were many loopholes in the legislation. Technical errors, such as the nomination form not providing for the party sponsorship of the candidate, were another concern. The parties claimed that the voters' rolls were not widely distributed to the community and the parties, hence their call for the postponement of the elections. The low voter turnout vindicates some of their claims.

**Table 5**  
**Ministry of Local Government Functions to be Decentralised**

Preparation, implementation and administration of plans, including plans for the expansion of settlements and minimising settlement encroachment on agricultural land

1. Land allocation
2. Building control
3. Enforcement of conditions attached to land and site allocations
4. Undertaking and management of the process of land adjudication
5. Preparation of local, part and sector plans in respective areas of jurisdiction
6. Land use planning (for an area)
7. Management of land held for community use (eg, open spaces)
8. Control and regulation of markets and bus terminuses
9. Stray stock management, including takeover / management of pounds for stray cattle and collection of fines
10. *Bewys*<sup>5</sup> writing
11. Registration of births and deaths
12. Administration of estates
13. Gazetting of chiefs
14. Community development
15. Burials of the destitute
16. Dealing with deportees

SOURCE: INTER-MINISTERIAL TASK FORCE MAY 2004

5 *Bewys* is an Afrikaans word used in Lesotho to refer to the official document used for registering livestock.

It is necessary, therefore, to look closely at the implications of the elections in terms of the limitations on and possibilities of the councils performing the functions assigned to them and in relation to the roles of women and of chiefs. By implication, the local authorities will be able to perform their designated functions if the legislation under which these functions are to be performed is amended. At present it is difficult for them to perform those functions effectively because most of the laws governing them conflict with one another and, in particular, with the Local Government Act. All line ministries have identified the functions that will be transferred to the local authorities after the elections. For instance, the Ministry of Local Government has identified the functions listed in Table 5, which, as would be expected, have implications for other sectors as well. For instance, one function under this ministry, the control and regulation of markets and bus terminals, also involves the Ministry of Health and Social Welfare, which oversees the health standards at these places. This function, therefore, has to be performed in liaison with the relevant government ministry or ministries.

### THE ROLE OF WOMEN IN LOCAL GOVERNANCE

It is difficult to avoid the temptation to talk about women's involvement in local government elections and development generally, without touching on its implications for their traditional role. Any discussion about their participation should consider a larger picture which takes cognisance of their general social responsibilities such as the increasing responsibility to nurse the sick and care for children who have been orphaned by the HIV / AIDS pandemic. The United Nations Children's Fund (UNICEF 1990), in declaring the rights of the child, has maintained that strengthening the role of women in general and ensuring their equal rights will be an advantage to the children. The escalation of HIV / AIDS means that there has to be an appreciation of the fact that in addition to an expectation that they will participate in local government, many women have now added an extra burden to their already demanding role in the household.

Women's participation in local politics will simply be added to their normal social and economic burden. Advocates of women's participation should not have high expectations that women, through their presence in the councils, will make an instant impact on development. They must acknowledge that these women, being the cornerstones of their households, will have a tough time because they will have to choose between attending council meetings and playing their traditional role as homemakers and caregivers. In the circumstances it is possible that their decisions to attend will not be based as much on the needs of the council as on their sense of duty in relation to their homes. It is important, therefore, that they are not pressurised to perform in councils according to expectations but are given time to adjust and are helped by the necessary technical and administrative support. This will go a long way towards making the councils sustainable.

It is also important to note that the majority of women who contested Lesotho's

local government elections are based in rural areas, yet they have higher literacy levels than their male counterparts. Despite this reality, many of them still depend on their husbands for the money to provide for their families. They are also expected to obtain permission from their husbands to be involved in the many voluntary activities for which they are renowned. Unlike their male counterparts, women do not have assets because the provisions of laws such as the Deeds Registry Act of 1967 still discriminate against them.

For instance, s 14(3) of the Deeds Registry Act provides that:

The bonds or other rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, save where such property, bonds or other rights are by law or by a condition of a bequest or donation excluded from the community.

Sub-section (6) of the same section states that the registrar shall:

... refuse except under an order of court to attest, execute or register all deeds and documents in respect of immovable property in favour of a married woman whose rights are governed by Basuto Law and custom where such registration would be in conflict with Basuto law and custom shall not be made in the name of women.

This means that in facilitating the registration of property, women councillors will be perpetuating discrimination against women, which, in turn, hinders them from participating effectively in development. The fact that one-third of the seats have been reserved for women does not automatically mean that they are empowered. The laws that discriminate against them prevent them from participating effectively in development. Given their active role in the establishment and sustenance of societies in pursuance of development, their energy has to be tapped for the good of the councils.

### PARTICIPATION OF CHIEFS IN GOVERNANCE

The Local Government Elections Act does not address the question of chiefs' participation in the elections. The process of determining the chiefs who will participate in local government councils was decided and facilitated by the Ministry of Local Government. Chiefs did not stand for election but, in terms of s 4 of the Local Government Act 1997, were nominated by other chiefs, who convened in a given council area. According to Wallis (1999, p 101) some chiefs have, in the past, been opposed to local government, maintaining that it is a weapon intended to break their power. Indeed, chiefs have posed problems for the development councils in the past, particularly after they were stripped of the ex-officio membership which had made them chairpersons of the local councils. According to the current interim

arrangements chiefs are members of the councils but are not automatic chairpersons – a situation that does not go down well with many of them. If the chiefs feel compromised, governance in their respective areas may be crippled. I have stated elsewhere that it is axiomatic that even if they do not openly obstruct the activities of the local government councils, the chiefs have the ability to use their residual power to influence the community to rise against the councillors.

There is a great deal of work to be done to get the newly elected structures operational. For instance, government must still develop regulations that will be used to administer the designated functions of the councils. Equally important is the development of the fiscal decentralisation framework which is the sacrosanct pillar of the successful implementation of decentralisation.

Despite these challenges, Lesotho has taken a step in the right direction in terms of deepening democracy, demonstrated here by the holding of free elections. It is important for the government to consider holding the local government elections and the national elections simultaneously. This will not only minimise the costs but will ensure a comparatively better turnout of the electorate, given the importance attached to National Assembly elections.

## CONCLUSION

There is no denying that Lesotho's road to democratic governance has been a bumpy one. This paper has indicated that as early as the 1960s there was a general problem pertaining to the acceptance of the legitimacy of the structures that were meant to spearhead development. Starting with the district councils, the village development councils and, lately, the interim community councils, there has been a pattern whereby these structures have never really been embraced by the communities. It comes as no surprise that even these newly elected councils were preceded by controversy.

The recent local government elections are not a panacea for development challenges in Lesotho but form part of the process leading to the amelioration of these challenges and the entrenchment of democracy. Local government is the centre of democracy because it is when people are able to run their own affairs that we can refer to a society as democratic. If the election process is to be successful there must be a comprehensive training programme for communities and the local government staff. As in national elections governments are born, local elections give birth to councils. It follows therefore that the newly elected councils that have been ushered in by the recent elections have been provided with an opportunity to tackle development problems.

The election results indicate that there was voter apathy. The big challenge is, therefore, to ensure the participation of all stakeholders, particularly more women, in future elections. The involvement of women in local government is not an end in itself, it is necessary if local government is to be imbued with a developmental conscience. It would otherwise be erroneous to claim to be consolidating democracy

when some sectors of the population are discriminated against. It is fitting, therefore, to conclude that there is a dire need to promote ownership of the electoral process by all sectors of the community in order to have democratic governance. There is no democracy if it is not inclusive. Developments leading up to the local government elections and the subsequent results indicate without doubt that inclusive democracy, which should have been the result of the elections, has been compromised.

— REFERENCE —

- Goering, L. 2004. 'Lesotho Women Hope for Control of their Lives: ravages of AIDS, high unemployment bolster case for legal end to men's deep-rooted dominance'. *Chicago Tribune*
- Government of Lesotho. 1965. Local Government Orders 1965. Maseru: Government Printer
- . 1967. Deeds Registry Act 1967. Maseru: Government Printer
- . 1979 Land Act 1979. Maseru: Government Printer.
- . 1993. The Constitution of Lesotho. Maseru: Government Printer
- . 1997. Local Government Act No.6 1997. Maseru: Government Printer
- . 1998. Local Government Elections Act 1998. Maseru: Government Printer
- . 2004. Local Government (Amendment) Act 2004. Maseru: Government Printer
- . 2004. Local Government Elections (Amendment) Act 2004. Maseru: Government Printer
- Hartmann, C. 2004. 'Local Elections in the SADC Countries: A Comparative Analysis of Local Electoral Institutions'. *Journal of African Elections* 3(1).
- Inter-Ministerial Task Force. 2004. *A Report on the Proposed Functions for Local Authorities Over The Period 2004-9*. Unpublished.
- Kabemba, C (ed). 2003. *From Military Rule to Multiparty Democracy: Political reforms and Challenges in Lesotho*. Johannesburg: Electoral Institute of Southern Africa.
- Kekeletso, M. 2005. 'Basotho Let Elections Pass them By'. *Public Eye Newspaper* 6 May.
- Letuka P, K Matashane-Marite and M Mapetla. 2004. 'Gender And Elections in Lesotho: Perspectives on the 2002 Elections'. EISA Research Report No. 4. Johannesburg: Electoral Institute of Southern Africa.
- Matlosa, K. 2003. *Electoral System Reform, Democracy and Stability in the SADC Region: A Comparative Analysis*. Johannesburg: Electoral Institute of Southern Africa.
- Ministry of Local Government 2003 Status Report on the establishment of Urban Boards. Unpublished.
- Poornima, R and V Vyasulu. 1999. 'Women in Panchayati Raj: Grassroots democracy in India, Experiences from Malgudi'. Paper presented at the workshop on 'Women and Political Participation: 21<sup>st</sup> Century Challenges' 24-26 March. New Delhi.
- Sephomolo, L. 2003. 'The Role of Women in Development and Politics in Lesotho'. Unpublished paper presented at the SADC Conference, Namibia.



- Shale, V R. 2004. *Decentralisation, Development and Conflict: The Challenges Awaiting Local Authorities in Lesotho*. Johannesburg: Electoral Institute of Southern Africa.
- . 2005. *Demarcating Local Authority Boundaries for good Governance versus the People-to-People Relations: A Case Study of Lesotho*. Johannesburg: Electoral Institute of Southern Africa.
- UNICEF. 1990. *First Call For Children: World Declaration and Plan of Action From The World Summit for Children*. New York: United Nations.
- Wallis, M. 1999. 'Lesotho: Seeking Local Democracy in the Mountain Kingdom'. In Reddy, P S (ed). *Local Government Democratisation and Decentralisation: A Review of the Southern African Region*. Cape Town: Juta & Co Ltd.

# THE ELECTORAL REFORM PROCESS IN MAURITIUS

By  
*L Amédée Darga*

L Amédée Darga is a private consultant in economic strategy and a social science researcher. He is a member of the African Association of Political Science. He has carried out extensive research in political and governance issues. He has also served as a mayor, a Member of Parliament and minister in Mauritius

2, Johanna Street, Port Louis, Mauritius

Telephone: +230 2107033; 6761335; Fax: +230 2107177

e-mail: [straconsult@intnet.mu](mailto:straconsult@intnet.mu)

## ABSTRACT

*This paper confirms the reputation of Mauritius as a stable country with a well-entrenched multiparty democracy and parliamentary system, which, however, need deepening. Independent institutions as well as fair, transparent and credible election management processes ensure trust both internally and from external observers in Mauritian democracy and the credibility of the parliamentary and executive selection process. However, the paper also brings to light the shortcomings, acknowledged by the Mauritian stakeholders themselves, of the electoral system which, while it can claim to have provided adequate comfort to the country's pluri-ethnic society and to have ensured the stability of the governance system is deficient in promoting adequate gender representation and a fairer distribution of parliamentary representation consonant with the voters' will. The attempt to reform the system is explained as are the reasons why the reform process is still incomplete.*

## INTRODUCTION

In the mid-1960s, deep social cleavages contributed to an extremely negative prognosis for democracy in Mauritius. Ethnically polarised groups squabbled over the shape of a new government, and 44 per cent of the electorate, predominantly from one ethnic group, voted against independence from Great Britain. Ethnic riots erupted in 1967, threatening to plunge the country into civil conflict. Violence between Muslims and Creoles killed at least 25 people (the exact count was never official) and wounded over 100 others just six weeks before Mauritius declared independence.

Immediately after independence, various external and internal forces brought together the two parties that had opposed each other in 1967 to form a government

of national unity. The void created was filled up by a new political movement, the Mauritius Militant Movement (MMM), which mobilised the people in street demonstrations and strikes. The MMM became the embodiment of popular discontent and won a by-election in September 1970. Prime Minister Sir Seewoosagur Ramgoolam decided to clamp down on political dissent, declared a state of emergency and suspended elections in 1971.

Despite a debut which suggested that the country might follow the same path as many others on the continent, democracy has grown and thrived in the years since independence. In the past 37 years Mauritius has held eight democratic elections, and the winning coalitions have shifted on most occasions. Political contest is alive and well, evidenced by the colourful and provocative posters plastered ubiquitously across the island at election times. The clear ideological stance of parties, which was characteristic of the 1970s and early 1980s, has gradually faded. Though ethnic discourse regularly surfaces during elections, several broadly based parties that now lack significant ideological distinctions attract the vast majority of votes.

Mauritius is one of the most stable countries in the world, and its citizens enjoy political and civil rights comparable to those of citizens in Belgium, France or Germany (World Bank 1998; Freedom House 2001). Even though Mauritians regularly express frustration with the quality of their government, political participation, at least at national election time, is quite high.

More recently, however, disenchantment with the present political elite has been becoming increasingly evident. In the years since independence Mauritius has developed from a socially fractured, unstable, and potentially authoritarian system to a functional, multiparty regime, ranked among the most democratic in the world.

## EXECUTIVE SELECTION

Since gaining independence from Britain in 1968, Mauritius has selected its chief executive by means of competitive multiparty elections, although the 1972 elections were cancelled as the government clamped down on challenges from the labour movement and new political forces. The majority party (or majority coalition) in the National Assembly selects the Prime Minister. Members of the legislature are popularly elected.

In an alliance made during the September 2000 election, the MMM and the Mauritius Socialist Movement (MSM) formed a coalition bloc to challenge the ruling Labour Party. As part of this agreement it was decided that Anerood Jugnauth (MSM) would serve as Prime Minister for three years with Paul Bérenger (MMM) as his deputy. Jugnauth would then step down in 2003 and allow Bérenger to take over the position of Prime Minister for the remaining two years of the term. Bérenger assumed office on 30 September 2003, the first non-Hindu to hold the position of Prime Minister.

## EXECUTIVE AND PARLIAMENT

Mauritius has a Westminster style parliamentary political system in which the Prime Minister is the most powerful executive figure with the power to dissolve Parliament whenever he or she feels it is expedient for him or her to do so. However, the parliamentary system imposes significant constraints on the political autonomy of the executive, obliging both it and the Prime Minister to be directly accountable to the legislature. Furthermore, the practice of coalition politics and the coalition-based nature of most governments in the country also limits the capacity of the executive to manoeuvre. Judicial independence from the executive and Parliament is guaranteed by the Constitution, and is upheld by the judiciary itself.

Notwithstanding the statutory powers of Parliament over the executive, it is the latter which, in reality, constrains the former from fully exercising its oversight role. One major reason for this is the fact that the present first-past-the-post (FPTP) electoral system often results in a numerically weaker representation of the opposition than reflects the wishes of the electorate. Secondly, the Constitution provides for up to 24 ministers and 10 junior ministers to be appointed. This means that almost half of Parliament is made up of the executive. Finally, it has become regular practice for prime ministers to abuse the 'Certificate of Urgency' to push Bills through Parliament, allowing little time for them to be considered.

Despite these restrictions, historically, a committed opposition, even though under-represented, has been able to force the executive to be on its toes.

## THE ETHNIC FACTOR

At the time of independence the prospects for political stability in Mauritius seemed bleak. Ethnic pluralism and economic stagnation culminated in violent communal riots during this period. However, in the past thirty years Mauritius has developed a reputation as one of the most stable and democratic countries in Africa. Key to both its economic and political success has been the ability of the country's ethnically diverse populations to more or less balance their narrow communal interests in a multicultural setting.

Ethnicity is quite a complex question in Mauritius, based as it is on both ancestral origins and assumed and perceived identity with no strict ethnic ranking. Historically the island had no indigenous population. Nearly one-third of its people (the Creoles) are descendants of slaves brought from the African mainland and from Madagascar by French colonial settlers in the 18th century to work on the island's sugar plantations.

Creoles suffer from limited social mobility and the majority have remained near the bottom of the country's socioeconomic ladder, while the small Franco-Mauritian elite continues to dominate the island's largest financial and business institutions. About 17 per cent of the population are Muslim. Their ancestors hailed from India, but they have developed their perceived identity on the basis of religion.

The dominant ethnic group is comprised of Hindu descendants of Indian plantation workers brought to the island as indentured labour after the British seized control of the country in 1810 and 'abolished' slavery in 1833. Within this group, a fault line divides Indo-Mauritian 'Hindus' (of northern Indian origin) from 'Tamils' (from the Dravidian south). The caste system has been replicated in a modified form in Mauritius, and the Vaish caste of Hindu society (a caste coming after the Brahmins) dominates the highest levels of the public sector establishment.

National identity remains weak in Mauritius and the ability of political parties to attract particular ethnic groups depends on the identity of the party's leader and leadership. Strictly and overtly ethnic parties have little opportunity to become mainstream. The main political parties are therefore multi-ethnic, although often this multi-ethnicity is reflected more in their leadership than their followers, and the Mauritian political system has historically forged governing alliances that mitigate ethnic, religious and ideological cleavages through parliamentary coalition-building. Moreover, democracy in the country has been bolstered by the presence of a common language (Kreol), the lack of a standing army and the existence of a vibrant and healthy civil society that, despite the attempts of certain elites to broaden the ethnic fault lines, cuts across cultural cleavages. In addition, the electoral system, which guarantees up to eight seats in the 70-member Parliament for correcting under representation of ethnic groups, has also worked to facilitate political stability. However, as the ethnic-based riots and communal violence of 1999 demonstrate, this harmony remains delicately balanced.

### LEGITIMACY OF THE ELECTORAL PROCESS

The electoral system is well anchored in electoral law, which is accepted as ensuring the autonomy and independence of the electoral system from all organs of state and political parties. The legitimacy of the electoral authority as manager of the electoral process is largely accepted by political parties and all candidates, as is its fairness and the transparency of its activities.

The registration, voting and results reporting process is fully credible, and legal action against violations as well as mechanisms for challenging election results are considered to be largely effective.

### INDEPENDENCE OF THE ELECTORAL COMMISSION/COMMISSIONERS

An independent Electoral Supervisory Commission and an Electoral Boundaries Commission are set up under the Constitution, which also creates the post of Electoral Commissioner. The latter is responsible, among other things, for the registration of voters, under the supervision of the Electoral Supervisory Commission. The Electoral Commission and Electoral Supervisory Commission are fully able to perform their duties and no blame has ever been ascribed to them, although there have been occasions when dissatisfaction has been expressed by

opposition parties (in general terms rather than through direct attack). The two institutions concerned with the electoral process are the Electoral Supervisory Commission and the Electoral Boundaries Commission. The Electoral Boundaries Commission consists of a chairman and between two and seven members, all appointed by the President 'acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the leader of the Opposition' (Constitution s 38(2)).

