# AFRICAN JOURNAL ON
# CONFLICT
# RESOLUTION

**Electoral Systems, Constitutionalism and
Conflict Management in Southern Africa**

**The Need for Electoral Reform in Botswana**

**Electoral Reform and Political Stability in Lesotho**

**Towards Stable Electoral Laws in Mozambique**

**Elections, Constitutionalism and Political Stability
in South Africa**

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for Governance and Stability in Zimbabwe**

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# Foreword

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More than once we have discussed the possibility and feasibility of an occasional special, thematic edition of this journal. Usually our conclusion was that it was a good idea, but that a few provisos were inevitably attached to it. Firstly, in each case the theme would have to be a very relevant one, and would have to be acknowledged by the readers as relevant indeed. Secondly, the planning of and preparations for such a special edition would have to begin well ahead of the envisaged publication date. Thirdly, such special editions should be relatively few and far between, since most of our readers might perhaps prefer the variety of topics in our regular editions.

Our work with regard to the journal therefore tended to proceed along two lines. On the one hand, we were welcoming incoming articles with their typical diversity of topics and approaches. On the other hand, we kept harbouring the idea of a first special edition, and wondering when a preparatory start should be made.

Then something just happened suddenly. With the generous support of the Regional Centre for Southern Africa (RCSA) Office of the United States Agency for International Development (USAID) ACCORD had run a Programme on Electoral Systems, Elections and Conflict Mitigation in Southern Africa. The objectives of this programme included the following:

- Strengthening early warning mechanisms in the area of elections
- Increasing capacity of Regional Organisations to mitigate elections-related conflicts

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- Reflecting on and appraising the democratic and multi-party elections process which emerged in Southern Africa almost a decade ago
- Reflecting on the challenges faced by countries in the region to deal with issues of multi-party elections
- Exploring the reasons why in most Southern African states elections almost always lead to conflict
- Reflecting on the nature of conflicts experienced and the extent to which the countries in the region have found means and ways of dealing with them
- Sharing lessons from different Southern African Development Community (SADC) countries, especially with regard to dealing with conflicts that are related to elections
- Providing technical assistance and training to USAID bi-lateral missions.

The idea was to conclude this programme with a publication, and preferably with a special edition of the journal. Thorough research work had formed an important part of the project and articles produced by a panel of academics were ready for publication.

In this way, the first two conditions mentioned above had indeed been fulfilled by this programme. All the planning and organising had been done by the programme team and those involved in implementing the plans. Even guest editors were enlisted! All that we as editors of the journal had to do, was to add a few finishing touches. We therefore wish to express our great and sincere thanks to all the participants and contributors: USAID as funder of the programme, Dr Khabele Matlosa as external guest editor, the authors of all the articles, Ms Titi Pitso as Regional Programme Manager, all the members of ACCORD's team, and contributors from the various countries. We genuinely appreciate your commitment, the time and energy you have devoted to the project, and the experience and expertise you have shared with all who will benefit from the work you have been doing.

So, here is our first special edition – on *Electoral Systems, Elections and Conflict Mitigation in Southern Africa*. What we find particularly satisfying from our editorial perspective, is that the theme of this first special edition is such a *people-related theme*. Everything about elections has to do with huge numbers of real people. Any change in an electoral system can make the voice of the people either more audible or less audible, either more influential or less influential. With regard to constitutions, which are also referred to more than once, something similar may be added: Any amendment to a

constitution can either improve or worsen the situation of the people with regard to human rights and democratic rights. The descriptions, discussions and recommendations found in this edition are therefore no academic abstractions; they deal with political realities which affect the lives of millions and billions of people.

Precisely this tremendously wide- and far-reaching significance of our special theme, however, places a great responsibility on all of us who will read and use this material. We have to remember that these articles, in an academic journal, will not reach the masses of people who live as citizens in their countries, and exercise their right to vote. This means that we are reading *on behalf of them*, and that we are making use of this material *on behalf of them*. We therefore have to explore ways in which the recommendations about duly people-oriented constitutions and electoral systems can be communicated to the political leaders and opinion formers. We have to develop the commitment, courage and perseverance to do, and keep doing, the bits we may be able to do. Some of our opportunities may seem to be more significant, while others may appear to be rather insignificant. Still, there is always the possibility of a seed thought growing into a deed that brings about real transformation. Moreover, we should remember that we find ourselves at the beginning of the stimulating era of the African Renaissance.

Is this not an appropriate time to be frankly realistic about the short-comings of electoral systems and procedures in various countries? In fact, there may be no single country that can boast about a perfect system or flawless elections. The six articles dealing with electoral systems and elections in six countries – Botswana, Lesotho, Mozambique, South Africa, Tanzania and Zimbabwe – should serve a useful purpose in this regard. Positive aspects are duly appraised, but where necessary, criticism and recommendations are added. In the leading article, election results and details of these and other Southern African Development Community countries are also discussed. We do trust, therefore, that this special package of articles will communicate and spread the message of free, fair and democratic elections, and inspire leaders and followers to introduce all possible improvements.

# Electoral Systems, Constitutionalism and Conflict Management in Southern Africa

*Khabele Matlosa* *

## Abstract

Since the onset of the democratisation process in Southern Africa in the 1990s, democracy discourses in both academic and policy-making circles have become more robust and invigorated. Although much of the attention has been largely on elections and their value to democracy, this article attempts to broaden both the theoretical and factual terrain of this interesting epistemological exchange among intellectuals and policy makers on democratisation in Southern Africa. It does this by attempting to discover the possible linkages between elections, electoral systems, constitutionalism and conflict management and show precisely how these phenomena then either enhance or undermine democratic governance. If, indeed, the theoretical and

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practical interface between these phenomena adds value to the nurturing and consolidation of democratic governance, then how best should the Southern African Development Community (SADC) states make sure that there are no reversals on the democratic governance project? In a word, how do the states ensure sustainability of the process? Conversely, if in theory and practice the interface among these phenomena seems to undermine democratic governance, then a critical question becomes that of exactly how the SADC states then need to embark on some political reforms to address and redress identified policy gaps for democratic governance. This article thus argues strongly that for democratic governance and constitutionalism to be nurtured and consolidated, SADC states need to undergo deliberate electoral system reforms. Such reform process should also aim at achieving peace and stability by ensuring constructive management of both violent and non-violent conflicts. With the benefit of hindsight, it is abundantly evident that elections in the SADC region have triggered various types of conflict, thus undermining in the process constitutionalism and constitutional rule. Arguably, the electoral reform process could act as an anchor for stable constitutional governance a key for constructive management of both violent and non-violent conflicts in the SADC region.

## Introduction

That democratic governance is one of the current key development challenges facing the world in general and Southern Africa in particular brooks no controversy (Huntington 1991, Bratton & Van de Walle 1997, Ake 1996, Hyslop 1999, Ake 2000, UNDP 2002). Although the entire world has witnessed impressive progress towards democratic governance following the collapse of the ideological bipolarity of the Cold War era on a global scale and the demise of apartheid in Southern Africa specifically, enormous challenges for the nurturing and consolidation of democracy still persist. It is thus gratifying to recognise that even within the United Nations circles the issue of democratic governance is currently being made a focal policy issue with a view to influence member states to reform their political systems. It is therefore befitting that the 2002 Human Development Report of the United Nations Development Programme (UNDP) focuses its spotlight on democratic governance and human development under an appropriate theme 'Deepening

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Democracy in a Fragmented World'. In this important and timely publication, the UNDP (2002:51) aptly observes that

> around the world, more people are recognizing that governance matters for development – that institutions, rules and political processes play a big role in whether economies grow, whether children go to school, whether human development moves forward or back. So, promoting human development is not just a social, economic and technological challenge; *it is also an institutional and political challenge* (emphasis mine).

The world-wide transformation towards democratisation and commitment to democratic rule by governments and other critical policy actors has not left Africa in general and Southern Africa in particular untouched. Hyslop (1999:1) reminds us that

> in the 1990s Africa appeared to be poised between two possibilities for its future. On the one hand there was the apparent success of South Africa's democratic transition; on the other hand the path of disaster typified by events in Rwanda, Burundi, Zaire and the surrounding region. The early 1990s had brought a wave of democratization to the continent; by mid-decade, however, it remained unclear whether it was a decisive change or merely a superficial shift.

This phenomenal development, which the renowned American political scientist, Samuel Huntington (1991), prefers to term the Third Wave, has expressed itself through commitments by African governments to embrace democratic rule through various continental and regional initiatives. It was, indeed, in recognition of the momentous and epochal progress towards democratic rule in the Southern African region that the Southern African Political Economy Series (SAPES) Trust undertook a project in collaboration with the SADC Secretariat and the UNDP Regional Office, which culminated in the production of the 1998 SADC Regional Human Development Report entitled 'Governance and Human Development'. This important regional initiative was the first attempt by SADC states to produce regional human development reports and the SAPES Trust produced a second report entitled 'Challenges and Opportunities for Regional Integration' in 2000. This author was involved in both initiatives, which raised the issues of democratic governance as critical

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for sustainable human development in the region. In recognition of evident and commendable progress made in the region towards democratic governance, the 1998 Regional Human Development Report observes that the aspirations of the peoples of Southern Africa include:

- Broad participation in the process of governance and development;
- Meeting of basic material needs now that political independence has been attained;
- Consolidation of political freedom and human rights;
- Transparent electoral processes which are both free and fair at central and local government levels;
- Participation in the design and implementation of local and national programmes to ensure that their concerns and interests are taken on board;
- Representation in consultative forums to work out strategic visions for countries and to negotiate social accords or social contracts between the main players – government, business, labour and other civil society organisations – to underpin economic and social progress; and
- Good governance characterised by accountability and transparency in the upholding of the rule of law, the management of public finances, and pragmatic economic policies which ensure equitable growth and sustainable human development (SAPES/UNDP/SADC 1998:5-6).

At the continental level, the newly established African Union (AU), which was formally launched in Durban, South Africa, in July 2002, has openly committed member states to democratic governance which will be monitored from time to time through the African Peer Review Mechanism (Cilliers, 2002). Inextricably linked to this is the New Partnership for Africa's Development (NEPAD) – a continental socio-economic and political revival plan pioneered by Presidents Thabo Mbeki (South Africa), Olusegun Obasanjo (Nigeria), Abdoulaye Wade (Senegal) and Abdelaziz Bouteflika (Algeria) – which was unanimously adopted by the Organisation of African Unity (OAU) Summit in Lusaka, Zambia in 2001 and further embraced wholesale by the AU Summit in South Africa in 2002 (NEPAD 2001, Matlosa 2002, Hope 2002; Anyang' Nyong'o et al 2002). The NEPAD initiative unequivocally states that the key pre-requisites for sustainable development in Africa revolve around four initiatives as follows:

- Peace and security initiative
- Democracy and political governance initiative;
- Economic Management and corporate governance initiative; and
- Sub-regional and regional development initiatives (NEPAD 2001).

This perspective is also shared by the United Nations Economic Commission for Africa (UNECA) based in Addis Ababa, Ethiopia, which has initiated various country studies covering almost all African states and aimed at monitoring progress towards democratic governance in the continent with the ultimate purpose of producing the first-ever continental report on governance in Africa. This report will come in handy for both the AU peer review process and the fourth African Development Forum (ADF IV) to be held under the auspices of UNECA, focusing on governance in Africa.

At the regional level, Southern African states made impressive strides towards democratic governance since the early 1990s. Zambia (1991) and Lesotho (1993) led the way through their epoch-making elections, which in the case of the former witnessed the displacement of a *de jure* one party system by a multi-party system and in the case of the latter the dislodging of a military junta by a democratic order (SAPES/UNDP/SADC 1998). A renowned democracy expert and a policy analyst for the Kellogg Foundation, Dr. Gloria Somolekae (2002:187), appropriately captures this transformation as follows:

> In Southern Africa, the end of one party rule in countries like Malawi, Tanzania and Zambia, as well as the end of minority rule in South Africa and Namibia have all marked the ushering in of [..a..] new era of hope and renewal. Although the current situation in the DRC and Angola constitute a notable setback in the region, there is still reason to believe that the democratization wave which has been sweeping the region since the 1990s has not lost momentum.

Somolekae's understandable optimism is vindicated, and indeed validated, by commitment of the Southern African states themselves to democratic governance mainly through the Southern African Development Community (SADC) Treaty signed in Windhoek, Namibia in 1992. The SADC Treaty states that the major objectives of the regional integration scheme will include the following:

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- Evolution of common political values, systems and institutions;
- Promotion of peace and security; and
- Strengthening and consolidation of long-standing historical, social and cultural affinities and links among the peoples of the region.

It is behind this continental and regional backdrop that we are better positioned to appreciate strides made thus far by SADC member states towards democratic governance and to identify key challenges that still bedevil their political systems. Like various other parts of the world, the Southern Africa region is undergoing a profound political transformation. The era of authoritarianism of either civilian or military variety, which marked the region's political landscape during the 1960s, 1970s and 1980s, has been eclipsed by an era of political liberalisation, which has ushered in multi-party competition. However, whether political liberalisation is synonymous with democratic governance suitable for the SADC region still remains a moot point (see Matlosa 2003a). The political liberalisation underway in the region is fundamentally steeped in and steered towards the western-type liberal democracy in a majority of the states and has indeed become part of the political conditionality of aid by western multilateral and bilateral donors as well as the powerful international financial institutions such as the World Bank and the International Monetary Fund (IMF) upon whom these states so overwhelmingly depend for economic survival.

This raises quite a number of critical questions as to the form and content of democratic changes in the SADC region. Who drives the democratisation process in Southern Africa? Is liberal democracy an appropriate democratic model for the region, which is in accord with the dominant political culture in most SADC member states? If not, does the region need to steer its political system towards a social democratic model as suggested by a renowned Nigerian social scientist, the late Claude Ake (1996, 2000)? Who determines the form and substances of the democratic process? Who sets the rules for the current political change in the region? What is the role responsibility between internal forces and external actors in the process of democratisation? Do electoral systems add any value to the democratisation process and constitutionalism? Anyway, does the region need to hold regular elections for democracy and constitutional rule to be nurtured and consolidated? What are direct and indirect linkages between electoral systems and conflict in the region? Do regional states have to undergo electoral system reforms to achieve

various objectives for democratic consolidation, especially constructive conflict management?

These are complex questions, each of which could require a separate article for a comprehensive discussion. However, for the purpose of the present discussion we will not attempt to exhaust the questions as such, but rather provide a snapshot of the main policy issues revolving mainly around elections, the electoral systems, constitutionalism and conflict management in the SADC region as a whole. We do this mindful and cognisant of the urgency of these issues, given the fact that a considerable number (five out of fourteen) of the SADC member states will hold parliamentary elections in 2004. It is thus imperative that this important debate on elections, electoral systems, constitutionalism and conflict management, which the Electoral Institute of Southern Africa (EISA) and the SAPES Trust have, to a considerable degree, begun, be continued, sustained and deepened further.

This article aims to discover possible linkages and interface between electoral systems, democratisation and conflict management, by blending theory and practice in terms of the current development in the SADC region. The discussion follows the following pattern: the next section, following these prefatory remarks, attempts to discover the interface between constitutionalism and elections for democratic governance. Section three presents an analytic discussion of the essence of electoral systems to democratic governance in Southern Africa. Section four provides a comparative analysis of various electoral systems globally and throughout the SADC region in particular. In this regard, we focus the spotlight on the more dominant electoral systems in the region, namely the constituency electoral system or what is commonly known as the first-past-the-post (FPTP) system, and the proportional representation (PR) system. Section five interrogates the possible linkages between elections/electoral systems and conflict/conflict management. The sixth section focuses the debate on efforts towards electoral systems reform in the SADC region with a view not only to deepen democratic governance and constitutionalism, but also to ensure peace and stability through constructive management of conflicts. This section is divided into two sub-sections, one outlining the Lesotho electoral system reform process and another drawing lessons from the Mauritius electoral reform efforts. The final and concluding section wraps up the discussion by summing up the key assumptions and observations made in the paper. This section, in the main, presents a rather thought-provoking (and maybe controversial too) proposal that SADC states

should deliberately transform their electoral systems towards some form of the mixed member proportionality (MMP) system along the path followed recently by Lesotho and currently underway in Mauritius. The most compelling rationale for this proposal is that the adoption of a common electoral model for the region would deepen regional integration on the political arena, which is also a crucial determinant for economic integration (See SAPES/UNDP/SADC 1998, SAPES/UNDP/SADC 2000, Mandaza & Nabudere 2002). Furthermore, a more harmonised electoral system on a regional scale would also be helpful for the regional states to monitor and peer review each other in terms of progress (or lack thereof) towards democratisation in line with the SADC Treaty signed in Windhoek, Namibia, in 1992.

## Constitutionalism and Elections

An interesting debate on constitutionalism and democracy in Africa as a whole and Southern Africa in particular has been underway since the recent past, which is somewhat linked to the political transition of the 1990s in the region (Shivji 1991, Oloka-Onyango 2001, Hyden & Venter 2001). This debate is marked by, among others, a controversy regarding the conceptualisation and definition of what exactly constitutes constitutionalism. Oloka-Onyango (2001:2) captures this controversy fairly poignantly and is thus worth quoting *in extenso*:

> For many scholars, politicians and activists, the notion of constitution-alism is one that produces numerous and oftentimes conflicting responses. For some, especially the more positivist or legally minded – constitutionalism simply represents a concern with the instrumentalities of governance. These range from the constitution itself and other legally constructed documents that have been created to support it, the structures and institutions that are established under their framework. They outline …the 'power map' of the particular state and the formal relationships between the governed and those who govern them. Others adopt a more nuanced and embracing view, considering constitution-alism within the much broader context of the social, economic, political, gendered and cultural milieu wherein those instrumentalities operate. *A nicely worded or eloquently phrased document means nothing if the*

*context in which it is supposed to operate is harsh and hostile – a context in which you may have a 'constitution without constitutionalism'* (emphasis mine).

Thus, constitutionalism denotes a much more profound political process that transcends a simple adoption of a constitution by a given country. It essentially entails the existence of a political culture in a given country that translates the constitution into a living and lived experience by both the government and the governed. In a nutshell, therefore 'constitutionalism is concerned about all the various dimensions of statecraft and governance – from the seemingly mundane, to the great and vexing issues of political and economic management in a world that has increasingly become smaller' (Oloka Onyango 2001:3).

Although all the SADC countries have adopted constitutions of different types, the degree of constitutionalism obviously differs from one country to another. This explains, in part, the differences among the SADC states in terms of democratic governance and political stability. Constitutionalism is crucial for democratic governance in more ways than one. It ensures legitimacy of the state and acceptability or credibility of a regime's moral title to rule. Furthermore, constitutionalism ensures the necessary confidence of the electorate in the state and government, thus adding value to political stability and the constructive management of conflicts. The linkage, or interface if you wish, between constitutionalism and elections is fairly strong for the two processes are critical for democratic governance.

Elections are governed by the constitution of a given country. The constitution thus forms a firm foundation for elections as a fair and legitimate method of selecting and replacing governments. In a word, ballots rather than bullets form a credible constitutional instrument for governance and regime change (Matlosa 2001). Besides the constitution, elections are also governed by electoral laws specifically meant to regulate the entire process from beginning to end by detailing accepted behaviour and actions of stakeholders during the pre-election period, the election or polling day and the post-election period. These rules and regulations may be reinforced by a code of conduct for political parties and other key actors during the elections. The main players that are supposed to ensure constitutionalism in the electoral process are the Electoral Management Bodies (EMBs), the government, political parties and civil society organisations. Lack of constitutionalism can severely destabilise the interrelationship among these key actors and thus undermine the value of elections to democratic governance. It is widely accepted

that elections are a crucial, *albeit* not the only, ingredient of democratic transformation. The value of an election to a democracy is either enhanced or reduced depending on the nature of an electoral model/system being used. Whereas an election is basically a *process* of choosing leaders, an electoral system is a *method* or instrument of expressing that choice and translating votes into parliamentary seats.

As the region made strides in its transition from war and violent conflict towards peace and reconciliation in the 1990s, yet another transformation was underway: the transformation from mono-party, one-person and military rule towards political pluralism and multi-party democratic governance. Among various other key ingredients of this transformation are the holding of regular elections and electoral systems that undergird the electoral process itself. All regional states have embraced the practice of regular multi-party elections bar three, namely (a) Angola, (b) the Democratic Republic of the Congo (DRC) and (c) Swaziland. Whereas Angola and the DRC have been engulfed in protracted violent conflicts that undermined their democratic governance, Swaziland is still reeling under a ruthless dynastic regime that does not allow any space for democratic culture and practice.

While Botswana and Mauritius have managed to institutionalise regular multi-party elections predicated upon a liberal democratic model since their political independence, a majority of the SADC member states embraced multi-party elections since the 1990s. With Zambia and Lesotho leading the democratic wave in the SADC region as noted earlier, a majority of SADC member states including Tanzania, Malawi and Zimbabwe adopted multi-partyism and jettisoned *de jure* one-party rule. In countries like Namibia (1989), Mozambique (1994) and South Africa (1994) elections played a more profound role as they acted as conflict resolution instruments much as they ensured peace, reconciliation, democracy and stability. In Lesotho (1993), the election acted as a midwife for the birth of civilian rule marked by a fragile democracy following a military interregnum of about eight years. One of the major setbacks since the on-set of the democratisation process in the SADC region was the aborted election in Angola (1992), which failed to resolve the protracted violent conflict. However, following the death of the UNITA leader, Jonas Savimbi, early in 2002, prospects for peace, reconciliation and stability in Angola are much brighter and possibly elections could be held in 2004. Table 1 (see page 21) provides a snapshot of the electoral process in the SADC region since the recent past.

**Table 1: SADC Elections Calendar**

| Country | Date of Last Parliamentary Election | Date of Next Parliamentary Election | Nature of Legislature | Size of Legislature | Ruling Party |
|---|---|---|---|---|---|
| Angola | 1992 | 2005 | Unicameral | 220 | MPLA |
| Botswana | 1999 | 2004 | Bicameral | 47 | BDP |
| DRC | 1993 | 2005 | Dissolved | 210 | Trans. Gvt |
| Lesotho | 2002 | 2007 | Bicameral | 120 | LCD |
| Malawi | 2004 | 2009 | Unicameral | 177 | UDF |
| Mauritius | 2000 | 2005 | Unicameral | 70 | MMM & MSM |
| Mozambique | 1999 | 2004 | Unicameral | 250 | FRELIMO |
| Namibia | 1999 | 2004 | Bicameral | 104 | SWAPO |
| Seychelles | 1998 | 2003 | Unicameral | 35 | SPPP |
| South Africa | 2004 | 2009 | Bicameral | 400 | ANC |
| Swaziland | 1998 | 2003 | Bicameral | 65 | Exec.Monarch |
| Tanzania | 2000 | 2005 | Unicameral | 231 | CCM |
| Zambia | 2001 | 2006 | Unicameral | 159 | MMD |
| Zimbabwe | 2000 | 2005 | Unicameral | 150 | ZANU-PF |

Source: SAPES Trust Data Bank

| | |
|---|---|
| MPLA | Movement for the Popular Liberation of Angola |
| BDP | Botswana Democratic Party |
| LCD | Lesotho Congress for Democracy |
| UDF | United Democratic Front |
| MMM | Mauritian Militant Movement |
| MSM | Militant Socialist Movement |
| FRELIMO | Front for the Liberation of Mozambique |
| SWAPO | South West Africa People's Organisation |
| SPPP | Seychelles Peoples' Progressive Party |
| ANC | African National Congress |
| CCM | Chama Cha Mapinduzi |
| MMD | Movement for Multi-Party Democracy |
| ZANU-PF | Zimbabwe African National Union Popular Front |

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Elections refer to a process by which people (variously referred to as either voters, the electorate or the governed) choose their national and/or local leaders periodically to manage public affairs on their behalf. Elections therefore, serve the following functions:

- they provide a routine mechanism for recruiting and selecting individuals to occupy seats in representative institutions;
- they provide periodic opportunities to review the government's record, assess its mandate, and replace it with an alternative;
- they accord the elected government domestic and international legitimacy as well as moral title to rule; and
- they also act as agents of political socialisation and political integration, providing a unifying focus for the country (Jackson & Jackson 1997:366).

Elections take place on the basis of certain accepted procedures, rules and modalities that are peculiar to individual countries in Southern Africa. It is a combination of the legal and the institutional framework for elections. The legal and institutional set-up is commonly referred to as the *administrative system* of elections. The management and administration of elections is commonly the responsibility of the election management bodies as depicted in table 2 (see page 23).

The administrative framework is combined with the procedures, rules and regulations that govern the manner in which voters exercise their choice and legislators occupy their seats in parliament. A combination of these procedures, rules and regulations is commonly referred to as the *electoral system.* Although this paper does touch on the administrative machinery for elections where appropriate, it focuses primarily on the electoral system. The choice of an electoral system is crucial for the credibility of the electoral process, the acceptability of the election outcome and, of course, the legitimacy of rule itself. To be sure, the credibility of the process, the acceptability of the outcome and internal and international legitimacy of the rulers are all important ingredients for political stability in any given country. Whereas elections simply accord the electorate a right to choose their representatives in the legislature, the electoral system sets specific systemic rules, which determine 'who votes and how votes are counted' (Jackson & Jackson 1997:371). An electoral system, thus, determines the manner and pattern in which votes are matched with the allocation of seats in parliament. An electoral

**Table 2: Electoral Management Bodies (EMBs) in the SADC Region**

| Country | Nature of EMB | Nature of Appointment | Tenure |
|---|---|---|---|
| Angola | – | – | – |
| Botswana | Independent Electoral Commission | Nominated by an all-party Conference | No term limit |
| DRC | Independent Electoral Body | Transitional Government | 2 years |
| Lesotho | Independent Electoral Commission | Estab. by the Constitution & appointed by the King | 3 years |
| Malawi | Independent Electoral Commission | Estab. by the Electoral Commission Act & appointed by the President | Term ends 30 days after election results |
| Mauritius | Electoral Supervisory Commission | Estab. by the Constitution | 5 years |
| Mozambique | National Electoral Commission | Estab. by the electoral law | Term ends 120 days after elections |
| Namibia | National Electoral Commission | Estab. by the Constitution & appointed by the President | 5 years |
| Seychelles | One Commissioner | Estab. by the Constitution & appointed by the President | 7 years |
| South Africa | Independent Electoral Commission | Estab. by the Constitution & appointed by the President | 7 years |
| Swaziland | Electoral Committee | Appointed by the King | – |
| Tanzania | National Electoral Commission | Estab. by the Constitution & appointed by the President | 5 years |
| Zambia | Independent Electoral Commission | Estab. by the Constitution & appointed by the President | 7 years |
| Zimbabwe | Electoral Supervisory Commission | Estab. by the Electoral Act & appointed by the President | – |

Source: Electoral Institute of Southern Africa

system is therefore, 'a method of converting votes cast by electors into seats in a legislature. Electoral systems thus are practical instruments through which notions such as consent and representation are translated into reality' (Asmal & De Ville 1994:2).

## The Essence of Electoral Systems for Democracy in Southern Africa

An electoral system refers to a method that a given country adopts for choosing national leaders. It encompasses procedures, rules and regulations for the electorate to exercise their right to vote and determines how elected Members of Parliament (MPs) occupy their allocated seats in the legislature. Procedures, rules and regulations governing elections are commonly defined by both national constitutions and specific electoral laws. The administrative obligations and management of elections are the responsibility of specific public institutions (see table 2) tasked for that either as government departments (as in Zimbabwe) or as independent electoral commissions (as in South Africa). There are many electoral systems throughout the entire world and there is little consensus as to which is best for democratic governance and political stability. Each country adopts an electoral system that best suits its own political traditions, culture, history and party systems. As Jackson and Jackson (1997:371) aptly observe, 'each political system offers certain benefits and disadvantages in terms of the representation of different groups in society'.

There exist on a global scale four main types of electoral systems, namely single-member plurality (SMP), single-member majoritarian (SMM) and proportional representation (PR) and the mixed members proportionality (MMP) with multiple variations within and permutations amongst them. The essence of each of these systems is summed up in table 3 (see page 25) highlighting their distinctiveness in terms of constituency representation and party representation.

The political history of Southern Africa and the concomitant political culture have had an overbearing imprint and impact on the nature of electoral systems that individual states have adopted since the independence period. A majority of the Southern African states were under the British colonial rule and upon independence they adopted the Westminster constitution and political arrangement that go with it. It should then be noted that very few

**Table 3: Types of Electoral Systems and Representation**

| Electoral System | Constituency Representation | Party Representation |
|---|---|---|
| Single-Member Plurality | • Maintains traditional link between representative and constituents<br>• Representatives often elected on a minority of total votes (Wasted vote thesis) | • Distortion of votes/seats ratio<br>• Minor parties disadvantaged unless support is regionally concentrated<br>• Discourages multiplication of parties; tendency to two-party system; one party; dominant party system |
| Single-Member Majoritarian<br>(a) Alternative Vote<br>(b) Second Ballot | • Both maintain traditional link between representative and constituents<br>• In both cases Representatives usually elected by a majority | • Distortion of votes/seats ratio<br>• 'Wasted vote' thesis does not apply; small parties survive even if unsuccessful<br>• Tendency toward multi-party system |
| Proportional Representation<br>(a) Party List<br>(b) Single Transferable Vote | • Individual representatives usually owe election more to party than to voters<br>• Representatives forced to compete for 'first preference' votes | • Approximate congruence between vote shares and seat allocations<br>• Minor parties usually gain 'fair' representation; easy entry for new parties<br>• Tendency toward multi-party systems |
| Mixed Plurality/ Proportional Representation = Mixed Member Proportionality | • Maintains traditional link between representative and constituents | • Approximate congruence between vote shares and seat allocation<br>• Minor parties usually gain 'fair' representation |

Source: Jackson & Jackson 1997

Southern African states have thus far taken a deliberate effort to adopt an electoral system of their own choice involving internal popular consultations. These include South Africa, Namibia and recently Lesotho. The rest of the SADC member states operate electoral systems that are part of the legacy of the inherited political and constitutional arrangements left behind by the departing colonialists in the 1960s. Consequently, the British SMP or the FPTP electoral system has become a dominant political feature of elections in the SADC region given that Britain was indeed a dominant colonial power in the region. Table 4 (see page 27) vividly illustrates different electoral models used in the SADC region.

It is worth noting that the electoral systems that Southern African states have adopted are not a product of public debate and broadly based internal political consensus. The stark reality is that electoral systems in the region were 'generally hardly ever debated and carefully chosen on the basis of consensus among political players and the population at large' (Molutsi 1999:9-10). Independent Southern African states have simply inherited these systems from the colonial rulers together with other constitutional frameworks (Matlosa 1999). It is not surprising therefore, that out of 14 SADC states, eight operate the FPTP system, given that Britain was a dominant colonial power in the region. Only four member-states of SADC, namely Mozambique, Namibia and South Africa have adopted the PR, while three others operate some hybrid of the FPTP and PR combined together. These are Lesotho, Mauritius, and Seychelles. Distinctions between the FPTP and PR as dominant electoral systems in Southern Africa are worth considering. It is to these that the next section focuses our attention.


## The First-Past-the-Post and List-Proportional Representation Electoral Systems: A Comparative Perspective

### The First-Past-the-Post System (FPTP)

The FPTP or SMP system is the simplest of the electoral systems in the world. It is also the commonly used electoral model drawing from the traditions of liberal democracy in the United Kingdom, the United States of America and Canada. Of all 52 states in Africa, 18, mostly former British colonies, use the FPTP electoral system. In the Southern African region this system is used by Botswana, the DRC, Lesotho, Malawi, Tanzania, Swaziland, Zambia and Zimbabwe.