The commission may 'take into account representations made to it in respect of any proposed alteration of a boundary' and must give public notice of any proposed alteration and fix the manner in which and the time frame for any representation to be made (Electoral Boundaries Commission Regulations 1976).

The Electoral Commissioner and the Electoral Supervisory Commission are totally independent. The post of Electoral Commissioner is provided for in the Constitution and the only qualification imposed is that the person must be a barrister. The Electoral Supervisory Commission supervises the registration of voters and the conduct of elections. Its chairman is appointed by the President of the Republic in accordance with the advice of the Judicial and Legal Service Commissions. The members are appointed by the president acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the leader of the opposition (Constitution s 38(1)).

### TRANSPARENCY OF THE ELECTORAL COMMISSION PROCESS

Once the decision has been made to hold an election, details such as date, times and so on must be published in at least three newspapers. Anyone who wishes to stand for election is given documentation by the Electoral Commissioner's office providing all the details of the election process. Details of the emblems used by the other parties are also available from the commission.

There is complete transparency in relation to election details such as the voters' roll, the nomination of candidates, the declaration of the ethnic identity of candidates (for general elections only), voting procedures, preservation of order at polling stations, proxy votes, the vote count, the appointment by candidates of electoral agents (yard agents, classroom agents and counting agents) to supervise the voting and counting. These matters are detailed in the *Election Regulations* of 1968, which are available to all parties/individuals.

### TRANSPARENCY OF THE VOTER REGISTRATION PROCESS

The law provides for the appointment of registration officers and for registration to be done in each constituency. The registration process is carried out on an annual house-to-house basis. Should the registration officer need to carry out further enquiries, he or she is able to do so. The law also provides that information about the publication of the voters' roll must be made available to the population through

the *Government Gazette* and at least three recognised daily newspapers. Furthermore, political parties are free to ensure that their followers are registered and that their names have not been erased for any reason. People are also informed of the days on which they may personally check that their names have been properly recorded in the constituency in which they should be registered.

For the general elections the constituency is based on their place of residence. Voters whose names have been left off the roll or incorrectly registered have the right to claim to be registered and one relative or a legal representative may accompany them, which is important for those who are either physically incapacitated or illiterate. A list of claimants is then prepared. The law further provides for a very thorough procedure for voters to object to the registration of particular persons whose names appear on the roll.

No legal provisions debar any resident adults, except prisoners, from registering, voting or standing for election in any part of Mauritius, including Rodrigues and Agalega, which are inhabited outer islands.

### CREDIBILITY OF ELECTION RESULTS/OUTCOMES

Election results are generally accepted by all candidates although, on occasions when the margin has been very slim, there have been a few cases where votes have had to be recounted.

In the past, particularly during the first post-independence general elections, in 1976, there was a fair amount of violence and political intimidation, but as the years have gone by and the population has become more mature, voters have become more careful, with some cynically accepting bribes to vote for a particular party and then proceeding to vote for the party of their choice. In fact, the system is such that nobody can really know how a voter has voted since there is only one ballot sheet on which the names of all candidates appear in alphabetical order and this is deposited in a transparent urn. The voter does not exit with any paper to show anyone how he or she has voted.

One can safely say that the number of incidents of malpractice or intimidation such as the distribution of money or gifts is infinitesimal. As for violence, any party that is seen to be involved in violent practices is shunned by the electorate. The Electoral Commission, the police and the candidates and their agents ensure the smooth flow of events.

### CREDIBILITY OF ELECTORAL CHALLENGE MECHANISMS

Any challenges to the electoral process are instituted through the judicial process. In fact, there have been very few such challenges, the most recent being in 1998. This involved a challenge by the losing candidate of a by-election who alleged bribery on the part of the winning candidate fielded by the then ruling party.

## ISSUES BEING CONSIDERED FOR REFORM

As explained above, the process, the legislative framework and the regulatory and supervisory functions satisfy all stakeholders. It has therefore not been considered necessary to reform these elements, although improvements and modernisation are being considered and some changes have already been implemented.

However, the substantial debate is about the need for reform in relation to:

- modernisation of the voting process;
- the need to ensure more balanced gender representation;
- the question of public funding of political parties;
- the question of prohibition of religious or ethnic political parties;
- the electoral system.

The new government formed after the general elections of September 2000 committed itself to reform the electoral process. It established a Commission on Constitutional and Electoral Reform in 2001, hereinafter referred to as the Sachs Commission, named after the chairperson of that Commission, South African Constitutional Court Judge Albie Sachs. Its brief was to investigate the following issues, among others, and to make recommendations arising out of its findings.

- The role of the Electoral Supervisory Commission and how it could be strengthened and its responsibilities extended to uphold the democratic fundamentals of Mauritian society, in particular to ensure really free and fair elections.
- All practical aspects relating to the holding of elections and the need for greater transparency and for securing a level playing field for competing parties.
- A draft Bill regulating the funding of political parties.
- Representation in Parliament on a proportional basis within the existing electoral system.
- The prohibition of communal or religious political parties.

The Commission, which consisted of three commissioners, Sachs, B B Tandon, a member of the Electoral Commission from India, and a former Mauritian judge, Robert Ahnee, presented its report early in 2002.

## MODERNISATION OF THE VOTING PROCESS

The question of modernisation of the voting process was not put to the Sachs Commission. However consideration is presently being given to the introduction of electronic voting. This would have the advantage of providing results extremely quickly, probably on the day of the election.



A delegation of parliamentarians and officials of the Electoral Commission visited India during that country's last general elections to observe the voting system in operation. Although public views appear still to be divided on the matter and no decision has yet been made, it is understood that all members of the delegation were favourably disposed to the introduction of a more modern system.

### THE NEED TO ENSURE MORE BALANCED GENDER REPRESENTATION

Mauritius has the lowest level of female participation in Parliament and Cabinet within the SADC region and all political parties concur on the need to redress the imbalance and foster more female participation in elected political institutions. However, they are not very clear on the ways and means of achieving this objective.

The Sachs Report (p 28) maintained that the under-representation of women could be addressed through the reform of the electoral system by introducing a mixed PR system, but further highlighted that 'the major responsibility for correcting the massive gender imbalance rests with the parties'.

The Commission, however, pointed out that a number of measures could be introduced with relative technical ease for progress to be made on that front. These vary in the extent to which they operate directly or indirectly. The Commission listed them as follows:

- Following the Indian approach, there could be a requirement that in each bloc of three candidates nominated in the twenty constituencies at least one be a woman and one a man.
- Guided by the South African experience, the parties could be required to rank their candidates on the proportional representation (PR) lists in such a way that at least every third candidate is a woman and every third a man. Since women, like men, share all the characteristics of the nation, the parties could factor in an appropriate balance of elements other than gender when nominating women candidates.
- If public funding of political parties is to be introduced, the allocation of funds could be made dependent in significant part on the extent to which women are put forward as candidates and win seats.

### PUBLIC FUNDING OF POLITICAL PARTIES

There is, to date, no public funding of political parties. Parties mobilise funds either through some direct corruptive practices during tenure of office or through what are diplomatically termed 'donations', mainly from private sector companies, such 'donations' always being unofficial and unacknowledged.

The Sachs Commission, having considered the issue of public funding as part of its mandate, made the following recommendations:

- The adoption of a law providing for the establishment of a fund which would receive funds appropriated by Parliament and such other funds which it may lawfully receive. Such funds would be administered by the Electoral Supervisory Commission, which shall allocate moneys:
  - (i) to a political party represented in the National Assembly on the basis of the number of members it has in the Assembly; the percentage of votes cast in favour of its candidates; and the number of women it has in the Assembly;
  - (ii) to elected candidates and those who, although not elected, have won 15 per cent or more of the votes cast in their respective constituencies;
  - (iii) before the election to those parties which field a total of 60 candidates – three in each of the 20 constituencies.

### THE PROHIBITION OF RELIGIOUS OR ETHNIC POLITICAL PARTIES

As explained above, national identity is still weak in Mauritius and ethnicity often strongly influences social power relations as well as political competition. However, a large number of Mauritians have a schizophrenic relationship with the ethnic factor – they are often consciously or unconsciously involved in an ethnic discourse and practice, but publicly reject it. The majority of Mauritians have, indeed, been particularly alarmed about the appearance in the past ten years of overtly ethnic political movements. The question of prohibiting such groups corresponds, therefore, to a dominant popular feeling.

However, a decision to prohibit religious or ethnic political parties raises a serious issue of conflict with the practice of democracy. The Sachs Report pointed to the fact that such a prohibition might raise questions of constitutionality. In terms of s 3 of the Constitution, everyone in Mauritius may, subject to respect for the rights and freedoms of others and for the public interest, enjoy the right to freedom of assembly and association.

The report therefore emphasised:

Clearly a direct prohibition of communal or religious parties would diminish the freedom of assembly and association of their members. The question would be whether or not such limitation could be justified in terms of upholding the rights and freedoms of others or the public interest.

The commission therefore proposed a constitutional amendment that would not directly prohibit communal or religious parties as such, nor prevent such parties from participating in elections simply because they were communally or religiously based, but would indicate that appropriate legal provisions could be made to prevent such parties from running in elections if the electoral officials had reason to believe

that they were actively fomenting harmful divisions based on religion, ethnicity, race, community or caste. The question still remains to be debated.

### THE ELECTORAL SYSTEM

The electoral system which has been practised in Mauritius since independence is the first-past-the-post (FPTP) system. The Mauritian electoral system, however, distinguishes itself with two unique features. The first is the division of the country into twenty constituencies in which each voter has to vote for three candidates, with the three candidates receiving the most votes being elected. The choice of which three candidates is left to the voter and no block party vote is legally imposed. The second is what is known as the best loser system (BLS). This has worked well in terms of its own stability and the stability of the elected governments by providing conditions for the practice of consociationalism which provided an often fragile but sustainable democracy in an ethnically plural society.

Sixty-two members are elected on a FPTP, or rather first-three-past-the-post (Mathur 1991, p 32) basis, from twenty constituencies on the Island of Mauritius and two from the Island of Rodrigues. In addition, eight other members are appointed to be best loser members of Parliament, thus bringing the membership of the National Assembly to seventy. The appointment of the best losers is done by the Electoral Supervisory Commission on the basis of a mechanism prescribed under s 5 of the First Schedule of the Constitution<sup>1</sup> and in a manner that ensures adequate representation of the officially recognised ethnic groups without changing the balance of forces between the parties as obtained through direct suffrage:

In order to ensure a fair and adequate representation of each community, there shall be 8 seats in the Assembly, additional to the 62 seats for members representing constituencies, which shall so far as is possible be allocated to persons belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

Constitution s 5(1) of the First Schedule

The first 4 of the 8 seats shall, so far as is possible, each be allocated to the most successful unreturned candidate, if any, who is a member of a party and who belongs to the appropriate community [ethnic group], regardless of which party he belongs to.

'Appropriate community' in the above section means the community which is most under-represented. The basis for determining the under-representation is the 1972 population census figure.

Constitution s 5(3)

1 <http://ncb.intnet.mu/assembly/consti/index.htm>

When the first 4 seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties, other than the most successful party, shall be ascertained and so far as is possible that number of seats out of the second 4 seats shall one by one be allocated to the most successful unreturned candidates (if any) belonging both to the most successful party and to the appropriate community or where there is no unreturned candidate of the appropriate community, to the most successful unreturned candidates belonging to the most successful party, irrespective of community.

Constitution s 5(4)

The best loser system has been challenged by a small extra-parliamentary party, Lalit, and by some in the elite on the basis that it institutionalises ethnicity as a political instrument. This challenge is, however, not, as yet, mainstream, and is contested by some who argue that it might threaten the adequate representation of minorities. Although some of the dominant political parties are of the opinion that the system should be done away with in the context of a reformed electoral system which would provide the safeguard BLS is supposed to ensure, none has ventured officially to propose its elimination in the fear that to do so would be perceived as opposing safeguards for minority representation.

The FPTP system has been challenged by most dominant parties, particularly when they are out of government. The challenge relates to the unfair nature of the system where there is a large degree of disproportionality between the percentage of votes cast and the number of seats obtained in Parliament. Thus, in 1982 and in 1995, the result was 60-0, while in 1991 and 2000 the presence of the opposition in Parliament barely reached symbolic levels and was disproportionately low with respect to the percentage of votes earned.

Although there is widespread acceptance of the need to correct the gross under-representation of opposition parties produced by the electoral system, this does not imply agreement on possible solutions.

A good electoral system for a plural society such as Mauritius is clearly understood by all as one that will:

- ensure government stability;
- guarantee fairness to parties in terms of representation in Parliament;
- promote gender and diverse representation;
- encourage accountable government;
- increase voter choice;
- maintain links between MPs and their constituents; and
- shun overtly communal (ethnic) parties.

**Table 1**  
**An Overview of General Election Results, 1991 to 2000**

	1991			1995			2000		
	Parties (Alliances)	No of seats	% of votes	Parties (Alliances)	No of seats	% of votes	Parties (Alliances)	No of seats	% of votes
<b>Government</b>	MSM/ MMM	57	56 28	Labour/ MMM	60	66 22	MSM/ MMM/ PMSD Les Verts	54 4	52 30 BL*
<b>Opposition</b>	Labour PMSD	3 4	39 39	PGD PGD	1 1	BL BL	Labour/ PMXD	6 2	36,95 BL
<b>Rodrigues Reps</b>	OPR	2	65 93	OPR Mouvement Rodriguais	2 2	41 98 BL	OPR Mouvement Rodriguais	2 2	51,15 BL
<b>Total</b>		66			66			70	

\* Best Losers

The current electoral system has delivered well on the first, fourth, sixth and seventh items, but not on the other criteria.

The issue of fairness of representation was the centrepiece of the Sachs Commission's mandate. The commission received a number of representations from political parties and other civil society stakeholders. In consonance with the views of the general public, the submissions converged on:

- the need to introduce a carefully constructed eligibility threshold of 10 per cent to reduce the danger of too much fractionalisation and to reduce the likelihood of ethnic based parties emerging;
- a mixed FPTP/PR system rather than the replacement of FPTP by a full PR system;
- a mixed FPTP/PR system must be crafted to fit local conditions.

Therefore, the critical questions to be addressed are:

- what share of seats should be allocated to each part of the system;
- what is the appropriate mathematical formula for distributing PR seats;
- what parallel or compensatory formula should be used to allot PR seats.

After examining five different models and concluding that 'no single model meets all the requirements in an unqualified manner', the Commission made the following recommendations:

- That 62 seats be maintained (20 constituencies x 3 members + one constituency x 2 members) on the basis of the present FPTP system.
- That a further 30 members be chosen on the basis of lists provided by parties that receive more than 10 per cent of the national vote. Such lists will be in descending order of eligibility. They will be published in advance of elections and may contain a restricted number of names of persons standing for constituencies (should such persons in fact end up being elected constituency members their names on the list would be disregarded). The object of the lists is to introduce a measure of compensation in the outcome of elections so as to make the final totals of seats held by the different parties reflect more accurately the support that the parties have received from the country at large. The lists will be composed in such a way as to secure greater gender representivity and to provide the reassurance that, until now, has been provided by the best loser system.

In other words, the intention is to do away with the present best loser system.

## AFTER THE SACHS COMMISSION

The Sachs Report unfortunately did not give rise to much comment from or debate within civil society, save for one or two interested individuals. Government then set up a Select Committee of Parliament made up of parliamentarians from both the ruling parties and the opposition. Its mandate was to:

- examine further the commission's report and the recommendations relating to the introduction of a measure of proportional representation in Mauritius's electoral system;
- make recommendations, without prejudice to the existing best loser system, regarding methods of implementing the commission's recommendations that the National Assembly be composed of 62 members as at present and of a further 30 members chosen proportionately from parties that obtain more than 10 per cent of the total number of votes cast at a general election; and
- to suggest appropriate legislative measures to give effect to the recommendations.

In short, the terms of reference of the select committee indicated clearly that:

- the system proposed by the Sachs Commission was accepted at least by the ruling coalition of parties, but that
- these parties wanted the reinstatement of the best loser system.

Differences emerged in the select committee, which was chaired by the secretary general of the same party as the Prime Minister, and which comprised members of the opposition parties. The divergence, interestingly, was not between the ruling coalition and the opposition, but between the two partners in the coalition and resulted in sometimes bitter exchanges in the media between the chairperson and the Attorney General, who comes from the other party in the ruling coalition. The select committee therefore failed to agree on one model and came up with two propositions.

The first was similar to that in the Sachs Report, but included the BL system, thus providing for 62 members returned through the FPTP + 8 BLS + 30 PR seats to be allotted on a compensatory basis.

The second concentrated on one of the models which the Sachs Commission had examined but discarded, namely 62 on a FPTP basis + 8 BLS + 30 seats attributed on a parallel basis.

There the matter rests and the issue has now shifted to a negotiation between the partners of the ruling alliance. It has been rumoured through the media that

they might be heading towards a formula of 62 FPTP + 8 BLS + 10 PR seats. Some refer to it as an extended BL system.

### THE RODRIGUES TRIAL RUN

In the wake of changes brought in favour of decentralised government for the Island of Rodrigues, it was decided that there should be a Rodrigues regional parliament and a Rodrigues regional administration.

It was decided that the mixed FPTP / PR system would be used to elect the 18-member regional parliament and the elections were contested by two parties.

The results (shown in Table 2) shocked some party leaders when they saw that the difference of four seats resulting from the FPTP system had been narrowed down to two after application of the PR system, which indeed gave a seat distribution closer to the reality of the votes won by the contending parties.

This poured cold water on the desire to proceed with the electoral reform that had initially been intended and as recommended in the Sachs Report and explains the conflicting views in the select committee.

**Table 2**  
**Summary of Rodrigues Election Results**

	% FPTP votes	FPTP seats	% FPTP seats	PR allocated seats	% List votes	Total seats
<b>OPR</b>	55, 5	8	66, 7	2	55,0	10
<b>MR</b>	44,0	4	33, 3	4	43, 6	8
<b>Total</b>	99, 5	12	100	6	98, 6	18

The matter remains unresolved.



## — REFERENCES —

- Mathur, Hansraj. 1991. *Parliament in Mauritius*. Edition de l'Océan Indien. Mauritius. *Constitution of Mauritius of 1968* (and subsequent Amendments). Mauritius. *Laws of Mauritius 2001* – CD Rom, by V-Street Legal Series Vol 1. Mauritius. *The Representation of People's Act*.
- Sachs Commission. 2001. *Report of the Commission on Constitutional and Electoral Reform*.
- Sithanen, Rama. 2004. *A Critical Appraisal of the Select Committee Report on Electoral Reforms in Mauritius*, February.
- . Sithanen Rama. 2004. 'Proposals for Electoral Reforms in Mauritius, Moving from First Past The Post to Mixed Member Proportional, A pathway for government stability, party fairness and rainbow representation'. Submission to the Select Committee of Parliament examining the Sachs report.

# THE FORMATION, COLLAPSE AND REVIVAL OF POLITICAL PARTY COALITIONS IN MAURITIUS

## *Ethnic Logic and Calculation at Play*<sup>\*</sup>

By

*Denis K Kadima and Roukaya Kasenally*<sup>\*\*</sup>

Denis K Kadima is the Executive Director of EISA.