**Table 4: Electoral System, Size of Legislature & Nature of Representation**

| Country | Electoral System | Size of Legislative | Number of Ruling Party Seats | % Ruling Party Seats | Appointed Seats |
|---|---|---|---|---|---|
| Angola | FPTP | 220 | 129 | 53.7 | 0 |
| Botswana | FPTP | 47 | 33 | 54.2 | 7 |
| DRC | FPTP | 210 | – | – | – |
| Lesotho | MMP | 120 | 79 | 66.0 | 0 |
| Malawi | FPTP | 192 | 93 | 47.3 | 0 |
| Mauritius | Mixed | 66 | 54 | 51.7 | 4 |
| Mozambique | PR | 250 | 133 | 53.0 | 0 |
| Namibia | PR | 104 | 55 | 76.1 | 6 |
| Seychelles | Mixed | 34 | 30 | 61.7 | 0 |
| South Africa | PR | 400 | 266 | 66.4 | 0 |
| Swaziland | FPTP | 85 | – | – | 30 |
| Tanzania | FPTP | 274 | 244 | 89.1 | 42 |
| Zambia | FPTP | 158 | 69 | 46.0 | 8 |
| Zimbabwe | FPTP | 150 | 63 | 53.0 | 30 |

Source: SAPES Trust Data Bank

The principal tenets of this system are many and varied. First, a country is divided into relatively equal constituencies from which only one representative is chosen to occupy a parliamentary seat on behalf of that constituency. It is as a result of this tenet that the FPTP is reputed for ensuring accountability of the MP to his/her constituency. This is one of its major strengths vis-à-vis other electoral systems. Second, candidates contesting an election in constituencies stand in their own right as individuals and not as political parties even if their candidature is endorsed by parties. Often times, this feature of the FPTP is not understood by politicians, and this leads to serious problems, especially during the primary elections, emanating from conflict between constituencies and party leadership on the choice of candidates.

This usually results in intra-party squabbles, faction fighting and at times even a rupture of parties into fragmented splinter groups (witness this problem in Lesotho, 1998, and Zimbabwe, 2000). Disgruntled party faithfuls have had to stand as independent candidates while in some instances parties have made a ruling that they will not place candidates because the disagreements had not been resolved even by the courts of law. Third, this electoral system allows for independent candidates to contest elections in their own right. Fourth, the winner of an election contest in any constituency may secure a simple plurality of votes and not necessarily the majority of votes and this leads to winners by minority votes both at the constituency level as well as the national level. Both the candidates and parties that endorse candidates do not need absolute majority of votes to form a government. This situation leads to the all-pervasive problem of 'wasted votes' whereby a considerable proportion of votes does not form part of the calculation for the election outcome. There is no more vivid demonstration of a minority government brought about by the FPTP system in recent history than the 2001 parliamentary election in Zambia. Table 5 (see page 29) depicts a situation in which the ruling Movement for Multi-party Democracy (MMD) won the election on a paltry 44 per cent. Surely if a government wins an election on less than 50 per cent of total valid votes, this simply becomes a pyrrhic victory and amounts to disenfranchisement and wasted votes.

For instance, Lesotho's 1998 election and Botswana's 1999 election outcomes ignored the choice of almost 40 per cent and 46 per cent respectively due to this system. Furthermore, this situation has undermined legitimacy of governments in the region leading to major conflicts as the Lesotho case clearly demonstrates. The 1965 pre-independence election in Lesotho delivered a marginal victory for the Basutoland National Party (BNP), which won the election race on a minority vote of about 42 per cent of the total valid votes. It was no wonder that the BNP government suffered a severe legitimacy crisis afterwards. Hence the party was defeated by the opposition Basutoland Congress Party (BCP) in the subsequent election of 1970 in which the BCP won 50 per cent of the total valid votes. However, the ruling party annulled the election, declared a state of emergency and institutionalised authoritarian rule between 1970 and 1986 when it was dislodged from power by the military.

Fifth, given the very nature of this system, it tends to unduly advantage dominant parties either leading to a one-party/dominant party system or a two-party system (duopoly). In the case of the dominant party scenario, witness for instance how the Botswana Democratic Party (BDP) has managed to stamp

**Table 5: Zambia Parliamentary Election Results, 2001**

| Party | Seats | % |
|---|---|---|
| Agenda for Zambia (AZ) | 0 | 0 |
| Forum for Democracy and Development (FDD) | 13 | 9.1 |
| Heritage Party (HP) | 4 | 2.8 |
| Movement for Multi-party Democracy (MMD) | 62 | 43.7 |
| National Christian Coalition (NCC) | 0 | 0 |
| National Leadership for Development (NLD) | 0 | 0 |
| Patriotic Front (PF) | 1 | 0.7 |
| Social Democratic Party (SDP) | 0 | 0 |
| United Party for National Development (UPND) | 47 | 33.1 |
| United National Independence Party (UNIP) | 12 | 8.5 |
| Zambia Alliance for Progress (ZAP) | 0 | 0 |
| Zambia Republican Party (ZRP) | 2 | 1.4 |
| Independents | 1 | 0.7 |
| **Total** | **142** | **100** |

Source: Electoral Institute of Southern Africa

its political hegemony through this system in Botswana, yet the country has not been subjected to major political conflicts. Table 6 (see page 30) illustrates the election results in Botswana between 1965 and 1999. Three important observations are worth noting from these data. The first is that since the first election to date, the BDP has entrenched its political hegemony over the Botswana polity through some form of a de facto one-party system. The second is that representation of parties in the Botswana national assembly is certainly not broadly inclusive and this also undermines oppositional politics. The third is that the unfettered political hegemony of the ruling BDP and the marginalisation of opposition parties tend to trigger a feeling of bitterness on the part of opposition politicians, and lack of confidence in the system which in the case of Lesotho has also resulted in overt violent conflicts.

**Table 6:  Botswana Parliamentary Election Results, 1965–1999**

| Party | 1965 | 1969 | 1974 | 1979 | 1984 | 1989 | 1994 | 1999 |
|-------|------|------|------|------|------|------|------|------|
| BDP   | 28   | 24   | 27   | 29   | 29   | 31   | 27   | 33   |
| BPP   | 3    | 3    | 2    | 1    | 1    | 0    | 0    | 0    |
| BIP   | 0    | 1    | 1    | 0    | 0    | 0    | 0    | 0    |
| BNF   | –    | 3    | 2    | 2    | 4    | 3    | 13   | 6    |
| BPU   | –    | –    | –    | –    | 0    | 0    | 0    | 0    |
| BCP   | –    | –    | –    | –    | –    | –    | –    | 1    |
| BAM   | –    | –    | –    | –    | –    | –    | –    | 0    |
| **Total** | **31** | **31** | **32** | **32** | **34** | **31** | **40** | **40** |

Source: Molomo 2000

The outcome of elections between 1965 and 1999 in Botswana vividly demonstrates the hegemony of the BDP in the context of a dominant party system anchored upon the FPTP electoral system and liberal democracy as table 6 clearly demonstrates.

Despite the fact that the FPTP electoral system in Botswana has not really led to open violent political conflicts, it has ensured and entrenched the dominant party system in a way that excludes and marginalises other key actors in the political system. In this manner the foundations of Botswana's world-acclaimed liberal democracy still remain shaky. This explains in part Molomo's recent critique of Botswana's electoral model. In his own words 'there are growing concerns in Botswana that while the FPTP electoral system has consolidated electoral competition in the country, it has in many respects denied the electorate the chance to shape their political future… Democracy is…'. about ensuring that electoral outcomes reflect the will of the people. The FPTP electoral system has faired poorly in this regard' (Molomo 2000:109).

It is on the basis of the deficiencies of the FPTP that observers, including Molomo himself, have raised profound arguments for Botswana to reform its electoral system. According to Molomo (2000:118), 'what is desirable is the formulation of an electoral model that provides for an effective link between MPs and their Constituencies and also one that allocates seats

in proportion to the popular vote'. His suggestion for an ideal alternative electoral model is the adoption of the MMP electoral system akin to the one that Lesotho has just adopted. For Botswana, this could mean that the current 40 constituencies are retained and contested on the basis of the FPTP to retain the accountability element, then the proportionality element could be addressed by introduction of say 20 more seats 'allocated on the basis of the party poll of the popular vote. This system would address both issues of linking MPs to particular constituencies and constituting a representative Parliament' (Molomo 2000:118).

Exactly the same way as in Botswana, the FPTP system has ensured a de facto one-party system in Lesotho as table 7 (see page 32) clearly depicts. More importantly though, is the fact that unlike in Botswana where the one party hegemony has been sustained and reproduced under conditions of political stability, in Lesotho the reverse has been the case until the electoral reform of 2002. The difference between Lesotho and Botswana in terms of political stability, despite a common electoral system, surely has to do with other factors, principally (a) resource endowment, (b) political culture and (c) institutionalisation of governance. All three factors have stood Botswana in good stead and nurtured its liberal democracy, which today is widely acclaimed globally. In the case of Lesotho, lack of resources, political intolerance and personalisation of governance have reinforced violent conflicts.

Table 7 (see page 32) demonstrates how the FPTP system can also lead to a one-party parliament (particularly the 1993 elections outcome), disenfranchising a considerable number of voters with adverse effects for democratisation and political stability. Although the conflicts that engulfed Lesotho after the 1993 and 1998 elections emanated from a multiplicity of factors, the electoral system had its share of this instability, hence the government and the interim political authority have agreed on the reform of the electoral model towards the MMP system. This author contributed directly to the debate around Lesotho's electoral reform and was one of the proponents for the adoption of the MMP.

Although the FPTP system is conventionally regarded as critical for ensuring political stability of the political system because it does not lend itself to coalition governments, in other countries it has helped accentuate already existing conflicts as in Lesotho in 1993 and 1998 and in Tanzania in 2000. It is interesting though to note that the same system has not triggered major political conflicts in Botswana for instance. The most interesting

**Table 7:  Election Results in Lesotho, 1965–2002**

| Year | Main Parties | No. of Votes | % Votes | No. of Seats |
|---|---|---|---|---|
| **1965** | BNP | 108 162 | 41.6 | 31 |
| | BCP | 103 050 | 39.7 | 25 |
| | MFP | 42 837 | 16.5 | 4 |
| | **Total** | **259 825** | **100.0** | **60** |
| **1970** | BCP | 152 907 | 49.8 | 36 |
| election annulled | BNP | 120 686 | 42.2 | 23 |
| | MFP | 7 650 | 7.3 | 1 |
| | **Total** | **285 257** | **100.0** | **60** |
| **1993** | BCP | 398 355 | 74.7 | 65 |
| | BNP | 120 686 | 22.6 | 0 |
| | MFP | 7 650 | 1.4 | 0 |
| | **Total** | **532 978** | **100.0** | **65** |
| **1998** | LCD | 355 049 | 60.7 | 79 |
| | BNP | 143 073 | 24.5 | 1 |
| | BCP | 61 793 | 10.5 | 0 |
| | MFP | 7 460 | 1.3 | 0 |
| | **Total** | **582 740** | **100.0** | **80** |
| **2002** | LCD | 304 316 | 54.8 | 77 |
| | BNP | 124 234 | 22.4 | 21 |
| | BAC | 16 095 | 2.9 | 3 |
| | BCP | 14 584 | 2.7 | 3 |
| | LPC | 32 046 | 5.8 | 5 |
| | NIP | 30 346 | 5.5 | 5 |
| | LWP | 7 788 | 1.4 | 1 |
| | MFP | 6 890 | 1.2 | 1 |
| | PFD | 6 330 | 1.1 | 1 |
| | NPP | 3 985 | 0.7 | 1 |
| | **Total** | **554 386** | **100.0** | **118** |

Source: Matlosa 2003b

**Table 8: Zimbabwe Parliamentary Election Results, 2000**

| Party/Representation | Seats | % |
|---|---|---|
| Zimbabwe African National Union Popular Front (ZANU-PF) | 62 | 51.7 |
| Movement for Democratic Change (MDC) | 57 | 47.5 |
| ZANU-Ndonga | 1 | 0.8 |
| Non-constituency Parliament Members | 12 | – |
| Provincial Governors | 8 | – |
| Chiefs | 10 | – |
| **Total** | **150** | **100** |

Source: Electoral Institute of Southern Africa

outcome of this system so far in the region is the ushering in of a possible two-party (duopoly) system scenario in the recent general election in Zimbabwe (see table 8).

Of the total 120 elected parliamentary seats, the ruling ZANU-PF won a simple majority of 62 seats (about 49 per cent of the total valid votes) while the main opposition, the Movement for Democratic Change (MDC), secured 57 seats (about 46 per cent of the total valid votes). ZANU-Ndonga came third with only one seat and less than 1 per cent of the total valid votes. Only time will tell whether Zimbabwe will evolve into a two-party (duopoly) system as this outcome seems to suggest. It is worth noting, though, that since the 2000 election, a lot of by-elections have been held in both urban and rural constituencies, which the ZANU-PF has won, thereby reducing the MDC seats to about 52 – a development that has prospects of giving the former a two-third majority in the legislature and thus vesting it with power to amend the constitution on its own. The challenge for the ZANU-PF as a dominant and hegemonic party is to play a politics of accommodation that allows room for divergent opinions – even those highly critical of its own policies within the framework of multi-partyism. On the part of the MDC, the major challenge is to prove itself beyond the election that it is a viable, vibrant and sustainable opposition party able to engage the dominant party constructively within the framework of politics of consensus. Both parties will play a crucial role to either make or break the seemingly emergent two-party (duopoly) system in

Zimbabwe from which the region could learn significant lessons. Prospects for a vibrant two-party system in Zimbabwe, however, look rather remote, given the profound political polarisation of the country's social fabric.

Sixth, the FPTP is also known for its marginalisation of smaller parties as it entrenches the hegemony of either one or two dominant parties. This feature has implications for the inclusivity and representivity of the legislature in its law-making and decision-making functions. It is generally accepted that the more inclusive and more representative the governance system, the more legitimacy will a government draw from the electorate. It is, in part, due to this system that opposition parties are generally weak, ineffective and fragmented in the countries using the FPTP reinforcing either the one-party or dominant party situations. Equally important here is the critique that the FPTP does not increase gender equality and women's participation in the political process (Molokomme 2000). Table 11 (see page 38) vividly demonstrates this stark reality.

## List-Proportional Representation (PR) System

The PR system is relatively more complex than the FPTP. It draws its inspiration from the traditions of social democracies and the number of countries that have adopted this system include, inter alia, Denmark and Sweden. Although the system has multiple variants, the commonly used one is the party-list. In Southern Africa, only Mozambique, Namibia and South Africa use the party list variant of PR.

The PR has a number of tenets and features with implications for the election outcome, democratisation and political stability. First, the whole country is considered as one single constituency for the election, hence there is no need for the delimitation of election boundaries. Rather than being a constituency-based system, it is rather an opinion-based electoral system. Put simply, voters' choices are not restricted and determined by geographically confined electoral zones, but are driven by their opinions/inclinations regarding ideologies and manifestos of contesting parties.

Second, candidates do not contest elections as individuals, but as party candidates appearing on a prepared list. This explains why in the Southern African context the PR system does not provide room for independent candidates to contest an election unlike in the case of the FPTP. Voters also do not elect individuals but political parties. The party list of candidates is 'usually equivalent to the number of seats to be filled' (Asmal & De Ville 1994:6). As Jackson and Jackson (1999:373) observe, 'essentially, … in all

party list systems the election is primarily to ensure that the legislature reflects the relative popularity of the parties: individual candidates are a secondary concern'.

This links to the third feature namely that after the election, members of parliament are accountable to the party rather than to voters. Hence, the PR is usually criticised for its inability to ensure the accountability of the MP to the electorate, while subjecting him/her to the dictates of the party leadership. The winner is determined by a calculation of the total proportion of votes of each party relative to the overall valid votes cast. Using a threshold for qualification of parties to enter parliament (e.g. 0.5 per cent in South Africa), qualifying parties are allotted parliamentary seats in equal proportion to their electoral strengths.

Fourthly, unlike the FPTP, the PR is reputed for encouraging more inclusive and fairly representative mechanisms of governance. The PR lends itself easily to coalition governments. Whereas coalition governments could be a recipe for political instability, if well managed, coalition governments, or what are also referred to as governments of national unity, could prove useful in building politics of consensus and compromise as the Mozambican and South African experiences clearly show. The inclusivity of the Mozambican electoral system can be demonstrated by the nature of the election outcomes in 1999 as table 9 (see page 36) illustrates.

In this way, the PR system has been found to be extremely useful as a conflict resolution mechanism especially for countries emerging from violent conflicts such as Mozambique, Namibia and South Africa (Matlosa 2001).

Witness for instance the enormous contribution of the inclusive and broadly representative PR system which first helped in the South African political transition to usher in a government of national unity following the 1994 election, and subsequently to nurture and consolidate peace, reconciliation and political stability through the second successful 1999 election. Although, of course, various other factors are at play in terms of South Africa's stable democracy, no doubt the PR has its own share of the remarkable progress that South Africa has made thus far in the management of the most protracted armed conflict in Africa and in deepening its democratic governance. Table 10 (see page 37) illustrates vividly the inclusivity and representivity of the PR system in South Africa by depicting the outcome of the 1999 election.

As a conflict resolution mechanism, this system could also serve countries like Angola and the DRC well in order to entrench peace and security at least

**Table 9: Mozambique's Election Results, 1999**

| Presidential Election | | | |
|---|---|---|---|
| **Party** | **Candidate** | **Total Votes Won** | **% of Total Votes Won** |
| Front for the Liberation of Mozambique (FRELIMO) | Chissano | 2 338 333 | 52.3 |
| National Resistance Movement of Mozambique (RENAMO) | Dhlakama | 2 133 655 | 47.7 |
| **Total** | | **4 471 988** | **100.0** |
| Parliamentary Election | | | |
| **Party/Coalition** | **Total Votes Won** | **% of Total Votes** | **Parliamentary Seats** |
| FRELIMO | 2 005 703 | 48.53 | 133 |
| RENAMO | 1 603 811 | 38.81 | 117 |
| OTHER | 532 789 | 12.66 | – |
| **Total** | **4 132 303** | **100.0** | **250** |

Source: SAPES Trust Data Bank

as part of the political settlement of the war. This suggests that before the PR system could contribute positively to a constructive management of a conflict, a solid peace agreement to which all belligerent parties adhere to must be in place (Matlosa 2001). Furthermore, the system is considered conducive for enhancing gender equality in politics and increased participation of women (Molokomme 2000). In a recent study, Molokomme discovered that although PR by itself is not a sufficient guarantee for increased women's participation in the legislature and cabinet, it was surely a catalyst for that. Table 11 (see page 38) depicts women's participation in parliament in the SADC region and according to this table surely those countries using the PR electoral system are doing much better than those using the FPTP.

SADC states signed the declaration on Gender and Development during the 1997 summit in Blantyre, Malawi. The summit committed member states to equal gender representation in all key organs responsible for decision

**Table 10: South Africa's Election Results, 2004**

| Party | Total Votes Won | % of Total Valid Votes | Parliamentary Seats |
|---|---|---|---|
| African Christian Democratic Party | 250 272 | 1.6 | 6 |
| African National Congress | 10 878 251 | 69.68 | 279 |
| Azanian People's Organisation | 41 776 | 0.27 | 2 |
| Christian Democratic Party | 17 619 | 0.11 | 0 |
| Democratic Alliance | 1 931 201 | 12.37 | 50 |
| Independent Democrats | 269 765 | 1.73 | 7 |
| Inkatha Freedom Party | 1 088 664 | 6.97 | 28 |
| Keep it Straight and Simple | 6 514 | 0.04 | 0 |
| Minority Front | 55 267 | 0.35 | 2 |
| Nasionale Aksie | 15 804 | 0.1 | 2 |
| New National Party | 257 824 | 1.65 | 7 |
| New Labour Party | 13 318 | 0.09 | 0 |
| Pan-Africanist Congress of Azania | 113 512 | 0.73 | 3 |
| Peace and Justice Party | 15 187 | 0.1 | 0 |
| The Employment Movement of SA | 10 446 | 0.07 | 0 |
| The Organisation Party | 7 531 | 0.05 | 0 |
| The Socialist Party of Azania | 14 853 | 0.1 | 0 |
| United Christian Democratic Party | 117 7892 | 0.75 | 3 |
| United Democratic Movement | 355 717 | 2.28 | 9 |
| United Front | 11 889 | 0.08 | 0 |
| Vryheidsfront/Freedom Front Plus | 139 465 | 0.89 | 4 |
| **Total** | **15 612 667** | **100.0** | **400** |

Source: www.elections.org.za

**Table 11: Women in Parliament in the SADC Region**

| Country | Election | Seats | Women | % Women | Electoral System |
|---------|----------|-------|-------|---------|------------------|
| Angola | 1992 | 224 | 34 | 15 | FPTP |
| Botswana | 1999 | 47 | 8 | 18 | FPTP |
| DRC | 1970 | 210 | - | - | FPTP |
| Lesotho | 2002 | 120 | 10 | 12 | Mixed |
| Malawi | 1999 | 193 | 16 | 8 | FPTP |
| Mauritius | 1995 | 65 | 5 | 8 | Mixed |
| Mozambique | 1999 | 250 | 71 | 28 | PR |
| Namibia | 1999 | 99 | 19 | 19 | PR |
| Seychelles | 1998 | 33 | 8 | 24 | Mixed |
| South Africa | 2004 | 400 | 157 | 40 | PR |
| Swaziland | 1998 | 95 | 7 | 7 | FPTP |
| Tanzania | 1995 | 275 | 45 | 16 | FPTP |
| Zambia | 1996 | 150 | 16 | 10 | FPTP |
| Zimbabwe | 2000 | 150 | 13 | 9 | FPTP |

Source: Molokomme 2000

making by the State by the year 2005. In this regard, member states committed themselves to immediately achieve at least 30 per cent representation of women in decision-making structures. It is within this context that table 11 must be understood. It is clear from the table that the top four countries in terms of high women representation in Parliament are South Africa, Mozambique, Seychelles and Namibia. Three of these operate the PR system, while one operates a mixed system. The bottom four countries in terms of women representation in Parliament are Swaziland, Malawi, Mauritius and Lesotho. It is instructive that three of these operate the FPTP system, while one operates a mixed system. A plausible argument can be made that the PR is surely a better system for the enhancement of gender equality in the

legislature. The MMP is the next best system for this purpose too, whilst the FPTP is the worst case scenario for increased women's participation in the legislature. Furthermore, it is abundantly evident today that the PR system is more useful for constructive management of conflicts especially for countries emanating from protracted violent wars. The FPTP system has been identified as one of the various factors behind different types of both violent and non-violent conflicts in countries such Lesotho, Zambia and Zimbabwe, although it has not necessarily triggered conflicts of such magnitude in Botswana. It is to the interface between elections and conflict that the next section now turns.

## Elections and Conflict Management

One of the major challenges and threats to the on-going democratisation process in Southern Africa relates to the conflicts of various forms that mark the region's political landscape, especially violent conflicts (Ohlson & Stedman, 1994, Adedeji 1999, Matlosa 2000). Conflict is part and parcel of social change in all societies and as such it is not necessarily a negative phenomenon, but conflicts become destructive and counter-productive once they escalate into violence and belligerents resort to violent means of resolving them. It could be argued, therefore, that the major problem facing the region is not so much that there are conflicts (overt and covert, violent and non-violent) everywhere, but rather that no effective regional mechanisms have been built for constructive management of the conflicts.

Ohlson and Stedman (1994:228) observe that 'domestic conflict resolution in Southern Africa generally occurs on an ad hoc basis, in response to crises. Southern Africa's countries, with the exception of Botswana, lack the basic institutions for resolving conflict steadily and preventing conflict from turning violent'. Whereas during the cold war and apartheid the Southern Africa region was engulfed in violent inter-state conflicts mainly propelled by ideological polarisation, the current era is marked by the prevalence of resource-based intra-state conflicts. Our analysis of the root causes of conflict and instability in Southern Africa is influenced more by structuralist perspectives. At the heart of major wars in the region, according to structuralist theorists, lies what can be termed a Triangle of Conflict comprising (a) contestation over state power, (b) distribution of resources and (c) cleavages based on ideology and social identity. It is within this framework of the Triangle of Conflict that various scholars (Ohlson & Stedman, 1994;

Ohlson, 1993) have identified the following profile/classification of conflicts that have engulfed Southern Africa:

- Conflicts associated with war termination and reconciliation (Namibia, South Africa, Mozambique and Angola);
- Conflicts over distribution (Angola, Zimbabwe and DRC);
- Conflicts over political participation (Lesotho, Botswana, Tanzania, Zambia, Malawi, Mozambique, Zimbabwe);
- Conflicts over identity and societal insecurity (in most SADC states, especially former settler colonies);
- Armed Conflicts over control of government or territory (Angola and DRC).

These various types of conflicts are not mutually exclusive from each other but are inextricably intertwined. As Ohlson (1993:247) points out, 'they feed into each other in complex webs of interdependence specific to each state. In their various manifestations all of them also have one thing in common: they concern legitimacy or, more specifically, the loss of popular legitimacy by state apparatuses due to the unwillingness or inability of government to meet expectations of citizens. They all illustrate the tendency towards a weakening of the state relative to other actors'.

The most costly and complex of these violent conflicts have engulfed two resource-rich SADC member states, namely Angola and the DRC, with dire consequences for democratisation and political stability, although prospects for peace and security in both look fairly bright lately. Sporadic violent conflicts have also occurred in Lesotho, Zimbabwe and Tanzania, linked to their recent elections. In the case of Lesotho, South Africa and Botswana intervened militarily to quell the violent conflict in 1998. Zimbabwe, Angola and Namibia have undertaken a joint military intervention in support of the Kabila government in the DRC war since 1998. The external military intervention in both Lesotho and the DRC has provoked debate around modalities and mechanisms for security co-operation in the region (Landsberg 2002). This debate has brought to the spotlight the crisis that has beset the SADC Organ for Politics, Defence and Security as a supranational structure for collective management of conflicts and promotion of democratic rule during the period 1996-2001.

There is no gainsaying that presently the Southern African region is confronted with a daunting task of nurturing and consolidating the new-found democratic governance as well as institutionalising a culture of peace and

constructive management of both violent and non-violent conflicts. No doubt, elections are bound to play a critical role to either contain or fan conflicts of various types in the SADC region. In the words of Kumar (1998:7):

> Post-conflict elections are supposed to transform a violent conflict into a non-violent one: *ballots take the place of bullets*. They are expected to enable the former warring parties to pursue their conflicting ideologies and programmes in a peaceful fashion. Elections give all factions an opportunity to present their agendas to the citizens, debate with their opponents, and mobilize public opinion to capture political power. Like other elements of democratic system, *elections contribute to the institutionalization of a conflict resolution mechanism* in the body politic (emphasis mine).

As has already been argued earlier, a majority of states operating the PR electoral system have held elections under a political condition marked by stability while those that have adopted the FPTP have experienced considerable instability. Generally, therefore the PR lends itself easily to political stability by and large, whereas, with few exceptions such as Botswana, the FPTP system does have its (un)fair share of contribution to most violent and non-violent conflicts that have beset some SADC member states such as Lesotho (Matlosa 2001, Elklit 2002). It is thus in order that the next section turns the spotlight on the challenges for electoral system reform in the SADC region with an explicit aim to nurture and consolidate democratic governance, deepen constitutionalism and ensure constructive management of the region's multivariate conflicts.

## Toward Electoral System Reform: Which Way SADC?

This paper has established the interface between electoral systems and democratisation in Southern Africa. It argues strongly that for an electoral system to add value to democracy, it must enhance accountability of the MPs to their constituency while at the same time ensuring broader representation of key political forces in the legislature. In this way a political system becomes more inclusive and participatory and accords the rulers legitimacy to govern. This further ensures that instability does not destabilise the region's political systems. SADC states must make deliberate efforts of

addressing election-related conflicts and war by, among other things, reforming their electoral systems accordingly.

A majority of SADC states has embraced the principle of regular multi-party elections. The dominant electoral systems used in the region are the FPTP and PR. These electoral systems differ fundamentally in terms of their essence and features as well as their impact on election outcomes and political stability needed for democratic governance. We have argued that elections and electoral systems are crucial, but not the only, ingredients for political stability and democratic governance in Southern Africa. Generally, the PR is more conducive to stability and broad representation in the process of governance than the FPTP. However, despite its multivariate defects and deficiencies, the FPTP is also reputed for enhancing the accountability of the MP to the electorate.

A reform process aimed at the adoption of an admixture of the FPTP and PR systems could stand the SADC region in good stead in terms of nurturing and consolidating democratic governance. The recent electoral system reform process in both Lesotho and Mauritius could help the region with lessons of experience in introducing the MMP as a preferred electoral model. This model is used mainly in Germany and New Zealand.

## Some Lessons from the Lesotho Electoral Reform Process

Lesotho used this electoral model during the 2002 elections for the first time (see Elklit 2002). Its main tenets are as follows:

- Constituency-based seats are retained – constituency vote;
- Party-based seats are introduced – party vote;
- The total of constituency-based and party-based seats make up the legislature;
- A specific formula is developed to regulate entry into parliament and the calculation of seats (e.g. in New Zealand two conditions apply namely that (a) a party must cross the threshold of at least 5 per cent of party votes and (b) it must win at least one constituency seat). In Lesotho, the entry threshold is determined by each party's quota of total valid votes cast.
- Voting may take place on the basis of either two ballot papers or a single ballot paper. The latter is used in New Zealand and could prove convenient and cost-effective for the SADC region. Lesotho uses a

rather cumbersome system of a double ballot which has a great potential of bureaucratising the voting process and is also costly financially.

Although I am making a strong recommendation that SADC states deliberately steer their electoral systems towards the MMP, it should be noted that this system is rather complex. This is so because it actually combines two systems into one. In fact, the most difficult aspect of this system has to do with a formula for entry of MPS into the legislative and allocation of seats. Consider for example table 12 (see page 44) which illustrates the allocation of seats on the basis of the MMP to opposition parties. Since the ruling LCD had captured 77 out of 78 contested seats, it did not qualify for compensatory seats within the MMP framework.

The allocation of seats on the basis of the MMP follows the following steps:

Step One Total valid votes cast (554 386) divided by total number of legislative seats (118) = Quota of votes (4 699).

Step Two Party votes divided by Quota of votes = Party Quota.

Step Three Subtract the summation of party Quotas from the total number of legislative seats.

Step Four Any remaining vacant seats will be allocated in the order of the parties with highest decimal fraction arising from the calculation done in step three above.

Step Five Subtract constituency seats won by each party from the total number of seats won by the party to get the party's compensatory seats.

Step Six Summation of the compensatory seats to ensure that the total tallies with the stipulated number of PR seats.

The MMP system has a great potential to deepen democratic governance and ensure political stability in Lesotho. Given its inherent representativeness and inclusivity, which virtues are bound to encourage politics of accommodation and consensus, this system has suddenly become so popular that it is termed *Ntsoepelele* in local vernacular, which means getting a smaller share of the bread. Although at times used rather derogatorily, the *Ntsoepelele* concept is so apt in describing the MMP given that indeed the ruling LCD has the largest share of the cake (77 out of 78 contested seats) and the other opposition parties have managed to get smaller shares of the national cake.

**Table 12: Allocation of Seats on the Basis of the New MMP System**

| Party Name | Total Party Votes (valid votes) | Constituencies Won by Party | Party's Allocation of Compensatory Seats | Total No. of seats | % Party Votes (valid votes) | % Seats Won (constituency seats + compensatory seats) |
|---|---|---|---|---|---|---|
| Basotho National Party | 124 234 | 0 | 21 | 21 | 22.4 | 17.8 |
| Basutoland African Congress | 16 095 | 0 | 3 | 3 | 2.9 | 2.5 |
| Basutholand Congress Party | 14 584 | 0 | 3 | 3 | 2.6 | 2.5 |
| Christian Democracy Party | 1 919 | 0 | 0 | 0 | 0.3 | 0.0 |
| Khoeetsa ea Sechaba/ Popular Front For Democracy | 6 330 | 0 | 1 | 1 | 1.1 | 0.8 |
| Kopanang Basotho Party | 1 155 | 0 | 0 | 0 | 0.2 | 0.0 |
| Lesotho Congress For Democracy | 304 316 | 77 | 0 | 77 | 54.9 | 65.3 |
| Lesotho Peoples' Congress | 32 046 | 1 | 4 | 5 | 5.8 | 4.2 |
| Lesotho Workers Party | 7 788 | 0 | 1 | 1 | 1.4 | 0.8 |
| Marematlou Freedom Party | 6 890 | 0 | 1 | 1 | 1.2 | 0.8 |
| National Independent Party | 30 346 | 0 | 5 | 5 | 5.5 | 4.2 |
| National Progressive Party | 3 985 | 0 | 1 | 1 | 0.7 | 0.8 |
| New Lesotho's Freedom Party | 1 671 | 0 | 0 | 0 | 0.3 | 0.0 |
| Sefate Democratic Union | 1 584 | 0 | 0 | 0 | 0.3 | 0.0 |
| Social Democracy Party | 542 | 0 | 0 | 0 | 0.1 | 0.0 |
| United Party | 901 | 0 | 0 | 0 | 0.2 | 0.0 |
| Independents | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| **Total** | **554 386** | **78** | **40** | **118** | **100** | **100** |

Source: Independent Electoral Commission, Lesotho 2002

The electoral reform process should not be confined to the political elite alone. The process must involve all sectors and sections of society from the planning stages, through design stages up to the implementation and review stages. This is an area where the Lesotho reform process has been weakest and this required a vigorous voter education prior to the 2002 election. The reform process must also not just lead to an adoption of a particular MMP only because it is implemented in New Zealand and Lesotho, but the reform process must be in accord with the particular political culture of each one of the SADC states. In other words, the electoral reform process must be homegrown and driven by a national vision rather than being externally derived and driven by aid donors.

## Some Lessons from Mauritius' Electoral Reform Process

As in the Lesotho case, Mauritius has also embarked upon a deliberate process of electoral system reform. It is interesting to note that whereas the electoral system reform in Lesotho was informed and driven more by the desire to reverse an age-old pervasive phenomenon of political instability, in the case of Mauritius the main driving motive was to entrench an already mature and relatively stable multi-party democracy. In the entire SADC region, the two main relatively mature and stable liberal democracies are surely Botswana and Mauritius. Among many internationally acclaimed attributes of the Mauritian democracy, is the holding of regular elections and hence installation of legitimate and credible government. Mauritius has thus been renowned for its constitutionally entrenched democratic tradition of regular elections since its independence in 1968. Since its independence, Mauritius has operated fundamentally a British-style FPTP electoral system. In contrast to the Lesotho FPTP, the Mauritian FPTP was improved by introduction of a compensatory mechanism known as the Best Loser System (BLS), which was an attempt to improve on the deficit of FPTP in relation to broader representation and inclusivity of the system and extend broader participation to parties in the national assembly. Despite the compensation factor introduced by the BLS, Mauritius has not been satisfied with the FPTP system in terms of value added to its democratic governance. Consequently, following protracted debate in the country, recently the government engaged a high-powered commission on 'Constitutional and Electoral Reform'. This Commission, which undertook its noble assignment during the latter part of 2001, completed its task on the 24 January 2002. The Commission comprised the following:

- Justice Albie Sachs (South Africa) – Chairperson;
- Mr. B.B. Tandon (India) – Member; and
- Mr. R. Alnee (Mauritius) – Member.

Among many of the Terms of Reference (TORs) of the Sachs Commission (as it is now commonly referred to) were the following:

- To make proposals regarding representation in parliament on a proportional basis within the context of existing electoral system;
- To make proposals for the prohibition of communal or religious political parties.

Much the same way as we have argued in the case of Lesotho, the Sachs Commission was also unswerving in its critique of the FPTP system in that the system unduly rewards dominant ruling parties to the disadvantage of relatively smaller opposition parties. The Commission had been provided an enormous amount of evidence in this regard by a number of deponents. It is thus with no consternation that the Commission observed as follows:

> ... there was unanimity that the first-past-the-post system in the three-member constituency frequently produced results which were grossly disproportionate to the share of votes obtained by different parties. At times although obtaining a substantial vote, the opposition was either completely or nearly completely eliminated. Thus, in 1982 and 1995 the result was 60-0, while in 1991 and the year 2000, the presence of the opposition barely reached symbolic levels (Sachs et al 2002:13).

The most recent election held in Mauritius on the 11th of September 2000 still demonstrates the inadequacies of the FPTP. The election outcome witnessed the MSM-MMM alliance claiming state power on a paltry 51.7 per cent of total valid votes and grabbing all the 60 parliamentary seats. Although this disequilibrium is compensated for by the BLS the negative effect of the FPTP system on Mauritius' flourishing democracy still remains. Thus despite the BLS mechanism, the FPTP system still has a number of deficiencies which prompted the government in Mauritius to engage a Commission specifically to introduce a PR component pretty much towards the MMP. In its task of injecting a PR mechanism in what is essentially a FPTP System, the Sachs Commission took into account the following guiding principles:

- fairness;
- stability;
- simplicity;
- familiarity;
- impact on national harmony and social progress (Sachs et al 2002:6).

After exploring critically several options provided by numerous deponents, the Sachs Commission proposed the adoption of an MMP System in which a proportion of Members of Parliament will be elected on the basis of the FPTP and other parliamentary seats occupied on the basis of a compensatory list PR System. The threshold for party candidates to claim seats under the PR has been set at 10 per cent of the total national vote. This was meant precisely to preserve the system of strong, broadly representative parties and to prevent the emergence of a multitude of communally-based or single-issued parties which would fragment the nation and promote governmental instability (Sachs et al 2002:19). The introduction of the MMP system in Mauritius is a positive political development for the country in that the FPTP system has generally been retained for purposes of accountability, but the PR component has been introduced in place of the BLS. The introduction of the MMP system will strengthen Mauritius' democracy in more ways than one by:

- enabling leading figures who could not contest election through the FPTP route to enter Parliament;
- facilitating greater participation of women in Parliament and government structures as a whole;
- opening awareness for disadvantaged social groups to participate in the governance process;
- eliminating possibilities for sectarian communal and religious based parties; and
- establishing mechanisms that subsume the BLS and embrace its under-lying affirmative action (Sachs et al 2002:25).

The actual workings of the new MMP system for Mauritius are as follows:

- 62 seats in the national assembly with 20 constituency seats each returning three members and Rodrigues two members;
- Introduction of a further 30 parliamentary seats contested on the basis of a list PR system;

- Establishment of a 10 per cent threshold for parties contesting the 30 PR seats to claim seats in the national assembly;
- Election candidates would not be allowed to contest on both FPTP and PR tickets at the same time;
- Participation of women in governance should be ensured through a requirement that in each bloc of three candidates nominated for the FPTP seats at least one be a woman and that every third candidate on the list PR system be a woman (Zebra PR).

Although the Mauritian government has in principle endorsed the recommendations of the 2002 Sachs Commission, implementation of the proposed electoral system reforms is yet to be effected. It is anticipated that the new MMP system will be put into effect during the next general election scheduled for 2004.


## Conclusion

There is no doubt that Southern African states have made tremendous strides towards democratic governance and constitutionalism since the early 1990s in earnest. There is also no gainsaying that since the collapse of the Cold War on a global scale and the demise of apartheid in South Africa, the conflict landscape in Southern Africa has changed radically (Baregu & Landsberg 2003). Major violent inter-state conflicts have been resolved by political means, although pockets of violent intra-state conflicts still persist. However, it is only fair to conclude that progress made in the arena of democratic and constitutional governance married with progress in the area of peace and security augur well for the region's democratisation project and institutional mechanisms for constructive management of conflicts. Thus, it is no exaggeration to posit that prospects for democratic governance in the SADC region are fairly bright. The 2002 UNDP Human Development Report conceives of democratic governance as encompassing the following basic tenets:

- Respect for people's human rights and fundamental freedoms, thus allowing them to leave with dignity;
- Allowing people to have a say in decisions that affect their lives;
- Allowing people to hold decision-makers accountable;

- Inclusive and fair rules, institutions and practices govern social interactions;
- Institutionalising gender equality in public and private spheres of life and decision-making;
- People are free from discrimination based on race, ethnicity, class, gender or any other attribute;
- The needs of future generations are reflected in current policies;
- Economic and social policies are responsive to people's needs and aspirations; and
- Economic and social policies aim at eradicating poverty and expanding the choices that all people have in their lives (UNDP 2002:51).

Judging by the above basic tenets, it is clearly evident that democratic governance in the SADC region still needs to be nurtured and consolidated through deliberate reforms of both the political systems and electoral systems. As regards the reform of the political system, it is desirable that SADC member-states consider adopting social democracy rather than liberal democracy. The western-type liberal democracy is only adequate in sustaining formal democracy and certainly not enough for consolidation of substantive democracy in Africa as a whole and Southern Africa in particular. Africa needs to move beyond liberal democracy towards social democracy, which Claude Ake (1996:132) defined as:

- A democracy in which people have real decision-making power over and above formal consent of electoral choice;
- A democracy that puts emphasis on concrete political, social and economic rights as opposed to liberal democracy, which emphasises abstract political rights only;
- A democracy that puts as much emphasis on collective rights as it does on individual rights; and
- A democracy of incorporation, inclusivity and popular participation paying due regard to racial, ethnic and gender equality.

This systemic reform has to dovetail neatly with policy reforms around electoral systems which most of the SADC states inherited from the departing colonial administration in the 1960s as part and parcel of the trappings of the western liberal democracy as it were. This process of electoral reform is precisely in accord with the SADC Treaty of 1992, which, among other things,

commits member states to evolve common political values, systems and institutions in order to achieve stability, peace and security. Furthermore, NEPAD identifies democracy, political governance, peace and security as crucial pre-requisites for sustainable development. Pursuant to the 1992 SADC Treaty and the 2001 NEPAD, Southern African States should reform their electoral systems with a view to deepen democratic governance. In order to evolve common political values, systems and institutions, SADC states are therefore urged to consider adoption of the MMP electoral system. Although individual states should initiate the reform process, institutions such as the United Nations (UN), through the UNDP, the AU, through the UNECA, and SADC should assist this process to its logical conclusion.

It is worth noting that in fact UNECA has already begun a continental project aimed at assessing progress towards democratic governance in Africa. UNECA intends to produce the first African governance report by the end of 2002. This UNECA project investigates three main components of governance namely (a) political representation, (b) institutional effectiveness and accountability and (c) economic management and corporate governance. Electoral systems reform is bound to become an important issue to feature in this report. In order not only to deepen democratic governance in the SADC region and in this regard living up to the expectations of NEPAD as well as ensuring the successful implementation of the democracy peer review instruments of the AU and UNECA, this paper argues strongly for a deliberate electoral systems reform throughout the region aimed at a regional adoption of the MMP along similar lines as has recently happened in Lesotho and Mauritius.

It is gratifying to also note that the SADC heads of state and government during their recent Annual Summit held in Luanda, Angola on the 3rd October 2002 made a definite commitment to nurture and consolidate democracy in the region. To this end the Summit urged member states to continue with efforts 'directed at deepening and accelerating reforms to constitutional, political and electoral system to ensure that they are participatory, account-able, inclusive and predictable' (SADC 2002:2). It is worth noting that the electoral reform process in the SADC region should not be an end in itself, but rather a means to an end. Electoral system reform should aim at nurturing and consolidating democracy, deepening constitutionalism and ensuring peace and security through constructive management of conflicts.

# Electoral Systems, Constitutionalism and Conflict Management

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# The Need for Electoral Reform in Botswana

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## Abstract

Botswana has been operating a First-Past-The-Post (FPTP) electoral system since her independence from Britain in 1965. Unlike other African countries, this system has not led to electoral violence or political instability. The system is not without its limitations, however. It lacks internal democracy and disadvantages the ruling party. Fair political competition cannot exist between the unequal. This hinges on the quality and depth of democracy. To enhance its democracy, Botswana needs to adopt a mix between Proportional Representation (PR) and FPTP.

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## Introduction

Botswana, as the longest serving multiparty democracy in Africa, has been widely acclaimed as a beacon of democracy. Democracy and good governance must take place within a framework of constitutional and legal discipline based on a set of fundamental rules that are codified in a written constitution, which affords people popular participation in the political process. The constitution is a document that embodies or personifies the existence of a state and constitutes a social contract between the state and the people. Invariably, constitutional reform based on the will of the people represents a good step toward democratisation.

In Botswana electoral law is provided for in the constitution and provides the basis for electoral discourse. Since independence elections of 1965, Botswana has held seven successful parliamentary and council elections based on universal adult suffrage. Botswana's electoral model, which is based on the Westminster Parliamentary system operating the FPTP electoral system, has produced a stable and accountable political system, in contrast to other African countries that are characterised by political instability. Nevertheless, despite a good track record of periodic and regular elections, a closer introspection of the electoral system reveals serious flaws and limitations.

In discussing the exceptionality of Botswana's political system, this article is arranged in five broad areas. First, it provides the contextual framework within which to understand Botswana's uniqueness and compare its political stability with that of other African countries. In this regard, the article outlines the position and interface of traditional and modern political institutions in the process of democratic governance. Furthermore, it observes that beneath the veneer of formal structures of governance, these structures are often ineffective and sometimes manipulated by cultural stereotypes. Secondly, the article discusses the pros and cons of the FPTP electoral system as applied in Botswana. As it is already commonplace, it shows how the FPTP system has produced political stability as well as a predominant party system in Botswana. However, a critical evaluation exposes its inherent limitations, especially with regard to representative democracy. Thirdly, the article focuses on the fact that electoral democracy need not only deliver a stable and accountable political system, but also has to be representative of the popular will of the people. It therefore seeks to project Botswana's electoral democracy beyond the application of the FPTP,

to include possibilities that would make it more inclusive. It discusses the Mixed Member Proportionality, as a possibility for Botswana's electoral reform. The Mixed Member Proportional system (MMP) can be introduced to correct the imbalances of the FPTP electoral system. Whilst this system ensures that every constituency has a Member of Parliament (MP), it also ascertains that seats allocated to political parties are in accordance with the popular vote. Fourthly, it recognises the limitation that Botswana's electoral system does not provide for direct election of the president by the populace. Fifthly, while the article exposes the limitations of Botswana's electoral system, it nevertheless recognises Botswana's exceptionality as a stable democracy, and concludes that it can be used as a model for conflict prevention and policy development in Africa. In addressing these issues, it begins by laying out the contextual framework of understanding the electoral system.

## Contextual Framework

In setting the context of understanding the effect of the electoral system on democracy, it is important to understand the role of other players in the democracy debate. It is important that one should understand the environment in which democracy is discharged. Such an environment includes the culture of the people, the structures of political parties, the funds at the disposal of political parties and their access to the media and the electoral system. What is also of utmost importance, is that voters must be informed about their political choices and they must also be educated about their civic and political rights, roles and responsibilities. It is essential that the electorate must understand key concepts of democratic governance, structure and relationships between political parties and government, the responsibilities of elected officials, and avenues of public accountability.

Botswana's electoral system cannot be discussed without locating it within the wider context of the country's culture and political economy. At independence in 1966, Botswana was one the poorest countries in the world. However, due to the discovery of minerals in the mid-1970s, especially diamonds, Botswana's economy grew to warrant it to be classified by the World Bank as a middle-income country. Nevertheless, Botswana's exceptionality as a fast growing economy cannot only be explained in terms of its mineral wealth but also its prudent economic management. Effective policy formulation and

implementation, good governance, a culture of openness and transparency, respect for human rights and the rule of law also complement the economic indicators.

However, Botswana cannot achieve political and economic stability in isolation; its efforts must also be complemented by regional and continental initiatives. Through the Southern African Development Community (SADC) and the New Partnership for Africa's Development (NEPAD), Botswana seeks to negotiate a meaningful integration into the global political economy, and bring about prosperity for all and end marginalisation in the global process. Through NEPAD it seeks to create a people-centred development that is based on democratic values (Cilliers & Sturman 2002). Through continental and regional bodies such as the SADC Parliamentary Forum and the SADC Electoral Commissioners Forum attempts are made to set regional norms and standards that regulate the conduct of elections and democracy.

Yet much as it is important to conceptualise these developments at a macro level, it is important to first lay the scene at the micro level. In providing the contextual framework for democracy and good governance in Botswana, it is imperative that the role of traditional leaders and institutions, especially in their political and juridical functions, is taken into account. Perhaps one of the variables that explain Botswana's political stability, a factor that tends to elude many African countries, is careful blending and grafting of traditional and liberal democratic institutions. As stated by Proctor (1968:59), one of the major problems faced by the architects of the new states of Africa has been to carve out a 'satisfactory position for tribal authorities in a more integrated and democratic political system.'

The greatest challenge that the majority of African countries face is that they are polarised by a 'dual political identity'. As Sklar (1999-2000:9) succinctly points out, people project ethnic as well as national identity. In Botswana, these identities are not only fostered by linguistic differences – although these are not as manifest as in other parts of Africa – but also by the territorial division of tribal and administrative districts. By and large, the administrative districts that are charged with local governance coincide with particular ethnic groups.

The independence constitution established Botswana as a unitary state with Parliament serving as the only legislative authority. As a cultural heritage and also recognising the influence that traditional leadership has on people, especially those in the rural areas, a House of Chiefs was created,

now known as *Ntlo ya Dikgosi*, as a second chamber without legislative powers, and only serving in an advisory capacity. During the pre-colonial period *Dikgosi* (chiefs) had legislative powers but various Acts curtailed these powers during the post-colonial period. Yet in spite of the severe erosion they suffered in terms of their powers, *Dikgosi* are still accorded a lot of respect and wield a lot of influence.

In spite of the tenuous relationship that exists between *Dikgosi* and politicians, a judicious balance exists between the two institutions and they complement one another in matters of governance. Perhaps the success of Botswana's liberal democratic model is partly due to the successful blend of the Westminster Parliamentary Model and the traditional institution of *Bogosi* (chieftainship). The *Kgotla* (village assembly) has also been harnessed and used effectively by government as a forum for consultation and dissemination and implementation of government programmes.

By and large, the ethnic question contests the notion of citizenship. As discussed by Kymlicka (2002), citizenship, under the liberal democratic set-up, guarantees the enjoyment of individual and civil rights as well as equality before the law, irrespective of race, class or tribe. Yet these rights are contested in Botswana given the perception that the constitution discriminates against certain ethnic groups. Even though the constitution does not refer to some ethnic groups as 'major' and others as 'minor', that interpretation is held by some citizens. This perception arises from the fact that the non-Tswana ethnic groups in the country are expected to assimilate Tswana culture and suppress their own under the guise of nation building. Ethnic minorities, therefore argue that their cultural heritage must be recognised in the public sphere leading to recognition of their language and ancestral land (Werbner 2001:1).

Moreover, the hierarchy of tribal administration implied in the constitution also suggested some discrimination. The constitution specified the *ex officio* status of the eight Tswana tribes as permanent members in the House of Chiefs, while chiefs from the north-east, Chobe, Kgalagadi and Ghanzi were designated sub-chiefs and periodically elected from these areas. The question then is, if Batswana are equal and the same in all respects, why are they then accorded differential treatment and status? In trying to explain this phenomenon, historians (Tlou 1984, Morton & Ramsay 1987) maintain that the present day Botswana was made up of several warrior nations that withstood the Boer and Zulu invasions, and groups that seem to occupy a

subordinate status sought refuge and protection from the dominant groups. It is, by and large, this hegemonic control that is being contested in the post-colonial period.

In a more profound way, the ethnic question was crystallised following a Parliamentary Motion that was tabled by the Member of Parliament for Sebina-Gweta constituency, Honourable Oliphant Mfa, in 1995, that sections 77, 78 and 79 discriminated against certain ethnic groups. Pursuant to this motion, His Excellency, President Festus Mogae, in 2000 appointed a commission of inquiry headed by a former cabinet minister, Mr Patrick Balopi, to make recommendations towards an ethnically neutral constitution. The public debates that came to light as a result of the Balopi commission indicated that the country was polarised along ethnic lines, differentiating between Tswana speaking and non-Tswana speaking ethnic groups.

A more practical expression of these ethnic debates is the polarisation of society into various civil society organisations designed to be mouthpieces of their ethnic groups. To cite only a few, these organs of civil society include the Society for the Promotion of Ikalanga Language (SPIL), Pitso ya Batswana (PYB), Kamanakao Association and First People of the Kalahari (FPK). In a nutshell, SPIL is a vehicle for Kalanga nationalism, which through the promotion of Ikalanga language seeks to foster Kalanga identity and self-actualisation. Pitso ya Batswana is an organisation that manifests the dominance of Tswana culture. Its ideals are to raise the consciousness of Tswana speaking Batswana, since they, even though they consider themselves to be a numerical majority, are increasingly marginalised by other ethnic groups, especially by Bakalanga, from strategic positions in government and other key sectors of the economy.

The ethnic contest in Botswana occupies a much wider sphere beyond the debates between Tswana speaking Batswana and Bakalanga, to include other ethnic minorities such as Batswapong, Babibrwa, Bakgalagadi, Basarwa and Bayeyi. Although it is beyond the scope of this article to discuss the plight of each and every one of these ethnic groups, it would suffice to isolate the cases of the Basarwa and the Bayeyi. The Bayeyi are mobilised by Kamanakao Association, which is a cultural organisation that wants government to recognise Kelvin Kamanakao as the paramount chief of the Bayeyi with jurisdiction over land occupied by the Bayeyi, and have designated Gumare, as opposed to Maun, their district headquarters. In addition, they also demand authority over Bayeyi customary courts and the recognition of Seyeyi as an official language and a language taught in the schools.

The First People of the Kalahari (FPK) organisation articulates the plight of the Basarwa as a marginalised community. The Basarwa, often referred to as remote area dwellers, are indeed remote in their spatial dimensions as well as their location in the axis to political power. They are remote area dwellers in the physical sense in that they are far removed from the major urban centres. They are stigmatised as a low class occupying the fringes of society, and as such, it is argued, there is need that they are assimilated into the mainstream Tswana Society. As a marginalised community, only a few of them have formal education and as a result they are not represented in key positions to influence government policy. Despite government's efforts on rural development and the provision of infrastructural services, facilities in their areas remain limited. Their relocation from the Central Kalahari Game Reserve (CKGR), a matter that is strongly contested not only by FPK and other national Non-Governmental Organisations but also by international NGOs, tends to underline the point of their marginalisation and dislocation.

Having laid the socio-cultural context of understanding Botswana's polity, it is in order to zero in on the political aspects. Politics in Botswana has manifested a multi-party predominantly one-party system. The ruling Botswana Democratic Party (BDP), although beset by factional fights, has won each and every election by a landslide victory. It would appear that what really threatens the ruling BDP is not so much the challenge from opposition parties but its lack of internal stability. The political battles are drawn between those who support the candidature of the party chairman, Ponatshego Kedikilwe, and those who support the incumbent party president and president of the country, Festus Mogae. However, during the April 2003 National Council meeting, Kedikilwe pledged not to challenge Mogae for the presidency of the party.

In spite of the manifestation of political pluralism marked by the existence of several political parties, a weak opposition characterises Botswana's democratic system. Nevertheless, it is an indisputable fact that a strong opposition is an indispensable part of a democracy. It keeps Government in check and accountable to the people. Yet splits and factionalism appear to be a defining characteristic of opposition parties in Botswana. Botswana has at least 14 registered political parties, and of these only four are represented in the Parliament. These are the BDP, the Botswana National Front (BNF), the Botswana Congress Party (BCP) and the New Democratic Front (NDF). All the opposition parties in parliament are breakaway factions from the BNF. Out of a total of 40, the entire opposition controls only seven seats. Apart from

the breakaway parties from the BNF, there are also the Botswana Peoples Party (BPP), the Movement for Marx, Lenin and Engels Party and the Botswana Alliance Movement, which is an alliance of the Independence Freedom Party (IFP) and the Botswana Action Party (BAC).

The fragmentation of political parties is in large measure a function of personalities and personal differences rather than substantive procedural or ideological differences. The most recent manifestation of this development is that in March 2003, Dr Kenneth Koma broke away from the BNF to form the NDF. This split was a result of irreconcilable differences between two factions within the BNF – the 'concerned group' and the 'party line'. The 'concerned group', on the one hand, was a faction of young party enthusiasts who wanted to challenge Koma's hegemonic control of the party, and also wanted a break with the past of building a personality cult of the party leader as if he personified the party. The 'party line', on the other hand, continued to hero worship Koma, and counted on his support to assume the leadership of the party. These differences, which were not as such ideological, came to the head at the Kanye Congress of November 2001, in which the 'concerned group' swept all the Central Committee positions by wide margins. On allegations of rigging, the 'party line' refused to accept the results and after a number of exchanges, which involved their suspension and subsequent expulsion from the party, formed the NDF.

## Botswana's Electoral System

When Botswana attained its political independence in 1966, it adopted a republican government, which operates a unicameral Westminster parliamentary system. According to the constitution, Parliament is the supreme legislative organ on the land, and comprises 57 elected Members of Parliament (MP), four members specially elected by the President, the Speaker, the Attorney General and the President, as an *ex officio* member.

The electoral law specifies that Botswana operates the FPTP electoral system, and that every five years there must be parliamentary and council elections. Following the October 4, 1997 referendum, a constitutional amendment was effected, which not only established the Independent Electoral Commission (IEC) but also lowered the voting age from 21 to 18 years and created an absentee ballot. These reforms were significant because they opened political participation to groups that were previously disenfranchised.

Perhaps one of the setbacks of Botswana's electoral system is that it does not provide for direct presidential elections. Yet the office of President in Botswana enjoys executive authority. The electoral law provides that for a person to be a presidential candidate, he/she must be nominated and endorsed by at least 1 000 persons registered as voters for purposes of the National Assembly elections. Then the candidate of the party that wins the majority of seats in the National Assembly stands duly elected as President. So the President is only indirectly elected.

## First-Past-The-Post Electoral System

Botswana operates the FPTP electoral system, sometimes referred to as the Winner-takes-all electoral system. If this system was a race or a marathon, it implies that the first to touch the line would be declared a winner, and since it's a zero-sum-game, the runner-ups, even those close to the winner, would be declared losers. What obtains in Botswana is a single member constituency system, where the candidate who gets a simple majority of the vote is duly elected as MP or Councillor.

The FPTP system is credited for producing stable governments that are accountable and lead to an effective link between MPs and the people. Its feature of a single MP constituency makes it clear whom the electorate should contact when they have a problem. The system also has inherent limitations in that it excludes opposition parties from government, and as such, lacks consensus building. Its winner-take-all phenomenon dilutes the most potent weapon that the electorate has – that is their vote – in shaping their political destiny. Moreover, this electoral system promotes a predominant party system, a feature that undermines the much-cherished ideal of a multiparty democracy.

Although elections are recognised as an essential component of democracy, they are not in themselves the only determinant of democracy. What is most crucial, is the content and character of a democracy. Reduced to simple terms, democracy is about empowering the people, and giving them the power to shape their political future. In essence, democracy is something beyond the ritual of casting a vote. It entails ensuring that institutions that are formed from the results of elections reflect the will of the people.

Without doubt, Botswana has institutionalised the phenomenon of regular elections. Botswana has religiously followed the constitutional provision of holding parliamentary and council elections every five years. Yet due to the winner-takes-all phenomenon of the FPTP system, legislative

bodies that are formed based on the results of these elections are not reflective of the popular vote or the will of the people. And this article submits that where the will of the people is undermined, democracy is subverted. Invariably, the results of elections based on the FPTP system show that the incumbent party tends to get a windfall of seats compared to their proportion of the popular vote. This tendency of rewarding incumbent parties tends to promote a predominant party system, such as in Botswana, and that undermines democracy.

## The Ethnic Vote

One of the least theorised issues on Botswana is the effect of ethnicity in electoral outcomes, but unfortunately there is no empirical evidence to support such discourse. For inexplicable reasons, government appears wary of studying the ethnic question. The National Census data did not categorise people according to their ethnic group, and there are no studies in the country, at least among those I am aware of, that address voting patterns along ethnic lines.

A salient feature of Botswana politics is that despite being portrayed as ethnically homogeneous, there exist strong tendencies among the various ethnic groups in the country. In a latent manner, the country is polarised about the Tswana ethnic groups and the non-Tswana ethnic groups. There are perceptions among non-Tswana ethnic groups that the Tswana ethnic groups seek to maintain a hegemonic control over them. This polarity is most manifest in the composition of *Ntlo ya Dikgosi*, as well as the symbolic control of the tribal lands by *Dikgosi*.

Yet despite clear evidence that Botswana society is polarised along ethnic lines, political competition has not been manifested across ethnic lines. Although there is evidence that some parties are ethnically and regionally based such as the BPP and IFP, there is no empirical evidence that ethnicity is a factor in voting patterns. Nevertheless, it a known fact that in some areas people vote in line with the political sentiments of their *kgosi*, but there is no empirical evidence to suggest that it is a widespread phenomenon. A dominant trend in voting patterns in Botswana is that the electorate votes for political parties rather than individuals. As a result, once a party has, in its primary elections, selected a candidate to contest the election on its ticket, the general membership of the party supports and votes for that candidate irrespective of their ethnic group. This point is supported by the fact that candidates who wield enormous popularity under the banner of a given

political party, when they resign from that party to contest elections as an independent candidate, find that electoral support is reduced to almost nothing. This feature is true across the political divide.

There have been allegations in the BDP, especially in the conduct of primary elections and party positions, that ethnicity does play a part in their power politics. There is no evidence to support that claim. However, one cannot deny that maybe individuals within parties play an ethnic card without it being a policy of the party. To demonstrate that ethnicity is not so much a factor in politics, the case of Francistown West may be taken. During the 1999 election, this constituency which is predominantly populated by Bakalanga, was won by a non-Kalanga, despite the fact that other parties fielded Kalanga candidates. Nevertheless, there are media reports that some candidates are using the ethnic card to unseat the incumbent during the 2004 elections.

The future direction of nation building that is unfolding in Botswana, is that ethnic groups are increasingly asserting their image. They negate notions of total assimilation and conformity, and propagate unity in diversity. There is every indication that politics may move in that direction, and there is need for research in this area. It is probable that political alignments in future may develop along these lines.

Political Parties as agents of political participation create a forum for exchange of political ideas and serve to institutionalise the development of democratic norms and values, and instil a culture of openness and tolerance of opposing political views. Through their voter education programmes they give the electorate a comprehensive understanding of the electoral system and the election management process, and it is only through this process that they can make ethnicity a factor in electoral support.

## Internal Party Democracy

Inner party democracy is one of the fundamental attributes of democracy. It begs the whole question of democratisation that it does not make sense to profess democracy at the national level and not to have it within the structures of political parties. Internal party democracy refers to the process in which members are elected to positions within the party, and candidates are chosen to contest elections for the party. This process is usually referred to as primary elections. To be sure, the conduct of these elections has over the years been a source of discontent. Losing candidates usually claimed that they were either fixed or falsified to advantage some candidates. The conduct

of such elections often leads to discontent and factionalism within political parties. Following such incidents, affected candidates either resigned or were expelled from the party.

The BNF, as the main opposition party, has experienced factional fights arising from dissatisfaction with the outcomes of primary elections, and these have led to the splintering of the party on many occasions. Such discord within the party was a result of clashes of personalities, and lack of respect for established structures and regulations. Since 1989 the BNF suffered major splits. Following the 1988 party congress in Francistown where the BNF leader, Dr. Kenneth Koma, stated that the BNF was not as such a party, but a front for different tendencies, the southern region led by Leach Tlhomelang, broke away and formed the Freedom Party. The reasons for their resignation were that the party had lost its direction.

Perhaps, the most dramatic split was the one that took place during the run-up to the 1994 elections. In an unprecedented event, three splinter groups emerged from the BNF to form the Botswana Workers Front, the United Socialist Party and the Social Democratic Party. The 1988 and 1994 splits were significant because they dislodged the party from its base and stronghold of the Ngwaketse constituencies. During the 1994 election, due to a split in the opposition vote, these constituencies were won by the BDP.

In 1997 the BNF experienced the worst leadership crisis in its history, in which some of the party stalwarts lost Central Committee elections. The candidates who lost the elections formed themselves into a lobby group, which called itself the 'concerned group', and challenged the results as unconstitutional. When no compromise was in sight, the party was polarised into two factions. These factions manifested, on the one hand, the old guard of the party drawing sympathies from the leader of the party, Dr. Kenneth Koma, and on the other the majority of BNF MPs who were also elected into the Central Committee. In a measure to resolve this problem, a special congress was convened in Palapye in April 1998.

At that congress, the party was thrown into a worst crisis where delegates ended up fighting – leading not only to physical injury but also causing a serious dent in its credibility as a party that could take over from the ruling BDP. As a result of these problems, in July 1988 eleven MPs and 68 councillors from 33 constituencies resigned from the BNF and crossed the floor to form the Botswana Congress Party (BCP), making it the official opposition. The effect of this split is that during the 1999 election, the entire opposition got only seven out of a total of 40 seats.

As if the party had not learned a lesson, in the run-up to the 2001 congress the BNF was again split into two factions, the 'party line' and the 'concerned group'. The split followed the decision of Dr. Kenneth Koma to step down as party leader. But Koma intended to implement a succession plan in which the party Vice-President, Peter Woto, would take over as party president. The 'concerned group' who preferred a young lawyer, Otsweletse Moupo, to take over as party president, fouled this plan. As it turned out, the 'concerned group' emerged as the hegemonic group within the BNF, and swept all the Central Committee positions with wide margins. Against allegations that the elections were rigged, the rift between the two factions widened. The factional fights manifested themselves in suspensions and fierce media and freedom square campaigns. In the end, members of the 'party line' resigned from the BNF and in March 2003 formed a new party, the NDF with Dick Bayford as its president and Dr. Koma its patron.