P O Box 740 Auckland Park 2006 Johannesburg

Tel: +27 (0) 11 482.5495; Fax: +27 (0) 11 482.6163

e-mail: [dkadima@eisa.org.za](mailto:dkadima@eisa.org.za)

Dr Roukaya Kasenally is a media and political communication specialist  
and teaches in the Faculty of Social Studies and Humanities at the

University of Mauritius. Reduit, Mauritius

Tel: +230 454 1041; Fax: +230 686 4000

e-mail: [roukaya@uom.ac.mu](mailto:roukaya@uom.ac.mu)

### ABSTRACT

*Coalitions and alliances are a regular feature of the Mauritian political landscape. The eight post-independence general elections have all been marked by electoral accords where those expecting to retain power or those aspiring to be in power hedge their bets by forming alliances with partners that ensure that they will be elected. Another fascinating feature is that, apart from that in 1976, all these coalitions have been formed before the election, allowing each party leader to engage in a series of tactical and bargaining strategies to ensure that his party gets a fair deal and, more recently, an equal deal, where the alliance partners shared the post of Prime Minister. The purpose of this paper is to shed some light on this under-researched area and to offer some explanation of the different mechanisms that exist*

---

\* The authors acknowledge with gratitude the Konrad Adenauer Foundation, Johannesburg, and the Embassy of Finland, Pretoria, who funded the project.

\*\* Denis K Kadima has been the Executive Director of EISA since December 2002. He played a key role in the development and adoption of the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO) and has published extensively on electoral processes, democracy and governance in the SADC region. This article is based on his doctoral research on political party coalitions in Africa, being conducted at the University of the Witwatersrand, Johannesburg. Dr Roukaya Kasenally is a media and political communication specialist and also teaches at the University of Mauritius. She holds a PhD in broadcasting and has written and published on the state of media and the process of information democratisation within Southern African as well as on the Asian continent. Dr Kasenally is currently Chairperson of the Standards Committee of the Independent Broadcasting Authority in Mauritius as well as the Regional Chairperson of the SADC Media Award.

*for the formation, maintenance and eventual collapse of alliances and coalitions. The authors also assess the impact of ethnicity, the current electoral system (first-past-the-post) and the domination of mainstream parties that are often 'conducive' factors for the perpetuation of coalitions and alliances. They also examine the effect of party coalitions on women's representation in Parliament.*

## INTRODUCTION

Mauritius's politics have been characterised by 'devastating political tsunamis' as far as party coalitions are concerned. The shifting of party coalitions is a recurrent phenomenon and since the country achieved its independence there have been nearly twice as many coalitions as there have been parliamentary elections. Few of these coalitions last and most collapse spectacularly. Interestingly, the collapse of a party coalition does not mean that former partners do not consider reuniting at some later point; hence the continual revival of political party coalitions on the island.

Since independence Mauritius has held seven general elections. All but one have been fought between two coalitions. The exception was the election of 1976, which was a three-horse contest. The nature of these coalitions lend themselves to further scrutiny. In six of the seven post-independence general elections, namely, those of 1982, 1983, 1987, 1991, 1995 and 2000, the coalitions were formed before the election, while, in 1976, a coalition was formed after the election.

The formation of these coalitions raises a number of questions. What brings particular political parties together? How are negotiations conducted? Who is entitled to negotiate? How are the relationships nurtured? What is the impact of party coalitions on women's representation in Parliament?

Despite 35 years of post-independence political history, there is no research systematically documenting this aspect of the Mauritian political process. This omission can partly be explained by the dichotomous nature of Mauritian politics – at one level these 'marriages of convenience' are hailed as a national 'sport', at another they remain a private matter. In fact, negotiations and exchanges between political parties are rarely conducted in the open, a factor which leads to rumour mongering and speculation until an official statement is issued to the media by the parties to a particular coalition. As one would expect these speculations reach fever pitch at the approach of a general election.

It should be noted that, though the word 'alliance' refers to the pre-election grouping of political parties and 'coalition' to the post-election groupings, these words are often used interchangeably. This study will not draw the distinction but when it is necessary for the sake of the argument to differentiate between groupings formed before elections and those emerging afterwards, they will be designated 'pre-election' or 'post-election' coalitions.

Party coalitions in Mauritius have been far from being alliances between parties of equal standing or status. In all seven post-independence general elections a

dominant party has scooped the highest job on offer – the post of prime minister. The only case of more or less equal partnership was in the 2000 election, when there was an electoral agreement to ‘split’ the term of the prime minister between the two coalition leaders, a compromise, political observers argue, that resulted from the weakened position of one of the partners. On that occasion history was made not only because of the split term of the Prime Minister but because a non-Hindu occupied the top place in government.

In any coalition a great deal depends on the breadth and depth of discussion and leverage of each party leader, which often defines the amount of bargaining capital to which he is entitled. It is not unusual to hear reports that a political party that has practically agreed on an alliance with another party is being ‘courted’ by or is ‘courting’ a third party. At the time of writing discussions and negotiations are taking place in different political quarters in relation to the 2005 general elections.

Although our research concentrates on post-independence Mauritius, pre-independence Mauritius merits some consideration, as, between these two eras, there has been a fundamental shift in the political ideology that has fuelled the different parties as well as an evolution in the nature of electoral alliances.

## HISTORICAL OVERVIEW

### *The General Elections of 1963, 1967: Setting the Tone for Marriages of Convenience*

The two pre-independence general elections that will be considered are those of 1963 and 1967 as they were instrumental in paving the way to independence. The 1963 election was fought by the Labour Party (LP), the Independent Forward Bloc (IFB) and the Parti Mauricien Socialiste Democrate (PMSD) on the theme of independence. The PMSD played on the fears of the minorities by opposing independence while the LP campaigned for full independence. Though the LP, with its ally, the IFB, won an overall majority of seats, it sustained severe reversals in the urban area to the benefit of the PMSD.

The 1963 election saw a regrouping along ethnic lines, which, in subsequent elections, become one of the core features (but also one of the complications) of political coalitions and alliances.

As had been agreed at the London constitutional conference of July 1961 which authorised the governor to appoint the leader of the majority party in the Legislative Council as chief minister, the leader of the Labour Party was made premier of the colony; the Legislative Council was restyled the Legislative Assembly and the Executive Council was upgraded to Council of Ministers. The succeeding years proved to be particularly tough as the question of independence continued to divide the different political parties. In 1966, an Electoral Commission led by Lord Banwell was set up to devise an electoral system and the most appropriate method of allocating seats in the legislature and to set the boundaries of electoral constituencies. The same electoral system persists to this day.

The 1967 general election once again saw political parties align themselves more or less ethnically. The LP was allied with two other Hindu parties – the IFB and the All Mauritian Hindu Congress (AMHC) – and the Muslim party known as the Comité d'Action Musulman (CAM) joined forces with them. In many ways the election was a referendum on independence, the rural/urban fracture became more pronounced and the PMSD campaign hardened and deepened communal divisions and rivalries. The LP campaigned on political, economic and social issues, arguing that independence would give the country an opportunity to tap additional resources for its development, while the PMSD exploited the fear of the unknown in an uncertain world as well as the numerical dominance of a united Indo-Mauritian group.

As shown in Table 1, the LP and its allies won handsomely with 54 per cent of the popular vote and secured 43 of a total of 70 seats.

**Table 1**  
**Results of the 1967 General Election**

Party	Percentage of votes	Number of seats
MLP*	33,7	26
IFB	15,1	12
CAM	6,3	5
PMSD	43,1	27

\* MLP: MAURITIAN LABOUR PARTY/LABOUR PARTY  
SOURCE: SMITH SIMMONS 1982

Mauritius achieved its independence on 12 March 1968. Soon afterwards a coalition government was formed, led by the LP. One of the first tasks of this coalition government was to pass through Parliament three constitutional amendments: the postponement of the following general elections, which were supposed to be held by August 1972 at the latest; the suspension of the fundamental rights of the citizens of Mauritius (to allow for the imprisonment of political detainees without trial) and the abolition of by-elections for the legislature. These harsh and undemocratic measures were justified by the government on the grounds that economic development and social peace were threatened by the activities of a new political party, the Mouvement Militant Mauricien (MMM), which emerged as a political movement in the 1970s to meet the aspirations of the youth of a newly independent country, disappointed by the politics of the old parties. The MMM accused the parties of political irrelevance and of creating communal tension and believed they could no longer be trusted by the younger generation. Independent Mauritius needed a paradigm shift in its political system and the MMM responded appropriately to that expectation. From 1973 to 1975 political activity was largely

proscribed, the press was censored and the MMM was subjected to political repression and physical violence against its founders, leaders and supporters that only served to harden the resolve of its followers.

The years 1968 to 1976 were difficult ones for the LP, which struggled to contain its coalition partners. It is interesting to note that one of its most ferocious enemies – the PMSD – became an ally from 1969 to 1973, a fact that throws an important light on the type of ‘ideology’ that brings political parties who are in total opposition to secure a ‘marriage of convenience’ aimed at remaining in power.

The first post-independence general election was held in December 1976. The MMM won, with 30 directly elected members, followed by the Labour Party and its ally with 25 seats and the PMSD in third position with only 7 members. After the allocation of the best-loser seats, the MMM had 34 parliamentarians in the new Assembly, the Labour Party and its ally secured 28 and the PMSD 8 (see Table 2).

**Table 2**  
**Results of the 1976 General Election**

Party	Percentage of Votes	Number of Seats
MMM	38,64	34
LP and CAM	37,90	28
PMSD	16,20	8
Others	7,26	0

SOURCE: MATHUR 1991

The LP and the PMSD entered into a post-electoral coalition, essentially to prevent the MMM from acceding to power, but the coalition government was weak and was no match for the MMM team in Parliament. The 1976-1981 Parliament saw the erosion of the authority of the Labour government. Dogged by internal division and a slim parliamentary majority, it encouraged some members of the MMM to cross the floor for ministerial and other office. The leadership was undermined by fractious groups either calling for reform or jockeying for power. On two occasions (1979 and 1980) the opposition filed motions of censure against the government, which were only averted after certain members of the opposition sided, for opportunistic reasons, with the government.

An ageing Sir Seewosagar Ramgoolam, the then Prime Minister, bent on holding office at any cost, could not see the writing on the wall. Economic difficulties arising from two International Monetary Fund (IMF)-imposed devaluations of the local currency compounded the discomfort of the government. Fraud and corruption denounced by a commission of enquiry added to the agony of a languishing regime. The Labour Party, in a frenzy of self-inflicted injury, expelled three of its National

Assembly members, who formed a new political party, Parti Socialiste Mauricien (PSM), led by Harish Boodhoo. The PSM rallied many of the disillusioned Labour supporters, laying the ground for the final assault on the Labour government and its landslide defeat in the 1982 general election.

Despite these tumultuous years, democracy worked well, with an opposition party that was able to keep the government and its allies in constant check. In fact, the 1976-1981 opposition party was among the most functional and productive of post-independence Mauritius.

The 1982 general election is an interesting test case in ethnic politics. With the LP considerably weakened, the MMM enjoyed the support of a people certain that a wave of change was about to sweep the country. Despite this 'certainty', the MMM was not ready to risk going alone to the polls, an uncertainty essentially triggered by the fact that the party had, since its inception, been viewed as one that had made space for the Muslim community as well as as a real alternative for the Creole people and it required a political partner that would secure the Hindu community. Bowman (1991) sums up the situation eloquently when he says that the MMM's alliance with 'the PSM and its promise that Aneerood Jugnauth would be prime minister if the election was won were clear gestures toward the Hindu population and, as such, diluted the party's non-communal, class-based image' (Bowman 1991, p 80). Table 3 illustrates the landslide victory of the MMM and the overwhelming repudiation of the LP.

**Table 3**  
**Results of the 1982 General Election**

Party	Percentage of Votes	Number of Seats
MMM/PSM	64,16	60
PAN*	25,78	2
PMSD	7,79	2
Others	2,27	2

\* PARTI D'ALLIANCE NATIONALE, LED BY THE LABOUR PARTY AS THE MAJOR PARTNER WITH THE MUSLIM ACTION COMMITTEE AND DISSIDENTING PMSD MEMBERS.  
SOURCE: MATHUR 1991

The enthusiasm and euphoria and the carte blanche given by the population to the MMM/PSM alliance to steer the future course of the country were short lived. Only nine months after its resounding victory, the government collapsed over a series of issues ranging from the status of the Creole language to the stringent economic policies proposed by the then Minister of Finance, Paul Bérenger. A dominant portion of the MMM, led by Bérenger, resigned, rupturing the party. Jugnauth was quick to react by forming the Mouvement Socialiste Mauricien (MSM).

A fresh election had to be called in 1983 as the MSM, into which the PSM had integrated, did not have the required majority in Parliament.

*General Elections in 1983, 1987, 1991 and 1995:  
Political Partners Play Musical Chairs*

The 1983 and 1987 general elections could be termed the reunion of the Hindu community – ethnic politics and calculation were rampantly practised. Jugnauth's MSM called on the LP and the PMSD, which, ironically, he had help oust from power, to form a new coalition, while the MMM confronted the electorate alone. According to certain political observers the election results provided a fine example of the way in which the first-past-the-post (FPTP) system can distort and misrepresent the wishes of the electorate. Despite winning some 46,4 per cent and 48,12 per cent of the popular vote in the 1983 and 1987 elections respectively, the MMM had secured a minority of seats (see Table 4).

**Table 4**  
**Results of the 1983 and 1987 General Elections**

Party	% of Votes 1983	% of Votes 1987	Number of Seats 1983	Number of Seats 1987
MSM/LP/PMSD	52,2	49,86	46	44
MMM	46,4	48,12	22	24

SOURCE: MATHUR 1991

What is interesting but equally disquieting is that parties had become aligned along geographic and ethnic lines – the MMM had come to represent the urban areas, where the Creole and Muslim communities were largely located, while the MSM and LP reigned supreme in the rural areas, where the majority of the Hindus resided, and, as expected, ethnic politics was at its peak.

The numerical majority that the MSM/LP/PMSD coalition government had secured in the 1983 election was far from offering any guarantee of stability. In fact, within six months of taking office, the coalition government underwent its first tremor with the sacking of the leader of the Labour Party, Sir Satcam Boolell. At this point another common feature of the Mauritian political landscape emerged – the Labour Party split and a group of three Labour Party ministers and eight Labour Party members of Parliament decided to continue to lend support to Jugnauth's government by forming the Rassemblement des Travailleurs Mauriciens (RTM). However, the 'defining' factor that marked the 1983-1986 era and was seen by many political observers as the major cause of instability was the rise of graft and



corruption within government ranks, which culminated in the arrest in late 1985 of four members of Parliament from the coalition government at Schipol Airport in Amsterdam when one of them was found with 20 kg of heroin in his luggage. That episode was followed by general panic within the coalition government when the 'architect' of the 1983 election victory, Boodhoo, resigned as chief whip in 1984 and started a bitter campaign against Jugnauth, claiming that the latter's party had benefited directly from corruption money. His 'revelations' caused a cascade of resignations and defections from the MSM. This resulted in Jugnauth calling on Boolell, who he had sacked some years before, to lend his support to the ailing coalition government. It is interesting to note that the opportunistic nature of Mauritian politics and the overriding urge to remain in power at any cost brought Boolell back into the coalition government, which enabled it to survive for another year when the general election was called for August 1987.

The 1987 party coalition line-up was similar to that of 1983 despite the major problems and splits of the 1983-1986 period. The inevitable happened just a year after the coalition's electoral victory when the PMSD, led by Sir Gaetan Duval, left the government. The departure of the PMSD did not really affect the ruling coalition but suggested that an important segment of the Mauritian population was no longer represented within the ruling coalition party. The MMM, an important rallying point for the general population, was the official opposition party.

Other failed attempts to redefine the Mauritian ethnic landscape caused various levels of tension and unease within the ruling coalition party as well as among opposition party members. Something quite extraordinary was to happen in early 1990 (two years before a general election was due) when the MSM and LP were officially the ruling coalition government and the MMM was the opposition party, which largely explains the never-ending permutations and combinations to which political parties lend themselves.

In 1989, with the LP keen to rebuild the political strength it had lost after the 1982 debacle, there were bilateral discussions and negotiations between it and the MSM, between it and the MMM and between the MMM and the MSM. Issues pertaining to parity between coalition parties dogged the discussions between the LP and the MMM as well as those between the LP and the MSM and, by mid-1990, the MSM and MMM had finalised a partnership deal, leaving the LP no choice but to leave the coalition, while the MMM, the existing opposition, was invited to join the government. Anticipating that electoral victory was clearly within the reach of the coalition, it called a general election a full year in advance of the scheduled date.

The 1991 general election saw a confident 'reconstituted' 'militant' family, while the opposition parties – the LP with a new leader at its helm, Dr Navin Ramgoolam (son of Sir Seewsagar Ramgoolam), and the PMSD were weakened and badly organised and no real match for the MSM/MMM alliance. The alliance scooped 57 seats and won 56,3 per cent of the popular vote (see Table 5). Political bliss was short lived as the MMM underwent its second split. The *Renouveau Militant*

Mauricien (RMM), led by Prem Nababsing and some of the key figures of the MMM, was formed and stayed in government, while Bérenger and his loyal 'lieutenants' stepped into opposition. By the time the 1995 general election was due, Jugnauth had been Prime Minister for some 13 years, always as leader of the dominant party that had forged a series of alliances since 1983.

**Table 5**  
**Results of the 1991 General Election**

Party	Percentage of votes	Number of seats
MSM/MMM	56,3	57
LP/PGD*	39,9	8

\*PGD: PARTI GAETAN DUVAL, A FACTION OF THE PMSD  
SOURCE: EIU 1991

The 1995 general election saw the triumphant return of the LP, supported by the MMM. What ensued was a total red and purple '*raz de marée*'; red and purple being the party colours of the LP and MMM respectively. The political reign of Jugnauth came to an abrupt end. The LP/MMM won 63,7 per cent of the popular vote and all the seats, while the MSM/RMM reaped a mediocre 19,3 per cent of the popular vote and remained seatless (see Table 6). In fact, the MSM/RMM won the lowest percentage of the popular vote recorded by an alliance in any of the post-independence general elections. However, it did not take long before the now familiar pattern of a ruptured coalition government emerged, and the MMM was urged to leave government in 1997.

**Table 6**  
**Results of the 1995 general election**

Party	Percentage of votes	Number of seats
LP/MMM	63,7	60
MSM/RMM	19,3	0
Others	16,0	6

SOURCE: EIU1996

In the most recent general election, in 2000, it was once more back to basics, with the grand 'reunion' of the 'militant' family, resulting in an almost clean sweep for the MSM/MMM coalition, as shown in Table 7.

**Table 7**  
**Results of the 2000 General Election**

Party	Percentage of votes	Number of seats
MSM/MMM	52,3	58
LP/PMXD*	36,95	8

\*PARTY MAURICIEN XAVIER DUVAL (PMXD) IS ANOTHER SPLIT PART OF THE PMSD  
SOURCE: ELECTORAL COMMISSION OFFICE 2004

The pre-electoral accord (popularly known as the 'medpoint' accord) was in fact a feat of electoral agreement/negotiations as it historically split the term of the Prime Minister, allowing the two coalition leaders each to take a turn and providing for each of the main coalition parties, the MSM and MMM, to receive 30 parliamentary seats. As mentioned above, the accord was even more unusual in allowing a non-Hindu to occupy the position of Prime Minister, which had always been reserved for a particular sub-group within the Hindu majority (Lodge, Kadima and Pottie 2002). The current alliance is well into its fifth year – the longest term yet of an alliance.

The question that is very much in the air is whether this successful electoral accord will be a once-in-a-lifetime achievement or whether it will inaugurate a new tradition within the Mauritian political party coalition landscape.

Examining the various coalition governments enumerated above, one can detect a systematic pattern of triumphant electoral victory followed by alliance decay and an early poll. In the 35+ years of post-independence Mauritian political history, political parties have forged alliances with other parties that have been historically and ideologically in opposition to them or with the very parties with whom relationships broke down when they were in a coalition government. No doubt, the above is just the tip of the iceberg, which sheds light on the complexity of political alliances where ethnicity, the presence of dominant parties, leadership style/personality and electoral victory are predominant ingredients in devising a 'perfect' winning formula.

*Ethnicity: The Necessary Evil of Coalition Political Parties*

Mauritius prides itself on being a multi-ethnic, linguistically rich and culturally diverse nation. Celebratory slogans like 'unity in diversity', 'one people one nation' and 'rainbow nation' are devised and popularised by politicians. However, the irony and hypocrisy lie in the fact that these very politicians practise and thrive on a politics of ethnic division and calculation. As shown in an earlier section of this paper, pre- and post-independence elections have been marked by ethnic considerations with the 'choice' of an alliance partner determined by its ethnic coefficient as opposed to its ideological proximity or compatibility.

Ethnicity is and will continue to be an important feature of Mauritian politics. People living in Mauritius are constantly 'split' between the multiple identities of their ancestral homeland and the one in which they have grown up. This layering of identities is usually exploited, not to say abused, at election times, when certain politicians appeal to the basic instincts of voters, asking them to support 'people of your kind'.

The omnipresence of ethnicity within the Mauritian political context is further embedded by the current electoral system which, for many, legitimises/ institutionalises the process of political ethnicisation. This is clearly illustrated by the fact that coalition parties were sought and alliances forged using ethnic 'logic' based on securing a majority base. This will be further explained in the section on the legal framework of the study and illustrated by the system of 'best losers', or variable correctives, which, in the search for a balance of ethnic representation, requires that each candidate for Parliament declare his or her ethnic affiliation.

Parties abound within the Mauritian political landscape and in the general elections of 2000 there were 22 political parties registered with the Electoral Supervisory Commission (ESC). This is no doubt indicative of the interest of parties in fielding candidates. Despite this diversity of political parties the post-independent Mauritian political landscape remains dominated by three of them, namely the LP, the MMM and the MSM. In fact, an interesting feature of these three parties is that, in the past 30 years or so, they have undergone multiple splits which have generated new parties, some of them short lived, others driven by a communal/ ethnic purpose and some essentially becoming one-person or one-issue parties.

Each of the mainstream parties has a particular ethno-electoral baseline. In the case of the LP, its pro-independence struggle allowed it to rally most of the Indo-Mauritian groups (Hindus, Muslims, Tamils and others) behind it, while the PMSD essentially represented the Creole community and the minority group of people of European descent (the whites). Post-independence Mauritius saw the emergence of a new party – the MMM, which was to challenge the old LP guard and appeal to certain ethnic groups, namely the Muslims, a fair segment of the Creole community and certain minority strands within the Hindu majority group. The 'hegemony' that the LP had acquired vis-à-vis the Hindu community was eroding and this deterioration was exacerbated by the creation of the PSM, which, in joining forces with the MMM for the 1982 general election, allowed the MMM to overcome the perception that it consisted entirely of Muslim, Creole and certain ethnic minority groups.

After its creation in 1983, the MSM recuperated and rallied a large section of the Hindus who had been staunch supporters of the LP prior to that party's 1982 decline. Indeed, when the MSM was formed, it was able to appeal to and attract a fair majority of the LP's electoral base. However, this electoral base, essentially made up of Hindus, began to return to the LP in the mid-1990s, leaving the MSM with diminished support. The period between 1983 and 1989 saw a great reunion

of the Hindu community, with the MSM taking on board for two successive elections (1983 and 1987) the LP as well as other minority parties.

As for the PMSD, the presence and clout that it had secured among the Creole community before independence steadily dwindled with the creation of the MMM. The PMSD has also suffered from multiple splits, which further fragmented its electoral base.

Mention was made above of several splits within the three mainstream parties since their inception. Although the formation of splinter parties has not made a substantial difference to the electoral balance, a fact that has been ascertained on several occasions by opinion polls, these parties have nevertheless been able to chip at the electoral capital of the three mainstream parties. The LP, for instance, has 'generated' splinter parties like the Parti Socialiste Mauricien (PSM), Rassemblement des Travailleurs Mauriciens (RTM) and the Mouvement Travailleur Démocrate that emanate from and represent the Hindu community.

The MMM has undergone three splits since its inception (in 1973, 1983 and 1993). The only one which allowed for the advent of a significant party was that in 1983 when the MSM was created. The *Renouveau Militant Mauricien* (RMM), created in 1993, was not significant and, as mentioned above, the MSM and RMM recorded the lowest percentage of the popular vote in any post-independence general election when they garnered only 19,3 per cent.

Since its inception the MSM has undergone several turbulent phases, essentially marked by the departure of senior members of the party. In 1994, the party experienced its first official split when Madan Dulloo, a senior minister in Jugnauth's Cabinet, left to create the *Mouvement Militant Socialiste Mauricien* (MMSM). The MMSM remains a one-person party and is currently part of the *Alliance Sociale* led by Navin Ramgoolam's LP. In February 2005 several members of Parliament, led by Anil Bachoo (who in the mid-1980s had created the *Mouvement des Travailleurs Dissidents* (MTD) – a breakaway group from the LP) had left the MSM, blaming its leader, Pravind Jugnauth, for being unable to steer the party and giving in too much to its coalition partner, the MMM. Bachoo's new party is known as the *Mouvement Socialiste Démocrate* (MSD) and has officially integrated *l'Alliance Sociale*, led by the LP and some five other small parties.

In the last decade or so, the Mauritian political landscape has also been marked by the advent of ethnically-driven parties like the *Hizbullah*, the *Mouvement Démocratique Mauricien* (MDM) and *Les Verts*, who claim to represent respectively the voices of a given section of the Muslim, Hindu and Creole populations. These three parties have not really caused a major stir but their ethno-political claims have, from time to time, struck a sympathetic chord among people belonging to certain ethnic groups.

Officially the mainstream parties like the MMM, LP and MSM appeal to a broad-based electorate but on the ground the reality can be very different, a fact that has been 'proved' in numerous general elections, particularly those of 1983 and 1987, during which ethnic differentiation was most obvious. From the early

1980s to the early 1990s, the Muslim community was ostracised by the government coalition for supporting the MMM, who were in opposition. Two events lend support to this claim. In 1984, the then Prime Minister, Aneerood Jugnauth, expelled the Head of Mission of the Libyan Embassy who was believed to be over sympathetic to the MMM. In 1987, the Muslim Personal Law (MPL), which gave legal status to the marriage of Muslims who opted to marry only religiously, was withdrawn and, to date, has not been reinstated. This has caused great anguish and concern to a section of the Muslim community.

It is obvious that certain political parties in Mauritius and, by extension, their coalition partners, operate a policy of carrot and stick – encouraging and rewarding ethnic groups that support them while punishing those that oppose them. Clearly this policy goes against the tenets of democracy and broad-based representivity, but, unfortunately, it fits the logic of ethnic politics.

So it seems that ethnicity is here to stay. Should one allow the current situation to continue unchallenged or should the necessary mechanisms be instituted to loosen the grip of ethnicity on politics? There is no doubt that the second option is desirable in the interests of every Mauritian citizen. However, it would require enormous political commitment and determination from some political parties to do away with a system that has favoured them to the detriment of other parties. Two events that have provided a glimmer of hope that matters might be heading in the right direction – the post of Prime Minister being occupied by a non-Hindu and the series of discussions leading to electoral reform. Although both these developments are important steps in the right direction, they are being jeopardised by a revival of ethnically charged language and the call from certain quarters to restore the 'due' of the Hindu community. In the latter case, electoral reform seems to be far down on the list of priorities of political leaders.

#### *Party Coalitions and the Invisibility of Women*

Mauritius has one of the lowest percentages of women in Parliament – 5,7 per cent (Inter-Parliamentary Union Database 2005), a situation that can be explained by the fact that Mauritian society is highly patriarchal and by the nature of the current electoral system which has systematically proven to be prejudicial to female representation. The Sachs Commission Report (2001) describes the low level of women's representation in Mauritian politics as 'a grave democratic deficit'.

Elections have always been extremely competitive in Mauritius because of the winner-takes-all electoral system that pushes party bosses to select those of their members who are most likely to win. These selected candidates are usually men. Although some political parties are discussing the institution of a quota system to correct this gender imbalance until now there has been no formal mechanism to ensure that more women are guaranteed a ticket.

This situation is further aggravated by the fact that general elections in Mauritius have essentially been fought on a coalition basis. The formation of

coalitions brings an additional level of competition to the one that already exists at party level, where women are already significantly marginalised. At inter-party level, negotiations are always tougher because fewer seats are available to each coalition party and this results in even fewer women being nominated.

Table 8 gives a breakdown of the number of women fielded as candidates in the post-independence general elections.

**Table 8**  
**Number of Women Fielded as Candidates in General Elections**

Year	Government Coalition	No of Women	Opposition Coalition	No of Women	Single Party Opposition	No of Women
1967	Independence Party	1			MMM PMSD	3 2
1982	Parti de L'Alliance Nationale	1	MMM/PSM	2	PMSD	1
1983	MSM / LP	1			MMM PMSD	4 1
1987	MSM/LP	2	MMM/MTD/ FTS	4		
1991	MSM / MMM	2	LP / PMSD	2		
1995	MSM / RMM	3	LP / MMM	5	Parti Gaetan Duval	6
2000	LP / PMXD	8	MSM / MMM	4	MDN	6

NOTE: EACH COALITION OR SINGLE PARTY HAS A LIST OF 60 CANDIDATES.  
SOURCE: DATA COMPILED FROM THE ELECTORAL COMMISSION OFFICE 2005

Judging from the above, there does not appear to be much difference between the number of women fielded by coalitions and by single (mainstream or small) parties. The proportion of women candidates has never exceeded 8 per cent in any coalition combination or mainstream single party. Matters improved slightly in the 2000 general election, when the LP/PMXD fielded the largest percentage of women candidates (13%) in any general election. It is also interesting to note that in 1995 and 2000 the Parti Gaetan Duval and MDN (two small parties) each fielded 10 per cent women candidates but none of them was elected.

Party leaders have promised to field more women candidates in the coming 2005 general election and, since the nomination of candidates is, to a large extent, their prerogative, it is only when the two coalitions make public their respective

lists that we will know whether they are indeed committed to the issue of gender representation in politics or whether it is mere rhetoric.

It must, however, be pointed out that the number of women candidates is not a sufficient indicator of the commitment of party leadership to gender balance. Beyond the numbers, it is worth investigating whether or not female candidates are fielded in winnable constituencies. In a proportional representation system, the number and ranking of female candidates on the party list is the ultimate criterion used to determine how serious a party is about gender parity.

### *Party Structures and Ideology*

The major political parties, namely, the LP, MMM and MSM, have undergone a significant shift in ideology since they were founded. This shift could be interpreted as the death of party ideology and the rise of political opportunism. In fact, the major concern of most political alliances seems to be to retain power or to return to power, an assumption backed up by the strange bedfellows they choose. Over the years, the leaders of different political parties entering or about to enter a coalition have offered various justifications for their choice of political partners. In this regard the comments of Paul Bérenger on the occasion of the 25th anniversary of the MMM are quite telling: 'There are,' he said, 'natural coalitions as well as coalitions that go against the natural order of things (*L'Express* 18 September 1994).'

As mentioned above, the LP was forged in the spirit of bringing independence and autonomy to the then British colony of Mauritius. The party was driven by an inherent belief that it offered an alternative to the oppressive forces of colonisation and hence preached the political and social emancipation of the masses. Shortly after independence, the party put into place a fully-fledged and comprehensive welfare system and instituted a culture of government subsidies which still exists today. The MMM was founded to provide a new approach to local politics after the old guard failed to solve the country's post-independence economic, social and political problems. At its inception it was viewed as a leftist/radical party with its major support coming from the trade unions. In the early 1970s, it promoted itself as a people-centred party. The MSM is in fact a fragment of the MMM, formed after a split from the MMM in 1983. The party has evolved with the economic situation of the country and the evolution of the society itself. Indeed, in the mid-1980s and 1990s the then Prime Minister and leader of the MSM, Sir Aneerood Jugnauth, was credited as the 'father' of economic success.

However, today there seem to be no real ideological differences between the three parties – they all say that they promote a pragmatic socialist ideology bent on social justice and redistribution of wealth. This emerges in their electoral manifestos, which use similar language and converge in terms of ideas and objectives (MSM/MMM 2000 and LP/PMXD 2000).

When it comes to party structure and organisation each party is bound by its constitution, which gives operating guidelines as well as the different sub-structures



for the dissemination of views, opinions and decisions at all levels of the party. The three parties have more or less similar structures and all pride themselves on an inclusive and bottom-up approach.

The mainstream political parties, as well as some of the smaller ones, have a four-tier structure comprising a political bureau that is in charge of policy conceptualisation, a central committee responsible for decision-making, a general assembly that meets at least once a year and regional branches that gather the grass-roots members. Despite what appears to be well-oiled party machinery, closer scrutiny of the actual operations of the political parties demonstrates the overriding authority of the leader of the party, an authority that often includes the power of veto when it comes to critical issues such as nomination of candidates, party funding and the formation and dissolution of alliances.

According to a former senior cadre of the MMM, more than a decade ago, the MMM's central committee would meet fortnightly, with meetings ending with a press conference. Today's MMM, says the same cadre, is under the total control of its leader, there is no longer any separation between government and party and the grassroots members are consulted less and less. This view was corroborated by another former MMM senior official, who argues that the party once had mechanisms in place for consulting its support base but today the leadership decides for the party. This top-down approach, with the party leader playing a central role, is not unique to one party, it is a feature of all political parties in Mauritius and demonstrates that despite promoting a discourse of internal political democracy, political leaders retain absolute control of their parties

## THE CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING POLITICAL PARTY COALITIONS

Mauritius is often cited as an exemplar of democratic success within the Southern African region. The regularity with which it holds elections, its culture of multi-partyism, its track record of political stability, management of diversity, political alternation and the fact that election results have not been contested are some of the positive elements of the 'Mauritian democratic model'. However, several questions must be posed about the 'quality' of this democracy. Is it sufficient only to have elections every five years or should citizens be consulted on policy in the interim? Should electoral reforms remain merely political pledges or should they ensure the consolidation of democracy and good governance? Should the law not give more leverage and latitude to the Mauritian Electoral Commissioner in the discharge of his electoral activities?

Some of the above questions have been left partly unanswered because of the absence of any specific electoral or political party law. Legally, political parties are required by the Constitution (1968) to register with the Electoral Supervisory Commission (ESC) at least 14 days prior to the nomination of their candidates for any general election (Constitution, First Schedule, s 2). The National Assembly

Elections Act of 1968 lays out the modus operandi of the registration of political parties, which should be recorded in 'form 3 and shall be made and signed in the presence of the Electoral Commissioner, by the president, chairman or secretary of the party duly authorised to do so by a resolution passed by the executive committee of such party and such application shall be supported by a certified extract of the minutes of proceedings of the meeting at which the executive committee of such a party passed such resolution' (Section 7 (2)). It is important to note that the above regulations apply solely to election periods. At other times political parties are completely unregulated.

The law is usually supplemented by the constitutions of each political party, which provide the necessary internal party guidelines. However, the applicability of the party constitution is questionable as members of some political parties have said that they have never been able to access such documents.

This relative freedom and flexibility has allowed political parties to register and nominate the candidates of their choice. Candidates may also stand as independents and do not require any party affiliation or nomination. In previous general elections, the number of political parties and independent candidates registered with the ESC has been significant – in 2000, 43 political parties were registered (Electoral Commission 2004). Mere registration does not, of course, mean that all these political parties play an active role or have a significant impact. In fact, the Mauritian political landscape has, for some decades, been dominated by three major political parties – the LP, the MMM and the MSM – and this situation is likely to continue for the foreseeable future, while the rest are condemned to remain fragments of little or no importance.

The absence of any electoral or political party law per se seems to be adequately compensated for by the Constitution, which defines Mauritius as a sovereign democratic state and ensures the separation of powers between the executive, the legislature and the judiciary as well as providing them with the necessary mechanisms for the discharge of their respective duties. In 1991 the Constitution was amended and the country became a republic, with a president who is the head of state and commander-in-chief and who 'shall be elected by the Assembly on a motion made by the Prime Minister and supported by the votes of a majority of all members of the Assembly (Constitution of Mauritius, Section 28 (2)). The President of the Republic, in turn, appoints the Prime Minister and his deputy (Section 58 (1)) who, together with the Cabinet, are accountable to Parliament. Should Parliament pass a resolution of no confidence in the government and should the Prime Minister not resign within three days of such a resolution, 'the President shall remove the Prime Minister from office' (Section 6 (1)). Even the post of leader of the opposition is enshrined in the Constitution (Section 73).

There is no doubt that these provisions ensure a system of checks and balances which prevent unilateral decisions being made and offer each 'player' an important stake. What impact does this have on parties or members of parties in coalitions? Section 59(3) of the Constitution provides that the 'President, acting in his own

deliberate judgment, shall appoint as Prime Minister the member of the Assembly who appears to him best able to command the support of the majority of the members of the Assembly'. This clause not only officially determines the majority governing partner (although in most of the cases of pre-election alliances this is already established and 'sold' to the electorate) but allows one of the partners of a ruptured governing alliance to hold onto power, as happened in 1984, 1989, 1993 and 1997.

Although the Constitution legitimises the ruling and opposition parties, the first-past-the-post (FPTP) electoral system that has been operational since 1886, together with the 'best loser' system, has led to countless permutations and combinations of pre-election alliances. The FPTP is in fact a first-three-past-the-post system, allowing for 60 elected members to be represented in the National Assembly, each of the 20 constituencies returning three MPs and the Island of Rodrigues two. In addition, a system of best losers (variable correctives) prevails, attributing an extra eight seats to non-elected candidates based on their ethno-religious affiliation. Many political observers believe the FPTP and the best loser system have been at the root of the proliferation, creation and ultimately the disbanding of political party alliances. In addition the system has resulted in the crude ethnicisation of political parties, which have essentially focused their attention on the electoral benefits of political party alliance formation.

In fact, the constant ethnic calculation in which political parties engage is 'legitimised' by the Constitution, making it necessary for 'every candidate for election at any general election of members of the Assembly to declare in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination' (First Schedule, s 3(1)). This process of deliberate ethnicisation has been further compounded by the drawing of electoral boundaries that perpetuate a rural-urban divide based on ethnic agglomeration.