Factionalism has not only been a factor in BNF politics; the ruling BDP has also had its fair share of it. Perhaps the BDP has been more successful in managing their differences, in that, even though some of them are debated publicly in the media, they are, by and large, resolved behind closed doors. What is certain about the BDP is that as much as they have differences, they are not oblivious of the fact that their ultimate goal is to attain state power, and try to do everything in their power to project an image of an orderly and organised party. Since mid 1990s, the BDP was polarised about the so-called Kedikilwe and Kwelagobe camps. The tussle by each faction has been to position itself as the hegemonic faction within the party and thereby to dominate party structures, especially the Central Committee, women and youth wings, and to influence the outcome of who emerges as the party president.

It is perhaps in the choice of the party president and ultimately the country's president, that democracy has been faulted in Botswana. As discussed in other sections of the article, there are no presidential elections in Botswana and the presidential candidate of the party that attains the majority of the seats in parliament becomes President of the country. Taking it from the era of Sir Seretse Khama, after he died in office in 1980, the BDP party caucus decided that his Vice-President, Quett Masire should succeed him as president. Although there were others in the party, such as Moutlakgola Ngwako, who had ambitions for the high office, the appointment met wider expectations.

Perhaps the greatest setback of BDPs internal democracy came with the retirement of Sir Ketumile Masire from the presidency in 1998. Masire

stepped down during the middle of his term as president. In spite of the fact that the move accorded the party and country enormous goodwill, the manner in which it was done cast serious aspersions on BDP's internal democracy. The country's constitution specifies that, in the event of the Office of President being vacant for one reason or another, the Vice-President would automatically ascend to the presidency. Much as the provision was made with good intentions to guard against uncertainty that would breed instability, say when a President died in office, it has now been used to subvert the democratic process. By stepping down during the middle of his term, Masire ensured that he gave his successor, Festus Mogae, the advantage of incumbency during the 1999 election. The manoeuvre was also intended to thwart any opposition from within the party for the position.

Internal party democracy was also faulted when President Mogae, when deciding on the Vice-President, overlooked all long serving members of the party, and made Lt. Gen. Ian Khama retire from his position as commander of the Botswana Defence Force to become the country's Vice-President. Such a manoeuvre can only happen in a situation where the constitutions of the party as well as the country do not provide for an election of the President and the Vice-President by the electorate. As things stand, the BDP is the dominant party in the country and there is no evidence that the opposition is regrouping to present a strong challenge to it during the 2004 general elections. Assuming the status quo obtains, the BDP will be in power for the foreseeable future and according to Mogae's succession plan, if nothing dramatic happens, much to the disdain of some members of the BDP, Lt. Gen. Ian Khama is set to be the country's next president after Mogae has served his second term.

On primary elections, the BDP has also had its fair share of setbacks. Until 2002, the party had primary elections where an Electoral College was constituted from the various structures of the party. During the primary elections, delegates from these structures were designated to vote. The effect of this practice was that people who were dominant in the party structures were able to influence the composition of party committees, and through that control were able to determine the composition of the Electoral College. In effect primary elections were only mechanisms of legitimating candidates who were already handpicked by kingmakers of the party. Furthermore, the Central Committee that was also dominated by some factions had the veto power of overturning the verdict of the Electoral College. As it happened in the past, the Central Committee declared candidates who lost primary

elections winners. The Cases of Archie Mogwe and C. Batsile in Kanye in 1984 and Gladys Kokorwe and Kabo Morwaeng in 1999 in Thamaga constituencies come to light. Over the years, this practice proved to be divisive and undermined party unity, in that candidates who lost embarked on negative campaigning and in some instances defected to opposition parties.

Arising from these concerns, in March 2002, the BDP National Council adopted a new framework of conducting primary elections, known as *bulela di tswe* – meaning open the floodgates – that is more open and democratic. The new guidelines empowered every card-carrying member of the party in a particular ward or constituency to vote during the primary elections. Whilst the system is democratic, it also suggests that those with sufficient financial backing stand a good chance of being elected. This system was first tried in the Lentsweletau by-election, and while it has some teething problems, it is widely acclaimed to be democratic.

## Gender Balance

The National Census has established that women constitute the majority of the population. Yet it has become apparent in Botswana's democratic politics that there is lack of effective representation of women in the governing structures of political parties and the country. Although women play a major part in party activities, in fundraising and political campaigns, their representation in decision-making structures is scanty. Through cultural stereotypes, which are informed by the patriarchal structures of society, women face major difficulties to enter institutions of governance.

As a way to enhance gender equality, SADC has adopted a policy, following the Nairobi and Beijing platforms, that by the year 2005, 30 per cent of women should be included in decision-making bodies, including the National Assembly. In 2003, Botswana is far from meeting that quota. Nevertheless, women organisations have been in the forefront of their empowerment and democracy debates. A women NGO, Emang Basadi, has been instrumental in the mobilisation of women and in the amendment of the Citizenship Act to make it gender neutral. During the 1994 election Emang Basadi mobilised the women coalition and developed a women's manifesto through which they pressurised political parties to have women candidates for the election. Even though this campaign has had limited successes, there is evidence of movement in the right direction. At present (2003), there are eight women members of parliament, and four of them hold full cabinet positions while two are assistant ministers. Although the opposition has

returned several women council candidates, it is yet to return a woman MP. Nevertheless, at the level of government two women have been appointed to the bench as High Court judges. There are also several appointments of women in senior level jobs in government.

## Debates for Electoral Reform

As pointed out by Reynolds and Reilly (1997:7), the choice of an electoral system can effectively determine who is elected and which party gains power. Just like democracy, electoral systems can never be said to be absolute or perfect. Depending on people's struggles, they need to be constantly reformed or reformulated. Yet since independence, Botswana has only had minor electoral reforms but has never embarked on any far-reaching overhaul of the system.

Since the choice of an electoral system is always a political decision, this article also discusses the various positions taken by political parties. By and large, the ruling BDP, on the one hand, which not only enjoys the advantage of incumbency but has also won all the elections, seems to be complacent and not ready for change. After all, the FPTP system has served them well, and has consolidated their hold to political power. Opposition parties, on the other hand, which face declining electoral fortunes, have since the early 1980s talked about the need for electoral reform with a view to level the political playing field. Initially, the debate centred on removing the election from the Office of the President and also making it independent from government by creating an Independent Electoral Commission (IEC). It also provided for the absentee ballot and lowered the voting age from 21 to 18 years.

The idea of an electoral reform is to deepen and widen the frontiers of democracy. In Botswana, while the electoral reforms of 1997 were significant in terms of entrenching democracy, the electoral system is still limited in many respects. Botswana's electoral system does not provide for direct presidential elections and the FPTP system computes the election outcomes in a manner that is not representative of the popular vote. Furthermore, due to the lack of political party funding, political parties do not have equal chances of canvassing for political support. Moreover, to enhance democratic choice, the electoral system must ensure that every vote counts in the making and unmaking of government. Where the political playing field is not level, democracy is compromised.

## Presidential Election

Mosca and Pareto in Bill and Hardgrave (1973:148-153) talk about the circulation of the elite as an essential attribute of democracy and good governance. Democracy requires that every five years or so leaders should renew their mandate to rule through the ballot box. Such a process in Botswana is well entrenched respecting parliamentary and council elections. Yet the presidency is elected in a manner that is not democratic, at least in terms of popular participation of the electorate.

The president in Botswana is not elected through universal adult suffrage as would be expected from a country enjoying so much goodwill in democratic practice. The President is only indirectly elected in that the presidential candidate of the party that attains the majority of seats in parliament becomes the country's president. Therefore the presidential elections are tied to parliamentary elections. As people vote for an MP they are indirectly also voting for president. There is a story that during the era of Sir Seretse Khama, the first President of the Republic of Botswana, an old man asked him in a *kgotla* meeting how he could vote for him without voting for the local MP. Wittingly, Seretse assured him that as he was voting for the MP he was also voting for him. But the truth of the matter was that the old man had asked a fundamental question that was at the heart of the theory and practice of democracy and political legitimacy.

It hardly needs emphasis that the presidency is the highest political office in the country, which enjoys extensive executive powers but is not directly accountable to the people. Furthermore, since the succession plan to the presidency is not democratic, Botswana's image as a shining example of democracy is slowly being tarnished. It is overdue that Botswana should reform its electoral system with a view to have direct presidential elections based on universal adult suffrage.

## Political Party Funding

Political party funding is one of the new areas of the democracy debate. This position is informed by the assertion that democracy is a rare species and where it exists, it must be nurtured and made to work. One way of nurturing it is by ensuring that political parties are given the resources to mount effective civic and voter education campaigns. Without doubt, political parties need to effectively articulate their ideology and also to sell their manifesto. Moreover, in a difficult terrain, such as that of Botswana, where most of the rural areas are heavy sand terrain and marshes, it is necessary to have robust four-wheel

drive vehicles to access these areas. Constrained by limited resources, opposition parties do not have adequate resources to effectively canvass for political support. Furthermore, the fairness of elections is also measured by the ability of political parties to have equal chances of canvassing for political support.

In Botswana the political playing field is not level because opposition parties suffer from the lack of funds while the ruling BDP takes advantage of incumbency by taking advantage of government resources. Cabinet ministers are able to piggyback on their official trips to make their presence felt in their constituencies. Moreover, they are able to enjoy political visibility and gain political mileage as they launch various government programmes and are covered by the official media. Other politicians like Lt. Gen. Ian Khama have unscrupulously used public resources for partisan political gain. The Ombudsman is currently handling a case in which the Vice-President used government resources and civil servants when addressing a political rally in the Nkange Constituency in 1999.

## Mixed Member Proportional System

The MMP system is an innovative electoral system that recognises both the strengths and limitations of the FPTP and PR electoral systems. It is sometimes referred to as the semi-PR or the hybrid system. As has already been pointed out, the FPTP system promotes stable and effective parliaments that exclude opposition parties from participating in government. Cabinet is solely drawn from the majority party, and that party alone forms government. The virtue of that system is that only one political party takes responsibility of government. There is no question of indecision or delays in taking decisions as result of consultation in the case of a coalition government that is inherent with PR systems. Furthermore, since the FPTP system provides for single member constituencies, there is clear accountability, as the electorate know the MP.

In the same vein, much as the FPTP has strengths, it also has limitations. Perhaps its greatest limitation is that it marginalises smaller parties and promotes the emergence of a one-party predominant party system or a two-party system. More fundamentally, it discourages the proliferation of small parties. Its greatest weakness is that it is not representative, as councils and parliaments created from the election outcomes of this system are not representative of the popular vote.

Proportional Representation on the other hand is an electoral system that is gaining popularity because it is in line with the new wave of democratisation. Representation is now the catchword of democratisation. This electoral system, more than any other system, faithfully translates the votes in an election into the number of seats in parliament or council. Since democracy is about openness, transparency and respecting the will of the people, this system is desirable. This system is inclusive because it recognises all shades of political opinion. Perhaps more importantly, it provides for multi-member constituencies, and ensures that every shade of political opinion is not only represented but also heard. Since this system is amenable to coalition governments, it embodies a government that rules by consensus and believes in power sharing. Critics of the PR system contend that it does not provide for a stable government and also tends to polarise society into various shades of cultural and political opinion.

As the debates between the two electoral systems indicate, there is no perfect electoral system, and this article argues that perhaps the best way out is to borrow the best from each tradition. It is in this regard that I recommend the MMP system for Botswana because it draws from the better of the two worlds. It draws the good attributes of both the FPTP and PR systems. The good virtues of a stable, effective and accountable government are attributes that must be promoted in an electoral system. These good attributes can further be reinforced by the strengths of the PR system such as representation and consensus building. This marriage of the two systems is what is being proposed by the MMP.

Furthermore, through the party list component the PR system is able to address inequities that characterise the FPTP system. In the FPTP system women and youth are usually excluded from the process. However, through the zebra system, the party list is often assisted to ensure that there is a balance in gender as well as age in selecting candidates for political office. The list can deliberately ensure that every other person in the list is a youth or a woman.

In Southern Africa, the MMP is only used in Lesotho, and following the 2002 elections, it appears to be working well. The MMP system is also used in Germany and New Zealand. In Germany 50 per cent of the seats are voted on FPTP system while the other 50 per cent are on PR. In New Zealand 58 per cent are on FPTP and 42 per cent PR. The mixture of PR and FPTP depends on the circumstances of a country, but its import is to produce a government that is balanced on being representative and accountable.

The adoption of the MMP in Botswana would require considerable debate. However, in broad outline it would entail increasing the number of seats beyond 57 as recommended by the delimitation commission. First of all the system suggests the retention of the 57 seats, which would be contested on the FPTP system. To enhance proportionality, it is suggested that an additional 29 seats be introduced and these be contested on the party list proportional system. In effect, the electorate would be provided with two votes, the constituency vote and the party vote. The constituency vote represents who will represent the constituency in Parliament. The party vote determines the overall composition of Parliament based on the popular vote.

As pointed out by Elklit (2002), to determine the proportions of seats each party is entitled to in Parliament, you first determine the quota of votes. The quota is the sum of the party vote cast divided by the total number of seats. To determine the number of seats each party is entitled to, divide the total votes cast for the party by the quota. Considering the election outcomes, if a party acquires more seats in the constituency election or the same number of seats they would have acquired under PR, their allocation of seats would be considered as final. The compensatory seats work or the PR component works where a party gets fewer seats under the constituency than they would have been entitled to under PR.

## Conclusion

This article concludes that while Botswana is hailed as a success story in democratic politics in Sub-Saharan Africa, its achievement can never be absolute. Democracy must be seen as an ever-evolving process that must be constantly reformulated to make it better. More fundamentally, the deepening of democracy requires popular control of the decision-making structures. Democracy will forever remain an aspiration, which people would forever strive to achieve. At the minimum, democratic theory is concerned with the process through which the electorate hold their leaders accountable and responsive to their needs. As a rule, citizens must always strive to understand their rights and responsibilities.

Botswana's democracy is rooted in the Westminster parliamentary model as well as traditional institutions. Despite the fact that the authority of *diKgosi* is significantly eroded, their influence over people is still an important political reality, and does not show any signs of receding. And this accounts

for Botswana's political stability. While this article underscores the strengths of Botswana's democracy, it exposes its limitations. The weakest aspect of democracy is the electoral system. A characteristic feature of Botswana politics is that it lacks internal democracy and also does not have presidential elections.

Much as the FPTP system that Botswana operates produces a stable form of government, such a government is not representative of the popular vote. It also advantages incumbent parties and marginalises opposition parties. Furthermore, free political competition that is assumed in democratic governance cannot exist among unevenly matched political parties. The ability of political parties to equally compete for political support determines the quality and depth of a democracy As a result, political party funding is suggested as one of the ways of levelling the political playing field. To enhance democracy, this article concludes that Botswana must adopt a mixed member proportional system that would ensure that it enjoys the positive attributes of the FPTP system as well as those of proportional representation. The conclusion that emerges from this article is that the MMP is the best system that would ensure that the system is not only accountable but also representative.

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# Electoral Reform and Political Stability in Lesotho

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## Abstract

Although somewhat chequered, Lesotho's political and constitutional history has been relatively smooth and peaceful compared to what was experienced by many African countries. The struggle for independence and the ultimate handover of power to the Basotho King by Britain were free of violence. Yet this did not lead to a stable and consensual post-colonial society in Lesotho. Intermittent peace-threatening episodes pervade Lesotho's 37-year period of independence. This notwithstanding, the country has enjoyed short periods of constitutional rule, the first being from 1966 to 1970 while the second roughly extends from 1993 to today, that is 2003. What might have been a democratic transition for Lesotho was dealt a severe blow by Chief Jonathan's annulment of the first post-independence elections, which he had lost to his rival, Ntsu Mokhehle. Because of a 20-year one-party rule that followed, constitutionalism as understood today to mean espousal of certain

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values about the fundamentals of government and governance was barely able to take root within the Lesotho polity. The return in 1993 to constitutional rule and the reinstatement of popular elections as formulae for distributing power and appointing rulers are still the focus of party-political contentions as these are not anchored in an electoral system with an in-built conflict resolution mechanism. This paper explores these issues.

## Political and Constitutional History of Lesotho

Lesotho's constitutional history should not be seen as an autonomous self-driving process or a series of events. It has as its anchor and catalyst in colonialism and its contradictions, mainly civilisation and/or modernisation through dispossession, exploitation and denial of political rights for the colonised peoples. The colonial rule imposed on Lesotho by Britain disrupted and denied what was set to become an autonomous political development rooted in the Basotho culture and the country's economic setting.

Yet colonial rule did not just supplant the Basotho chiefs-dominated system of rule but set the stage for the drive towards political modernity, that is, where ascription ceases to be a criterion for leadership. Such modernity was to be achieved through a corporatist and exclusionist administrative strategy. This double-pronged strategy enabled the colonial regime to co-opt and use the traditional authorities and other influential indigenous elites as administrative agencies while denying them political power. Thus, despite being incorporated into the new system, chieftainship was denuded of political power and converted into an apparatus of the colonial state. It could not be abolished since only through it could the colonial state control and govern the colonised population. The Basotho Paramount Chief used the institution of chieftainship's strategic role within the administration as a bargaining chip in his negotiations with the colonial government for increased role for chiefs in the system.

Therefore, the demand for a participatory form of government first came from the Basotho chiefs. Ostensibly responding to this demand, the first Resident Commissioner to Lesotho requested the High Commissioner in 1884 to agree to the establishment in Lesotho of a 'Council of Advice'. This was to be composed of chiefs and headmen 'nominated by Morena e Moholo (called Paramount Chief by Britain) but approved by the Resident Commissioner' (Machobane 1990:77). The tenure of chiefs was to be permanent but the

proposed council was not to make laws, this being the prerogative of the Queen of England. The council was to serve as a communication channel between the subject people and the colonial power. However, it took the High Commissioner 27 years to accede to the request, only establishing the council – styled the Basutoland National Council (BNC) – in 1903 though with 'no statutory force until 1910 when the proclamation establishing it was promulgated' (Machobane 1990:82).

In its present form, however, the council could not address the problems facing the Basotho 'commoners', mainly chiefly abuses and arbitrariness permeating land allocations. Hence, growing agitation among this class for a council that would be inclusive of commoners. Spearheading the agitation was the Basutoland Progressive Association (BPA) formed in 1907 by the educated Basotho elite. But, according to Thabane (2002:122), the BPA sought only to replace the chiefs whom it felt were inadequately qualified to partner the colonial government in its 'attempt to civilise and modernize Basotho' (sic). A new political movement under the name Lekhotla la Bafo (Commoners League) led by one Josiel Lefela emerged 12 years later in 1919. Challenging the legitimacy of the British colonial rule in Basutoland, the organisation did not seek to achieve political accommodation with the colonial state. Rather it demanded an end to colonialism and the restoration of the chiefs to their positions, provided that they feed their people and scale down their demand for tribute labour by keeping only one field (lira or national field) in respect of which the commoners would provide free labour (Edgar n.d:11).

The amount of pressure exerted by the two organisations helped to persuade the colonial government to make some political concessions, leading to a reformed administration that later guided the country to constitutional rule. Thus by 1960, for example, the BNC was a legislative body with 80 members of whom 40 were 'indirectly elected through district councils and the other 40 consisting of 22 principal Chiefs and 14 members nominated by the Paramount Chief and four British officials' (Gill 1993:204).

Another important reform measure, also a result of pressure by the two political organisations, is the administrative restructuring of 1938 that saw the introduction of policies that outlawed the 'placing system' started by Moshoeshoe I. Using the system, Moshoeshoe placed his sons as chiefs over other non-Koena groups throughout the country. The system had accelerated the growth in the number of chiefs, leading to serious problems such as ceaseless disputes over grazing and farming land. Further reforms were

introduced in 1948 that saw the erosion of chiefly power as the chiefs' courts were abolished and replaced by civil local courts that served as extensions of the modern judicial court system.

The reforms triggered significant political developments in the country. Four years later, in 1952, the first modern political party, the Basutoland African Congress (BAC) under the leadership of the late Ntsu Mokhehle emerged. Renamed the Basutoland Congress Party (BCP) in 1959, Mokhehle's party called for far more radical changes than those demanded by its predecessors. It demanded self-rule for Lesotho. But splits in the party in late 1950s set the stage for the emergence of the BCP's rivals, namely the Marema-Tlou Party (MTP) and the Basutoland National Party (BNP) formed in 1957 and 1958 respectively by Chiefs Samuel Seepheephe Matete and Leabua Jonathan. The MTP later in 1961 merged with Makalo Khaketla's Freedom Party to become Marema-Tlou Freedom Party (MFP).

The tempo of constitutional development that was set in motion by the administrative reforms mentioned above and the emergence of the BCP gathered pace with the advent of the BNP and the MFP (Makoa 2002:7). The self-rule demanded earlier by the BCP was to occur within a pluralist multi-party competitive framework. Moreover, constitutionalism was to be the guiding principle for the post-colonial regime and the three national political parties vying for state power. Adopting an Oxford Dictionary definition, Professor Devenish (1998:3) sees constitutionalism as 'the system or body of fundamental principles according to which a nation, state or body politic is constituted or governed.'

Constitutional development in Lesotho was indeed expected to usher in a regime where political authority and the exercise of power followed agreed procedures and norms. But Devenish warns that 'a country's constitution is a product of its unique history…'. He also says that constitutions have normative premises such as the protection of human rights. They require that governing must accord 'with publicly articulated, perspective rules that enable citizens to access the legitimacy and property of public policies.' Noting that constitutionalism involves 'the use of values or norms in political practice and discourse… when political leaders and others respect the basic laws as a framework that cannot be ignored', Hyden and Venter (2001:3) point out that 'constitutions function only when everyone accepts that they represent a self-binding moral commitment to a set of rules that can only be sacrificed in very exceptional circumstances, if at all.'

Colonialism, though not unique to Lesotho, greatly shaped both constitutional development in the tiny southern African kingdom and its post-independence constitution. For example, at the outset, three parties spearheading the independence campaign negotiated and settled for the British Westminster parliamentary model of government for an independent Lesotho, and this was granted. Yet the Basotho negotiators did not necessarily believe that this type of constitutional arrangement was immaculate. They made this clear in a press statement, cited by Maqutu (n.d:9a), that they issued in 1958 when negotiating the 1959 Constitution that set Lesotho on an independence path. This reads as follows: 'We recognize that the granting of a Constitution is not a specific for all difficulties. A very great deal will depend upon the calibre of men who work the Constitution and the spirit it is worked (sic)… but also in the sense of moderation which the Basotho have so often shown.'

Emphasising the prowess of those engaged in the actual making of the constitution as critical to the success of such a constitution, however, the Lesotho delegation tended to attach less importance to constitutionalism as appositely caricatured above by Devenish, and Hyden and Venter. In other words, what ought to be the normative sinews of the constitution were still a matter for serious contention as the country achieved its independence. A glaring evidence of this is the quibbling over the scope of the application of the constitution shortly before and after independence. This culminated a series of anti-government protests over the role of the King.

The ruling BNP and the main opposition party BCP had exchanged their original positions on this issue. Not sure of an electoral victory, the BNP had supported the MFP's suggestion that the King should be the final arbiter in the event of a disagreement or seemingly indissoluble political disputes. The BNP also felt originally, as the MFP did, that the King must have control over the army and the police. The BCP had on the contrary wanted a figurehead or ceremonial monarch. However, soon after losing the 1965 general election that paved the way for the country's independence, the BCP supported the MFP's position. After winning the election and assuming governmental power the BNP switched over to the position originally held by the BCP, imposing a regime that relegated the monarch to a ceremonial figure.

Unable to work together to achieve a mutually acceptable political settlement to the dispute, the disputing parties settled for a contending strategy – sanctions of which some encapsulated the use of violence that led

to bloodshed. These mutual antagonisms further deepened political polarisation among the Lesotho people, bringing the country to the brink of a full-blown civil war and setting the stage for a military coup that ended Jonathan's 20-year rule on 20 January 1986. While the military did eventually relinquish power to an elected civilian government in 1993, its intervention did not bring about a national reconciliation. Polarisation and rancour still pervade political relations in Lesotho. In summary, although it involved all the 'stakeholders' at its various stages, constitutional development in Lesotho has not engendered constitutionalism.

For some analysts, the country's electoral system as entrenched in the country's Westminster style constitution is one of the main culprits as, rather than spreading power, it centralises it in the hands of the dominant political party. Matlosa (1999:180), for example, argues that this 'gives unfair advantage to the dominant party over all others (sic).' Although it has been amended to accommodate 40 more parliamentary seats allocated on the basis of proportionality of votes, the electoral system is still not inclusive. Also noteworthy is that this token reform does not seem to have achieved its intended objective, namely assuaging the opposition. The BNP and the Lesotho Congress for Democracy (LCD) splinter organisation, the Lesotho Peoples Congress (LPC), are challenging the outcome of the May 2002 elections.

## State and Constitutionalism

Two observations should be useful in providing some perspective on the state and constitutionalism in Lesotho. First, during the struggle for independence, the state, as elsewhere in colonial Africa, was not only the most powerful political force but also the most potent power contestant. Its contest for power, though indirect and subtle, was real and forceful. It jealously defended its prerogatives and spheres of interest, including overseeing and directing the process of political change, as it unfolded, in accordance with the civilised norms and standards of political behaviour as defined by Britain, the colonial power.

The colonial state was, therefore, not a passive observer waiting to enforce the law. It was an active participant in the unfolding constitutional development, imposing – borrowing Khadiagala's (1997:195) phrase – 'norms and setting the rules of communal conduct' to which the power contestants

were not immune. But this is not surprising. Upholding a social order is the function of the state. In any case, a motive force behind the initial political reforms, as indicated in the preceding section, the colonial state could not be an uninterested facilitator of constitutional development and constitution making in Lesotho.

Second, but in contradistinction to the above, the process of political change in this small kingdom did not entail – using Sean Jacobs's (2002:50) phrase – 'mediated deliberation'. Such a mediated deliberation is said to be dependent on the presence of powerful elite institutions, particularly the industrial classes and their media in various forms. Therefore, in the case of Lesotho, transition to independence did not have the necessary inputs from these critical forces.

The colonial state that was steering the country to independence had an unenviable task of alone acting as a framework for the political order that was to emerge from the struggles for independence. Yet in peculiar social and political conditions in Lesotho, it functioned as both the guardian of the process and setting, the latter determining how far-reaching the constitutional changes must be. Unsurprisingly, political standards in Lesotho during campaigning for independence were those set by the colonial state. This is the state that was to protect and uphold the national constitution in post-colonial Lesotho.

An imposed alien phenomenon, however, this type of state was not equipped to meet the challenges of independence, which included the inculcation of political and social values that fostered constitutionalism. This was its Achilles heel. It lacked the requisite ideological or political resources that would enable it to become the nation's 'spirit' in the Gramscian sense, that is, 'as an educator in that it tends precisely to create a new type or level of civilization' (Carnoy 1984:76). In other words, despite the enormity of its coercive power, the state that was inherited by Lesotho's neo-colonial regime was not a hegemonic force accepted without question as the 'nation's will' with autonomy to be the final arbiter rather than just a tool for use by power incumbents.

Its ability to develop as an autonomous and a kind of a universally accepted force was further undermined by the country's chronic external dependence for jobs and consumer goods that forced out over half the male population to become oscillating migrants at any given time. In 1966 there were hardly 500 industrial jobs in Lesotho (Selwyn 1975:83). Employed in and exploited by the South African mines and commercial farms, the Lesotho

migrant workers were largely beyond the purview and influence of the colonial state. With no form of economic leverage over the majority population, even after being bequeathed to Lesotho, the inherited state enjoyed little or no relative autonomy that would enable it to act independently to protect the constitution. The Basotho nation has unwillingly put up with this legacy to date, having a constitutional rule without constitutionalism with a strong economic underpinning.

At independence there was neither the respect for the constitution nor consensus as to the fundamentals of governance. Not even the monarch who supposedly symbolised national unity seemed to appreciate the challenges of the constitutional rule accepted by his Basotho nation. He headed what seemed to be a campaign of civil disobedience in 1965/66, ostensibly calculated to unseat a legitimate government in violation of the constitution. Also disregarding the provisions of the constitution, the King dismissed pro-government Senators appointed by him and called on the people to resist what he called attempts by the ruling party to reduce him to a 'ghost' (Maqutu 1990b:263). Disregard for the constitution was even more blatant in 1970, with Prime Minister Jonathan declaring a state of emergency and refusing to hand over the administration of the country to his rival and winner of the elections held in January of that year, Ntsu Mokhehle.

With Jonathan's seizure of power any hope that there would be constitutionalism in Lesotho dissipated, while the role of the state changed from being nominally one of protecting the constitution and democracy to one of being an anti-democratic bulwark. As Mothibe (1998:47) puts it, Jonathan's action 'set in motion an authoritarian agenda characterised by brute force, naked oppression and de facto one-party rule'. Thus for the subsequent period of 27 years between 1970 and 1993, Lesotho had a state with no democratic agenda and which, therefore, could not inculcate the norms and values that might conduce constitutionalism. Democratic avenues having vanished, the struggle for constitutional rule assumed a different character. The BCP, the only rallying centre for those struggling against the Jonathan regime, resorted to an armed struggle, but this exacerbated the chasm in the Lesotho polity because of the vengeful murders and retributive violence that followed.

## Electoral Process and Electoral Reform Imperatives

Between 1993 and 1998 the conduct of elections and management of the electoral process in Lesotho rested with the Director of Elections who was a state employee. The electoral regime as a whole had been agreed prior to the elections by all the stakeholders, and the agreement entrenched in the national constitution, but the country's main opposition parties campaigned successfully for the replacement of the incumbent Director of Elections with a three-man independent electoral commission. This had a chairman with a law degree, and two other members commanding public respect.

The reasons advanced by the opposition for its stance was that the Director's status made it impossible for him to act independently of the government, his employer, which has direct interest as one of the main competitors in the electoral process. In addition, the opposition felt that government control over the Director of Elections and his staff had bureaucratised the electoral process of which the consequences included the lack of transparency and restricted access to him. In any case, Section 66 of the constitution made provision for the establishment of an independent electoral commission. Thus made within this context, the demand was certainly not outlandish. It was apposite and necessary.

Probably fearing a repeat of the 1994 incidents such as the army infighting, police and prison officers strikes, seizure of ministers by members of the armed forces, and the assassination of the Deputy Prime Minister, the government caved in to the pressure and, accordingly, facilitated the proposed change. Varied interpretations of these incidents appear in the works of many writers on this issue and, therefore, need not detain us here (Makoa 1995, Mahao 1997, Mothibe 1998, Thabane 1998). Another important factor was a condition imposed by the troika countries – Botswana, South Africa and Zimbabwe – for the reinstatement of the BCP regime after its overthrow by the King in 1994.

The troika pressured the King and the Prime Minister to sign a memorandum of understanding detailing a set of conditions for reinstating the latter's administration. One of them was that the 'recognition of the basic rights of individuals and groups in a pluralist and civil society shall be duly observed and fulfilled' (Memorandum of Understanding 1994). The replacement of the incumbent director as the sole manager of elections was secured one year and a few months ahead of the 1998 disputed elections. Not only was he subordinated to the newly instituted Independent Electoral

Commission (IEC) but he was also to cede some of his powers and responsibilities to it.

However, by the time the elections were held there was already a groundswell of complaints by the opposition, of which some became the subject of arbitration by the High Court, against the IEC. Among the complaints brought to the Lesotho High Court was the IEC's apparent refusal to furnish political parties with the voters' lists. For unexplained reasons, however, the High Court did not deliver judgement before the polling day and this further poisoned the relations between the IEC and the complainants. Thus by the election day mutual trust and confidence between them had evaporated. The attrition did not augur well for the elections for, indeed, their outcome was rejected as fraudulent by the main opposition BNP, and the BCP and the MFP. This precipitated a stand-off with the government that could only be broken by external military intervention.