Electoral reform has been one of the political pledges of the main parties, even appearing in their electoral manifestos. As early as 2001, the Government set up a 'Commission on Constitutional and Electoral Reform' presided over by a judge of South Africa's Constitutional Court, Judge Albie Sachs). The commission presented its recommendations a year later, following which a Select Committee of the Assembly was appointed to study the report. The select committee only made its recommendations public in 2004 (Select Committee 2004). What is striking about the two reports is that they both recognise the deviant and disproportionate distortion of the prevailing FPTP system where 'the three member constituencies frequently produced results which were grossly disproportionate to the share of votes obtained by the different parties. At times, although obtaining a substantial vote, the Opposition was completely or nearly completely eliminated' (Sachs Report 2001 para 33). The main aim of the two reports was to ensure an electoral system where fairness and representativeness were not forsaken especially when it came to 'correcting the over-representation of the leading party or alliance' (Sachs Report 2001 para 37).

Despite the investment of considerable time and resources in these two committees nothing much seems to be happening and all hopes that a dose of Proportional Representation might be introduced into the general elections scheduled for late 2005 have been stalled. Electoral reform is one of the elements that is expected to consolidate the fabric of Mauritian democracy. The absence of any electoral or political party law is to be lamented as the mere registration of political parties, particularly since this only happens at election times, is far from sufficient.

## POLITICAL PARTY COALITION FORMATION

This section analyses the formation of political party coalitions in Mauritius and attempts to answer the following questions: How are these coalitions formed? What are their purposes? What are the driving forces, including those located behind the scenes? What are the real motivations of the political leaders in entering into coalitions? How is the power shared amongst the affiliated parties? To answer these questions, the authors held extensive interviews with current and past senior members and leaders of the LP, the MMM, the MSM and the PMSD. Secondary sources were also consulted, but in a limited way, because the subject of political party coalitions in Mauritius has barely been studied.

### *The Objectives and Driving Forces of Party Coalitions*

There are several factors, of varying degrees of importance, which compel political parties to enter into pre-election coalitions and which shape the conditions of these partnerships. The dominant factor in Mauritius is the ethnic set-up of the country, which makes it impossible for one party to win more than 50 per cent of the vote. Prior to independence, the LP was the strongest party, as it had been able to rally practically the whole of the Indo-Mauritian community and consequently was able to win on its own. With independence, the population became ethnically segmented, especially with the coming of the MMM. Thus, contracting an alliance has become an important ingredient in the formula for election victory.

Another factor that explains why Mauritian leaders tend to resort to coalitions is the three-member constituency first-past-the-post electoral system combined with the limited geographical concentration of the various communal groups. This compels parties to spread across ethnic barriers and enter into pre-electoral alliances in order to avoid wasting votes.

There is also a psychological reason for these coalitions – they reassure voters, who feel secure when a party demonstrates that it is open to others and can, if need be, rally their forces. Explaining this symbolism, one respondent notes that even the majority community, the Hindus, feels the need to reassure the other communities by entering into coalitions, even with small parties. The quest for social cohesion is therefore not a negligible factor.

Most respondents maintain that coalitions are formed to accommodate ethnicity. The authors do not concur with this view. As in other parts of the world, political parties in Mauritius enter into pre-election coalitions with a view to winning elections and governing. Party coalitions are ultimately formed in order to access or maintain power. To achieve this, the architects of party coalitions resort to ethnic calculation and logic. It can therefore be argued that, though the factors described above, including ethnicity, shape the formation of political party coalitions, the overarching objective of entering into these coalitions is to remain in power or to access it and govern the country.

The first case of a post-election party coalition was the 1969 coalition government, which took the form of a marriage of convenience between the Hindu-dominated pro-independence party, the LP, and the Creole and white dominated anti-independence party, the PMSD. This arrangement accommodated ethnicity when the ethnically based political polarisation that resulted from the bitterly fought pre-independence election in 1968 made it difficult to run the country. The solution seemed to be to bring the two main pre-independence parties together in a government of national unity.

On the other hand, the 'economic bourgeoisie', which consisted mainly of white businesspeople, had voted against independence and was resented by the new 'political bourgeoisie', composed of the Indian-dominated pro-independence groups led by the LP. To ease the tensions between the economic and the political bourgeoisies, which did not augur well for the newly independent state, France and the United Kingdom, the former colonial powers, brought the two parties together in a consociational arrangement.

Interestingly, the two main political parties, the LP and the PMSD, agreed subsequently to suspend elections, thus entrenching their joint rule beyond their term of office. This development showed that political leaders did not hesitate to sacrifice their professed 'democratic' values in order to consolidate their grip on power. For seven years Mauritius was transformed into a kind of two-party 'dictatorship'.

The 1976 post-election coalition between the LP and the PMSD was partly justified by some ideological considerations – the two parties were alarmed at the emergence of the leftist party, the MMM, which they regarded as communist. Fearing the possible geo-political impact of an MMM victory on other countries in the region, such as Madagascar, Seychelles and Reunion, France and the United Kingdom encouraged the LP and the PMSD to form a coalition, which they did, successfully keeping out of power the MMM, which had actually won the election. In summary, the objectives of the 1976 post-election coalition were threefold: the self-interest of the losing parties, the preservation of the national economic bourgeoisie who had been frightened by the MMM's socialism, and the external forces which were threatened by the MMM's leftist ideology.

All the subsequent coalitions have been pre-election alliances. The respective ideologies of the political parties involved have become increasingly irrelevant

because, since Mauritius is an export-oriented country, successive governments have had to maintain liberal economic policies in order to continue to enjoy preferential treatment and quotas. This trend was reinforced from the late 1980s with the collapse of the Eastern Bloc and the advent of Perestroika.

As indicated above the driving force behind most coalition negotiations has been the party leaders. In 1976, Sir Seewsagar Ramgoolam and Sir Gaetan Duval combined to keep out their 'common enemy', the MMM. In 1982, although the leaders of the MMM and the PSM, respectively Anerood Jugnauth (before he quit to form the MSM) and Harish Boodhoo, along with Paul Bérenger, the then secretary general of the MMM, drove the formation of the coalition of those two parties, although the MMM also consulted other strong party members who, no doubt, had an important role to play. When the coalition collapsed, the MSM's Jugnauth formed an alliance with the LP, having negotiated directly with its then leader, Sir Satcam Boolell.

1983 saw the start of the reign of Jugnauth's MSM as the 'dominant' party in the 1983, 1987 and 1991 coalition governments. Another important point to bear in mind was the practically undisputed choice of Anerood Jugnauth as the Prime Minister of the pre-electoral coalition.

In 1995, the electoral agreement between the LP and the MMM saw the return of the LP as a dominant party after nearly 13 years of absence. Bérenger personally conducted the negotiations.

In 2000, Bérenger and Jugnauth reached a historic agreement on an MMM-MSM coalition. Two high-ranking officials, Anil Baichoo of the MSM and Pradeep Jeeha of the MMM, are also credited with having played a crucial role in the negotiations. Harish Boodhoo of the Parti Socialiste Mauricien (PSM), a smaller coalition partner, was also an important force. The MSM and the MMM were each entitled to 30 parliamentary seats but each of them was to share its seats with minority coalition partners. Indeed, the MMM gave two seats to the PMSD and the MSM offered one seat to the Verts and another to the Mouvement Républicain (MR). It is worth noting that the decision to share the post of Prime Minister between the leaders of the MSM and the MMM was not explicitly included in the agreement. It was agreed that after three years Jugnauth would voluntarily cede the post to Bérenger. During Bérenger's term Jugnauth became the ceremonial President of the Republic of Mauritius. Also by agreement Pravind Jugnauth, son of Sir Aneerood Jugnauth, became the Minister of Finance for the first three years and Deputy Prime Minister for the last two years of the government's term. When his father became President of the Republic, the son became leader of the MSM.

While many in the MSM were happy with the arrangement, realising that the coalition was necessary for an election victory, others were hostile to it and hoped it would not last.

Party coalition negotiations usually take between one and three months, although, in exceptional cases they have lasted for a year and, in one case, they took just one week. It is undeniable that party leaders are the driving forces behind most

coalitions, though, in some cases, the initiative of approaching a potential partner has come from high-ranking party officials, one level below the leaders.

The role played by party members and supporters in the formation of coalitions should not be underestimated. If members and supporters favour a particular potential partner or coalition composition it is difficult for leaders to ignore the popular will.

### *Selection of Coalition Partners and the Sharing of Power*

It is argued above that there are no longer fundamental ideological differences in Mauritius and that what differences there are are created by political parties in order to build their own style and identity. All Mauritian parties lean towards social democracy and the centre-left and stand for social cohesion, national unity, democracy, anti-corruption and social progress.

As an export-oriented country subject to World Trade regulations, Mauritius has sacrificed its sovereignty by constantly seeking support from the world, including the European Union, the United States and South Africa, a factor that has led to a common ideology.

The selection of affiliate parties is therefore based on criteria other than the sharing of a common ideology. All the respondents recognise that the underlying criterion in the formation of political party coalitions is the accommodation of ethnic diversity. Each coalition ascertains that it is seen as ethnically representative, an important requirement for social cohesion.

Apart from this first criterion related to the need for political correctness in matters of ethnic representivity, several other criteria determine the selection of potential coalition partners.

The second criterion is the relative strength of political parties. This is an important element because the ultimate objective of a coalition is to win the election so it is important to assess how many seats a party can bring to the coalition in order to secure victory. The strength of a political party can be measured through opinion polls, the most recent election results and the size of the crowd attracted to rallies. All these factors play a part in determining each party's share.

A third criterion is the ability of a leader to govern. This helps to explain why a particular party leader might be invited to join a coalition and play a leading role even if his political party is relatively small. This was the case with the MSM in 1991 and 2000.

The drive for political stability in the interests of the economy is another factor that has been instrumental in shaping coalitions, for instance that between the LP and the PMSD in 1976.

The outgoing Prime Minister is in a position of strength to negotiate unless polls show that his popularity is in decline. Indeed, the Prime Minister has substantial leverage not only in determining the date of the next election but also in choosing with which political party his party will form a coalition. In the same vein, economic

problems under a particular prime minister may make him and his political party unattractive as a coalition partner in the next election.

The final criterion which determines the formation of a coalition is agreement about how power is to be shared among the partners. Extensive interviews with current and party leaders revealed how power sharing is negotiated. The basis of allocation of Cabinet portfolios and other senior positions is negotiation. This includes the selection of the prime minister, the deputy prime minister, the president of the Republic, the vice-president of the Republic, the speaker of Parliament, the deputy speaker, the minister of foreign affairs and the minister of finance.

In addition to negotiations, other factors explain the sharing of positions both within the parties and between coalition partners. Among these are the internal dynamics of a party which allow some individuals to secure posts for themselves and their protégés. The selection of parliamentary candidates is carried out by the political bureaux of the two main parties in the coalition and takes into account, *inter alia*, the ethnic profile of the constituency as well as the rural-urban divide. Loyalty to the leader from within the party is an important criterion in the internal selection of candidates because the leader requires the assurance that in case of a breakdown of the coalition the majority of members will remain with him and will not cross the floor. In the past the MMM had lost many of its members, who, following the collapse of the coalition, chose to form a new party and remain in the coalition.

The mechanisms of selecting parliamentary candidates within the coalition are influenced by factors such as the balance of power between the coalition partners. In this regard, the leading party in the coalition, needing to ensure that it keeps its majority even if the coalition breaks down, must have a sufficient number of seats for this to be possible. In addition, the determination of the number of parliamentary candidates for each partner party depends on the size of the partner. If the coalition is formed with a smaller party, such as the MSM, the larger party would be assured of receiving the majority of seats.

An implicit element must be factored in when posts are shared out. Until recently, all the country's prime ministers have not only come from the Hindu community but from a specific caste within that community. This implicit criterion has made it possible to predict the next prime minister from among a handful of Hindu party leaders.

The advent of Bérenger as the country's Prime Minister was initially appreciated by the electorate. Eventually, though, it caused a great deal of discontent among some conservative Indians. It will be interesting to see in the future whether the inauguration of a non-Hindu as the Prime Minister of the islands in late 2003 was just an exception that confirms the rule of power-sharing; an *accident de parcours*.

## MANAGEMENT AND MAINTENANCE OF PARTY COALITIONS

In-depth interviews with past and current senior party officials and leaders have enabled the authors to look at the internal mechanisms of political party coalition



management and maintenance. This section examines these procedures, analyses the challenges of sustaining coalitions and determines the consequences for individual affiliate parties of joining a coalition. In addition, the section examines internal party procedures and mechanisms in the area of consultation with the party membership in order to determine how internal party dynamics influence the functioning of the coalition, and vice versa.

### *Coalition Management Procedures*

Party coalitions are preceded by speculation and rumour, a situation that persists until the agreements are announced in press statements. Typically, press releases do not provide detailed information on matters such as management procedures. The fact that these procedures tend to remain informal means that coalition management systems tend to depend on personal relationships between the leaders, and negotiations are initiated or arranged with the support of close allies sympathetic to the parties.

The leaders of the coalition partners in government meet on an almost daily basis, giving them an opportunity to harmonise their views. In 1992, for example, the MSM-MMM coalition government held weekly meetings known as the *Réunion des Eléphants* or Meeting of Elephants, which provided a platform for discussion and action. There is no doubt that these regular meetings, although they are essentially informal, afford the leadership an opportunity to avoid conflict, although, at times it has proved necessary to bring in brokers or wise men to help sort out differences or misunderstandings between coalition partners. Problems arise when one of the coalition partners leaves or is forced to leave government – a recurrent feature as, historically, coalitions (especially governmental ones) have a short lifespan.

Leaders of the opposition party and other smaller parties which are not represented in Parliament continue to hold meetings but tend to concentrate on internal party matters, although it is important to note that opposition parties frequently join forces. The exception was the case in which members of the opposition MMM joined forces with the ruling MSM, allowing the latter to continue its mandate.

Very little is known about the mechanisms used to initiate, develop and finalise coalition agreements between political parties as matters are always conducted behind closed doors and with the greatest secrecy. For the purpose of this paper, three coalition agreements are studied – those of 1991, 1995 and 2000 and the only source of information documenting aspects of these agreements are newspaper reports of the chronology of events leading to the signed coalition agreements.

In the case of the 1991 agreement that saw the MSM and MMM partnered, negotiations started when the former was still in coalition with the LP and the MMM was in opposition. This was, no doubt, a very awkward situation for the LP, and especially for its then leader, Sir Satcam Boolell, who had fallen out with the

leader of the MSM, the then Prime Minister, over a series of issues, one of them being a change in the Constitution to make Mauritius a republic. This awkwardness was exacerbated when, on 19 July 1990, the MSM and MMM issued a press statement detailing the essence of its pre-electoral agreement (*L'Express* 20 July 1990 and *Le Mauricien* 20 July 1990).

The communiqué covered eleven points dealing with the number of candidates each party would field (MSM 33, MMM 27); the distribution of important posts such as president, vice-president, prime minister, deputy prime minister, speaker and the deputy speaker of the National Assembly and the commitment of the two political partners to making Mauritius a republic. This pre-electoral agreement was made official more than a year before the 1991 general election was called. As expected, this situation became unbearable for the LP, who soon left the coalition government, and the MMM stepped in.

The 1995 coalition agreement brought together the LP and the MMM. In 1993, after a series of problems arose between Paul Bérenger (then Minister of Finance in the 1991 ruling coalition government) and Sir Anerood Jugnauth (then Prime Minister), a split MMM left the coalition government and moved into opposition.

The negotiations between the LP and the MMM started in early 1994 and, after some three months of intense exchanges between the party leaders, the parties came up with a 'package deal which was acceptable to the two parties and more importantly that could be sold to our respective electorate' (*L'Express* 5 April 1994).

The electoral accord was signed on 9 April 1994, more than 18 months before the 1995 general election. The main features dealt with the sharing of tickets (35 for the LP and 25 for the MMM), the prime ministership (LP) and deputy prime ministership (MMM), the allocation of ministerial portfolios (12 for the LP and 9 for the MMM), the presidency (MMM) and the vice-presidency (LP) as well as the position of speaker of the National Assembly (LP) (*L'Express* 9 and 10 April 1994 and *Weekend* 10 April 1994).

Of the three agreements under consideration here, the 2000 agreement required the most extensive negotiation and lobbying. Only a week prior to its signing, the two political protagonists were still proclaiming their intention of going it alone. On 15 August 2000 (less than a month before the general election) the historical pre-electoral accord) that would see for the first time a split prime ministership and an equal share of tickets (30 for the MSM and 30 for the MMM) was signed, as described above. (*L'Express* 14, 15 and 16 August and *Le Mauricien* 16 and 17 August).

In light of the above, it is clear that coalition electoral agreements are never final until they are signed and made public. Potential political coalition partners enter into negotiations, which intensify when the Prime Minister dissolves Parliament and sets the date of the general election as provided in the 1968 Constitution. The aim of these negotiations is for each political partner to get a fair deal, which can in turn be 'sold' to its electorate. Another important feature of these pre-electoral negotiations is that although they can last anything from a whole

year to just a week it is always the 24 hours prior to the signing of the electoral accord by the party leaders that are deemed the most crucial.

### *Challenges of Sustaining Party Coalitions*

The sustainability of a party coalition comes with a set of challenges for the coalition itself and for the affiliate political parties. These challenges start at the formative stage of the coalition, continue through its life and only end when the coalition collapses. What makes party coalition maintenance particularly challenging in Mauritius?

All political parties want to be seen to be politically correct by presenting an inclusive government encompassing all the ethnic groups. This lack of homogeneity constitutes the main weakness of party coalitions in Mauritius. Because of the divergences of policies and personal interest among the coalition partners, it is difficult to reach consensus and satisfy everyone and the compromises and agreements that betray principles cannot go on indefinitely. This makes the survival of the coalition unsustainable over time. The requirement of diversity which allows a coalition to win an election is the very same factor that is the origin of its collapse. It is a political absurdity.

According to one of the respondents, it is more difficult to maintain a coalition made up of two parties of comparable size. He argues that when a dominant party, like the MMM or the LP, each of which enjoys the support of about 30 per cent of the electorate, enters into a coalition with a smaller party, such as the MSM (10%), the coalition is likely to last longer. It is true that the only time the LP and the MMM did coalesce, the alliance did not last, whereas the MSM-LP coalition of 1983 lasted for four years (the LP was made to leave the coalition after a year and was brought back a couple of years later) and the 2000 MMM-MSM coalition lasted the full term. However, the assumption that party coalitions last when they consist of a dominant party and a smaller one is contradicted by a number of examples. Neither the 1982 coalitions between the MMM and the PSM nor that in 1987 between the MSM and the LP lasted. In fact, it seems that the length of survival of a coalition relates to its term of reference and, since coalitions are rarely electoral agreements of equal status (except that of the 2000 general election), they cannot be expected to last.

As detailed above, the collapse of a coalition government does not necessarily mean the end of the government – the frequency with which MPs leave the departing coalition party and form their own to join the government in a new form ensures that most coalition governments survive, albeit in a different form. Aneerood Jugnauth has proven to be most skilful in reconstituting coalitions to his own advantage, a talent that enabled him to remain the Prime Minister of Mauritius without interruption for 13 years, from 1982 to 1994.

Why do so many party coalitions fail to survive in their initial form? The reasons are numerous and include deep differences in policy, power struggles, personal

gain, incompatible leaders' personalities and perceived unfairness of the deal, measured by the number of ministerial and diplomatic appointments and posts in parastatals allotted to each of the affiliate coalition partners. Satisfying the personal ambitions of divergent constituents in relation to promotion, appointments and various favours and privileges has been the main challenge to the maintenance of party coalitions, given that expectations are high while the means of achieving them are limited.

Beyond material gain, at times tensions or splits have occurred because of inadequate consultation and dialogue within the coalition. Regular meetings help coalition partners to harmonise their views in a transparent manner and iron out differences. All of this contributes to building trust and confidence, which are indispensable to the sustainability of any coalition.

The collapse of coalitions may also be the result of internal political problems. Strong leadership is needed to keep the coalition together.

Several respondents interviewed by the authors indicated that it was difficult to sell the concept of the 2000 MSM-MMM coalition to many MSM supporters. These supporters only accepted the arrangement in the hope that the coalition would collapse before the end of the three years, when Bérenger was due to take over from Jugnauth as Prime Minister.

The breakup of coalitions has also been a purely electoral strategy, used particularly when the coalition government is doing badly in the opinion polls and a coalition partner has left some months before the next general election in order to become 'clean'.

It is worth noting that the above challenges apply essentially to ruling party coalitions. Opposition party coalitions face other challenges. First, it is difficult for them to access the state-owned media. Similarly, financial resources are less accessible to the opposition than to the party in power. In addition, the state apparatus is controlled by whoever is in power. It is also not easy for opposition coalitions to convince the electorate that they constitute an alternative government. This can be even harder when the government of the day is perceived to be delivering on its election promises, just as it can be challenging for a ruling coalition to enter an electoral race when the economy is bad and people are unhappy.

A unique difficulty that opposition coalitions face is the challenge of managing the pressure from members who are impatient to get into power. To their advantage, however, is the fact that opposition coalitions are under no pressure to meet the demands of the electorate.

Affiliated parties are affected by coalition related intra-party tensions. According to the respondents interviewed, the MMM, having lost two successive elections (1983 and 1987) by standing alone was desperate to enter a coalition with a large party ahead of the 1991 elections. Reportedly, Bérenger wanted to coalesce with the party's traditional adversary, the Labour Party, while his lieutenants hoped for the reunification of the militant family (ie, MMM-MSM). After the MSM-MMM coalition won the election, Bérenger allegedly destroyed the coalition, using his

role as the party secretary general to criticise the coalition government, of which he was Minister of Finance.

The selection of MP candidates and appointments to important posts outside government is naturally a difficult and competitive process. Competition takes place at two levels: among the coalition partners and among officials within the party. It has been observed that this process runs relatively smoothly when the chances of winning are greater, especially when one of the parties clearly dominates the coalition.

The fact that coalitions mean that fewer seats are available for members of the parties involved often results in some party members opposing the coalition. In some extreme cases, intra-party tensions following some appointment have led to the breakup of coalitions.

In addition, when there are divergences of policy, and for the sake of the coalition's survival, the leadership of one of the parties may choose to accommodate its coalition partners. As a consequence backbenchers may find it difficult to defend unpopular actions taken by the government, which may result in an explosive situation within the party.

### *Consequences of Coalitions for Affiliate Parties*

Although the majority of voters are essentially faithful to their party of origin and are most likely to vote for it in the following election, sizeable numbers may 'sanction' a party for entering certain kinds of coalition.

Most respondents reported that the MSM, which is classified as a conservative Hindu-dominated party, has lost a lot of support because of its alliance with the MMM in 2000, making it possible for a representative of a minority group to occupy the top job of Prime Minister for the first time. Indeed, many sectors of the Hindu community who had hoped that the coalition would collapse by the end of the third year, before the MMM leader could take over as the head of government, expressed their discontent with the arrangement when Bérenger was sworn in as Prime Minister in late 2003.

The MMM-MSM coalition government is believed not to have delivered on several of its election promises and the country is going through a socio-economic crisis. It would be interesting to conduct a survey to determine whether the resentment against the government is caused fundamentally by ethnic feelings or by socio-economic hardship. Would the resentment have been as strong had the Bérenger government clearly delivered on its electoral promises?

There is another important question that deserves to be answered separately in order to determine the extent to which discontent with Bérenger's premiership is essentially ethnically motivated. Is the MSM not weakened more by the discontent over the perceived weak leadership of Pravin Jugnauth than by the fact that the party allowed a non-Hindu to become Prime Minister? Is the recent political 'haemorrhage' that has further weakened the MSM an electoral positioning strategy

by some MSM members, a rejection of Jugnauth junior's leadership or a distancing from Bérenger's leadership?

As pointed out above, a further consequence of party coalition has been rifts within parties, with the MMM the major victim of this phenomenon. Generally, however, the splinter parties do not survive beyond the next general election, the MSM being an exception.

For example, after the split of the MMM-PSM government in 1983, the newly created MSM attracted MMM dissidents and joined forces with the PSM, putting the MMM out of government. Similarly, the MMM-MSM coalition government, which had won 100 per cent of parliamentary seats in the 1991 general election, collapsed following tensions in the coalition and the MMM was again out of government. Led by Prem Nababsing, the *Renouveau Militant Mauricien* (RMM) joined the MSM Prime Minister, allowing the coalition government to continue in power.

Because until recently the leader of the MMM did not qualify to be the Prime Minister of Mauritius because he was not a Hindu the MMM has always been on the losing side. Interestingly, with Bérenger Prime Minister for the first time, it is also the first time that his party has not split as a result of its participation in a coalition government. Instead, roles have been reversed and the MMM's main partner in the coalition, the MSM, lost members in February 2005.

### COALITION SURVIVAL

Few party coalitions have survived the full five-year term of office in their original form. Only the 1976 LP-PMSD and the 2000 MMM-MSM have achieved this feat. What are the underlying causes of the longevity of some coalition governments and the short life expectancy of most of them?

One of the respondents believes that success or failure depends on the relative strength of the main coalition partners. He argues that when partners are equally powerful, like, for instance, the LP and the MMM in 1995, there is more likely to be confrontation between the two. When one party is clearly dominant, the coalition is likely to last longer because each party knows the limits of its bargaining power, as was the case with the MMM-MSM coalition of 2000.

While there is some logic in this argument, the 1982 MMM-PSM, the 1987 MSM-LP and the 1991 MSM-MMM coalition governments were all characterised by the existence of one dominant party (the MMM in 1982 and 1991 and the LP in 1987) and one smaller party – the MSM. They all collapsed. Clearly the explanation is more complex and needs to take into consideration other factors as well.

Some respondents argued that, given that pre-election coalitions come with a common programme ahead of the general elections in contrast to post-election coalitions, whose members contested the elections defending different programmes, the former have a better chance of success than the latter. This viewpoint is contradicted by the fact that the only two post-election coalition governments

formed in the country (in 1969 and 1976) did not collapse before the end of their term of office while pre-election coalitions with common programmes, which have been numerous in the history of Mauritius, have rarely lasted a full parliamentary term. Conversely, the development of a governmental programme after an election does not necessarily mean that post-election coalition governments are more vulnerable to early termination than pre-election coalition governments.

The study of the longevity of party coalitions in Mauritius is a complex subject because both objective and subjective factors are often at play. Furthermore, a specific constellation of these factors and circumstances during periods of economic recession or prosperity, the weight of ethnic politics, personal ambition, the leadership skills and personality of party bosses, electoral strategy, the relative strength of coalition partners and trust, respect and dialogue or the lack thereof, all impact on their survival or premature termination.

## CONCLUSION

The formation, collapse and revival of party coalitions are an integral part of Mauritian political culture. Party coalitions are seen as indispensable to the accommodation of the country's ethnic diversity, consensus building and social cohesion. Coalitions have usually taken the form of ethnic accommodation, a vehicle that politicians have used extensively to access or maintain power. The packaging and ultimately the selling of these coalitions to the electorate is done with the necessary spin and very often the coalitions are named in celebratory language such as 'Parti de L'indépendance' (1967), 'Parti Alliance Nationale' (1982), 'L'Alliance Bleu Blanc Rouge' (1983), 'L'Union pour le Future' (1987) and 'Alliance Sociale' (2005) which essentially emphasise the sense of solidarity and consensus that brings different parties together.

Another point to bear in mind is that the Mauritian mainstream parties seem to espouse common ideologies built around the fundamental concepts of social justice, sustainable and equitable development and a people-oriented investment strategy. In fact, interviews with key political actors from the three mainstream political parties define their respective parties as centre-left.

This study has attempted to answer broad research questions such as: what brings political parties together in a coalition? How are coalitions negotiated? Who is entitled to negotiate on behalf of the political parties? How are coalition relationships nurtured? What makes coalitions survive, collapse and revive?

Extensive interviews with current and past senior party officials and leaders allowed the authors to understand the internal working of political party coalitions and to answer the above questions. It is our conclusion that the ultimate objective of political party coalitions is to win elections and govern the country. Contrary to widespread belief, party coalitions are not formed essentially to accommodate the country's ethnic diversity. While highly desirable and desired, ethnic accommodation has been a vehicle through which to access or maintain political power.

It is not an end in itself. Otherwise the 1983 and 1987 coalition governments would not have consisted of parties essentially dominated by one communal group.

Similarly, it has been found that party coalitions exacerbate the under-representation of women in elected positions. Women in Mauritius find themselves having to compete at both the intra- and inter-party levels. In the case of intra-party competition, they are confronted by 'ferocious' opposition from their male colleagues, which is compounded when a coalition is formed because of the sharing of electoral tickets.

The study has also noted that coalition negotiations are conducted essentially by party leaders and other senior party officials and that coalition management procedures are informal and often lack explicit conflict management mechanisms.

As to the mechanisms for maintaining the coalition, regular and periodic meetings (preferably weekly) are essential. By means of sincere dialogue, coalition partners may learn to trust and respect each other, develop a sense of tolerance and flexibility and enhance their commitment to the coalition because problems arise when each party tries to get the best of a deal, undermining the value and relevance of the meetings.

It is also crucial that the coalition agreement be fair to all parties. Coalitions serve their purpose well if policies are spelled out and addressed. The electorate judges the value of a coalition by its ability to improve the quality of their lives. This means that the coalition government must strive to deliver on its promises.

It has been observed that coalitions become more fragile as a general election approaches; this is especially the case when the outgoing coalition government is rated low in public opinion polls and is expected to lose the coming election.

One of the weaknesses of coalitions in Mauritius is the fact that there is no law governing them. They should be registered and their objective, duration and agreement made public because, like political parties, they are institutions of public interest. The agreements linking political parties in coalitions should be in the public domain. At the same time, excessive regulation of coalitions and political parties should be avoided as this could impinge on freedom of association.

In the final analysis, the strength of party coalitions in Mauritius is the consensus over the need to accommodate the country's ethnic diversity in its political institutions. Party coalitions win elections thanks to ethnic accommodation, which, in turn, helps increase their appeal among a broader constituency than the narrow groupings of the constituent parties; a reassuring sign of inclusiveness for the electorate. It is argued abundantly above that the main weakness of party coalitions in Mauritius is to be found in the precedence of ethnic over ideological identity, which makes them fragile in the face of ethnic pressure. Can it, however, be argued that by coalescing along ethnic lines Mauritian parties and their leaders have, over time, learned to work together beyond their ethnic allegiances and have evolved towards a common ideology characterised by a respect for human rights, social democracy and national cohesion, which, if not examined more closely, tends to look like an absence of ideology?



# REVIEW

*State of the Nation South Africa 2004-2005*

Edited By John Daniel, Roger Southall, and Jessica Lutchman

HSRC Press

This, the second of the HSRC's annual *State of the Nation* publications, assesses government performance based on President Mbeki's State of the Nation speech in 2004. The President's speech provides a tool for opposition parties and civil society to hold government accountable to an extensive government delivery programme that contains very specific targets and time frames. The book offers an important analysis of President Mbeki's second term and a balance sheet of the major achievements and setbacks relating to the pertinent issues facing South Africa in its second decade of national transformation and democracy. The book is divided into four parts – politics, society, economy, and South Africa in Africa – with a brief summary of each part providing a wealth of information about South Africa's past, present, and future. Written by a mix of senior and junior scholars, and members of civil society, the chapters are of uniformly high quality.

The introductory chapter by the editors contains important general arguments about Mbeki opting for a third-way style social democracy and raises issues for further research in terms of whether South Africa is a developmental state like South Korea. Malaysia serves as the model. The editors devote their attention to the obstacles to South Africa's progress towards the status of a developmental state. These include problems of state capacity because of deficiencies in human resources development in the public service; the racial disjunction which continues to shape opportunity and attitudes and leads to a lack of national coherence; the global and African environment and globalisation, which limit options.

Part one, on politics, examines race and identity, the state of parties post-election 2004, ANC dominance and the opposition, rural governance, corruption and the state of the public service. Zimitri Erasmus tackles the issue of race and identity and the growing phenomenon of xenophobia. She argues that race is socially constructed and intersects with other areas of inequality and identity. She notes that being white no longer automatically conveys race privilege. Although the new black elite has been able to escape race discrimination poor black Africans continue to be subjected to it. Erasmus also shows how South Africans, black and white, use race not only to exclude black Africans from elsewhere on the continent from access to certain rights but also to violate their humanity. In this instance race now intersects with nationality and citizen rights, giving rise to xenophobia.

The issue of race also plays an important part in the elections, write Southall and Daniel, as they focus on the question of ANC dominance. However, their focus is more on declining electoral participation because of what they believe to be popular disillusionment with aspects of government delivery. The apathy could

also be attributed to complacency among the black population and lack of appealing opposition parties. Lungisile Ntsebeza follows with an examination of government's attempts to democratise local governance. Ntsebeza is perturbed by the tensions between a Constitution that enshrines democratic principles, modelled on liberal democratic lines of representative government on the one hand, and the wide-ranging powers given to an inherently undemocratic hereditary institution of traditional leadership on the other. Sam Sole deals with the issue of corruption and comments on government's efforts to roll it back, but warns of general levels of immunity in the political sphere, especially because of the rise of a new black capitalist class. Vino Naidoo reflects on the apartheid inheritance, and notes the transformation of the public service in line with the new South Africa on the basis of historical political factors of culture and change.

The second part of the book deals with societal issues. The focus is on crime and policing, the defence force, the state of schools, women, HIV and AIDS, the Muslim community in a post-apartheid South Africa, the arts, and the archives. The social dynamics and the myriad issues that need to be dealt with remain a challenge in the second decade of democracy. As far as Ted Leggett is concerned, the two most important issues to South Africans are crime prevention and job creation. And there is a need to change the social conditions of poverty and unemployment that generate crime, instead of simply trying to lock up all the criminals. Len Le Roux and Henri Boshoff examine how, through affirmative action and voluntary service packages, the predominantly white and male character of the apartheid defence force was eliminated. However, budgetary constraints and the high level of HIV / AIDS in the South African National Defence Force (SANDF) constitute the biggest threat to its deployment potential and operational effectiveness.

Linda Chisholm notes the changes and progress that have been made in South Africa's schools to overcome the legacy of apartheid. But the quality of schooling remains a challenge, especially in rural areas. Tim Quinlan and Sarah Willan focus on leadership by the President and the Minister of Health as a source of problems in containing the AIDS pandemic. The statements by the Minister of Health, they write, show a lack of decisiveness about how to use knowledge gleaned from the statistics and the impact of the anti-retroviral programme. They accuse the government of having used the HIV / AIDS issue for electioneering purposes in 2004.

Goolam Vahed and Shamil Jeppie examine the diversity of the Muslim community in the context of rapid social, political and economic changes in the past 10 years and Lynne Maree examines the state of the arts after ten years of democracy. Maree gives an overview of privilege and prejudice in the arts sector during apartheid, which continues today. The appointment of Pallo Jordan as Minister of Arts and Culture gives hope to a sector where racism and racially structured thinking are still the order of the day. Seán Morrow and Luvuyo Wotshela, writing about the state of the archives and access to information, raise the importance

of archives to any society interested in its past and its future. On a progressive note, Shireen Hassim appraises the new South Africa's readiness for gender equality and the creation of special institutions for advancing women's interests. She cautions, however, that the increased representation of women might not lead to a congruent representation of the policy interests of disadvantaged women as members of Parliament are accountable to their party rather than directly to an electoral constituency.

The focus on the economy is important, as the authors have read into the President's speech a turning point in government economic policy, particularly on the crucial issue of poverty alleviation. The President promised an expanded role for state and state-controlled enterprises in the campaign to halve poverty and unemployment by 2014. The last six chapters, on the economy, touch on the crucial issues of transformation of ownership in South Africa – black economic empowerment, unemployment, poverty alleviation, inequalities and service delivery. From Stephen Gelb's overview of the economy to Benjamin Roberts's review of poverty policies, the chapters point to the political centrality of the assault on poverty, which is vital to South Africa's democratic project. The final two chapters assess South Africa's foreign relations with Nigeria and Zimbabwe. The authors dismiss suggestions that Nigeria and South Africa have hegemonic tendencies in their respective regions. In the final analysis Sachikonye, like most observers, reinforces the perception that South Africa's quiet diplomacy with Zimbabwe has been ineffective and ambivalent, proving that South Africa is not a regional hegemonic power.

The book's major strength lies in its use of critical analysis of South Africa's economic, social and political progress to judge whether government is performing and whether the politicians are delivering. However, it would have been much enriched by a powerful conclusion analysing the role of civil society. A country undergoing changes, as South Africa is, needs a strong civil society to guard against authoritarian tendencies. Whilst the President has given targets and time frames, who is going to check on government performance and accountability and ensure that government keeps its promises?

Despite this omission, the book is a valuable resource for readers seeking to understand South Africa's past, present and future policies on transformation. It is particularly useful for students of South African politics, civil society, and anyone who wishes to celebrate the achievements of the first ten years of South Africa's democracy, the way it has dealt with apartheid's past and the challenges of growth that lie ahead.

*Bertha Chiroro*  
*Researcher, EISA*

— REFERENCE —

- Bowman, L W. 1991. *Mauritius: Democracy and Development in the Indian Ocean*. San Francisco: WestView Press.
- EIU. 1991. *Country Report Mauritius/Madagascar/Seychelles*.
- . 1996. *Country Report Mauritius/Madagascar/Seychelles*.
- Electoral Commission Database. 2004. *Mauritius, 2004*.
- Le Mauricien* 20 July 1990.
- Le Mauricien* 16 and 17 August 2000.
- L'Express* 5 April 1994.
- L'Express* 9 April 1994.
- L'Express* 10 April 1994.
- L'Express* 20 July 1990.
- L'Express* 14, 15 and 16 August 2000.
- L'Express*, 18 September 1994.
- Lodge T, D Kadima and D Pottie (eds). 2002. *Compendium of Elections in Southern Africa*. Johannesburg: EISA.
- LP-PMXD. 2000. Political Manifesto.
- Mathur, H. 1991. *Parliament in Mauritius*. Mauritius: Editions de L'Océan Indien.
- MSM-MMM. 2000. Political Manifesto.
- National Assembly Elections Act 1968.
- Sachs A et al. 2001. *Report of the Commission on Constitutional and Electoral Reform*.
- Select Committee of Assembly. 2004. *Recommendations on the Sachs Report*.
- Simmons, A S. 1982. *Modern Mauritius: The Politics of Decolonisation*. Bloomington: Indiana University Press.
- Straconsult. 2002. *Report on the State of Good Governance in Mauritius*. United Nations Economic Commission for Africa.
- The Constitution of Mauritius 1968. Mauritius: Government Printers.
- The Representation of the People's Act 1968. Mauritius: Government Printers.
- Weekend* 10 April 1994.