According to the country's electoral law – National Assembly Election Order 1992, Section 22 – political parties competing in a national election must be furnished with constituency voters' lists – provisional and final – to afford them the opportunity to scrutinise them for possible errors. But whether the failure to provide the lists in time affected the outcome of the elections is a matter for conjecture. It was, however, among the important factors that influenced the three parties' reaction to the outcome, and their subsequent decision to stage prolonged protests in August-September, 1998 – which were ended violently on 22 September by the intervening South African and Botswana armed forces in front of the King's palace. The intervention came after both internal and external mediators had tried unsuccessfully to persuade the protesting parties to change their tactics. But it helped to bring the warring parties to the negotiating table, enabling negotiations to begin in the following month under the guidance of South Africa, which represented the Southern African Development Community (SADC).

Until the second post-military elections in 1998, Lesotho's electoral process occurred in a winner-takes-all political framework. However, based on the majoritarian principle, it marginalised or excluded the losers of elections from participation in the national decision-making process for only the winners of constituency seats could be members of parliament. Thus, only those who voted for the candidates who came out victorious in individual electoral constituencies were represented in the legislature. But doubts as to the appropriateness of the system for a country that had barely enjoyed stability since independence have to do with the fact that the 1993 elections

had delivered a one-party parliament, there being no indication that this outcome would not be repeated in subsequent elections. This was dangerous, more so because the real protagonists in Lesotho's political power contest, 'the BNP and the BCP, were in principle still at war when these elections were held' (Makoa 2002:5). Through its South African backed Lesotho Liberation Army (LLA), the BCP had between 1979 and 1986 been fighting to overthrow Jonathan's government. Later episodes underlined the need for electoral reforms. The 1998 general elections delivered an almost single-party parliament, rekindling the latent conflict between the erstwhile belligerents, Jonathan's and Mokhehle's followers, now boxed into the BNP and the newly formed LCD. The pattern has been repeated in the May 2002 election, with the ruling LCD winning all, but one, constituency seats.

The doubts were, in particular, triggered by the King's overthrow of the BCP government and support for the coup by the losing competitors, namely the BNP and the MFP and small parties such as the United Democratic Party (UDP). However, unconcerned about representation in the legislature, these political parties initially called not for a parliamentary system based on the proportionality of the total vote but a government of national unity. Pressure for an inclusive political system came from the civil society which, although fragmented and weak, in 1995 persuaded the government to sponsor a national conference to consider this option.

The conference recommended reforms to the present electoral model that included in the main adopting an electoral system that ensured proportional representation. The proposed model, all the conference participants except the ruling party and the government argued, was a peace and stability strategy. However, without the support of the government and the ruling party, this came to naught. The governing BCP and the government dismissed the entire proposal as a ploy used by the defeated opposition party leaders to gain entry into parliament through an unconventional channel – 'through the backdoor', as they put it. Serious consideration of this alternative had to await the 1998 post-elections crisis that brought the country to a standstill.

South Africa and Botswana intervened militarily to restore law and order to the country. But ultimately this was to be a negotiated order since the crisis had paralysed the government and greatly boosted the opposition's bargaining power. On the other hand, with the legitimacy of their action questioned by their own people, media, Lesotho's opposition parties and the international community, South Africa and Botswana sought an easy exit from Lesotho, and this increased the pressure for a negotiated post-military

intervention political order. Working out a deal that was satisfactory to both the opposition and the government was, therefore, imperative.

A meeting of the belligerents to be chaired by the South African Minister for Safety and Security was convened early in October 1998 to begin the negotiations. The outcome was an agreement that the opposing parties must work together in search for peace and solutions to the wide political problems in Lesotho. This included the establishment of a political structure – termed the Interim Political Authority (IPA) – that was to facilitate this process by preparing in co-operation with the government the country for fresh elections in a 15-18 months period. The IPA's functions would include scrutiny of the present electoral model with a view to reforming it where necessary so that it would take account, in future elections, of every vote cast. The IPA, in which each of the political parties that contested the elections had two representatives, was established in November 1998 (cf Interim Political Authority 2000).

Regarding the electoral model, the IPA recommended combining the first-past-the-post (FPTP) system with proportional representation (PR), to transform parliament into an inclusive body with a multi-party outlook representing and servicing the entire nation, and to create a politically stable environment. The recommendation was approved by the Lesotho Parliament after some modifications. The Lesotho electoral model, operational since the May 2002 elections, thus combines the FPTP and PR approaches. Parliament's composition has accordingly been transformed, and now has 80 members elected directly from the country's similar number of constituencies and 40 members qualifying on the basis of their parties' overall performance at the polls – that is, the proportion of the total number of votes cast. However, the model does not translate to increased capacity for conflict resolution or management.

## Electoral System and Conflict Management

A corollary of and reflecting Basotho elite's persistent failure to strive for domestic solutions to internal disputes (Makoa 1999), the new system is devoid of an extra-legal, independent and neutral conflict management institution that manages or resolves elections-related conflicts. The lack of such a 'citizens' mechanism means that courts of law and the IEC have monopoly on conflict resolution. Admittedly, ad hoc measures have been

taken by the non-governmental organisations (NGOs), particularly the churches, to try and settle some of the damaging political disputes. But these have been ineffective largely due to a lack of formal recognition by the state, deep-seated animosities and mutual distrust among the Lesotho people, and doubt as to their neutrality. The ad hoc conflict resolution measures coming via the NGOs have also not been effective because of the nature of the electoral laws. As noted below, these preclude access to and examination of the matters and objects that are central to conflict such as the ballot papers and other voting materials. The importance of gaining access to the objects of conflict was underscored by an investigation of fraud allegations with respect to the outcome the 1998 elections. While its report did not apportion blame to any of the disputants, the Langa Commission investigating the allegations noted irregularities and discrepancies raising serious concerns, and that 'the means of checking this has been compromised and created much room for doubt' (cited in Matlosa 1999:182).

In terms of Section 6 of the National Assembly Elections (Amendment) Act 2001, the IEC is empowered to resolve complaints concerning elections. Complaints against the IEC and its staff, and disputes between the IEC and interested parties are, therefore, by law or in principle, subject to arbitration, conciliation and mediation by the commission. While they may strictly adhere to the principle of impartiality, the problem is bound to arise with regard to the cases where the commission and its staff are perceived to be blameworthy. It is even more problematic, if not useless or absurd, where complaints cannot be settled without auditing the entire electoral process that the commissioners and their staff manage, or by gaining access to secrets regarding the management and operations of the process.

In fact, while any interested party is entitled under the electoral law to complain against the conduct of the IEC and its staff, he/she is denied access to secrets and data that are basic to his/her complaint. Such secrets and data can only be released with the order of the High Court. However, in Lesotho's political history this is unknown. The High Court has dismissed every case in this regard and by so doing, has encouraged a lack of accountability and transparency in the country's electoral process for it says that the IEC's conduct is not amenable to popular scrutiny.

The existing framework, in particular, has mystified both the electoral process and elections. This has political costs. Those managing the electoral process have no obligation to account to their principal – voters and their legitimate institutions. It has externalised the elections, hence alienating the

voter from the electoral process. That is, elections become the property of the IEC, and because of this, the voter has only the right to vote. This is a curious paradox – where people only have the right to complain but cannot access data that are crucial to finding the solutions. The lessons of 1998 made it clear that Lesotho needs a conflict resolution mechanism that facilitates scrutiny of both the process and those managing it in order to confirm or falsify what is alleged. The opposition parties reacted the way they did because of their feeling of powerlessness in relation to the electoral management regime that they could neither influence nor challenge in terms of the existing constitutional setting.

## Key Policy Challenges for Democratic Governance and Stability

The analysis suggests several important policy challenges for democratic governance and stability in Lesotho. The first is developing policies that address what Moyo (1998:5) terms the 'genetic problem'. This means 'discovering value principles' that facilitate transition from an old to a new stage of political development. These will serve as building blocks for and foundations of the transcendent political order. As indicated earlier, what would have been an autonomous political development in Lesotho was interrupted by colonialism. However, this did not provide such a bridge as suggested above for transition into modernity. The reason for this is that it was unable significantly to change the Basotho's social values, for the colonial state that guided Lesotho to independence lacked the requisite resources to support such change.

Nor did it equip the 'modernising' elite, that is, the petit bourgeoisie that spearheaded the campaign for independence, for this task. Admittedly, as the analysis suggests, this will be difficult to achieve without a radical structural change, involving economic transformation that generates an indigenous middle class ready to assume political leadership. Also important as a policy challenge for the system is evolving norms and structures that would mitigate the effects of political competition and, instead, increase inter-party collaboration and co-operation. The government and the ruling party must forge a partnership with the nation rather than simply leading it. In other words, accepting qualified opposition groups to lead in various community development projects is another important innovation. In sum, it

means expanded political participation as a national norm rather than a vagary of political outcomes.

However, this calls for a change in attitude of the ruling party towards the opposition. The people have passed their judgement. Policies that exclude or marginalise the opposition should be abandoned. With this, elections will cease to be the zero-sum game that it is, while confidence in democratic rule will increase. It also means reforming the present electoral model in order to make the national assembly more inclusive and representative of society, and lead to greater transparency and to the building of mutual confidence and trust. A truly democratic atmosphere fosters inter-group interactions, free discussions and exchange of ideas. It 'can offer an effective means for peaceful handling of deep-rooted differences through inclusive, just and accountable social frameworks' (Harris & Reilly 1998:17). The beneficiaries of expanded democracy in Lesotho would include the IEC and the electoral system in that they would cease to be phenomena external to and confronting the electorate. It is imperative also to facilitate the evolution of a universally acceptable conflict resolution mechanism in Lesotho. External interventions have only created dependency without solving the country's problems.

## Conclusion

Our conclusion cannot but start by noting the unbreakable interdependence and interconnectedness between the triad of elections, constitutionalism and political stability. Alone, as this Lesotho-focused analysis has tried to show, each of these issues, on its own, cannot solve political problems such as mutual antagonisms, electoral fraud, non-acceptance of election outcomes and disregard for a constitution. Together, these are critical sinews of democracy and foundations of peace. Unfortunately, however, the process of decolonisation and the framework in which it occurred facilitated the emergence of an elective regime with a written constitution without inculcating proper attitudes. The conditions in Lesotho made a more favourable outcome difficult if not impossible. Opportunistic politicking, based on societal divisions, therefore took root with disastrous consequences. Instruments of democracy such as elections, political parties and parliament have thus become means and mechanisms for gaining power and denying basic rights to opposition groups outside government. The resulting political climate has made it impossible for

the state and its traditional apparatuses to intervene as neutral forces when disputes arise. Crucial institutions such as courts of law, the police, army, the constitution and elections directorate have lost or are fast losing credibility. Policy reforms suggested above should help in bringing about some improvement to the situation.

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# Towards Stable Electoral Laws in Mozambique

*Iraê Baptista Lundin\**

## Abstract

Following a protracted violent conflict that engulfed Mozambique spanning a period of 16 years of armed war that has destroyed not only lives and infrastructure, but also debilitated the social tissue of the nation, the country seems poised for stability and economic progress. Having adopted a centrally controlled system after independence in 1975 to structure the country to move towards development guided by the socialist ideology, in 1990 a new constitution was adopted to bring about far-reaching transformation in both the economic realm and political domain. Subsequent to the historic General Peace Agreement (GPA) signed in 1992, which effectively ended the war, Mozambique nurtured the new-found peace with its first democratic election held in 1994 for the presidency and the national parliament. As part of the conflict management mechanism of the GPA, the 1990 Constitution was amended to allow the country to adopt a proportional representation electoral

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system. The 1994 democratic election and its outcome surely helped deepen reconciliation between the belligerent parties and this process was given even more impetus by the 1998 local government elections and the 1999 general election, despite complaints of other contestants in both events. That there were high expectations from all key actors in advance of the 2003 local government elections and the 2004 general election is thus no wonder.

## A Brief Political and Constitutional History of Mozambique

Mozambique has been independent since 1975, after more than a decade of struggle against the Portuguese colonial ruler. However, the independence did not bring about peace. In fact, already in April 1976 the first incursions were made in the West zones of the country bordering the then Rhodesia, initiating what became a protracted armed conflict, which lasted for 16 years. After independence the model chosen by the new elite in power to structure the government and construct development was socialism – implying a centrally planned economy and the state controlling all domains of public life, education and health care as well as the process of production and distribution of goods. The system excluded automatically those not sharing the same ideology, including the emergent bourgeoisie, the religious leaders and believers, and the traditional elite. The system also denied important elements of the African culture, supposedly to be destroyed according to that line of thought, to give space to the envisaged modernisation.

These political measures contributed to a feeling of exclusion in state affairs among those not allowed to take part in the inner circle of the political elite. External forces capitalised on the sentiment, creating and exacerbating a conflict that almost destroyed the country's social fabric, leading to a climate of polarisation in the political domain. The first constitution of 1975, discussed and approved by the Central Committee of the Front for the Liberation of Mozambique (FRELIMO), the ruling party, at Tofo Beach in the province of Inhambane, was designed to reflect the model of government based on one-party rule and a monolithic parliament. The ruling party would decide all aspects of public life including the functioning of the tribunals. The Constitution of 1975 lent a prominent role to FRELIMO recognising its determinant role in the struggle for independence, being consequently 'the legitimate representative of the Mozambican people' (preamble of the 1990 Constitution). It stated in article 2 that 'the power belongs to the workers and

peasants united and conducted by FRELIMO and is exercised by the organs of popular power'.

The first constitutional revision took place in 1977, when the country officially adopted the socialist line and created a system of so-called people's assemblies in the existing levels of government, from the People's National Assembly in Maputo, the capital of the Republic, to the People's Locality Assemblies in the smallest administrative unit in the country. In 1978 all property was nationalised including those belonging to the religious denominations, which included hospitals and schools managed by the Christian churches. In 1983, during the Third Congress of FRELIMO, the economic performance of the country was highly criticised thus opening up a major national debate. The decision was then taken to decentralise some of the political institutions from central to local level in 1984. The state of things started to change in the country by then, with the first contacts taking place with the Bretton Wood institutions after the then president, Samora Machel, had declared the country in bankruptcy, thus not able to honour the payment of its debts. The second constitutional revision took place in 1986, and at the same time the National People's Assembly created a commission to review the Charter in accordance with the changes taking place in the economy, to be formally structured from January 1987 with the introduction of the structural adjustment programme (SAP).

The SAP and other changes required, in fact, a new constitution, not a mere revision of the old one. Even if a new draft was presented and discussed openly in the country in sessions of popular debate organised by the National People's Assembly during 1987-88, the reforms were so substantial that something totally different was required to embrace the new disposition. In fact, the Fifth Congress of FRELIMO that took place in 1987 discussed and approved substantial changes in the politico-economic life of the country, such as political pluralism and a role for the private sector in the economy.

In 1990, a new draft, more in accordance with the new Mozambique in terms of economy and politics, was presented and discussed within the Central Committee of FRELIMO, and this was also widely debated in the country involving different sectors of the still incipient civil society. The new Constitution was to provide a space for the democratic exercise of the right to participate in public affairs, not only in regular elections but also the right to establish associations to contribute to creating an emerging and vibrant civil society.

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After the General Peace Agreement was signed in 1992, the constitution was revised for the first time, to accommodate the 'Principles of the Electoral Act'. In 1996 a new amendment was added to accommodate the local government: local organs institutionalising the local power 'with the objective to organise the participation of the citizens in the solution of the problems proper of its communities and promote the local development and the deepening of democracy'.

## State and Constitutionalism

The State of independent Mozambique has had two constitutions so far. The first one introduced the new dispensation after independence, stating the new national sovereign state and the right of the Mozambicans as free people. The second one incorporated constitutional reforms introduced in the economic system and adopted with the structural adjustment programme of January 1987 to embrace the law of the market in the economic sphere, and to embrace plural liberal democracy in the political sphere. According to the Constitution of 1975, Mozambique is an independent, sovereign, unitary and democratic state, subdivided into 11 provinces and 128 districts, as well as administrative posts and localities. FRELIMO was to guide state affairs and the direction of the economy as well as the social institutions in the country.

The new constitution of 1990 'contains the principles of a multi-party system, separation of powers, guarantees for human rights, the right to strike, freedom of speech, of association, of press, and of religion'. Capital punishment is ruled out by the new Constitution. Article 2 of the Constitution of 1990 states that 'sovereignty is vested in the people', the governing body is accordingly, elected by 'universal suffrage', 'secret, direct, personal and equal vote', lending to the system a 'concrete political content when elections are held in a representative regime of political democracy' (Carrilho 1996:126). It is important to point out that the new Constitution opened the door for the end of the armed conflict that had by then already engulfed the country for 14 years. Compared to the earlier one, the new constitution is not only a model of pluralism and freedom including the market regulating trade issues, but states also the right of the citizens and the initiative of law by the people's elected representatives.

## The 1975 Constitution

The Constitution of 1975 was a reflection of the overwhelming role of the state not only in economic affairs but also in the life of the individuals. The role of FRELIMO was a reference point in the society, covering the political, economic and cultural domains. In a sense the role of FRELIMO was almost coincident to the role of the state. At individual level the concept of people was the most used term to refer to the inhabitants of the country.

According to the Constitution of 1975 (article 45 of the Constitution) the power to make law rested with the following:

a. The Central Committee of FRELIMO, which establishes the orientations and defines the principles of the legislation;
b. The Permanent Commission at the People's Assembly;
c. The Cabinet; and
d. The Commissions at the People's Assembly.

The Constitution of 1990 is a reflection of pluralism, where the state opens a substantial space to civic forces to participate in the process of decision-making such as the private sector in economic affairs. According to the Constitution of 1990, the power to law (article 137 of the Constitution) rests with:

a. The President of the Republic;
b. The Commissions of the Assembly of the Republic;
c. The Deputies; and
d. The Cabinet.

One fundamental difference in this matter is the attempt to detach FRELIMO as a party from the state, and thereafter from the right and prerogative to create laws. Besides the other organs of sovereignty, the power to make laws lies now on the members of parliament involving all parties there represented.

## The 1990 Constitution and the General Peace Agreement of 1992

In 1992, a General Peace Accord (GPA) was signed in Rome ending an armed conflict of 16 years. The GPA was 'initially *de facto* above the Constitution, [but] later *de jure* submitted to it' (Carrilho 1996:127). According to Carrilho,

**Box 1: Extracts of the Principles of the Electoral Act in the GP**

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| **The Electoral Act in the Protocol III of the GPA was signed on 12 March 1992 with the following elements:** |
| Freedom of the press and access to the media. Citizens have the 'right to freedom of the press and freedom of information', and 'those rights shall not be limited by censorship'. Moreover, 'advertisements which conform to the prevailing commercial laws may not be refused for political reasons'. |
| Freedom of association, expression and political communication. The rights ' shall not extend to the activities of unlawful private paramilitary groups or groups which promote violence of any form or terrorism, racism or separatism'. 'Freedom of association, expression and political communication shall encompass access, without discrimination, to the use of public places and facilities'. |
| Freedom of movement and residence. |
| Return of Mozambican refugees and displaced persons and their reintegration. |
| Electoral procedures: a democratic, impartial and pluralistic voting system introducing norms for: <br><br> (i) general principles such as (a) 'the Electoral Act shall establish an electoral system which is consonant with the principles of the direct, equal, secret and personal ballot' and (b) Elections to the Assembly of the Republic and for President of the republic shall be held simultaneously, (ii) the right to vote, (iii) the national electoral commission, (iv) voting assemblies, <br><br> (v) election to the assembly of the republic, stating in (b) 'The Electoral Act shall provide for an electoral system based on the principle of proportional representation for the elections to the Assembly', and in (f) 'A minimum percentage of votes cast nationwide shall be established, below which competing political parties may not have a seat in the Assembly. This percentage shall be agreed in consultation with all political parties in the country and shall not be less than 5 percent or more than 20 percent', (vi) election of the president of the republic, (vii) financing and facilities. |
| Guarantees for the electoral process and the role of the international observers. |

Source: The General Peace Agreement of Mozambique 1992

although the GPA by its nature, object and subjects came close to being an international treaty or accord, it was passed as law (13/92 of 14 October) by the Mozambican parliament in a formal sense, its value was therefore beneath that of the Constitution (1996:127-128).

The GPA changed the Constitution and introduced 'principles of Electoral Law' in article 107. Paragraph 3 of article 107 was revised and changed from majority vote to proportional vote according to the protocol of the GPA. The new Constitution and the GPA have thus established the foundations for the creation of the planning, executing, directing and supervision organs of the electoral processes for the multi-party elections where the organs are the National Electoral Commission (CNE) and the Technical Secretariat of the Electoral Administration (STAE). From 1994 to 2002 those organs have seen modifications in form and contents, in an attempt to obtain broader consensus between the two major parties. The last changes took place in 2002, to build a new framework for 2003 and 2004, the date when the next local and national elections respectively were due to take place.

## The Electoral Process and Electoral System Reform Imperatives

The first plural and democratic election in Mozambique took place in 1994, in accordance with the new Constitution of November 1990 and in keeping with the GPA signed in October 1992. The electoral system adopted in 1994 after a Conference of all Parties, was of proportional representation, (article 107, paragraph 3 of the Constitution, in the version revised according to Law 12/92 of 9 October, and article 128 of the electoral law), to be presented through party lists (article 124 of the electoral law).

According to the electoral law, the number of seats was to be 250 (article 193, paragraph 3)[1]. The province was to be the electoral constituency and the

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1    According to the law the number of seats to be chosen within the country were 248, two to be decided by the Mozambican residents outside the country. However, because no consensus was reached in the parliament on how to register those Mozambicans living outside the country, suspicion that the embassies and consulates would not do it properly, considering that the government appointed all the functionaries, the 250 seats were all voted inside the country.

2    The number of registered voters has changed the number of seats in the provinces of Maputo City (-2), Inhambane (-1), Manica (+2), Tete (+3), Nampula (-4) and Nyassa (+2), between the first national election held in 1994 and the second one held in 1999.

distribution of the seats was to be in accordance with the number of voters registered (article 200), not of the density of the population[2]. The votes would

**Box 2: The Hondt Method**

The first step of the Hondt method is to determine the quotient by dividing the total number of registered voters by the number of total seats[3]. For the national elections in 1999 the total number of voters was 7 099 105 (85.5 percent of the potential voters) to be divided by 250. The quotient was 28 396.

The second step is to divide the total number of registered voters for each province (the electoral circle) by the quotient. The result gives the number of seats to be elected by the province. In case the result of the division is superior to the half of the general quotient (28 396), the electoral circle gets one more seat to elect its members for the parliament.

be converted into seats at the National Parliament according to a principle settled by the Hondt method (article 204).

The best innovation in the democratic process is, by far, the increasing participation of the civil society of urban and rural varieties. The urban civil society is participating at city level, modifying some governance paradigms by creating an ambience to compel government to discuss and consider the importance of the strength embedded in the work of the national organisations. The rural civil society, including the traditional elite, is also taking part in the process of democratisation. The traditional healers are at present not only accepted by the political system but also valued as important part of the process of healing both the body and the spirit, participating in health campaigns across the country, including the combat against HIV-AIDS. Traditional chiefs are also valued as an important element of liaison between the state and the rural communities. The legal framework of the local govern-ment (law 2/97) has opened a space for the local government to interact with

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3    For 1994, 1998 and 1999 a new census was held specifically for the election. In 2002 a new law was approved (18/2002) invalidating the laws 5/97 and 9/99, transforming the census into a continuous process.

the traditional chiefs, and subsequently, the decree 15/2000 has designed the guidelines of how the interaction can take place. A law on the role this elite should play, if any at all, in the general structure of the state affairs, is however, not discussed yet.

As a culmination of the process of participation of the civil society in state affairs, and in order to value its role in reinforcing democracy, the bench of the opposition in the parliament, the National Resistance Movement of Mozambique (RENAMO) Electoral Union, has suggested that the head of the CNE be chosen by and among the civil society. The suggestion was accepted by consensus, and that is one of the major changes in the structure of the CNE for the local and national elections of 2003 and 2004. It will have a longer life-span of five years for the first time, not only 120 days as the previous ones. Furthermore, as an outcome of the innovation introduced in 2002 (law 20/2002), the STAE will be subordinated to the CNE for the whole term of its life-span. Previously it was subordinated to the Ministry of State Administration after the dissolution of the CNE that used to cease its operations 120 days after the elections.

## Electoral System and Conflict Management

The decision to choose the electoral system in 1994 took place after a long process of discussion involving large sectors of the society and all registered parties. At first, and given the presidential nature of the system of government, parliament adopted in the Constitution a system of majority vote for the parliamentary elections. RENAMO contested the principle during the negotiations in Rome before the GPA was signed in October 1992.

The first conflict was resolved by the Multiparty Conference in Maputo from July 1993 until middle 1994, which, even if the discussion was slow and at times leading to nowhere, had the merit of producing a broad consensus in the question of the electoral system. Also the question of the composition of the first National Electoral Commission was decided there, with a formula according to which no one would have the upper hand. The president was chosen by consensus among the political parties there represented. The 'magic' formula was abandoned afterwards, never to produce the initial consensus again, and this caused a stalemate in 1999 when the opposition accused the CNE of bias towards the government of the day.

According to Carrilho (1996:138) 'the choice of representativeness versus governability' (quoting Diamond 1990:54) was solved by proportional representation, by giving more weight to representativeness (Diamond 2000:54). The Constitution and the Electoral Law did provide for independent candidates to run for presidency, but did not provide for independent individuals and groups to run and/or present candidates to the national parliament outside the party or coalition lists, what was made possible for the local government elections in 1998, when a group of citizens could register and present candidates for the municipal parliament.

## The Electoral Law of 1994

The electoral law of 1994 was designed under the framework of the Constitution and the GPA. That framework was and still is, one of the major challenges to democracy in terms of representation, considering the five per cent threshold to obtain a seat, and that only the two major parties, FRELIMO and RENAMO, have been able to surpass the threshold. FRELIMO has used its 30 years in power to strengthen its position while RENAMO gained more votes in the areas it controls.

The threshold of five per cent has kept the majority of the small parties from entering parliament, which has thus far ensured a two-party system or what others term a duopoly. In 1994, a coalition of three parties, the Democratic Union (UD), made just above five per cent to secure nine seats, to become a balance between the two giants[4]. In 1999, RENAMO invited ten small parties for a coalition known as RENAMO-Electoral Union. In 1994 FRELIMO maintained the presidency and the majority in parliament with 129 seats, RENAMO got 112 seats and the UD nine.

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4   The three parties are the Liberal and Democratic Party (PALMO), the Mozambican National Party (PANAMO) and the National Democratic Party (PANADE). They constituted a small bench in the parliament until they broke up before the end of the term on issues that were in fact not solved in the beginning of the mandate, connected to the number of seats to be divided among the three parties.

## The Electoral Law of 1997

The first local elections for municipalities were held in 1998, guided by a package of laws designed in 1997 by the government and approved in the same year by parliament. Although the package was tailor-made for the local election, it was not considered appropriate by the opposition in order to guarantee fairness and transparency in the process. Consequently the opposition decided to boycott the election. The major opposition party, RENAMO, called for a boycott and the response was overwhelming. All joined the boycott but two small parties, the Workers Party (PT) and the United Mozambican Resistance (RUMO), which did participate along with groups of citizens which presented candidates in ten municipalities[5]. For 2003 the package was amended and even if not totally satisfied the opposition did participate in the election.

Apart from the amendment in the Constitution in 1996, by Law 6/96 of 22nd November, the following laws were approved by parliament[6] for local government elections:

- Law 2/97 of 18th February: Approving the legal framework for the implementation of the local municipalities[7].
- Law 4/97 of 28th May: Creating the National Electoral Commission.
- Law 5/97 of 28th May: Institutionalising the systematic electoral census for the realisation of the elections and opinion polls.
- Law 6/97 of 28th May: Establishing the legal-juridical framework for the elections of the local municipal organs.
- Law 7/98 of 31st May: Establishing the framework for the administrative tutelage of the State upon the local municipalities.

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5   PT and the RUMO are represented in the municipalities of Maputo and Matola, and PT also in Xaixai. Groups of citizens did participate presenting candidates in big city municipalities such as Maputo, Beira, Nampula, Pemba, Chibuto and Nacala, as well as in small village municipalities such as Manhiça. They are represented in the municipalities of the cities of Maputo, Beira and Nacala, and the small town of Manhiça.

6   It was there but not sufficiently explicit.

7   The local government was to be implanted in two types of places: the municipalities in cities and small tows, and the villages corresponding to the territories of the seat of the administrative posts.

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- Law 8/97 of 31st May: Establishing the special norms that regulate the organisation and the functioning of the city of Maputo (the city capital of the Republic).
- Law 9/97 of 31st May: Defining the statute of the office holders and members of the local municipalities.
- Law 10/97 of 31st May: Creating the municipalities in cities and villages and in some territorial circumscriptions[8].
- Law 11/97 of 31st May: Defining and establishing the legal-juridical regime of the municipal finances and patrimony.

**Table 1: The Dimension of the Municipal Assembly**

| Voters | Members in the Assembly |
|---|---|
| Less than 20,000 | 13 |
| 20,000 – 30,000 | 17 |
| 30,000 – 40,000 | 21 |
| 40,000 – 60,000 | 31 |
| 60,000 – 100,000 | 39 |
| More than 100,000 | 39 plus one for each 20,000 more |
| The city of Maputo | No more than 71 |

Source: Law 2/97, paragraph 36, and law 8/97, article 5

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8  All 23 cities and 10 of the 60 villages, one in each province were involved; not a single locality was chosen for the first act, a decision of the legislator that designed it to be gradual in terms of number of municipalities involved. According to the Ministry of State Administration, a statement made when presenting the law to the parliament in 1997, 'the proposal of ten out of the 60 small towns is funded in the principle of gradualism what is explained by the inexistence or insufficiency of economic and social conditions, necessary and indispensable to the implantation of the functioning of municipalities in small towns in general'. The ten villages are then seen as pilot experience by the legislator, to be evaluated after the first five years. For 2003, the gradualism has not increased, the time considered by the legislator still too short to extend the municipalities to other small towns and to the villages.

The Municipal Council that exercises jurisdiction over different domains in the municipal government was to be formed by the President of the Council plus a number of town councillors; the number to be decided by law considering the whole population in the municipal territory, according to table 2.

**Table 2: The Dimension of the Municipal Council**

| Population | Number of Members of the Municipal Council |
|---|---|
| Less than 50,000 | 5 |
| 50,000 - 1000,000 | 7 |
| 100,000 - 200,000 | 9 |
| More than 200,000 | 11 |
| The city of Maputo | 14-18 |

Source: Law 2/97, article 50 and law 8/97, article 7

The election took place in June 1998 in 33 municipalities according to the law 10/97, but only 15 per cent of those eligible did cast their vote. FRELIMO won all municipalities, but two small parties got some places in Xaixai, Matola and Maputo, and four groups of citizens were represented in Maputo, Beira, Manhiça and Nacala.

In spite of the high rate of abstention, the election reflected the willingness of the citizens to participate in the process. Citizen groupings at local level represented local interests when at national level voting along the lines of the bigger parties[9].

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9   In the municipality of Maputo, the group of citizens, 'Together for the City' which got the second place in the local parliament, is clearly an amalgamation of FRELIMO members or ex-members. Some among them ex-office holders in previous national governments, which decided to create a political-civic movement to administer the city focusing mainly in the local interests.

## The Amendments in the National Electoral Law for 1999

National electoral laws were also amended for the 1999 elections. The amendments changed the organic structure of the STAE. The innovation was to permit the appointment of two Deputy General Directors by the political parties according to the representation in parliament. They would assist the General Director but have no right to vote. The CNE was also changed. In 1994, the most consensual CNE was composed of members chosen by the government, by RENAMO, as well as from the small parties. In 1998 (local elections) and 1999 (national elections) it was composed only of members indicated by the government and by the parties represented in parliament.

Paragraph 2 of article 19 of law 4/99 that created the CNE, stipulated that in the electoral periods the organic framework of STAE, at each level, is to be complemented by political appointments. Law 4/99 introduced alterations in the composition of CNE, enlarging the organ at provincial, district and city levels. The new composition of the CNE for 1999 increased from eight members in 1998 to 17 members: 15 members elected proportionally by political parties represented in parliament, and two members appointed by government. The president of the organ was to be nominated by civil society and appointed by the President of the Republic.

At provincial level CNE was to have seven members, one designated by government and six by the parties represented in the parliament, proportionally. At district and city level, the membership stood at five in the total, one plus four following the same principle. The amended electoral law in 1999 did also provide for a new electoral census, and the limit of 18 years to register to vote, to be completed up to the last day of the census. In 1999 FRELIMO's candidate won the presidency, and representation in the national parliament is 133 seats for FRELIMO and 117 seats for RENAMO-Electoral Union.