# TRANSITIONAL POLITICS IN THE DRC

## *The Role of the Key Stakeholders*

By  
*Claude Kabemba*

Claude Kabemba is the Programme Manager Research, Information  
& Publication at EISA

P O Box 740 Auckland Park 2006 Johannesburg

Tel: +27 (0) 11 482.5495; Fax: +27 (0) 11 482.6163

e-mail: [claudio@eisa.org.za](mailto:claudio@eisa.org.za)

### ABSTRACT

*Very few observers, either inside or outside the Democratic Republic of Congo (DRC), thought that when Joseph Kabila took over from his slain father he would, within a few years, mobilise the Congolese in a negotiation process that would create the best chance for peace and democracy in the country's history. Political negotiation, which began in Lusaka in 1999 and was successfully concluded in South Africa in 2003 under the leadership of South African President Thabo Mbeki, blew gales of change into the DRC with major consequences for the country. The negotiation process has brought former belligerents together in a government of national unity and created a Parliament that has drafted and adopted the Constitution of the 3<sup>rd</sup> Republic. The country is now ready for its third democratic election in 44 years. But serious challenges remain before an election can be organised and bring sustainable peace to the country.*

### INTRODUCTION

The Inter-Congolese Peace agreement known as 'l'Accord Global et Inclusive' was signed in Pretoria on 17 December 2002 and endorsed at Sun City on 2 April 2003. The transition process started on 30 June 2003 when the transitional government was installed. The Inter-Congolese dialogue created a new political culture in the history of Congo by establishing a large and inclusive political dialogue. There is no doubt that this was an extraordinary forum. It was the first time the Congolese had sat together since the National Conference which was held in 1991-1992. The transition process that emerged from that conference was halted by President Mobutu.

The Inter-Congolese Dialogue has forced the Congolese to make substantial compromises in relation to the redistribution of political power during the transition. It has also introduced the culture of cohabitation in government institutions by

different political forces and has brought peace to a large part of the territory. But what are the prospects for a successful transition?

In terms of the Peace Accord, the transition was to end on 30 June 2005 but allowance was made for two possible six-month extensions if this were recommended by the Independent Electoral Commission to a joint session of the National Assembly and the Senate (Transitional Constitution Art 196). Forty-four groups, including armed factions, exiled political figures, and civil society groups signed the Final Act at Sun City in South Africa (*Star* 3 April 2003). This transition, if allowed to reach its logical conclusion, the holding of free and transparent elections, should produce the foundation on which to build a culture of democracy. One key objective of such elections will be to restore legitimacy to government. The Democratic Republic of Congo (DRC) has not had a legitimate government in the past 43 years. During this period the state collapsed, producing one of the most dysfunctional entities on the continent.

Since Sun City, the country has made significant strides in implementing the key requirements of the accords with the main structures now in place. These are a Presidency comprising a president and four vice-presidents representing all the major political tendencies; a Parliament with two chambers – the National Assembly and a Senate; and five institutions for the support of democracy: the Independent Electoral Commission (IEC), the Truth and Reconciliation Commission (TRC), the High Authority of the Media (HAM), the Anti-Corruption Commission (ACC) and the Human Rights Commission (HRC).

However, it is one thing to set up institutions and structures and quite another to make them functional. Only two of the five institutions, IEC and HAM, are operational.

DiPalma (1990) proposes the following preconditions for successful democratic transition:

- Minimal divisions within the forces of old regimes and the opposition. This ensures that a dialogue can be conducted and extremists can be marginalised.
- The vital interests of all participants must be guaranteed in the transition period and in the new constitution. Thus, previously recalcitrant forces come to believe that a change of government will not threaten them.
- The balance of international forces and support must favour democratising forces over authoritarian forces and all participants must be offered incentives to compromise.

A successful transition would initiate a process of national reconciliation and state building. At present the conditions are being put in place incrementally to ensure that democratic elections take place at the end of the transition. But does the DRC have the capacity, the visionary leadership, the political will and the resources to move towards a democratic society? This work tries to answer this critical question

by reflecting on the strengths and weaknesses of key stakeholders in the process. It will look at the following actors: the executive, Parliament, political parties, civil society, the media and the international community. These stakeholders were chosen because of their critical importance to the transition process. Other important stakeholders are the army and the justice system, which are not looked at here except in relation to the first set of stakeholders.

### THE PRESIDENCY DURING THE TRANSITION

The Inter-Congolese Dialogue provides for a system, commonly known as the 1+4 formula, whereby the president is seconded by four vice-presidents. The formula is unique and has never been tried before. The Peace Accord retained Joseph Kabila as President during the transition, seconded by Jean Pierre Mbemba, chairman of the Movement for the Liberation of Congo (MLC); Azarias Ruberwa, leader of the Rally of Congolese for Democracy (RCD); Yerodia Ndombasi, representing the former government; and Zahidi Ngoma, representing the non-armed opposition. Each vice-president has a commission under his responsibility, as shown in Table 1.

The challenge for the transition has been how to ensure a smooth working relationship between the president and each of the four vice-presidents on the one hand and between the four vice-presidents on the other. The key area of contestation between the leaders of the different groups was not as much what they offered in terms of change as the battle for the presidency. The creation of five presidential positions arose out of the competition between President Joseph Kabila and his two Vice-Presidents, Jean Pierre Mbemba and Azarias Ruberwa. The three have not enjoyed a smooth relationship, especially during the early stage of the transition. There has been continuous tension between the President and the two former rebel leaders.

However, there has been no tension between Kabila and other two Vice-Presidents, with whom he shares a close relationship. Ndombasi comes from Kabila's political family and Ngoma's nomination received great political support from Kabila. The Kabila government is said to have played a key role in ensuring that Zahidi Ngoma, a close ally, leads the non-armed opposition group. In line to represent this group were Nzuzi wa Mbombo, leader of the Mouvement Populaire de Revolution (MPR) and Etienne Tshisekedi, leader of the Union Pour la Democratie et le Progrès Social (UDPS).

The 1+4 formula encapsulates the value of inclusiveness on which the entire negotiation process from the Lusaka Peace Accords to the Pretoria Peace Agreement was founded. The inclusive nature of the negotiations marks an important change in the political thinking of the Congolese. For the first time they were coming to terms with a situation in which different groups could work together to achieve a common purpose – peace and political stability. Despite the problems this system has experienced and continues to experience, one of its great benefits for the DRC is that the Congolese leadership has been introduced to the notion that 'in a

democracy no one can choose himself, no one can invest himself with power to rule, and therefore no one can give himself unconditional and unlimited power' (Breytenbach 2003, p 65). Only the entrenchment of these values will set the country on the road to sustainable democracy and development.

**Table 1**  
**Vice-presidents and Their Portfolios**

Name	Portfolio
Jean Pierre Bemba (MLC)	Economy and Finance
Azarias Ruberwa (RDC-Goma)	Politics, Defence and Security
Yerodia Ndombasi (ex-government)	Development and Reconstruction
Zahidi Ngoma (non-armed opposition)	Social and Cultural

Although the transitional Constitution defines the role of the president and gives specific roles to each vice-president, it does not clearly articulate the working relationship between the five and how decisions are to be taken. In fact, a closer look shows that there is a tendency for some vice-presidents to behave as did prime ministers during the First Republic. Insiders report the existence of serious tensions and suspicions between the president and the two vice-presidents from the former rebel movements, the MLC and the RDC.

It is difficult to say precisely what kind of system – presidential or parliamentary – currently exists in the DRC. The major threat to the transition, if there were to be one, would probably come from within the Presidency. As Henri Boshoff (2004) suggests, 'The RCD and MLC in particular are worried about the growing independence displayed by Joseph Kabila in the decision-making process and fear that their prerogatives are being undermined by the Presidency.'<sup>1</sup> The weakness of the 1+4 formula is that the four vice-presidents do not have a defined role. It will come as no surprise if the tension referred to above degenerates into total chaos closer to elections as major government decisions will be made by the president and his vice-presidents to enhance their standing during the election campaign. Every party in the government of transition has tried to outmanoeuvre the others by using every opportunity, even state resources, to advance its interest. But what has been exceptionally surprising is the fact that everyone concerned accepts that there is no option but to work with the 1+4. All Congolese accept that despite the imperfection of the 1+4 solution and its conflictual nature, it must be allowed to continue. This is a sign that there is a level of political maturity in the

1 See Henri Boshoff's report on a trip to the DRC from 6 to 11 July 2004 available on line at [www.iss.org.za](http://www.iss.org.za)



DRC. But there are concerns among ordinary Congolese that the transition process is very slow and political leaders are being accused of deliberately delaying it. For this reason the Congolese Catholic Bishops have called for sanctions against anybody who violates the Constitution and for a strong justice system to accompany the formation of the government

It seems it is the management of the Presidency that will make or break the transition. A good relationship between the president and his vice-presidents and between the vice-presidents themselves could influence the resolution of other difficulties facing the transition, especially the integration of the armed forces. But a closer observation of the behaviour of some of those in power simply reflects the historical political culture left behind by Mobutu and his clique whereby 'the state remains a major source of capital accumulation and the fulcrum of social privileges (Adejumobi 1997, p 126)'. The new elite continues to see the state as 'the major avenue of upward mobility, status, power and wealth (Callaghy 1986, p 36)' and not as an opportunity to serve the community. If this is allowed to continue there is no hope for a better future for the Congolese. Indeed, this mode of operation reflects Max Weber's conclusion that 'the way of doing politics is not to live for it, but to live from it (Adejumobi 1997)'. As Joseph Ayee convincingly put it, 'the persistent development crisis and the recent phenomenon of failing states are due in part to poor leadership; leaders who are not committed to the development of their societies and who lack honesty and commitment to democracy'.

Unlike South Africa, which was fortunate to have had Nelson Mandela and F W de Klerk, there has, in the Congo, been a lack of the necessary leadership to seize the opportunity to fast track the transitional process. Mandela and De Klerk understood the situation of their respective political organisations and, realising that no one organisation was likely to win, took difficult decisions, some of them very unpopular with their organisation, throughout the negotiation process.

The Congolese appear to be unlucky on this score – as one executive member of the RCD puts it, 'The fundamental problem in the DRC is the deficit of transitional leadership at the pyramid of the government' (Interview, civil society group, Kinshasa November 2003). The slow process and the tension emanating from the presidency sent negative signals to the nation and most Congolese remained sceptical about the transition until the adoption of the Constitution. For them, there seemed to be no difference between the pre-Mobutu and post-Mobutu periods.

Individuals in government are accused of being interested only in their political survival and doing everything possible to prolong the transition process. For example, when the transitional government presented its programme for the first time on 2 December 2003, it was vague about the question of elections. In fact, the plan of action did not emphasise elections as a priority. There were no concrete proposals for government financial support for the electoral process. This came as a disappointment to citizens, who see elections as the only hope they have. The government's uncommitted attitude to elections also influences donor commitment. Donors have been reluctant to make good their financial pledges on the grounds

that there is a lack of genuine commitment by political leaders to elections and there is no well-structured government that can be trusted with the finances.

### THE PARLIAMENT OF TRANSITION

The Parliament is bicameral, with a National Assembly and a Senate comprising 500 (Table 2) and 120 (Table 3) members respectively. The way Parliament discharges its duties will influence the democratisation process in the DRC.

Parliament consists of the five main groups or *composantes* and three small groups or *entities* that participated in the Inter-Congolese Dialogue and signed the final agreement (Table 3).<sup>2</sup> The *composantes* are constituted by the former government, the two former rebel movements – the RCD and the MLC, the non-armed opposition and civil society. The first three groups, which fought each other, hold the balance of power. The non-armed opposition and civil society groups are weak and are aligned to the first three. The three ‘entities’ are the Rassemblement Congolais pour la Démocratie, Mouvement de Libération (RCD/ML), the Rassemblement Congolais pour la Démocratie, National (RCD/N) and the Mai-Mai. They are largely insignificant but may play a critical role when alliances are formed in Parliament around specific issues.

The National Assembly has three main functions – to legislate; to exercise control over government, public enterprises and the civil service to monitor the implementation of the resolutions of the Inter-Congolese Dialogue and to adopt the Constitution to be submitted to the referendum (Constitution of Transition Art 98).

**Table 2**  
**Composition of the National Assembly**

Main Stakeholders	No.of MPS	Entities	No. of MPs
Armed Opposition			
RDC/Goma	94		
MLC	94	Mai Mai	10
Ex-government	94	RCD/ML	10
Civil society	94	RCD/N	5
Non-Armed Opposition	94	Small entities	5
<b>Total</b>	<b>470</b>	<b>Total</b>	<b>30</b>

<sup>2</sup> There are groups that participated but are not part of this Parliament. For example, the G14 and UDPS are out of Parliament. But in the case of the G14, while the decision was that the group will remain out, some of its members joined other groups and are in Parliament today.

The role of the Senate is to mediate political conflict among different institutions. It also charged with writing the draft Constitution (Constitution of Transition Art 98). In general, Parliament is weak because of the social and economic crisis and the political circumstances under which it was set up. This distribution of MPs and Senators was agreed upon at Sun City and reflects the representation of the different delegations to the talks.

**Table 3**  
**Composition of the Senate**

Main Stakeholders	Number of Senators
Government (PPRD)	22
MLC	22
RCD	22
Civil society	22
Political opposition	22
Entities	
Mai-Mai	4
RDC/ML	4
RCD/N	2
Total	<b>120</b>

\* MAIN STAKEHOLDERS WERE THE KEY GROUPS TO THE INTER-CONGOLESE DIALOGUE WHO TOOK THE LARGER SHARE OF PARLIAMENTARY SEATS.

\* ENTITIES WERE THE SMALLER GROUPS AT THE INTER-CONGOLESE DIALOGUE.

### WOMEN'S REPRESENTATION IN PARLIAMENT

There are only 62 women in the National Assembly of a total of 500 members. The Senate has only three women out of 120. This biased representation goes against the spirit of the Lusaka Accords, which put the threshold at 30 per cent in line with the Southern African Development Community (SADC) protocol. Sun City did not take care of gender balance either in the National Assembly or the administration.

The same lack of representation applies to civil society groups. Of the 68 who were present at the negotiations only 14 are in Parliament. This is an unfortunate situation given that the Constitution of transition clearly emphasises gender-balanced representation in Parliament. It seems that in the Congo the concept that political power belongs to men is culturally entrenched – the under-representation of women cuts across all groups represented in government. The future electoral system must be designed to deal with this issue and political parties must be encouraged to increase the number of women in positions of leadership.

## PARLIAMENT'S ACHIEVEMENTS

The two houses of Parliament, the National Assembly and the Senate, work through eight commissions:

- Political, administrative and legal commission, led by the non-armed opposition
- External Relations commission, led by the RCD/ML
- Economic and finance commission, led by the former government
- Defence and security commission, led by the Mai Mai
- Women, family and youth, led by the MLC
- Support to democracy commission, led by civil society
- Social and cultural commission, led by the RCD
- Reconstruction and development commission, led by civil society

Parliament got off to a slow start because of logistic and budgetary constraints and members went for months without being paid. But the work of Parliament is also behind schedule because of the government's wrangling. The slow process affected the calendar for the execution of the transition and resulted in the postponement of the elections from June 2005 to 2006.

However, despite the delays, Parliament has been able to achieve most of its targets. Laws have been passed and the draft Constitution of the Third Republic was adopted on 16 May 2005. With the Constitution adopted, it will now be easy to draft electoral laws to pave the way for democratic elections. The content of the new Constitution clearly shows how the new state will begin to depart from the character of previous states under Mobutu and Laurent Kabila. For example, the Constitution prescribes two terms for the president, it introduces gender parity in all state structures and there seems to be a clear separation of power between the executive, the legislative and the judiciary. It also creates the position of Prime Minister, a move that will dilute the power of the President, which has been the source of most of the problems of the DRC.

There is also a move to decentralise the state and, although the devolution of power to the provinces will be incremental, this is a positive step for this territory, which is the size of Eastern Europe. The new Constitution proposes to increase the number of provinces from 11 to 26.

## POLITICAL PARTIES

Most political parties are new and have no ideology. For most of them the main focus is how to access power, even though they have no clearly articulated programme of how to use that power once they have it. The problems political parties are facing are not peculiar to the DRC but reflect similar characteristics to parties in other countries. They are badly structured and have very weak financial

bases and they remain very ethnically and regionally orientated. Generally no political party can claim to have a monopoly on political mobilisation and although parties such as the PPRD and the UDPS can presumably claim to have a presence in all provinces the extent to which their structures there are operational is not very clear.

The theoretical approach to how political parties should function cannot be applied directly to the DRC. The internal disorganisation, absence of ideology and weak structure suggest that the country does not have political parties as we know them in other parts of the world.

It is estimated that the DRC may have a total of 443 political parties. But only eight of these – the MPR/FP, the Parti Lumumbiste (PALU), UDPS, PPRD, the Parti Démocrate Social Chrétien (PDSC), PCR, RCD and MLC – seem to have some visibility.

All the political parties tend to have very weak internal structures and a limited connection with their supporters. They also face financial difficulties which limit their ability to operate and communicate with their members. The Congolese people in general do not know the ideology or philosophy of the parties to which they belong, not surprisingly, since even the constitutions of the parties are not easily accessible to their members.

In other SADC countries such as Mozambique, Namibia and South Africa, which have gone through a similar process former rebel movements have made a smooth transition to relatively well-structured political parties. This is due primarily to long years of struggle during which they built an ideological base which allowed them to enter the multiparty game on a much stronger footing. Even for a relatively weak group like Renamo, under the leadership of the low-rated Alfonso Dlakama, in Mozambique made a spectacular transformation. In the DRC, former rebel groups, although they are political parties on paper, are failing to transform and this is one factor hampering the transition process.

The transition cannot proceed with unstructured political parties which have no clear and well-articulated ideology. Political ideology is a system of ideas a party espouses to explain a society and either to justify or to criticise what is happening and uses as a basis for action to maintain and transform the society. Political ideologies are very important to the development of humanity. The hypotheses, models and theories they propose are sometime very important to the direction societies take and the way they are constructed. All this is lacking in the DRC. By way of illustration, no political party has taken time to reflect on the following issues:

- The geographic, demographic, religious and ethnic context in the DRC. The DRC is among the biggest states on the continent, the others being Nigeria, Sudan, Angola, Ethiopia and South Africa. Of these, all except South Africa are faring badly. Does the size of a country have an impact on its performance? What kind of political system would address

simultaneously the problems of size and good governance? How do you ensure that all the different ethnic groups are represented in whatever system of governance is put in place?

- The political, economic and security policies adopted by the transitional government. What kind of electoral system and state (unitary or federal) does the DRC need? In a country destroyed by years of mismanagement and war what kind of macro-economic policy would balance the internal demands of social delivery and the demands of globalisation. Questions of privatisation, trade relations, and debt and development aid are not being addressed.
- The role of outsiders, including other African states, criminal networks, the diaspora, and westerners, their effect on the country's trajectories and the threat posed by internal and external groups to the integrity of the state.