## The 2002 Amendments to the Electoral Law

In 2002 parliament amended the law for local elections to be held in 2003, in order to make it more consensual. Three new laws were discussed and approved, providing a framework for the national elections to be held in 2004:

- Law 18/2002 of 10 October: Altering the laws 5/97 and 9/99, related to the institution of the systematic electoral census for the realisation of elections and opinions polls.
- Law 19/2002 of 10 October: Introducing alterations to the law 6/97, related to the election of the organs of the local municipalities.
- Law 2/2002 of 10 October: Creating the National Electoral Commission.

The new CNE will have 19 members, 17 appointed by the parliament on a proportional basis, and one member without a voting right, appointed by the government. The 19th member is the president of CNE appointed by the civil society. The CNE will choose the provincial and district commission to be in force from 45 days before the date of the electoral census, electoral acts and electoral polls, and ceases its functions ten days after the results have been presented to the public. The electoral commissions at city and district levels, function from 30 days before the date of the electoral census, electoral acts and opinion polls, and cease their functions five days after the results have been presented to the public.

The most notable feature of the amendment was that the CNE was to be headed by a member appointed by the civil society, to be approved by the parliament from the list of at least three names, and nominated by the President of the Republic. The process caused a good feeling of counting in state affairs in the civil society, even if because it was a new practice it has probably not produced the best results in the eyes of all sectors of the civil society[10]. Decisions in the CNE will be made by consensus, there will be a permanent voter's roll, and CNE will remain a permanent structure.

STAE will have its General Director selected by the CNE, after a public contest based on curriculum evaluation, and appointed by the Cabinet on the

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10  A national exercise took place co-ordinated by the Movement for Peace and Citizenship under the umbrella of the Mozambican Association for Democracy (AMODE) involving civic and religious associations. It produced in the end a short list of three names. However, the Christian Council of Churches (CCM) congregating 22 Protestant Churches decided to indicate its own candidate, a new name making it four names all together, the last one was the candidate picked up by the ruling party with the majority of the seats in the parliament and consequently also in the CNE. Even if denouncing the last moment move as a manoeuvre from the part of FRELIMO, RENAMO-UE and the other parties have accepted the results hoping that the head of the CNE will lend a new dynamic into the whole electoral process.

recommendation of the CNE. During the electoral period the Director of the STAE is assisted by two Deputy General Directors nominated by the political parties according to the representation in the parliament. This fact will hopefully prevent boycotts and turn the election into a really participatory democratic exercise[11]. Moreover, the new law (20/2002) will hopefully prevent the accusations of fraud that the opposition has made since 1994, the worst in 1999 when the Supreme Court ruled out the appeal. This fact has contributed to keeping the state in a stalemate for many months and has halted foreign investment to commence much needed development.

## Gender Representation in Decision-Making

The position of women in Mozambique has been a concern since the first days of independence. However, in spite of the efforts, it was only in the 1990s that the presence of women in public decision-making arenas became more visible (UNDP 2002:40). The increasing percentage of women in the legislative bodies and in the political administrative powers is a consequence of that effort. It resulted from the awareness that women have a lot to offer for the development of the country, from 'the impossibility of isolating women's participation in decision-making from the mechanisms of socialisation that shape the female identity around values and practices that limit their access and opportunities' (UNDP 2002:41) in the society, and from the increasing number of women receiving professional training under the programmes of formal education.

Mozambique is thus one of the countries on the continent where, although still relatively limited in relation to the proportion of women in the total population, the representation of women in the top legislative body is one of the highest, not only in Africa but also in the world as indicated by table 3 (see page 113).

Table 4 (see page 113) indicates that there is still a long way to go to reach a fair representation of women in the administrative political power in Mozambique. The numbers are however, gradually increasing.

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11  The major opposition party RENAMO, has already declared that it will participate in the process.

**Table 3: Women's Participation in Legislative Power (%)**

| Decision Making Area | Local Authority Bodies 1998 | Assembly of the Republic | |
|---|---|---|---|
| | | 1994 | 1999 |
| Deputies | | 27.6 | 29.4 |
| Chairpersons of Municipal Assemblies | 3.0 | | |
| Members of Municipal Assemblies | 30.4 | | |

Source: Instituto Nacional de Estatística 2000:69 (Table 8.1)

**Table 4: Women's Participation in Administrative Power (%), 1999**

| Decision Making Area | Women | Men | Total |
|---|---|---|---|
| Ministers | 14.3 | 85.7 | 100.0 |
| Deputy Ministers | 29.4 | 70.6 | 100.0 |
| Permanent Secretaries | 31.3 | 68.7 | 100.0 |
| National Directors | 16.0 | 84.0 | 100.0 |
| Deputy National Directors | 19.6 | 80.4 | 100.0 |
| Provincial Governors | 0.0 | 100.0 | 100.0 |
| Provincial Directors | 7.6 | 92.4 | 100.0 |
| Deputy Provincial Directors | 20.0 | 80.0 | 100.0 |
| District Directors | 4.4 | 95.6 | 100.0 |
| District Administrators | 4.7 | 95.3 | 100.0 |

Source: Instituto Nacional de Estatística 2000:70 (Table 8.2)

## Key Policy Challenges for Governance and Stability

After 10 years of peace and 12 of democracy counting from the date of the approval of the Constitution in 1990, the major challenges at present lying ahead to establish true democratic governance and stability in Mozambique

are of a political and economic nature. In the political domain, reality has shown that 10 years of peace have been enough to bring about a real climate of reconciliation that came into force at the time of the signing of the General Peace Agreement in Rome in 1992. There are difficulties in reaching consensus in parliament between the two major political parties. FRELIMO dominates the urban areas and the south of the country, RENAMO dominates the rural areas, as well as the central and northern provinces, apart from Cabo Delgado where the war for liberation commanded by FRELIMO started in 1964.

In the economic domain, the fact that the country is highly dependent upon external aid for budget support (about 60 per cent in 2002) constitutes a constraint in the form of conditionalities imposed from the outside. Privatisation has been held responsible for leading to the retrenchment of thousands of workers on a daily basis, and thus creating a condition of social insecurity, fermenting urban and rural criminality, and female as well as male prostitution involving under-age adolescents.

Besides, the economy is not yet well structured in the hands of a productive local national bourgeoisie. The local bourgeoisie that exists functions mostly as fronts for foreign capital that leaves behind little for the real and human development of the country. The reforms in place since 1987 have not yet produced results at the micro level: the successes in terms of high growth achieved by the country at macro level are not yet trickling down. The economic model in force is not (yet) opening up enough spaces for participation by the common citizen who presents a good entrepreneur spirit and is willing to work and construct a better life for him/herself, his/her family, the community and the country. Beside those connected to the political power are those opening the doors to offer the facilities required by the private sector, which is interpreted and regarded by the civil society at large, as traffic of influences (see the report of Ética Moçambique, Afrisurvey 2001, for the low level of credibility of all state institutions, including the tribunals, the office of the general attorney and the police).

The situation is creating gaps in the political domain because the opposition cannot find space to participate in the game. Considering that the sociology of the vote is so far connected to territorial regions, the exclusion of the opposition from the economic process is creating and consolidating a sense of exclusion in the central and northern provinces. Considering that the foreign investors look for good conditions in terms of functioning infrastructures, the fact that the rural areas and the central and northern provinces are lacking

those basic elements makes the geography of investments to follow a vicious circle, not contributing to promoting democracy and far from the principles of reconciliation highly necessary after 16 years of armed conflict that has divided the country not only into two opposed sides but also into more and less developed areas and regions.

Not only constituting a source of instability but also of *high* inequality, gender inequality still persists in Mozambique. The representation of women in the legislative bodies is comparatively high compared to other African countries, but still below the proportion of women in the total population. In respect of political administrative decisions, women have a very low representation, constituting one of the major inequalities in the country, a challenge still to be addressed[12].

The question of the electoral process is still a concern in Mozambique in spite of the reforms that are taking place as late as in 2002 to guide the local elections of 2003 and the general elections of 2004. The structure of both the CNE and the STAE still has to be better addressed in order to become functional in normative administrative terms. Comparing the CNE of 1994, when the process was very much guided by the consideration of peace, to the subsequent bodies of 1998 and 1999, it appears that the CNE has become less concerned with fostering peace.

Hallon (2000:88), reading the first two processes of 1994 and 1998 and comparing them, argues that in 1994 the priority of the head of the CNE was to keep the parties together and facilitate consensus building. The loyalty was to the CNE itself, rather to the parties or personalities represented. In 1998 the approach was totally different, so when RENAMO representatives withdrew after the new law was not in its favour, the head of the body did little to bring them back. In 1999 there were also divergences. For 2003/4 the innovation was to bring a head for the body from outside the political party picture, the result is yet to be seen in practice.

Hallon (2002:89) also raises a concern over the STAE, when he states that 'in 1994 it was an ad hoc body with representation of the parties, and

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12 In spite of nice words used by the politicians of all colours on the important role women are playing in structuring the foundations of the family and in the development of the country in general, the position of women is still not a high priority in the country. Just to give one example, the new family law with proposal to address some inequalities has been laying on waiting in parliament for at least the last two sessions, yet to gain a position of priority in the legislative affairs.

pulled together a set of people who were anxious to make the election work. After that a permanent STAE was established within the civil service, and with no political oversight except from the CNE – and with open hostility between the CNE and STAE heads'. For 2003/4 the system is changing to have STAE under the guidance of CNE, and this might bring a new dynamic to the functioning of the electoral process.

Finally, in terms of democratic governance, the question of corruption has to be mentioned because it is undermining the state and consolidating a culture of misusing public funds with impunity. The state is carrying on at present a comprehensive administrative reform supposed to touch all levels of the civic administration in order to address the subject. The results of such reform will depend very much on the political will as well as on the ability of the executive, the legislative and the judicial to join hands and start common action in terms of making clear that 'no one is above the law'.

## Conclusion

The situation of the Mozambican State regarding elections, constitutionalism and political stability has been presented above in broad terms. In terms of legislation the system has been developing in Mozambique in a positive way, providing the legal instruments for the process to function accordingly. This applies both to the choosing of leaders and the choice of the voters translated into parliamentary seats, which according to Matlosa express the foundations of the election and of the electoral system Matlosa (2003:7). The representative system is lending a sense of fairness, where those who manage to obtain even a small percentage of the votes in the constituency can have a seat in the national parliament. However, all indications are that the system has to be reinforced by internal rules in the parliament on the duties and rights as well as the status of the deputies and the parties[13]. Moreover, the question of the five per cent threshold to obtain a seat in the National Assembly is preventing the small parties from having a say in national affairs.

The amendment made in the electoral law in 2002 will probably assure the participation of all political forces in future elections, and hopefully also prevent the accusations of fraud and of the CNE serving the ruling party.

In terms of conflict management, the pluralism of the political system has kept peace alive. However, it has not been able yet to consolidate the principle of interaction, giving and taking for the common good in order to

construct a peaceful situation in state affairs above the classical definition of peace concentrating only on the absence of war. And in the case of Mozambique it is of utmost importance to understand peace in a broader sense, which embraces the inclusive participation in state affairs of the great majority of the citizens and of the regions in the national territory still kept at the side of the process.

In terms of the economy, the growth of the last years has not yet brought along development to the country and has not addressed the questions of growing inequalities. In fact, the picture of success attached to Mozambique has been as much a blessing as a burden. In fact, the conditionalities imposed by the international financial institutions in terms of free trade and privatisations, for example, are keeping the country at bay. Unemployment is rising dramatically with the process of privatisation and more and small businesses are closing the doors. Besides, the majority of the Mozambicans are still not involved in business.

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13 There is at present a stalemate in the national parliament: there are five opposition deputies that left RENAMO but want to remain members of the parliament, and the party want them out of the parliamentary body, alleging that they have been elected on a party list basis. The case was voted in December 2002 and the majority (FRELIMO) have discharged the allegations stating that once elected the deputy is a member of the parliament on its own right and only when joining another party they can be expelled, what is not yet the case. The fact has brought the police to the parliament, the members of the special forces, for the first time in 25 years, to contain the nerves of RENAMO in the three last sessions in December, which had invaded the floor shouting, chanting and blowing noise instruments in order to prevent the good functioning of the house. When the parliament started the first session of the year 2003 in February, the overall climate was calm; but the question is for how long?

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# Elections, Constitutionalism and Political Stability in South Africa

*Dren Nupen**

## Abstract

The history of South Africa's electoral politics dates back to the mid-19th century. Historical familiarity with electoral procedures and the development of a strong party system helps to strengthen modern electoral politics. General elections under universal suffrage have been held three times, in 1994, 1999 and 2004. Good electoral administration has included a strong commitment to conflict mediation procedures, using the skills generated through trade union-based collective bargaining in earlier decades. Electoral reform to enhance parliamentary accountability constitutes the main policy challenge in this sphere today.

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## Entrenchment of Racial Segregation

South Africa was first colonised by the Dutch East Indies Company in 1652. During the Napoleonic Wars the British assumed control of the Cape Colony. An exodus of Dutch-speaking pastoralists beyond the borders of the colony led to the establishment of independent settler republics. Within these republics, a creolised form of Dutch, Afrikaans, became the dominant language. A second British colony, Natal, was established on the East coast in 1830. From 1863 Indian indentured labourers were recruited to work on Natal sugar estates. African kingdoms were gradually subjugated in a series of wars which lasted through the nineteenth century but in several instances the terms of conquest allowed considerable autonomy to the better organised African authorities, including the Zulu monarchy and the less centralised Transkeian kingdoms.

In 1910 the Union of South Africa was constituted as a self-governing Dominion from four British colonies, Cape, Natal, the Orange River Colony and the Transvaal. The Orange River and Transvaal Colonies were formerly self-governing Afrikaner republics which had lost their autonomy during the Anglo-Boer war. Each of these territories had a history of electoral politics before Union but in the case of the Republics the franchise was completely racially exclusive, limited to white settlers. In the Cape and Natal the franchise was qualified by property and education requirements. From 1853, when representative government began, the voters roll in the Cape incorporated Africans and Coloureds, people of mixed racial descent, and by 1910 their numbers represented 15 per cent of the electorate. In Natal, though, in 1909 only six Africans could vote and the Asian franchise was limited to those who had qualified by 1893. The South Africa Act which established the Union ensured that these arrangements would continue subject to any change a subsequent Union parliament might make.

In 1930 white women were enfranchised without qualifications and in the following year the vote was extended to all white men, though the qualifications in the Cape and Natal remained for black voters. African voters were removed from the common roll in 1936 and in the Cape qualified Africans instead could vote for three white 'Native Representatives'. In addition, nation-wide a complicated system of indirect elections was established to send four (white) native senators to the upper house. At the same time, Africans could elect 12 African representatives to an advisory Native Representative Council. These arrangements persisted until their abolition in 1959. Between then and 1994

the only elected bodies which represented Africans were those which functioned within the boundaries of the ethnic homeland system.

By 1994 ten separate homeland governments existed, each with their own arrangements for elected representation. The first elected homeland 'Territorial Assembly' was instituted in the Transkei in 1963. Of its 109 members only 45 were elected, the rest held their seats as *ex officio* chiefs. Meanwhile, 50 000 Coloureds were removed from the common roll for parliamentary elections in 1957 after enlargements of the Senate and the Supreme Court enabled the government to remove the entrenched status of Coloured voting rights. Instead, Coloureds were accorded voting rights for special white representatives; by 1963 Coloured voter registration had declined by 80 per cent to under 10 000. Indians and Coloureds were removed from the common municipal rolls in Natal and the Cape in 1964 and 1968 respectively. They were re-enfranchised in 1984 through the 'Tricameral' constitution, which established a separate House of Representatives for Coloured 'own affairs' and a corresponding House of Delegates for Indians.

The franchises for all these segregated institutions were qualified by assigned ethnic or racial status, but within such limitations they were open to all adults. Generally, all South African elections were conducted within single member constituencies in which the winner was the candidate with the largest share of the votes. Racially segregated elections for African, Indian, and Coloured voters did not usually attract enthusiastic participation.

Despite the endurance of a 'dominant party' political regime between 1948 and 1994 amongst white South Africans, their more or less racially exclusive electoral politics featured vigorous competition between parties and fairly high levels of voter commitment. Through much of its rule the National Party benefited from constituency demarcations that enhanced the political significance of certain geographical groups of voters; effectively some votes were worth five times as much as others. Voter interest in elections was sustained by the degree of ideological hostility that existed between parties and the strong sense in which until the 1980s political divisions amongst whites corresponded with ethnic and other kinds of social distinction. This was changing by the late 1980's, though. In 1987, for example, half the English speaking population voted for the (traditionally Afrikaner) National Party.

Within this institutional framework a strong party system developed. The National Party could trace its origins to 1913 when it was formed as the heir to Afrikaner republican traditions. It found its social base among small

farmers and white sharecroppers as well as a growing Afrikaans-speaking proletariat. Before the Second World War, South Africa was mostly governed by a succession of political organisations that embodied a social coalition between larger landowners and big business. Of these the most enduring was the South African Party (later the United Party), which was in power between 1910 and 1924 and subsequently between 1933 and 1948. In and out of office, Afrikaner nationalists encouraged a process of local manufacturing based initially on the establishment by parastatal steel and electricity companies. Racially restrictive labour laws protected white workers' jobs and status.

The Second World War accelerated industrial growth and urban expansion. This process considerably enlarged the number of black industrial workers and magnified the potential threat to white livelihoods they represented through competition as a much cheaper source of labour. These wartime social developments helped to boost the popularity of Afrikaner nationalism which from the 1930s had become an advocate of much more stringent and codified forms of racial segregation. In 1948, the National Party was elected into government. It would retain power for the next 46 years.

Until the mid-1970s, National Party administrations were committed to the implementation of Apartheid, an initially vaguely defined programme of white racial supremacy. As it became systemised its measures would include strict social segregation, a harshly repressive labour regime, including tight 'influx' controls on the geographical movement of black labour, and the confinement of African land rights to the native reserves which had been established through earlier legislation in 1913 and 1936. During the 1960s, nearly three million people were forcibly removed from white farms and black peasant free-holdings and despatched to bleak settlements in the reserves. These were now dignified with the status of ethnic homelands. From 1959 efforts were made within the homelands to promote local political authorities which in four cases, Transkei, Ciskei, Bophuthatswana and Venda, would eventually acquire independent national status.

Within the arena of white parliamentary politics, the National Party administration was confronted by a demoralised opposition initially led by the United Party. The first parliamentary organisation to offer white voters any kind of principled opposition to Apartheid was the Progressive Party formed in 1959. Under various different names, the Progressives slowly expanded their electoral support, and by the late 1980s they attracted the backing of approximately a quarter of the white electorate. A series of reforms,

though, beginning with the official recognition of black trade unions in 1979 and the abolition of 'influx control' in 1986, had narrowed the distance between the government and its liberal parliamentary opponents. Its more important adversaries were outside the boundaries of institutional politics, leading a popular insurrection in the factories and black townships.

## Political Challenge to Racial Segregation

The most important organisation that represented black South African aspirations was the African National Congress (ANC), established in 1912 in protest against the impending restrictive land legislation. Its formation was prompted partly by the relative success the Natal and Transvaal Indian Congresses under the leadership of Mohandas Gandhi had enjoyed in mobilising civil disobedience campaigns against racially discriminatory legislation. Until the 1950s though, the ANC only occasionally employed militant tactics, relying instead on efforts to influence government policy through the Cape franchise and white liberal intermediaries. From 1921 a Communist Party of South Africa represented an alternative source of popular political inspiration, and by 1928 the Party had a mainly black member-ship, though it remained very small. During the 1930s and 1940s, both Communists and the ANC contested segregated elections for native represen-tation as well as the local township Advisory Boards. The Communist Party enjoyed more success in municipal politics. In the Cape, coloured voters returned several communist councillors to office during the 1940s. During this period Communists, Gandhists in the Indian Congresses and the ANC leadership worked increasingly closely with each other, and, under pressure from a militant 'African nationalist' ANC Youth League, began to embrace a more militant range of tactics.

The ANC's radicalisation was hastened by the official suppression of the Communist Party in 1950, whose African members thereafter concentrated on strengthening the ANC. At this stage the ANC confined its membership to Africans though it headed a multiracial 'Congress Alliance' which included the Indian Congresses, a white (and mainly communist) Congress of Democrats and a non-racial South African Congress of Trade Unions. A decade of strikes, demonstrations, civil disobedience, and boycotts culminated in 1960 in the government banning the ANC and its more radical offshoot, the Pan-Africanist Congress. In 1961 both organisations, the ANC in conjunction with the

Communist Party, began planning armed insurgencies. Within four years most of their leadership was either in prison or in exile. In exile the ANC established headquarters first in Dar es Salaam and later in Lusaka; in 1969 whites, Indians and coloured were admitted to membership of the exile Organisation and from 1985 'non-Africans' were elected to its national executive.

During the 1960s another social and political force emerged, namely the black trade union movement. The South African economy experienced structural transformation financed by a large influx of foreign capital, which brought about important changes in the relations of production. These changes resulted in a shortage of semi-skilled and skilled labour unable to be met by Whites or immigrants. This allowed for large numbers of black labour to enter the labour market. But the racially based labour practices created deep resentment amongst black workers and confirmed a growing sense that the political and economic systems were profoundly unfair and unjust. These conditions provided a platform on which Black workers were able to build industrial unions. 'By concentrating large numbers of workers in production, the material conditions for a new kind of shop floor based trade unions had been created by the early 1970s. The January and February 1973 strikes in Durban highlighted these changes, when an estimated 100 000 workers broke the decade of industrial peace by taking to the streets to demand higher wages' (Webster 1978:178). Between 1973 and 1976 those involved in disputes ranged annually between 30 000 and 100 000 (Webster 1978:179).

In 1976 a schoolchildren's revolt against compulsory instruction in Afrikaans spread across the country, helping to create the opportunities and the following which enabled the ANC to rebuild its clandestine networks and initiate a modest programme of urban guerrilla warfare. Rather than become involved in direct political activity, the independent black trade union movement embarked on building strong decentralised structures to survive attacks by the repressive state apparatus. The democratic shop floor structures were predicated on 'principles of worker control, accountability and mandating of worker representatives, and to developing working class leadership in the factories' (Webster 1978:179).

The trade union movement was fast becoming a powerful force on the shop floor. It practised a policy of engagement with the state and employers, predicated on strong democratic shop floor structures and practices. At the same time as union membership was on the increase powerful social movements were developing and emerging in the townships and schools, such as civic organisations and youth and student congresses. By the mid-1980s

these new community-based movements in civil society began to challenge the state directly, both at central and local level, supplying the ingredients for the most massive and sustained social insurrection ever experienced by any South African government.

The social crisis deepened, as did the various strategies of the pro-democratic forces in South Africa; i.e. the political independence and strategic flexibility of the trade union movement, in contrast to the political and military struggle then waged by the ANC and its internal allies (Adler & Webster 1995:81). The trade union movement had to re-evaluate their strategy for fear of being marginalised and isolated. They joined with the social movements and participated actively in general strikes and political activities from the mid-1980s. In 1985 the Congress of South African Trade Unions (COSATU) was formed 'signaling a strategic compromise in which the integrity of the industrial unions was acknowledged while the new federation committed itself to participation in national democratic struggle under the leadership of the ANC' (Adler & Webster 1995:82). This resulted in 1986 in mass action that included strike action by the trade unions, township rebellion and massive civil disobedience campaigns orchestrated by the Mass Democratic Movement (MDM) – reconstituted as such after the United Democratic Front had been banned. This rebellion's impact was magnified by an international movement in favour of economic sanctions against South Africa. By the mid-1980s discreet talks had begun between government representatives and both the imprisoned and exiled ANC leadership.

In 1990, after most whites had voted in favour of the National Party reform proposals, F.W. de Klerk repealed the bans on the ANC and other prohibited organisations. He ordered the release from their life sentences of the ANC's leaders, including the guerrilla leader Nelson Mandela, first imprisoned in 1962. Mandela was elected as the ANC's president one year later. In this role he helped lead a multi-party negotiation process which resulted in the adoption at the beginning of 1994 of a transitional constitution under which would be held South Africa's first fully democratic elections. This constitution reflected a widespread recognition of the merits of compromise amongst the most significant political actors.

The resulting elections would be held under a system of proportional representation and all parties that achieved a ten per cent share in the vote would be entitled to cabinet positions. Nine elected regional governments would share power with the central administration and allow smaller parties the possibility of executive control. A final constitution would be negotiated

after the elections by both houses of parliament serving as a Constituent Assembly. This second constitution would have to conform to many of the essential principles contained in a liberal Bill of Rights. To ensure such continuity and to safeguard constitutional rights more generally, the transitional legislation established a permanent Constitutional Court.

## State and Constitutionalism

Before 1994, South Africa was governed through the conventions of parliamentary sovereignty. The South Africa Act of 1910 entrenched the status of two official languages, English and Afrikaans, as well as the non-racial common roll in the Cape, but the protection afforded to both could be overcome by a two-thirds vote in parliament. In 1956 the National Party administration enlarged the upper house of parliament, the Senate, to achieve the majority it needed to remove coloured voters from the Cape roll. From 1961 South Africa had a written constitution but this could be altered in its entirety, except for the provisions relating to official languages, by a simple parliamentary majority.

The adoption of a transitional constitution for the period 1994-1999 and the subsequent enactment of a more permanent constitution in 1996 marked South Africa's transition to a system in which the constitution has supreme authority. It can be amended by parliament but changes in certain of its most important provisions need a 75 per cent parliamentary majority. All other sections are protected by a two-thirds majority requirement for their amend-ment. To date there have been only eight minor amendments concerning technicalities of public administration, supported by all parties in parliament. A Constitutional Court can test the constitutional validity of any legislation. The state president appoints the courts' members for 12-year terms selecting the judges from a list of nominations submitted by the Judicial Service Commission, a body itself partly appointed by the executive, partly by parliament and partly by the legal profession. Chapter 9 of the 1996 Constitution established or enhanced the independent status of a number of other 'state institutions supporting constitutional democracy' including a Public Protector, an Auditor General, an Electoral Commission and Commissions for human rights, language protection, and gender equality. Though the 1996 Constitution calls for a separation of powers between the legislature, executive and the judiciary, in fact the executive is accountable to

parliament and the President exercises certain judicial powers, including the appointment of judges and rights of pardon over criminals. In 2002 President Thabo Mbeki exercised this latter right with his pardon of thirty prisoners who had been refused amnesty by the Truth and Reconciliation Commission.

Since 1994, the South African state has assumed what constitutional lawyers have termed a 'quasi-federal' character inspired mainly by the German model. In the division of powers between central government and the nine elected regional or provincial administrations the national government has the power to override laws passed by the regional legislatures, except in a few minor fields. The provincial administrations have very limited authority to raise taxes, primarily through vehicle licensing and levies on gambling. and depend chiefly on funds allocated by central government. Central authority can recover such funds if they are misused. Central government can also assume control over any section of provincial administration if it fails to perform effectively.

Between 1994 and 1999, the transitional constitution compelled the executive to be composed through a coalition of party representatives with posts being distributed roughly proportionately to those parties that achieved more than five per cent of the votes in the national elections. The National Party withdrew from the Government of National Unity in 1996, partly because of its failure to impose its will on the drafting of the 1996 Constitution. It wanted the maintenance of the transitional power sharing provisions so that minority parties would keep their entitlements to cabinet seats. Regional executives also composed themselves through prescribed coalitions during this period. The constitutional requirement for power sharing did not feature in the 1996 constitution that determined cabinet appointments after 1999. The transitional constitution also protected the jobs of all existing civil servants during the first post-1994 administration. In 1999 a second chamber of the parliament in Cape Town was constituted, the National Council of the Provinces, replacing a senate whose members had been nominated by the National Assembly. Its 90 members are made up of nine equal delegations representing each region, drawn from the regional legislatures. The Council was intended to review legislation with regional implications and over such matters can exercise veto powers.

South African governments are formed by the President, a member of the National Assembly who is elected during its first meeting after an election. The combination in the Presidency of the roles of head of state with head of government dates back to 1994; before then, state presidents were

titular and ceremonial figures who replaced in their constitutional function the British Queen's representative, the Governor General when South African became a republic in 1961. Up to 1984, prime ministers led governments. When elected, the president vacates his or her parliamentary seat and appoints a cabinet of ministers with particular portfolios as well as a deputy president. Since 1994, the president can serve only two five-year terms. South Africa's first president after universal suffrage elections in 1994 was Nelson Mandela, who served one term, declining on grounds of age to serve another. His successor was Thabo Mbeki. Before their appointments both were elected (though secret ballots) as the presidents of the African National Congress at delegate conferences.

Since Thabo Mbeki's accession, the President's office has accumulated enormous functions and powers. Mbeki was one of the two deputy presidents during the Mandela government (the other was F.W. de Klerk until 1996). Even as Mandela's deputy Mbeki was largely responsible for the day-to-day management of the administration as well as providing the main authority in policy formation. At the end of 1998, Mbeki's office was merged with Mandela's for the launch of a 'super-presidency'. After the 1999 election, the new office was to be supported by more than 300 staff, its own cabinet minister and three director-generals as well as a budget of R70 million. This was to enable it to perform its role as 'a powerful coordinating structure for government policy and action'. A Cabinet Office with a Secretariat within the Presidency is responsible for this co-ordinating function. The intention was that the office would exercise considerably more control over ministries to ensure a much more 'integrated' (a favoured term in modern South African public administration) allocation of resources. The Minister without portfolio within the presidency controls government communications. All ministries are expected to subject policy documents and draft legislation to the Presidency's Policy Co-ordination and Advisory Services Unit. This trend towards executive power makes the South African system, as in the case of France, a hybrid between parliamentary and presidential government.

Ministers remain members of parliament and are accountable to parliament through question time sessions as well as through their obligations to various parliamentary portfolio and standing committees. As in Britain, therefore, the heads of the various civil service departments are usually professional politicians rather than administrative specialists or qualified experts. The President may also appoint deputy ministers. Under the terms of the 1996 constitution, there are no restrictions on the president's power to

appoint and dismiss ministers, except that on appointment they should normally be members of parliament. The president may appoint to his cabinet two people from outside parliament, a provision intended to facilitate the inclusion of technocrats. In practice, if the President wanted to appoint additional people from outside parliament, as the party leader he can easily create a parliamentary vacancy and appoint that person to it. As will be explained below, in general elections parties compete for parliamentary seats through offering single lists of candidates and consequently, depending on the internal rules of the political parties concerned, party leaderships can decide who should be nominated for public office and whether they should be replaced between elections. For this reason, the executive's power over parliament is very much greater than in most systems in which executives are accountable to parliament. In theory, South African Presidents and their executives can lose office through votes of no confidence, but given the *de facto* power over parliamentary office holding exercised by the President, an ANC backbencher revolt would be extremely unlikely. This point was underlined when a deputy minister, General Bantu Holomisa, a former dictator of the Transkei, was dismissed from office in 1998 (and expelled from the ANC) after accusing a member of cabinet of accepting a bribe from a casino proprietor. Holomisa proceeded to found a new party, the United Democratic Movement (UDM), which enjoyed a measure of success against the ANC in the vicinity of the former Transkei in the 1999 election.

During four decades of the National Party's rule, the state buttressed its powers through manipulating judicial appointments in high courts, granting the police extensive powers through security legislation and building in the South African Defence Force a formidable military capacity. Between 1979 and 1989, during the time of P.W. Botha's leadership, military commanders acquired considerable political influence through their membership of the State Security Council, a cabinet committee that during this period became the key site of government decision making. During the 1990s, though, much of the state's coercive capacity eroded.

In certain respects this diminution of executive authority has been positive. To the government's credit, the senior levels of the judiciary are much freer of executive influence than they were ten years ago. All judges are appointed through a constitutionally sanctioned process that limits executive discretion and ruling party influence. Though senior judicial appointments since 1994 have included several lawyers who before their appointment to the bench were well known ANC supporters, court judgements demonstrate

plenty of evidence of robust judicial independence, despite complaints by cabinet ministers about the judiciary usurping their role as policymakers. This independence has been especially obvious with respect to the Constitutional Court. The court demonstrated its independence decisively in 1996 when it refused certification to a draft of the final constitution because it reduced the powers of regional governments. In two key judgements the Court has ruled on how the government should allocate public resources, in respect of its constitutional obligation to supply shelter for groups of forcibly evicted Cape Town squatters and, most recently, in the provision of anti-retro-viral medication for HIV-AIDS patients.

Public respect for legal institutions and constitutional rights, though, requires more than the autonomy and integrity represented by the Constitutional Court and the other senior levels of judicial decision making, commendable as these features of South African justice are. For most citizens, courts are inaccessible and inefficient. Magistrate's courts especially are understaffed, under-financed, corrupt and demoralised. As a consequence of huge caseloads legal proceedings are extremely slow. Nearly half of South Africa's prisoners are people awaiting trial. Several thousand cases a year do not reach trial because criminal syndicates bribe court officials to lose or destroy dockets. The continuing evident popular preference for informal modes of retributive 'street justice' is testimony to a public view of the courts as time consuming, expensive and ineffectual. Meanwhile, a comparably inefficient public administration continues to frustrate the 'delivery' of constitutional entitlements, court judgements notwithstanding.

## The Nuts and Bolts of the Electoral Process

In contrast to the shortcomings of its public service, South African electoral administration and politics and practice present rather bright prospects for the country's future democratic consolidation. When asked in a survey about the efficacy and importance of voting and elections, 62 per cent of South Africans believe that 'the way you vote could make things better in the future'. Similarly 64 per cent agree that elections in general (rather than their own vote) make a difference, with 73 per cent of citizens agreeing that 'Our government was voted into power by accepted procedure' (Friedman 2001:8).

One sardonic observer noted in 1958 that 'South African elections have a deceptive air of reality about them' (Farquharson 1958:134) and still today

all the main parties conduct their campaigning in a manner to suggest that victory is almost certainly within their grasp. They use opinion polling, market research, image consultants, advertising agencies and many of the other techniques of modern electioneering, increasingly gearing their approach to a population that relies more and more on television for its understanding of public affairs. Television political advertising is prohibited, but party events are calculated to project compelling visual images to news cameras and voters are presented with choices that focus heavily around the presidential attributes of the party leader. Despite the provision of public funding for parties already with parliamentary representation, the main contestants depend heavily on unofficial sources of finance, the ANC still in 1999 collecting much of its R160 million election treasury from friendly foreign governments, while the Democratic Party (DP) and the New National Party (NNP) drew their support mainly from local business.

Despite their generally predictable outcome, South African elections are contested energetically and seriously. In 1994, in certain parts of the country, organisations that were still influenced by their experience as military formations, continued to defend their territory, forcibly excluding their rivals from their 'home' locations. By the 2000 elections, such instances of 'no-go zones' (there were 165 during the 1994 elections) had become exceptional and even in Black townships in small rural centres – previously the neighbourhoods in which activist intolerance was most pronounced – canvassers from both the Democratic Alliance (DA) and the ANC could visit the same streets on the same days.

Arguably, the electoral system promotes the formation of socially inclusive political parties and civil electioneering. The types of party system which develop, in particular the number and the relative sizes of political parties in parliament, are heavily influenced by the choice of electoral system. Electoral systems can also impact on the way parties campaign and the way political elites behave, thus helping to determine the broader political climate (Reynolds & Reilly 1997:8). It was these considerations that were taken into account at the World Trade Centre in Kempton Park, Johannesburg, in the pre-1994 all-party negotiations to map out the future political dispensation of the country.

In South Africa elections are organised through national list proportional representation. 200 national assembly members are selected from lists submitted by provincial party organisations and 200 are drawn from the parties' national lists. Effectively the country serves as a single constituency.

Seat allocation is through the Droop quota. The absence of a representation threshold and the employment of the largest remainder method for the allocation of surplus seats ensure that very small parties enjoy parliamentary representation. Early drafts of the electoral law put the threshold for parliamentary representation at five per cent of the national vote, but, in a concession to the smaller parties, the African National Congress and the National Party agreed in early 1994 to drop the 'mandatory' threshold. The provincial governments are elected on the same basis, at the same time, on a separate ballot paper. Parties can choose to contest either a single region or several regions, or the national assembly and regions. The parties pay a deposit of R10 000 for each regional list and R90 000 for the national assembly list when they register with the Independent Electoral Commission (IEC). Parties have discretion over the principles they employ to compose their lists.

In theory the size of the national assembly should be determined on the basis of one seat for every 100 000 of the population, with a minimum of 350 seats and a maximum of 400. Provincial seats in the national assembly should reflect their proportional share of the population and these are decided after political party representations by the IEC. Provincial legislatures have between 30 and 60 seats, again on a principle of one seat for every 100 000 people. Elections must be held within 90 days of dissolution of the national assembly and provincial legislatures and are proclaimed by the President and the Provincial Premiers. Municipal elections, while conforming to the constitutional requirement for proportional representation, combine ward councillors and list representatives in a mixed member proportional system.

Party list proportional representation, is often criticised for offering opportunities for extremist parties to obtain office – sometimes as power brokers in shaky coalitions (as in Israel). In South Africa's case, the double-ballot, List PR electoral system contains strong incentives for moderation given the spatial distribution of the electorate. Every vote a party receives counts in their seat allocation and hence all parties are encouraged to seek votes outside their core support or base areas. In doing so, they will attempt to project their programs in terms which make them generally appealing. The system is less likely to promote ethnic bloc voting than a geographically defined form of representation.

Party leaders can include on their lists people who might not win popular support in electoral contests focused around individual candidates: members of racial minorities or women, for example. The drawback is that

parliamentarians hold their seats at the behest of party leadership and they are not directly accountable to voters. In the South African case this has produced a parliament which tends to be deferential towards the executive. Electoral experts and observers maintain that the choice of a List PR system for the first democratic elections in South Africa in 1994 was critical to creating an environment of inclusiveness and reconciliation which has made post-apartheid South Africa an example of hope and political stability to the rest of Africa (Reynolds & Reilly 1997:70).

Since 1994 the IEC has managed South Africa's elections. The IEC is responsible for administering national, provincial and municipal elections as well as evaluating their integrity and certifying their results. The present IEC was established after the adoption of the 1996 constitution with the appointment of five commissioners, one of whom must be a judge. A broadly representative all-party committee within the national assembly nominates the Commissioners. None of them are allowed, at their time of appointment, to have overt political affiliations. The IEC has administered two national elections since its establishment and a municipal election in 2000.

In the 1999 general election, the IEC's arrangements included an elaborate registration process in which strenuous efforts were made to register as many people as possible. This was not the case in the 1994 elections when there was no voter registration requirement – voters were required to present a prescribed identity document, of which there was a wide range. Prior to the 1999 elections legislation imposed on prospective voters quite exacting identity documentation requirements – many voters had to acquire new documents – but these requirements did not particularly discriminate in their effects against likely supporters of any particular parties – and they were not of the IEC's making. Registration was conducted over a six-month period and during this time the IEC's administrative proficiency clearly improved.

In general, voting itself in 1999 and 2000 was well organised, though long queues on polling days suggested that the IEC's faith in satellite technology to demarcate roughly even electoral districts was at times misplaced. Even so, despite the long waiting times, voters' verdicts were favourable. An exit poll based on responses from 11 140 voters at 214 randomly selected polling stations found that only three per cent of respondents felt that the procedures during balloting and vote counting were not free and fair. Parties did not query the outcome of the 1999 election – they too seemed to accept the results as equitable. In national elections voter participation is high – 90 per cent of eligible voters in 1994 and 80 per cent of the registered electorate in

1999. Voter turnout in municipal elections is much lower though, an apparent reflection of public disenchantment with the performance of local councillors, or as has been argued by other commentators, also because this seems to be a world-wide phenomenon.

The public legitimacy of the electoral arrangements over which the IEC presides is evident in the absence of any serious disputes over their results. Acceptance by losing parties of electoral outcomes is partly attributable to the effectiveness of a conflict management system instituted in 1994 and elaborated in successive polls. The functioning of this system is described in the next section.

## Conflict Management

There are intense debates and theories about the nature and outcomes of conflict management processes in South Africa. Some analysts argue that the various forums where trade unions and management sought to reach recognition and agreements about shop floor issues in the late 1970s and the 1980s represented a form of conflict management. Others argue that for the emerging black trade unions in the 1970s to have engaged company management in these forums was to allow for co-optation and compromise. A third view was that unions engaged with company management, and later the state, as a strategic response to prevent a unilateral restructuring of labour relations in circumstances in which the state was imposing excessive control. Whatever the merits of such arguments, it is very likely that the experience of institution-alised collective bargaining helped trade unionists to acquire negotiation skills and that such skills were subsequently transferred to community organisations and political organisations.

Arguing in a similar vein to the critics of trade union participation in collective bargaining forums, in 1990 there were powerful advocates of the view that any negotiations with the apartheid state by the banned ANC and its internal allies, namely the MDM and civic organisations such as SANCO (South African National Civic Organisation), had the potential to undermine the course of the national democratic struggle. But the conclusion that ultimately prevailed was that it was important to enter into negotiations with the De Klerk government to ensure that any transitional arrangements that were agreed upon represented the interests of all groups in South Africa. The fear was that if the apartheid government was allowed to shape economic and

political policy alone, it would not only ignore the interests of the MDM, but would also create new realities which would be very difficult to undo and which would then dictate the course of the transition (Friedman & Shaw 2001:192).

The economy had been in recession since 1982, resulting in retrenchments and mass unemployment. The crisis was met with unprecedented levels of mobilisation and resistance from both labour and communities over political and economic issues – the highest strike levels were experienced in the history of South Africa, and rent strikes, bus boycotts, school boycotts, consumer boycotts, anti-Constitution campaigns and stay-aways became a permanent feature of the political terrain from 1984 onwards. At the same time the ANC in exile stepped up the armed struggle. This period of resistance created new alliances internal to South Africa, where labour, community organisations and student organisations joined together. Massive stay-aways became the order of the day, despite the continual harassment and repression by the apartheid state (Webster 1978:185). The first few months of 1984 constituted a period of intense urban conflict, leading eventually to the declaration of the State of Emergency on the 22nd July 1984.

It was during this period of upheaval and conflict in South Africa that a group of lawyers and academics established the first independent mediation service (IMSSA). The service provided independent mediation and arbitration services in the industrial relations arena. In the early 1990s IMSSA extended its services to include community mediation as communities were experiencing an upsurge of political conflict, especially in the East Rand townships in the 'old' Transvaal and KwaZulu-Natal. Skilled mediators were trained in each of the provinces to deal with the conflicts.

The decision to convene the pre-1994 multi-party negotiations to negotiate transitional arrangements from apartheid rule to a democratic dispensation resulted in a consensus amongst political elites on the legitimacy of the democratic system that could only bode well for political stability in the country (Friedman 2001:6). These negotiations played an important conflict management and conflict prevention role, even although the process was not fully inclusive as several groups decided not to participate. These included the governments of Bophuthatswana and the Ciskei, and parties at both ends of the political spectrum including the Inkatha Freedom Party (IFP), Conservative Party (CP), the Azanian Peoples Organisation (AZAPO) and the Afrikaner Weerstandsbeweging (AWB).

**Dren Nupen**

The outcome of the negotiations represented a series of compromises, some of them short-term, others more likely to endure. These compromises may be fundamental to the long-term sustainability and stability of the country. We would not have reached the consensus we did as a nation without these negotiations, which put in place the necessary mechanism to usher in transitional arrangements, such as an electoral system that is inclusive, that represents all stakeholders, is transparent in its management and in the final analysis produces legitimate and credible results, acceptable to all, and important for this discussion, a National Peace Accord.

By January 1993, 11 regional peace committees and 54 local peace committees had been formed throughout the country with skilled, trained mediators to deal with disputes and conflicts that arose in the communities. These committees had multi-party representation, including political organisations, civic organisations, local authorities, churches, business, trade unions and members of the security forces. Their role was to intervene to avert incidents of political violence and to promote the prospects of peace in the areas over which they had jurisdiction. Peace committees were able to anticipate and avert incidents of violence by opening lines of communication between key parties and, in numerous instances such as the march on KwaMadala Hostel by residents of Boipatong following the massacre in that community, on-site mediation by peace committee officials averted imminent confrontation. The peace committees also operated as forums of accountability. The police, for example, were called upon to account for progress in investigations into crimes of political violence. The committees further co-ordinated humanitarian relief efforts for residents driven from their homes because of the political violence. Negotiation and facilitation skills training were also offered at both regional and local levels to deal with conflicts and disputes which arose from political party contestation, civic groupings with political affiliations, student grievances, the white right's insecurity about change and so forth.

The experiences of negotiation, consensus building and conflict management processes from the 1970s onwards provided the necessary experience for these processes to be included into the legislative framework for the 1994 elections. The significance of this election as well as the way the managing body, the Independent Electoral Commission, was structured and formulated reflects the context of the transitional process of which they were part. The Independent Electoral Commission Act, No 150 of 1993, stipulated that the Commission was to consist of an Election Administration Directorate,

a Monitoring Directorate and an Adjudication Secretariat, each operating independently of the others. The task of the Monitoring Directorate was basically to monitor the performance of the Election Administration Directorate, a rather novel idea for one arm of an organisation to monitor and police another. The Monitoring Directorate established a panel of mediators and the Adjudication Secretariat a panel of adjudicators whose role was to investigate, and when appropriate, to mediate election related disputes. If unsuccessful, the disputes and/or complaints were referred to the Adjudication Secretariat. These internal conflict management processes ensured that assistance was on hand if and when disputes and conflicts threatened to destabilise the pre-, during and/or post-election periods. The panels were a great success and were hailed by all parties as having been vital to the successful outcome of the elections.

In addition the Electoral Act favoured the involvement of political parties in all aspects of the election process. The Party Liaison Committee structure provided a space for parties to share their concerns about what was happening on the ground with the electoral authority and each other. This complemented the work that had already been done by the Peace Committees in managing political conflicts and disputes that erupted in various provinces. These structures provided avenues of communication between the political parties, the IEC and the Transitional Executive Council (TEC) respectively. They played a crucial conflict management and conflict resolution role and in the final instance secured the electoral process.

In the months preceding polling in 1999, the IEC established similar structures with a wide network of local and provincial conflict resolution and conflict management structures, drawing upon prominent local personalities to sit on these committees. The Party Liaison Committees were once again resurrected and supplied forums in which local instances of violations of the electoral code of conduct could be addressed. These were once again very important in terms of ensuring that the integrity of the electoral process was upheld. A significant indication of their success was the absence of any litigation following the election as well as the acceptance of the results by all the parties that contested the poll.

Similar arrangements were instituted during the 2000 local government poll, and once again, despite the impressive diversity of contesting parties that included a large number of local associations, the Commission recorded no serious objections to any of the procedures or outcomes. This was largely because of the role played by the IEC's conflict management panels that

altogether responded to (a notably modest) 193 complaints, in most cases to the recorded satisfaction of the parties concerned (Conflict Management Programme 2001:23-24). South Africa has had a long history and association with trying to build consensus around the 'rules of the political game' be it at trade union level in the 1970s, or with students and scholars in the 1980s. The dividends of this experience are evident in its relative success in comparison to most new democracies in addressing electoral conflict since 1994.

## Electoral System Reform Imperatives

During colonial and republican administrations, South Africa used the British First-Past-The-Post (FPTP) system for electing its public representatives for parliament. This system was in place until the 1993 Interim Constitution and the elections of 1994. After these elections the election reform debate once again surfaced as the country still had to move towards its permanent constitution that, in principle, left the door open for some adjustments to, amongst other things, the electoral system. To this end the Constitutional Assembly convened its Theme Committee Two to debate electoral options for consideration by the lawmakers (Faure 2003:1). Though it became evident after the Arniston Bosberaad (indaba/meeting) in 1996 that the 1994 PR list system would be retained for the 1999 elections, speculation as to what type of electoral system South Africa should change to for the 2004 election gained momentum once again.

The imperative to revisit the model used for the 1994 and 1999 elections was partly constitutional. The provisions of the 1996 Constitution relating to an electoral system did not extend beyond the 1999 elections. The Constitution requires that an electoral system should be introduced through the enactment of national legislation. Thus at present there is no electoral system that prescribes for the conduct of national and provincial elections.

Against the background of ethnic and regional divisions of the apartheid era, PR offered the promise of coalitions and multiparty representation of diverse interests, and forced parties to campaign beyond narrow ethnic or regional bases of support if they hoped to win a majority of seats. It is also the best system in the world for improving the representation of women. South Africa now has 30 per cent representation of women in Parliament and a similar share in local councils. But in addition to the electoral system, it is largely as a result of the ANC's voluntary commitment to 30 per cent women's

representation on its party lists that South Africa now ranks in the top ten countries in the world for women in parliament.

By the same token, there are disadvantages associated with the South African experience of the current electoral system. For example, the closed party list system may bestow excessive power on party elites – especially where weak intra-party democracy exists. There are also issues of accountability, informed by the argument that members elected through PR have maintained very weak ties to a fixed territorial constituency (even with the assignment of informal constituencies). This is not an automatic flaw; other formal consultative arrangements may contribute to enhancing accountability. However, in a closed list system, as in variants of PR, it is the party rather than the member who 'owns' the seat, and this system enhances party power (and independents are unable to compete for provincial or national seats). A related problem is the fact that voters do not know who is going to represent them, whereas some might prefer to associate a face, as well as a party, with their vote. Moreover, just as the PR system may encourage coalitions, so it may enable fragmentation of the party system.

On the basis of these theoretical and practical issues, it seemed timely for South Africans to reflect on the country's experience with the current electoral system. South Africa had now held two sets of national and provincial elections in 1994 and 1999, as well as municipal elections in 1995/96 and 2000. The next national and provincial elections are scheduled for 2004. However, there are additional dynamics of a political and institutional nature that make the timing of such a review even more imperative.

Since early 2001 there have been signs from several quarters that an electoral system review is to be launched. First, the IEC has undertaken a wide-ranging review of its procedures and regulations, with an eye to improving its conduct of elections. Second, the Minister of Home Affairs has indicated that his ministry would initiate a review of the constitutional provisions related to the electoral system, particularly the prohibition on Members of Parliament (MPs) crossing the floor to join another party. Third, a special task team reporting to the Office of the President, and to be led by Dr. Frederik van Zyl Slabbert, was formed, and its brief was to review the current electoral system.

This review demanded that a complicated technical topic involving highly motivated interest from political parties and voters alike should be handled with a deft concern for the consolidation of South Africa's democracy. The ultimate test of the contribution of any electoral system review should not

be the degree to which partisan interests feel they benefit, but the degree to which the rules of the electoral system are structured to encourage the maximum possible participation by political parties and voters alike, so that their interests are represented. Of course individual parties are always inclined to calculate under which system they feel they would most benefit and it is not desirable to seek to exclude such normative considerations from the debate. But it was very important for this process to remain non-partisan. Additional issues are considered in any electoral system reform process. For example, there are administrative and financial considerations for the IEC. Elections are expensive; the IEC budget for the 1999 elections was close to R1 billion, with political parties spending a combined estimate of R300-R500 million.

Whichever electoral system Cabinet adopts finally, it will impact on the demarcation process, the voters' roll and the drawing of electoral districts. The electoral schedule will also be adversely affected if the debate is left too late, and more importantly, any changes in the electoral system must be communicated to voters. The municipal elections of 2000 were very complicated with some voters casting three ballot papers. Possible reform could limit voters to two ballot papers in a more consistent electoral system combining PR and FPTP.

Electoral system reforms may also impact on the formation of South Africa's party system. Independents and smaller parties captured less than five per cent of the combined vote in both sets of local elections – the majority of the electorate continue to vote for a relatively small number of parties, with a strong majority voting for the ANC, and there was relatively little 'vote-splitting' by voters with ward and PR ballots. South Africans therefore display high degrees of party loyalty, which is reinforced by the electoral system.

Moreover, those who argue that the introduction of more constituency representation would improve the relationship between voters and their representatives must be balanced against the fact that voter turnout in South Africa's two sets of municipal elections was approximately 50 per cent despite the fact that these are the only elections in which voters may choose constituency representatives. But the fact that public opinion data has shown that many South Africans do not feel that MPs (elected through PR) do a good job of staying in contact with them shows that there are no easy answers.

The Electoral Task Team (ETT) identified a set of core values against which electoral options should be evaluated: fairness, inclusiveness,

transparency and accountability. It was the last of these considerations that proved most contentious both in the team's closed sessions and in the public discussions it sponsored. Team members agreed that the retention of proportionate representation should be an essential principle of any future electoral design, notwithstanding a 1992 Constitutional Court opinion (on proposed floor crossing legislation) that this was not a core principle in the Constitution. Common sense suggests that in South Africa, the coincidence between traditional communal divisions of race and ethnicity with party political affiliations makes it desirable to ensure that the most significant parties are represented in parliament in accordance with the respective significance of their support. Two-thirds of the team in a majority report recommended the adoption of a mixed member proportional system in which half of parliamentary representation would be through 69 three to seven-member constituencies. The remaining representatives would be selected from national lists and would be allocated to parties in such a way as to compensate those parties who would be under-represented through the results of the constituency elections. This would be more complicated than the present national list system but the same principles were used in the 2000 South African local government elections and they seemed to be understood and favoured by the electorate. The new system, the ETT argued, should only be legislated after the 2004 elections, for it would require extensive administrative preparations.

A minority of the team argued for the retention of the present system, a position also supported by the ANC whose leaders maintain that a mixed member proportionality (MMP) system would probably work against the more popular parties adopting women or members of racial minorities as candidates. The ANC would win most constituency elections and hence its share of the list membership would be small. Maintaining its gender equality quota and its racial diversity in parliament would require it to nominate substantial numbers of women and minority candidates in the constituency polls.

## Conclusion: Key Policy Challenges

These proposed reforms represent key policy challenges. In 1996 three million fewer people voted than in 1994. In both local government elections, 1995-1996 and 2000, less than half the electorate participated in the polls. Survey evidence suggests that South Africans are less likely than the citizens

of other countries in the region to make contact with their elected representatives and such exercises also elicit high levels of citizen distrust of politicians (Mattes, Davids & Africa 2000:35-38,71). The present electoral system provides few incentives for parliamentarians and members of provincial legislatures to make contact with citizens between elections; the voluntary system through which parties assign their representatives to various constituency offices works at best unevenly. Public cynicism about parliament is accentuated by a system that permits party leaders to 're-deploy' or dismiss parliamentarians at will. The resulting insecurity amongst parliamentarians who hold their positions at the behest of party leadership weakens any predispositions by backbenchers to exercise oversight with respect to the executive.

South African elections are well administered and contested fairly. They benefit from a diversity of well-established parties, several of which have substantial popular followings. Their integrity and legitimacy is protected by a constitutional order to which the ruling party accords appropriate deference. They result in institutions that are impressively inclusive in their membership but that remain very remote from ordinary citizens. A more personalised system of representation might well enhance the public accountability of legislatures and government more generally.

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# Electoral Violence, Political Stability and the Union in Tanzania

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## Abstract

The paper examines the issues on elections, constitutionalism and problems of political stability in Tanzania. An examination of the state and constitutionalism in Tanzania shows that the state in Tanzania may be characterised as authoritarian. Like in most other African countries the constitution has been frequently amended to ensure that the executive, especially the President and the ruling party Chama Cha Mapinduzi (CCM), become dominant and remain in power. State authoritarianism has been justified by the need to maintain order and by the ideology of developmentalism. Even after the introduction of the multi-party system the electoral process and election system are still dominated by the ruling party. The difference between the state and CCM is still blurred.

The conduct of elections has been a major source of discontent for the opposition. Therefore, new electoral laws and truly independent election commissions are required which ensure that the playing fields are levelled and fair to all political parties. Moreover, in spite of the amendment of the

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1977 constitution in 1984 to provide more equality between men and women in all spheres of life, there is still a huge gap between law and practice with regard to the principle of equality. Women still face more problems than men in the electoral process. The latter are still more represented in both parliament and cabinet.

Furthermore, political and economic liberalisation has brought new political and social tensions in the country, based on ethnicity, race, religion, and increasing poverty. These tensions pose a great challenge to peace and stability, and to the future of the union. Sustainable solutions need to be found. For instance, people should be educated about their rights and taught to resent corruption. Moral and professional ethics should be inculcated in public servants, and job security should be provided to reduce the temptations for quick money. The state should play an active developmental role besides keeping law and order. Finally, a lasting solution needs to be found to the Union question because in this era of multi-partyism and openness, it is even more important that matters are discussed and solutions found that are based on popular will.

## Brief Political and Constitutional History of Tanzania

The United Republic of Tanzania was established in April 1964, following the amalgamation of the former independent states of Tanganyika and Zanzibar. The United Republic came about after more than 70 years of colonisation. The mainland, Tanganyika, was first colonised by the Germans and later handed over to the British in 1920 under the trusteeship system through a mandate from the League of Nations. Tanganyika attained independence in December 1961 under the leadership of Mwalimu Julius Nyerere. The transition to independence, however, was achieved without the pattern of violence that dominated the struggle for independence in other African countries such as Kenya, Zimbabwe and Mozambique (Msekwa 1977).

At independence in 1961, Tanzania like the other former British colonies in East Africa, Kenya and Uganda, crafted a constitution. Common to all three is the fact that their constitutions were of liberal democratic nature. On paper, provisions were made for checks and balances among the three arms of government – the executive, the legislature and the judiciary. Apart from Tanzania, the Ugandan and Kenyan constitutions had bills of rights. Only in 1984, did Tanzania incorporate bills of rights in its constitution.

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However, immediately after independence, the regimes in the three East African countries acted contrary to the constitutions. The constitutions have been amended several times to recast state power in ways that increase the incumbent regimes' abilities to cling to state power. The Kenya Constitution, for instance, has been amended 30 times and the Tanzanian one 13 times. In Uganda, the constitution was thrown out and a new one, popularly known as the 'pigeonhole' constitution, was crafted by the executive in 1967. After the 1971 coup of Idi Amin against Milton Obote, governance in Uganda was by decree. In 1995, yet another constitution was promulgated.

The first casualty of these amendments was the bill of rights, as regimes steadily marched towards one-party states. In Kenya, the Kenya African Democratic Union (KADU) was gradually absorbed into Kenya African National Union (KANU) and attempts to form a new party by Jaramogi Oginga Odinga were frustrated, leading to a constitutional amendment that outlawed other parties.

In Tanzania, although the Afro Shiraz Party existed in Zanzibar, in practice Tanzania was a one-party state. In 1977 Tanganyika African National Union (TANU) merged with the Afro Shiraz party to form Chama Cha Mapinduzi (CCM), effectively creating a one party state. In Uganda, all other parties were outlawed at the end of the 1960s. This process culminated in a military dictatorship where no dissent was tolerated and opponents of the regime were physically eliminated. After the fall of Amin, political parties were reintroduced, but these were too weak to compel the ruling Uganda People's Congress (UPC) party to create room for democratic practice.

The other plank for the constitutional amendments in these countries was the amassing of power in the executive to render other organs weak or inoperative. In all three countries, presidents could not be brought before a court of law. They had powers to appoint and discharge judges. They dissolved parliaments. This effectively meant that too much power was in the hands of the executive, and that the executive could not be checked by the legislature or the judiciary (Bazaara 2000, Ghai 1986).

The 1990s witnessed dramatic changes in the constitutional landscape in East Africa including Tanzania. All the undemocratic constitutional amendments of the first phase were challenged. There are a number of reasons propagated for this reversal. The first is the end of the cold war. During the cold war it was possible for the United States, for example, to support a dictatorship in Africa as part and parcel of its ideological crusade against communism. In post-cold war Africa, it was no longer possible to

ideologically legitimise constitutions that allowed the state to suppress its people. The second reason is pressure of civil society and opposition groups against the state. This was more pronounced in Kenya where civil society had running battles with the state to open up space for democracy and pluralist politics. Finally, donors on realising that economic development was not simply about micro-economic stability but also about democracy, pushed for 'good governance' and pluralist politics (Mwaikusa 1995, Okema 1992).

At the beginning of the 1980s, Western donor institutions such as the World Bank started to complain against the top-heavy bureaucracy which most African regimes including Tanzania had created and perpetuated on the continent. These bureaucracies were viewed as detrimental to Africa's development. They were wasteful, corrupt, inefficient and politically repressive. They stifled people's civil liberties and entrepreneurial opportunities.

However, instead of openly calling for democratic change in Africa, the western donor institutions such as the World Bank advocated 'good governance' as a cure for this malaise. Good governance here meant government that ensures relative freedom and security in society, keeping corruption at bay, delivering services and maintaining a high degree of transparency and accountability. 'Good governance' provided one of the conditionalities upon which aid would be granted. It constituted a form of pressure, which quite often speeded up the process towards holding multi-party elections (World Bank 1989). Thus it became quite possible for authoritarian regimes to hold competitive elections without necessarily giving in to full democratisation. The outcome of the convergence of all these forces has been amendments of constitutions to open up politics and to buttress democratic practices. In 1992, the Tanzanian Constitution was amended to abolish the one-party state and to allow for a multi-party system.

It is on the basis of this that Anyang' Nyong'o (1997) warns that competitive elections, while good indicators of democratic governance, are not in and of themselves what democracy is all about. The vote is not enough. Democratisation requires the establishment, not only of a series of regular elections, which South Africa had under the half century of apartheid rule, but also a wide battery of other institutions and procedures. These institutions and processes include legislative, judicial and investigative bodies within the state, plus interest groups, civic associations, and political parties within society, all of which are able to hold political executives accountable. Like their counterpart nationalist parties, recently established political parties have been given mass movements: weak in organisation, single-issue oriented

and not ideological. They have been elite-dominated, top-down in mobilising supporters, largely urban-based and with little or no elaborate programmes and policies for their projects in assuming state power.

## State and Constitutionalism

The constitution of a country is the most important legal document. It is the supreme law and at times it has been referred to as 'the social contract'. It is the contract between the rulers and the ruled. It is therefore more than just a document. It embodies the wishes and aspirations of the country. All the laws, by-laws, rules and regulations find their legitimacy from the constitution.

Constitutions take various forms. There are written and unwritten constitutions. Great Britain, for instance, has no written constitution. It is guided by traditions developed over the years. However, most countries and particularly those in the developing world such as Tanzania, have written constitutions which have mostly been developed and shaped by their colonial past. For instance, constitutions of most of the former British colonies retained the Westminster tradition with clear separation of powers, independence of the judiciary and, generally, existence of checks and balances. Tanzania was formally under the British as a mandate under the League of Nations and later as a Trustee Territory under the United Nations. Its independence constitution was negotiated with the former rulers. One major concession made by the British was to allow the then Tanganyika to become independent with a constitution that did not contain a Bill of Rights (Peter 1999, Mtaki & Okama 1994).

In his discussion of the bumpy road to constitutionalism in East Africa, Bazaara (2000) emphasises the distinction that need to be made between Constitution and Constitutionalism. It is one thing to have a constitution (rules of the game) and another to have a culture of respecting it. The frequent amendment of constitutions by African leaders in order to remain in power is an indicator that they do not respect their countries' constitutions. For instance, Okoth-Ogendo (1991) uses authoritarianism as the defining characteristic of the post-colonial state in Tanzania, especially under the one-party rule. In an authoritarian state, power is concentrated in the executive arm as personified by the President, with the power, authority and prestige of the representative organs of the people such as the legislature and the courts of law diminished accordingly.

An authoritarian state is characterised by an oppressive legal system within which the law is used by the state to coerce its citizens rather than to confer rights upon them. Such a legal system confers wide discretionary powers on the president and his ministers and the central government bureaucrats under them. The corollary to this concentration of power is the restriction or outright suppression of power centres outside of state structures, such as social organisations and popular movements.

The post-colonial state in Tanzania bears a strong resemblance to its colonial predecessor. It inherited almost all the latter's laws and institutions. The Societies Ordinance, which had been the cornerstone of colonial control over civil society, was also adopted without any substantial amendments besides the removal of the more obviously colonial references such as that to 'the Governor'. The underlying philosophy of authoritarianism that had informed colonial law and practice was, therefore, retained largely intact.

State authoritarianism was justified not only by the need to maintain order but also by what has come to be known as the ideology of developmentalism. The state had to be strong, the argument went, in order to bring development to the people. Popular organisations such as trade unions, co-operatives, political parties and local governments were proscribed in the supposed interests of development. The refusal to introduce a bill of rights into the constitutional amendments of the early 1960s was also justified on these grounds, as were many other infringements of people's rights (Shivji 1995, Shivji 1985, Ake 1975).