### PARTY FUNDING

One threat to the transition process could be the funding of political parties and its ability to create a level playing field. A party cannot function without a solid financial base. There seems to be a great disparity between the financial fortunes of political parties in the DRC and this could also influence the way they campaign during elections. In a society where poverty is rife, victory could go to whomever has the upper hand in terms of finances. For instance, the armed groups struggling to transform into political parties have access to resources in the areas under their control and can use them to build a strong financial support system. The PPRD, MLC and RCD have no money although individuals within them do. But it seems the leaders of these parties are not interested in funding the parties. The leaders, as they did during the Mobutu regime, use the revenue to enrich themselves.

Other parties which have been in existence since that Mobutu regime – the MPR, UDPS and PALU – remain divided along ethnic lines and, although they are well known, they draw most of their support from their leaders' province of origin and face serious financial difficulties in making a significant contribution to the transitional process. The MRP, Mobutu's party, should be the most stable financially since it includes in its ranks some former ministers and Mobutu's children, who are known for having indulged in corruption and the theft of state resources in the past. Most of them are not prepared to sponsor the party although they want it to bring them back to power.

The last group of political parties has no membership base and faces both organisational and financial difficulties. The parties are so insignificant that they are marginalised in the transition process and will simply disappear when the election campaign starts and join the bigger, better-known parties.

The question that arises is whether party funding should be regulated or not? Regulated funding could result in political interference in Congolese politics from external elements, as happened during the war when external powers and multinationals played an important role, unregulated funding would be preferable in the current environment in the DRC. But if external funding becomes an imperative, an election pool fund could be created to distribute funds equally among all qualified political parties. Before the elections, the challenge would be how to distribute the money to the number of parties that are expected to enter the political race and how to limit this number.

### INTER-PARTY DEMOCRACY

The challenge of democratising political parties in the DRC remains real. The difficulties the parties are experiencing include the inability to transform into genuine political parties that can spearhead the democratisation process. A lack of democracy within the parties is biggest problem. The leaders have an enormous amount of control over their parties, which are experiencing a situation akin to 'dictatorship by their own leaders'. The fact that parties are 'undergoing construction' needs to be taken into account. Generally, it seems that members do not participate in the 'daily life' of their parties, which have top-down structures whereby party leaders decide on all matters. Looking at the Lesotho experience Khabele Matlosa (2003, p 85) offers a crucial lesson for the DRC, stating that since parties are the key actors in the democratic process and key agents for the running of state machinery, their internal management structures will need to be adequately democratised and the success or failure of this democratisation process will be reflected in the way primary elections are conducted.

### CIVIL SOCIETY

By its nature, civil society can contribute to building and consolidating democracy by fostering political pluralism, engendering democratic values and enhancing political participation. The democracy discourse on the continent has been marked by a critical probe into the state and role of civil society organisations in the governance process (Sachikonye 1995, p 400). A question posed in societies in transition is whether pro-democracy non-governmental organisations (NGOs) influence the process and the design of transitional policies and laws?

There is a vibrant civil society in the DRC with a multitude of organisations including human rights groups, women's groups and youth groups. But they are not well organised and do not play a balancing role to provide a bulwark against malgovernance. They lack the internal organisation that would give them the capacity to foster participation and influence state decision-making. A further problem is that their multiplicity does not also mean they are autonomous and this lack of autonomy reduces their effectiveness in influencing the behaviour of

politicians. Civil society in the DRC has always been politicised and divided along ethnic lines and until recently the most vibrant manifestations of civil society were in Kinshasa. But with the war in the east of the country that area has also developed strong and vibrant civil society groups. During the negotiations Kinshasa's civil society expected to influence the process but because the process was intended to be inclusive of a range of regional and political interests, the number of representatives from Kinshasa's civil society groups was reduced (manipulated) in favour of groups from the east of the country.

One of the greatest achievements of the negotiation in the DRC is to have included civil society groups at all, a recognition of civil society's struggle for democracy since Mobutu. But what the negotiation did was further politicise civil society by including its influential members in government institutions, Parliament and the Senate. This has further crippled state-society relationships. Civil society, which was politicised and sidelined under Mobutu and Laurent Kabila, has emerged not as a watchdog but as a strong contender for political power. Like those of political parties, the internal structures of civil society organisations are undemocratic. All the groups have presidents who set the rules and the replacement procedures. If they are accountable at all, it is to donors. Even here, receipts for work done are frequently faked. Some NGOs, like many political parties, are simply 'briefcase institutions'.

During and after the Inter-Congolese Dialogue, civil society leaders positioned themselves in such a way that they cannot be ignored as serious contenders for political power. The importance and strength of civil society does not simply come from the text of the Accords, which allows it to be part of the transitional institutions, it also comes from its provincial and ethnic positioning. Civil society's ethnic and political character is stronger than its watchdog mission and because political leaders have come to realise that they ignore its presence at their peril civil society groups and individual representatives are treated as political actors. The result is that it seems politicians have been given *carte blanche* to implement a transition to their own liking.

In other countries on the continent the independence, strength and pluralism of civil society and its ability to unite in a broad front, has been a critical factor in shaping democratic change. In the DRC, civil society groups, by participating in the distribution of political power, have lost their legitimacy.

### THE INTERNATIONAL COMMUNITY

The international community has played a key role in taking the DRC where it is today. Ethienne Tshisekedi, the leader of UDPS, suggests that it is time to stop criticising Europeans who are helpful although they also, when given the opportunity, exploit weaknesses to promote their own interests (Interview, Kinshasa November 2003). The involvement of the international community is crucial to the success of the DRC's transition, before, during and after the elections.



The coming elections are expected to be funded from outside – not necessarily the best option but one imposed by the current socio-economic and financial situation of the country which would not allow it to fund its own elections. Foreign governments and international institutions are involved at different levels in the transition process with some having sent experts to support the state institutions and electoral body. The French, the Belgians and the South Africans, for example, are devoting their time to training the country's security forces. La Mission de l'Organisation des Nations Unies en République Démocratique du Congo (MONUC) is involved in peacekeeping. While the contribution thus far has been beneficial, gaps still remain in donors' intervention in the DRC and it seems they have not learned from previous experiences.

While it is important to focus on keeping the peace donors also need to look seriously at issues which would contribute to cementing that peace. One key issue is the planning and financing of elections. The holding of elections is an urgent matter. As William Lacy Swing, the head of MONUC in the DRC, put it in an interview with the author (November 2003), the transition will be a failure if it does not produce a democratic dispensation. For this reason MONUC follows the preparations for the elections closely. Its election support structure, led by Swing's deputy with three electoral assistants, supports the Independent Electoral Commission and coordinates the work of donors (Interview with the Head of MONUC November 2003). Another concerned organisation is a committee of foreign ambassadors called Le Comité International d' Assistance à la Transition (CIAT), whose role is to monitor and evaluate the transition process. But in general the international efforts are ad hoc undertakings governed by few consistent principles, norms, rules, or established procedures. Such initiatives are carried out by a host of autonomous actors, including donor governments, the UNDP, NGOs such as the International Foundation for Electoral Systems (IFES), the Electoral Institute of Southern Africa (EISA) and the National Democratic Institute (NDI). All these international actors believe that if the government of transition is left alone it might not be able to move the process forward fast enough.

The donor community has pledged financial assistance to the electoral process, but the framework for designing, coordinating and delivering such assistance remains woefully fragmented and under-institutionalised. It seems that donors did not have an agreed strategy, based on a common vision. Another worrying point is that donors have postponed efforts to plan aid intervention as happened in Afghanistan and is projected for Iraq.

Experience has shown that successful donor support for sustainable peace and reconstruction is based on resolving the following key challenges (Patrick 1999, p 35):

- The mobilisation of resources
- The deepening of institutional reform
- The harmonisation of aid conditions

- The coordination of assistance locally
- The enhancement of recipient capacities
- The promotion of accountable aid delivery and implementation

Donors argue that it is difficult for them to design support mechanisms when they do not know what kind of elections will be organised. In this way they have put the ball in the court of the Congolese, who have been very slow in passing the necessary electoral laws. The European Union will bear most of the cost. Most pledges have been in the technical area of elections but very little has been said about the logistics.

The donors' concern is that they cannot fund all aspects of the elections, particularly the salaries of electoral officials, who are considered to be civil servants. This must be the responsibility of the government and they have requested that government contribute to the financing of the elections. One member of civil society estimates (Interview, Kinshasa November 2003) that the Congolese government could put together up to US\$100-million a month for the elections (and this does not include the money that goes into private pockets). Since there is no major social spending from government, there is no good reason to argue that the state cannot fund the elections, whose costs are estimated at US\$ 300-million

## CONCLUSION

The transitional process in the DRC is happening under very difficult socio-economic and military circumstances, with problems including the collapse of the state, the hostilities that continue in the east of the country, political corruption, economic stagnation, ethnic clashes, and the misuse of mineral and ecological resources. A transition that will pave the way for democratic elections is the only hope for a stable DRC. Despite the disappointment engendered by the slow progress being made in this direction there is a need to ensure that the process continues and is founded on the values acquired at Sun City: inclusiveness and negotiation, an ethos of reconciliation and nation building and tolerance.

The Congolese people have matured and are not prepared to be held hostage indefinitely. People are becoming increasingly demanding, as demonstrated by the actions of 3 June 2004 when they took to the streets in protest against the renewed violence in the east of the country and demanded a speedy end to the transition. The 1+4 formula, despite its flaws, is an important mechanism for bridging the country's diversity. There is also hope created by the unanimous position of the international community through the CIAT that elections will take place within the timeframe agreed upon at the Inter-Congolese Dialogue.

However, in Congo there is no institution that enjoys popular trust. The undue influence of the executive on other institutions such the judiciary, Parliament, the military and the Chapter 9 institutions poses a threat to the consolidation of the current process and will pose an even greater threat in the future if it is not attended to.

The existence of a vibrant but ineffective civil society is a serious weakness in the entire process. For civil society organisations to play their role efficiently, they must themselves be democratic and motivated by broader social concern. Civil society in the DRC must consider instituting non-statutory self-regulatory mechanisms to engender a spirit of trust from government. It is incumbent upon civil society, especially the so-called NGOs, to take a critical look at itself and put its house in order if its criticism of others is to acquire moral force and credibility. Self-regulation is also the best way of keeping government interference at bay.

Donors must make strategic interventions to support the transition process. The first phase has been successfully completed with the drafting and adoption of the Constitution of the 3<sup>rd</sup> Republic. Now there is a need to ensure that the war does not return and elections do not become a source of discord. The international community can help speed up the process by offering financial and logistical support to the institutions of transition. A semblance of a state must be created in the DRC. A national army that can protect the integrity of the new state is badly needed, a professional police that respects human rights must be trained as a matter of urgency and a credible justice system is also needed to support the transition. The challenge is to avoid a political vacuum at any time during the process.

#### — REFERENCE —

- Adejumobi, Said. 1997. 'The Two Political Parties and the Electoral process in Nigeria: 1989-1993'. In Nzongola Ntalaja and Margaret Lee (eds). *The State and Democracy in Africa*. Zimbabwe: African Association of Political Science.
- Ayee, Joseph. Forthcoming. 'Leading Large States'. In Jeffrey Herbs and Greg Mills 'Africa's Big Dysfunctional States'.
- Breytenbach, W. 2003. 'Democratic Transition in the SADC Region'. In Bobo Immink, Samson Lembani, Martin Ott and Christian Peters-Berriers. *From Freedom to Empowerment: Ten Years of Democratisation in Malawi*. Malawi: Konrad Adenauer Foundation.
- Callaghy, Thomas. 1986. 'Politics and Vision in Africa: The Interplay of Domination, Equality and Liberty'. In Patrick Chabal (ed). *Political Domination in Africa*. Cambridge: Cambridge University Press.
- Dialogue National*. 2004 No 194. 'Washington promet 108 millions de dollars pour soutenir la transition en RDC', Tuesday 7 September.
- Di Palma, G. 1990. *To Craft Democracies*. Berkeley: University of California Press.
- Matlosa, Khabele. 2003. 'The Electoral Process and Democratic Governance in Lesotho: Lesson for the Democratic Republic of Congo. *Journal of African Elections* 2(1).
- Mumba, Marcel. 2003. 'Idéologies des parties Politiques Congolais au regard des enjeux électoraux de l'an 2005'. *The Scrutin* 35.
- Sachikonye, L. 1995. 'Civil Society, Social Movements and Democracy in Southern Africa'. *Innovation* 8(4).

*Star, The*. 2003. 'Historic Part rings in new period for the DRC', 3 April.

Stewart, Patrick. 1999. 'The Donor Community and the Challenge for Post conflict Recovery'. In Shepard Forman and Stewart Patrick. *Good Intentions: Pledges of Aid for Post conflict Recovery*. United Kingdom: Lynne Rienner.

# REVIEW

*State of the Nation South Africa 2004-2005*

Edited By John Daniel, Roger Southall, and Jessica Lutchman

HSRC Press

This, the second of the HSRC's annual *State of the Nation* publications, assesses government performance based on President Mbeki's State of the Nation speech in 2004. The President's speech provides a tool for opposition parties and civil society to hold government accountable to an extensive government delivery programme that contains very specific targets and time frames. The book offers an important analysis of President Mbeki's second term and a balance sheet of the major achievements and setbacks relating to the pertinent issues facing South Africa in its second decade of national transformation and democracy. The book is divided into four parts – politics, society, economy, and South Africa in Africa – with a brief summary of each part providing a wealth of information about South Africa's past, present, and future. Written by a mix of senior and junior scholars, and members of civil society, the chapters are of uniformly high quality.

The introductory chapter by the editors contains important general arguments about Mbeki opting for a third-way style social democracy and raises issues for further research in terms of whether South Africa is a developmental state like South Korea. Malaysia serves as the model. The editors devote their attention to the obstacles to South Africa's progress towards the status of a developmental state. These include problems of state capacity because of deficiencies in human resources development in the public service; the racial disjunction which continues to shape opportunity and attitudes and leads to a lack of national coherence; the global and African environment and globalisation, which limit options.

Part one, on politics, examines race and identity, the state of parties post-election 2004, ANC dominance and the opposition, rural governance, corruption and the state of the public service. Zimitri Erasmus tackles the issue of race and identity and the growing phenomenon of xenophobia. She argues that race is socially constructed and intersects with other areas of inequality and identity. She notes that being white no longer automatically conveys race privilege. Although the new black elite has been able to escape race discrimination poor black Africans continue to be subjected to it. Erasmus also shows how South Africans, black and white, use race not only to exclude black Africans from elsewhere on the continent from access to certain rights but also to violate their humanity. In this instance race now intersects with nationality and citizen rights, giving rise to xenophobia.

The issue of race also plays an important part in the elections, write Southall and Daniel, as they focus on the question of ANC dominance. However, their focus is more on declining electoral participation because of what they believe to be popular disillusionment with aspects of government delivery. The apathy could

also be attributed to complacency among the black population and lack of appealing opposition parties. Lungisile Ntsebeza follows with an examination of government's attempts to democratise local governance. Ntsebeza is perturbed by the tensions between a Constitution that enshrines democratic principles, modelled on liberal democratic lines of representative government on the one hand, and the wide-ranging powers given to an inherently undemocratic hereditary institution of traditional leadership on the other. Sam Sole deals with the issue of corruption and comments on government's efforts to roll it back, but warns of general levels of immunity in the political sphere, especially because of the rise of a new black capitalist class. Vino Naidoo reflects on the apartheid inheritance, and notes the transformation of the public service in line with the new South Africa on the basis of historical political factors of culture and change.

The second part of the book deals with societal issues. The focus is on crime and policing, the defence force, the state of schools, women, HIV and AIDS, the Muslim community in a post-apartheid South Africa, the arts, and the archives. The social dynamics and the myriad issues that need to be dealt with remain a challenge in the second decade of democracy. As far as Ted Leggett is concerned, the two most important issues to South Africans are crime prevention and job creation. And there is a need to change the social conditions of poverty and unemployment that generate crime, instead of simply trying to lock up all the criminals. Len Le Roux and Henri Boshoff examine how, through affirmative action and voluntary service packages, the predominantly white and male character of the apartheid defence force was eliminated. However, budgetary constraints and the high level of HIV / AIDS in the South African National Defence Force (SANDF) constitute the biggest threat to its deployment potential and operational effectiveness.

Linda Chisholm notes the changes and progress that have been made in South Africa's schools to overcome the legacy of apartheid. But the quality of schooling remains a challenge, especially in rural areas. Tim Quinlan and Sarah Willan focus on leadership by the President and the Minister of Health as a source of problems in containing the AIDS pandemic. The statements by the Minister of Health, they write, show a lack of decisiveness about how to use knowledge gleaned from the statistics and the impact of the anti-retroviral programme. They accuse the government of having used the HIV / AIDS issue for electioneering purposes in 2004.

Goolam Vahed and Shamil Jeppie examine the diversity of the Muslim community in the context of rapid social, political and economic changes in the past 10 years and Lynne Maree examines the state of the arts after ten years of democracy. Maree gives an overview of privilege and prejudice in the arts sector during apartheid, which continues today. The appointment of Pallo Jordan as Minister of Arts and Culture gives hope to a sector where racism and racially structured thinking are still the order of the day. Seán Morrow and Luvuyo Wotshela, writing about the state of the archives and access to information, raise the importance

of archives to any society interested in its past and its future. On a progressive note, Shireen Hassim appraises the new South Africa's readiness for gender equality and the creation of special institutions for advancing women's interests. She cautions, however, that the increased representation of women might not lead to a congruent representation of the policy interests of disadvantaged women as members of Parliament are accountable to their party rather than directly to an electoral constituency.

The focus on the economy is important, as the authors have read into the President's speech a turning point in government economic policy, particularly on the crucial issue of poverty alleviation. The President promised an expanded role for state and state-controlled enterprises in the campaign to halve poverty and unemployment by 2014. The last six chapters, on the economy, touch on the crucial issues of transformation of ownership in South Africa – black economic empowerment, unemployment, poverty alleviation, inequalities and service delivery. From Stephen Gelb's overview of the economy to Benjamin Roberts's review of poverty policies, the chapters point to the political centrality of the assault on poverty, which is vital to South Africa's democratic project. The final two chapters assess South Africa's foreign relations with Nigeria and Zimbabwe. The authors dismiss suggestions that Nigeria and South Africa have hegemonic tendencies in their respective regions. In the final analysis Sachikonye, like most observers, reinforces the perception that South Africa's quiet diplomacy with Zimbabwe has been ineffective and ambivalent, proving that South Africa is not a regional hegemonic power.

The book's major strength lies in its use of critical analysis of South Africa's economic, social and political progress to judge whether government is performing and whether the politicians are delivering. However, it would have been much enriched by a powerful conclusion analysing the role of civil society. A country undergoing changes, as South Africa is, needs a strong civil society to guard against authoritarian tendencies. Whilst the President has given targets and time frames, who is going to check on government performance and accountability and ensure that government keeps its promises?

Despite this omission, the book is a valuable resource for readers seeking to understand South Africa's past, present and future policies on transformation. It is particularly useful for students of South African politics, civil society, and anyone who wishes to celebrate the achievements of the first ten years of South Africa's democracy, the way it has dealt with apartheid's past and the challenges of growth that lie ahead.

*Bertha Chiroro*  
*Researcher, EISA*