The state justified its welfarist economic and social policies through the ideology of developmentalism as well. In this period it was virtually impossible to organise independently outside state structures. However, some non-state organisations, mostly charitable, religious bodies, involved in the provision of social services such as education and health care, existed. These were tolerated because they were almost invariably apolitical and therefore posed little threat to the existing power structure. But even these organisations were not immune from the Tanzanian state's authoritarian policies – as the banning of the East African Muslim Welfare Society and the Ruvuma Development Association in the late 1960s illustrates. Even though the formation of the latter, a peasant organisation, was inspired by the state ideology of *ujamaa*, as a non-governmental organisation it was nevertheless perceived as a threat to the state's hegemony (Peter 1999).

Under the one-party system in Tanzania constitutional processes were not consultative, and were non-participatory. The final product was just

imposed on the people. It is arguable that there would be no need for civic education on the Constitution and people's rights if they (the citizens) had themselves been the authors of these constitutions. The whole civic education campaign signifies that people at grassroots level do not own the constitution. Moreover, when the courts pass a judgement, which does not favour the state, there is either partial or no compliance to it by the state. On the other hand, the citizens tolerate this apparent disrespect of the law. Thus, the state is not exemplary in respecting the rule of law while citizens cannot rise against non-compliance because they do not own the constitution. The Constitution is not a reflection of their values, judgement, and opinions; hence both the citizens and the state do not see an obligation to safeguard or comply with it. In Tanzania, the majority of the citizens do not know what the constitution looks like, even those that know it find its language unfamiliar. Constitutions like this may be legal but they are certainly illegitimate.

Besides the problem that the rules of the game are perceived to be biased in favour of the party in power, it is alleged that the state organs in Tanzania, notably the regional and sub-regional state officials plus the police, tend to support the ruling party. The state officials including the police are suspected to act against the new political parties and other emerging interest groups, such as pro-reform civil society groups. This is exemplified by the fact that the Regional Commissioners are members of the ruling party political committees within their respective regions. It is also alleged that the new parties are denied access to the media. The police are accused of disrupting the emerging democratic political framework by particularly denying them the right of association and member recruitment by imposition of regular bans on organising rallies and demonstrations (Soremekun 1999).

Another obstacle to constitutionalism in Tanzania and Africa at large is associated with the impact of globalisation, especially the manner in which its effects have occurred in Africa via the Structural Adjustment Programmes. Globalisation and dependence on foreign grants and loans diminish not only the sovereignty of the African countries but also tend to promote a culture of not respecting constitutions. Essentially what happens is that donors can dictate a particular policy direction even if it breaks all provisions in the constitution. In addition, a country that is dependent on foreign loans and grants does not have pressure to be democratic or to respect the constitution. This is because the regime does not have to negotiate with internal political forces because they do not constitute its revenue base. This is why many states in the world that derive revenue from extracting oil (as the Middle

Eastern countries) have essentially remained dictatorial and with conservative constitutions where they exist (Bazaara 2000, Booth 1994). The following section examines the electoral process and electoral system imperatives in Tanzania.

## The Electoral Process and Electoral System Reform Imperatives

Tanzania like most of the post-colonial African countries was dominated by a one-party regime in the first 30 years of political independence. In 1962, when Mwalimu Julius Nyerere assumed the mantle of political power, the country operated as a *de facto* one-party state. A *de jure* one-party state was proclaimed in 1965, after the adoption of recommendations by a presidential commission on constitutional matters.

The constitution was amended by parliament. The role of national elections was retained, although the candidates for elections were selected by the then ruling party, the TANU. There was a stipulation in the constitution that each seat could be contested only by two candidates in order to ensure that no member could be elected without commanding a majority of support. The 1965 and subsequent national elections under the one-party system were conducted under these rules. Presidential elections were held at the same time as parliamentary elections and Nyerere regularly contested elections every five years from 1965 to 1980. In 1977, the constitution further cemented the one-party rule by declaring that the single party was the supreme organ of state under which all activities were to be organised. On the basis of this provision, not only opposition political parties were disallowed but major institutions like the armed forces, labour unions, co-operatives and cultural and religious bodies were either institutional members of the only party or affiliated to it (Mtaki & Okama1994).

The signs of success for the internal and external pressures against one-party regimes in Tanzania and Africa at large started to show towards the end of 1980s. By 1995, competitive elections had been held in at least 31 African countries. However, in spite of very vigorous pressure for democratic change, controversial elections were held which merely returned the old regimes to power, with the opposition immediately contesting the validity of the results as well as the legitimacy of the regimes in power.

Tanzania amended its constitution in 1992 to become a multi-party state and the country opened up to political liberalisation. Through that political

dispensation multi-party competitive politics were reintroduced and the evolution of independent and autonomous civil society organisations was encouraged (Republic of Tanzania 1992, Nyalali Commission 1991). The main opposition political parties included Chama Cha Demokrasia na Maendeleo (CHADEMA), under the leadership of its founder Edwin Mtei. Mtei was a former CCM treasury minister who had resigned after differences with Nyerere over adopting International Monetary Fund (IMF) policies. CHADEMA did not contest the presidential election, but established close connections with another opposition party, the National Convention for Construction and Reform (NCCR-Mageuzi), which put a candidate. The two parties also agreed to an arrangement that they would form a coalition if they were called to form the government. The NCCR-Mageuzi gained prominence after Augustine Lyatonga Mrema, a former CCM deputy prime minister, took over the leadership.

The party with the greatest links to Zanzibar was the Civic United Front (CUF) led by Shariff Hamid. It was the most significant party in Pemba and most observers predicted that the CCM would find it difficult to compete with the CUF on the islands. Although it did not have much support on the mainland, it fielded a presidential candidate, Ibrahim Lipumba. Some of the other major political parties included the National Resistance Alliance (NRA), the National League for Democracy (NLD), the Popular National Party (PONA), the Tanzania Democratic Alliance (TADEA), the Tanzania Peoples Party (TPP), the Union for Multiparty Democracy (UMD) and the United Peoples Democratic Party (UPDP). The large number of opposition parties, as well as opposition disunity, clearly favoured the CCM. Nevertheless, the opposition presented a potential challenge to the ruling party, CCM, and was able to point to the rampant corruption and economic mismanagement that had occurred under the aegis of the ruling party.

After 33 years of one-party rule under the CCM, presidential elections were held in 1995. In elections that were categorised as free by international observers, Benjamin Mkapa of CCM became the first president of Tanzania to be elected under a multi-party electoral system. However, the CCM, with its huge advantages over opposition parties in membership and access to campaign resources, did not face a significant challenge by opposition forces. Even with the advent of democratic elections, the CCM has been able to maintain its hegemonic position in the country. This hegemony was reaffirmed with the presidential elections of October 2000 in which President Mkapa was easily re-elected with over 70 per cent of the popular vote. Given that the

liberalisation of Tanzanian politics is being pursued in a 'top-down' way, through the cautious leadership of the CCM rather than through grassroots mobilisation and agitation, elections continue to be biased in favour of the incumbent.

For instance, the 1995 elections results for the Parliamentary seats show that the incumbent party CCM secured 3 814 206 votes equalling 59.22 per cent of votes cast, suggesting in turn that the combined 12 new parties secured only 40.78 per cent of the votes cast. The closest party to that of CCM in terms of popular support was the NCCR-Mageuzi, which won an impressive 21.83 per cent of the votes cast. Only two of the other new parties got over 5 per cent of the votes: Chadema got 6.16 per cent and CUF 5.02 per cent. The year 2000 elections showed that CCM enhanced its position by securing 65.3 per cent of the parliamentary votes, while the new parties' position relapsed to 37.7 per cent of the votes. Also in 2000 the new parties were able to field fewer candidates for the parliamentary seats than in 1995. While CCM was able to field 100 per cent of the contestants required, the closest party to field candidates was the CUF, which fielded 59.7 per cent of the candidates. The NCCR-Mageuzi, which had fielded 82.3 per cent of the candidates in 1995 as the second strongest party, relapsed to the fourth position with less than half (40.3 per cent) of the candidates they had fielded in the 2000 elections.

Furthermore, the transitional period to the multi-party system coincided with the timetable for elections that were to be held in 1995. During this time, the CCM consolidated its position and controlled all institutions. It established the rules under which new political parties were to operate and frequently intervened in the 'national interest'. The CCM represented itself as the party that upheld Tanzania's record of peace, stability and solidarity in contrast to the opposition that threatened the very fabric of the nation by articulating particular interests. The state dominated by CCM, refused media access to the opposition by not relinquishing its hold on the sole national broadcasting agency, Radio Tanzania. In addition, it refused both to repeal the 40 pieces of repressive legislation which made it difficult for the opposition to function, and to mount a democracy education programme. Critically, during the transition phase, the CCM remained dominant and the boundaries between the government and the party remained blurred.

The long transitional period meant that it was difficult for the opposition to maintain a coherent position. The initial euphoria of multi-partyism waned as the opposition was unable to provide a viable alternative set of policies.

Another problem for the opposition was that it found it extremely difficult to penetrate the rural areas where the CCM had its strongest support, making them largely an urban party.

Perhaps an even more regressive trend in the opposition parties is the crossing of key opposition leaders to the incumbent party, CCM. Top-level and founder members, that include some Chairpersons of the opposition parties, abandoned ship and crossed to the CCM. This trend, among others, has led to the fear that maybe Tanzania is backtracking to the one-party rule (Ahluwalia & Zegeye 2001).

While the multi-party elections heralded a new phase in Tanzanian politics, the most important political machinations remained within the CCM. President Mwinyi, under the stipulations of the constitution, was only permitted to serve two terms and this necessitated the identification of a presidential candidate by the CCM. In order to elect the CCM presidential candidate, the party established an elaborate procedure. Aspiring candidates' names had to be submitted to the party's Secretary-General who, in turn, submitted them to the Central Committee. The committee was empowered with the task of drawing up a short list of five candidates who were recommended to the National Electoral Commission (NEC) which could either accept or alter the list. Finally, the NEC presented these names to the party congress, which elected the candidate by secret ballot.

Although there were 17 candidates for the CCM presidential nomination, based on the party's procedures, Benjamin Mkapa was elected by the party congress. The influence of Julius Nyerere in the election was paramount. In May 1995, he castigated the CCM leadership for corruption and exposed major problems in the party. He made it clear that he would support a candidate who was untainted regardless of the political party, which such a candidate represented. Mkapa's election was endorsed by Mwalimu Nyerere.

The official election campaign was punctuated by confusion. The elections were conducted first in Zanzibar and then on the mainland. The separate Zanzibari elections were made problematic by the major debates over the way in which the union is governed, and exposed major divisions on the island. The election process was plagued from the beginning by CUF complaints that it was being hindered and intimidated by the CCM. There was a general feeling among the opposition that a free and fair election was not possible. The CUF campaign emphasised economic liberalisation and closer co-operation with the Arab Gulf states. It was precisely these close ties with the Islamic states that the CCM played upon, arguing that this was an attempt to exert

Arab control over the islands. On 25 October 1995, the CUF claimed victory. However, the final election results were delayed, and the electoral commission declared the CCM presidential candidate, Salmin Armour, as duly elected after attaining 1 565 more votes than the CUF candidate, Seif Shariff Hamad.

In the parliamentary elections, the CCM was declared to have won 26 out of 50 seats. Despite efforts to monitor the election process, it was apparent that the elections were fraught with difficulties when the number of votes counted in two constituencies exceeded the number of voters registered. It was not surprising, therefore, that international election monitors noted major discrepancies in the election process. CUF members boycotted the Zanzibar House of Representatives. The European Union and other donors cut aid in what was perceived to be fraudulent elections.

The union elections, which were held on 29 October 1995, were also disrupted by administrative disorganisation in Dar es Salaam where the elections were postponed and rescheduled for 19 November. The opposition argued that this was a means to promote disorder in areas where the opposition had support. In protest, the opposition refused to contest the presidential elections in the re-run in Dar es Salaam. This was an important mechanism for the opposition to gain legitimacy, given that provincial results ensured a CCM victory. Nevertheless, the opposition contested the parliamentary elections.

The election results witnessed the return of the CCM to power. In the presidential race, where four candidates had sought election, Mkapa received 62 per cent of the vote while the opposition candidates amassed 38 per cent. The election results showed that the CCM was being challenged and that it could not attain the kind of popular support it enjoyed under Nyerere. In the parliamentary elections, the CCM won 186 of the contested seats with the CUF attaining 24 and the NCCR-Mageuzi 16. Because the National Assembly includes a number of nominated seats, the final configuration consisted of the CCM with 214 seats and the opposition with 60.

However, although the ruling party, the CCM, retained power, it confronted an economy riddled with problems. There was rising unemployment exacerbated by Structural Adjustment Programmes (SAPs), the collapse of infrastructure and poor industrial performance. The state was unable to provide even the most meagre of social services. This is reflected in the fall of life expectancy figures from 52 years in the early 1990s to 48 years in 2000, as well as one of the highest infant mortality rate on the continent. The decay of health services can be seen in the banning of x-ray services because of defective machines. The Tanzanian government has faced an ever increasingly

vigilant donor community demanding accountability and transparency. The most pressing concern for international agencies was the failure of the government to collect taxes and curtail the high levels of corruption. The World Bank's refusal to disburse funds was echoed by the donor community that refused the balance of support payments as a result of the Paris Club meeting in 1995.

In 2000, Tanzania held its second multi-party elections. These elections were seen as a foregone conclusion with President Mkapa assured of a second term in office. The opposition parties' inability to field a single candidate meant that Tanzanians were highly sceptical of the electoral process. For the average voter, the real issue was the continuing decline in their standard of living. Although the government adopted and met World Bank-IMF expectations, high unemployment, insufficient health care, a lack of educational facilities and sheer poverty remained.

The 2000 elections were not different from the 1995 elections with the CCM able to ensure that they were not operating on a level playing field. The abolition of state subsidies to political parties meant that the opposition was unable to fund their campaign adequately. The problem of the differentiation between the CCM and the state remained. The CCM was again able to intimidate the opposition through the use of police supervising political rallies. In addition, it denied the opposition access to the dominant government media. Although the private media have been permitted to operate, in general, it had little impact on the political agenda. Most significantly, the media, public or private, failed to raise the key issue of economic management.

The opposition, under the aegis of the National Convention for Construction and Reform-Change called for the resignation of Lewis Makame, the chairperson of the National Electoral Commission, on the grounds that he favoured the CCM. The opposition, however, was unable to make any significant electoral inroads. The same four presidential candidates ran for office and it appeared that the opposition had learned nothing from the previous election. International observer teams reported that the election was relatively fair and free on the mainland. As expected, President Makapa and the CCM easily attained power.

In the first multi-party elections in 1995, the CCM, with less than a one per cent margin, claimed victory in Zanzibar. The opposition CUF claimed widespread rigging and boycotted the assembly. This led to the suspension of donor aid to the island. The 2000 election sadly mirrored the 1995 election.

The 2000 election was marred by claims of electoral fraud and violence with troops patrolling the streets.

Although the constitution prohibits religion to be the basis of a political party, the ruling CCM accused the CUF to be an essentially Muslim party. Ironically, the label of an Islamic party helped the CUF to gain further support from the Islamic community. The detention of 18 CUF members without trial for treason exacerbated tensions further. These CUF members were declared to be 'prisoners of conscience' by Amnesty International.

The election was annulled due to irregularities in 16 of the 50 constituencies. The Commonwealth team of observers commented that the election was a shambles. Despite the opposition's demand that a new election should be held, the CCM rejected this, leading to further violence on the island. The re-run was boycotted by the CUF and Amani Abeid Karume was sworn in as Zanzibar's president and the vice-president of Tanzania. In an attempt to forge unity, Karume's first act was to release the 18 CUF members. The opposition to CCM rule on Zanzibar has nevertheless continued with clashes between the opposition and government. The repression of the opposition has resulted in the fleeing of a large number of Zanzibaris to Kenya, including 14 CUF members of parliament. This crisis represented the largest challenge to the Tanzanian government, which has always prided itself as a peace-loving nation. The events in Zanzibar represent the repressive nature of the system that continues to exist in the country.

It is on the basis of the above that Ahluwalia & Zegeye (2001) argue that politics in Tanzania have not changed substantially since the first multi-party elections in 1995. The same issues continue to dominate with some aspects gaining importance. These include the structure and position of the political parties, elections and the constitutional and legal framework to ensure the functioning of the emerging political system.

In Tanzania, both the incumbent and the new political parties are hard pressed to develop viable alternative political platforms that can attract voters as well as retain committed members. The ruling party (CCM), having abandoned 'Ujamaa' (Socialism), has joined the new parties in preaching a form of Social Democracy that meets the aspirations of both the previous world of *ujamaa* and the present demands of market-based economics and liberal democracy. Only CUF in Zanzibar stands opposed to key CCM policy issues, such as the Union and the Revolution of 1964 which removed the

Arab Oligarchy. There are concerns that a reversal of the Revolution of 1964 implies a return to Arab Colonial rule in Zanzibar and a complete break of the Union. Besides inter-party politics filtering through into ethnic and other separatist fault lines, the lack of well-articulated and alternative political platforms makes party politics shift to an arena of both inter- and intra-party politics organised around personalities.

As in other societies in political transition towards plural and competitive democracy, the debate on the constitution in Tanzania is essentially about the demand for a pact between the pro-reform groups to arrive at a consensus amongst themselves and between them and the incumbent party of the regime. This debate should guide the transition process as well as enshrine lasting rules that should be observed by all players in the political system including the rules relating to elections.

The new parties agreed both in 1995 and in 2000 that the existing constitutions of the Union and Zanzibar should be discarded completely (or at most they can serve as essential reference documents) and be replaced by new ones if elections were to be free and fair. They argued that the existing constitutions and the legislation that emanate from them, including the electoral laws that governed the elections in 1995 and were to govern elections in 2000, were founded on specific assumptions. These they argue underline in their various provisions the dominance of a single-party system. Ujamaa-Socialism is seen to remain Tanzania's development blue print. They further argue that to simply amend the various provisions as argued by the party in power would be the equivalent of building on and incorporating the assumptions of those provisions.

Since democratic governance is being sought in the present time and this is founded on different assumptions including competitive politics and a liberal political and economic system, they demand a more appropriate way of achieving a constitution. Their position is that democratic content requires the constitution makers to begin afresh with basic and new assumptions. The elections in 2000 took place within a general constitutional and legal framework shaped by amendments that by and large enhanced the position of the party in government. Such amendments include the 2000 13th amendment that provides for nominated seats to be filled according to the president's choice. As was the case for the constitutional and legal framework, these same conditions applied to elections of both 1995 and 2000 (Zegeye 2001).

Hassan O. Kaya

## The Issue of Gender and Election Process in Tanzania

The importance and necessity of women's participation in decision-making for sustainable development in Tanzania have been recognised in many circles. Elections are the time when the Government, NGOs and the entire civil society have the chance to put into practice what was pledged in Beijing in 1995 regarding women's political empowerment in decisionmaking. The Beijing 4th World Women's Conference included the participation of women in decision making as one of its 12 areas of concern in the Global Platform for Action (GPA). The GPA points out that without women's participation in decision making, the goals of equality, development and peace cannot be achieved. Thus it proposes that governments commit themselves to establish gender balance in governmental bodies and committees.

Already in 1995 the Tanzanian Government guaranteed 15 per cent of parliamentary seats respectively for women. In 1996, the year following Beijing and the first multi-party elections, the cabinet endorsed and increased the number of seats reserved for women to 20 per cent. The number of women parliamentarians and the quality of their contribution combine to influence political life. Their entry to the parliamentary scene often produces a qualitative change and can balance the legislative work in support of equality. Full integration of women in political life not only favours the democratisation of politics but also enables women to take full advantage of democracy which has so much to offer in the promotion of equality.

Women's political rights must be considered in the overall context of human rights and should not be dissociated therefrom. The 1977 Constitution of Tanzania, amended in 1984, provides equality between men and women in all spheres of life, but in political reality there is a huge gap between law and practice with regard to the principle of equality. Multi-party democracy provides more opportunities for women to participate. This is especially so if enough efforts, resources and hard work are put in by women themselves and other stakeholders including the youth.

Temu and Kassim (1992) assess the participation of women in elective decision-making bodies in Tanzania by looking at the three phases of the electoral process, i.e. the pre-electoral phase which provides access to nomination and candidature; the electoral phase itself during which selection of candidates takes place; and the post-electoral phase which involves the exercise of the political mandate:

# Electoral Violence, Political Stability and the Union in Tanzania

## (i) Pre-Electoral Phase

Election to Parliament begins with active political involvement of local grass-roots organisations. This means that legitimate entrance into a constituency is gained. Women, however, face a number of obstacles as early as this pre-electoral phase. This is due to the fact that there are so few of them already in decision making positions within political parties to support their nominations. Those who lack full support from their political parties cannot be nominated and if there is no nomination there is no candidature.

Poverty is another big stumbling block in the way of the prospective women aspirants for parliamentary and local government seats. Most of the women aspirants have low incomes, which do not allow them to pay the fees set even by their own political parties. The parliamentary seat fees range from 100 000/= (CCM's fees in shillings) to 20 000/= (NCCR-Mageuzi's fees) and 5 000/= (CUF). For councillorship it is 10 000/= (CCM), 3 000/= (NCCR-Mageuzi) and 1 000/= (CUF). There is, however, a move by an inter-party committee that is co-ordinating efforts to empower women politically to consult the NEC to set a uniform rate for all parties. Another impediment to women aspirants is the inadequate campaigns time: New aspirants have to get introduced to voters but time is often too short for them to be able to cover enough ground.

## (ii) Electoral Phase

In 2000 out of the 72 female candidates from different political parties 12 women from CCM were elected. In the 1995 elections, out of 67 women candidates, only eight were elected – seven from CCM and one from CUF.

Peter (1999) emphasises that voting is essential to ensure that women are elected. Women in Tanzania make up more than half the total population, namely 51 per cent according to the 1988 Census. While in 1995 within the different regions 43 per cent up to 52 per cent of the voters were female in 2000 the female poll decreased to about 40 per cent up to 50 per cent. Nevertheless women have not yet joined forces to support their fellow-women. There is a tendency for women to consider those running for office as wishing to be part of a man's world. In this regard female voters vote for men in preference to women. This partly explains the low number of women elected. Another factor is the multiple roles that women play in production and reproduction as well as the attitudes and power relations existing in society. In the 1995 and 2000 elections many women failed to register because they

were preoccupied with farm work. Some women who showed interest in running in the elections faced threats from their spouses to the extent of telling them to choose between marriage and politics.

In Tanzania reserved seats have been introduced to partially compensate for absence of women in elective office and senior posts. However this should only be a temporary measure, to be lifted when the objective has been reached. President Benjamin Mkapa, while addressing the International Women's Day on 8th March 2000, challenged women to go out and run in the constituencies instead of being contented with the special seats. However, in the 2000 elections the women parliamentarians joining Parliament through special seats still outnumbered by far the ones elected in the constituencies. In the new parliament 47 women are members on special seats, with 40 coming from CCM, four from CUF and one each from TLP, UDP and CHADEMA.

## (iii) Post-Electoral Phase

World-wide women tend to be in the minority in national parliaments. The political space occupied by women in parliament depends as much on their numbers in relation to men, as on the qualitative impact of their participation in parliamentary activities. The constituency expects a lot from their women parliamentarians. They have to prove themselves to a greater extent than men. Between a man and a woman elected to parliament for the first time there is chance that the woman has to overcome more obstacles than the man to occupy her place to the full. Likewise the small numbers of women in parliament, coupled with attitudes and procedures, impact negatively on the post-electoral phase, especially on the appointment of women to high positions. In Tanzania the president has appointed only four female ministers out of 28.

## Electoral System and Conflict Management

The issue of the electoral politics and conflict management in Tanzania, especially with regard to the Union question, is well illustrated by Haroub Othman (2001). He notes that the Union of Tanganyika and Zanzibar is the only one in Africa. The Union has been given different interpretations and characterised as federal, quasi-federal, or as an interim arrangement towards a unitary state. What the '*Articles of Union*', which are the *Grundnorm*, intended to do, was to create a single state with two authorities having a

limited jurisdiction. The intention was to retain the identity of the smaller unit. By this event, the identity of Tanganyika has not been lost, as it is sometimes claimed. It is Zanzibar's autonomy and identity that must be maintained lest, as Mwalimu Nyerere himself often pointed out, an impression be created that the larger and more populous Tanganyika has swallowed Zanzibar.

In 1983/84 and 1990/92 extensive political and constitutional debates took place in the country which deeply probed the question of the Union. The debates of 1983/84 resulted in major amendments to the 1977 Union Constitution and the formulation of a new Zanzibar Constitution. The Union question, however, continues to trouble the minds of many people within and outside Tanzania. While all the other political parties in the country are demanding a federal set-up, the ruling party (CCM) and its government are still insisting that the two-government arrangement is there to stay. A lasting solution needs to be found to the Union question because in this era of multi-partyism and openness, it is even more important that matters are discussed and solutions found based on popular will.

As already illustrated, in 1995 Tanzania held its first multi-party elections since its founding in 1964. While both local and international observers had no major criticism on the way the elections took place on the Mainland, in the case of Zanzibar the story was different. Neither the local nor the international observers endorsed the elections. The elections showed also that the country was split right in the middle, along geographical lines. One of the parties (CUF) was dominant in the island of Pemba, while the ruling party (CCM) held sway in the island of Zanzibar. What this meant in the Zanzibar context was that neither of the parties was a 'national' party.

After the election results were announced, the opposition CUF felt that its victory had been usurped, and that it was its candidate who won the Presidency. The result was that CUF refused to recognise the Zanzibar government. Its members of the House of Representatives boycotted the sessions of the House. The expectations of Zanzibaris prior to the elections, like their compatriots on the Mainland, were that they would enjoy greater democracy and more human rights. But this was not how it turned out in Zanzibar. Instead, even the small gains that had been won before the elections were lost.

What was understood from the beginning, though, was that the crisis in Zanzibar was not of a constitutional or legal nature, but of a political nature. And when the proposed solution, brokered by the Commonwealth, came, it was a political one. It depended on the political will of both parties for its implementation. That political will, unfortunately, was lacking. One did

not need to be a student of conflicts to see that with the year 2000 elections Zanzibar was heading towards a deeper crisis. While all observers commended the way the elections were conducted on the Mainland, the Zanzibar elections were characterised by the Commonwealth Observer Team as a shambles. In fact all observers were more critical this time of the way the elections were run, and they all demanded fresh elections.

This time the opposition CUF did not recognise both the Union and Zanzibar Presidents, and they demanded their members of the Union Parliament and those of the House of Representatives to boycott both legislative bodies. The two bodies have now, using the House Rules, decided to throw out all CUF representatives from both Houses. The result of this was that Zanzibar had a one-party House of Representatives.

Moreover, the police killings in Zanzibar in January 2001 cast a deep shadow over Tanzania. What was very clear was that the country lacked political leadership of the security forces, and that the security forces lacked technical means to do their professional work. There was both local and international pressure for the Tanzania government to form an independent commission of inquiry to investigate what happened.

However, this paper does not propagate that there were no tensions and conflicts in the Union under the one-party political system, but during the one-party system where the party was supreme and under the charismatic leadership of Mwalimu Julius Nyerere, it was possible to resolve some of the tensions. But new tensions emerged with the political liberalisation. Although these might have been expected, there was the belief that the society was cohesive enough to withstand them. Unfortunately such has not been the case:

First, Tanzania is a country that has been known for its non-racial philosophy. Racial schools and other social welfare amenities that were provided on a racial basis were abolished after independence. The Nationalisation of Buildings Act of 1971, though obviously affecting a particular race (Asians) in its implementation, was all the same justified on socialist grounds. But currently, there are people arguing for *uzawa* (black indigenisation) in the economy.

Second, Tanzanians have prided themselves in their religious tolerance. The independence movement was led by Julius Nyerere, a Catholic, Rashidi Kawawa, a Muslim, and Oscar Kambona, an Anglican. But unfortunately there has now emerged serious religious tensions. At the time of independence nobody would ever have thought that there would come a day in Tanzania when people would think that their positions in public life depended on their religious affiliations.

Third, under Nyerere's leadership the use of ethnic and racial origin was something of a taboo question. Even chiefdoms were abolished. It was possible for someone from Ruvuma region to stand in elections in Dar es Salaam. There are examples of people such as Julius Nyerere, Amir Jamal, Omar Muhaji and Oscar Kambona who stood, and won, in constituencies outside their home areas. Derek Bryceson is a classic example of a white, Cambridge-educated big farmer standing in a working class area, the numerically largest constituency in the whole country, and still winning massively. Presently, whenever elections approach, people retreat to their ethnic origins, and the population is coming to slowly accept looking at things through their ethnic and religious perspectives.

Fourth, in the past the education system and other forms of socialisation played an important role in the cementing of national unity. The nationalisation of religious and ethnic schools, and the opening up of their doors to all, including the allocation of 50 per cent of secondary school places for people coming from outside the region where the school was situated, created a healthy situation of bringing Tanzanians together. An important role was also played by the National Service scheme where youth of both sexes, regardless of their regional, ethnic, racial, social class or religious backgrounds, were trained together in camps, which led to the development of friendships among the youth from these different backgrounds.

## Key Policy Challenges for Democratic Governance and Stability

Tanzania, like the rest of Africa, is faced by a multitude of policy challenges for the establishment of democratic governance and stability. Besides the existing racial, ethnic and religious tensions stated above, one other challenge is rampant corruption. Othman (2001) rightly states that often corruption is viewed as involving the use of money to influence a person or a decision towards a certain direction. At other times it even involves buying one's right. In politics money is indeed used, but it is not the only corruptive currency. Other factors are also involved, all of which are as corruptively effective as the use of money.

In Tanzania, corruption as in most African countries, is currently at a threatening level. It has permeated all sectors of society. Corruption cannot be fought from political platforms, especially when people's rights are being denied or sold because of corrupt practices. What is needed is educating

people about their rights, inculcating in the public servants moral and professional ethics and giving them job security which would reduce the temptation for quick money.

Moreover, in this world of interdependence, the question of human rights holds powerful sway. Indeed, the respect and defence of human rights is the foundation of any democratic nation. A country's constitution is laudable only insofar as it defends and sustains human rights; and a government is held in esteem to the extent that it implements the significant rights recognised in the world today. The world is increasingly becoming a 'global village'. The existence of information technology means that whatever happens in one part of the world, including human rights abuse and corruption, almost immediately becomes known in other parts of the world. For a country like Tanzania, which depends so much on aid from external donors, loans from foreign banks and international agencies, good governance including observation of human rights and eradication of corruption have been stated by the donor community as conditionalities for the granting of aid. Conditions must be created in which the human rights provisions contained in both the Tanzania and Zanzibar Constitutions and in the international human rights instruments to which Tanzania is a party are understood and enjoyed by everybody (Othman 2001, Mwaikusa 1995, World Bank 1989).

Furthermore, with the liberalisation of the economy in Tanzania, the gap between the poor and rich is becoming bigger. The implications of the liberal economic policies being pursued at present on the social sector are catastrophic. Poverty is forcing more and more people not only to create their own devices for survival but also into vices that were not common before such as drug trafficking, murder, and violence against women and children. These social developments if not tackled correctly, may plunge the country into serious problems and threaten its peace and stability (Booth 1994).

Since the Arusha Declaration was abandoned there has been an ideological vacuum. It was hoped that the '*Tanzania's Development Vision to the Year 2025*' would arouse the people's enthusiasm and mobilise them to greater heights, but the document failed to gain legitimacy because its formulation was another technocratic exercise with no political content. A development vision has to involve the whole people since they are the ones who are expected to shoulder and to benefit from its implementation. For such a development strategy to work, the state must play an important role. There is need to discard the notion that the role of a state is only to keep law and order, and that it must shed away its other developmental responsibilities.

The demands of the opposition political parties, civil society organisations and professional bodies for constitutional reforms need to be taken seriously because if they are not listened to with all seriousness, they may be a problem in the future. The present constitutional arrangements were formulated at the time of a one-party state for conditions that were appropriate at the time.

Since the coming of the multi-party system, the conduct of multi-party elections has been a major source of discontent. It seems that the electoral laws are deficient and the electoral commissions do not inspire confidence in their independence. What are required are new electoral laws and truly independent electoral commissions. Moreover, as part of the political culture of the country the monitoring of the whole electoral process to see that it is free and fair is the responsibility of everybody. It is important that the electorate itself must learn to resent, reject and expose any wrongdoing in the electoral practice.

The Electoral Commissions have the primary responsibility to see that the playing fields are levelled, and that each political party and each candidate is afforded a fair chance. The mass media must be ready to expose whosoever employs illegal practices in the elections; and the police should not hesitate to bring anyone before the courts if they are suspected of having engaged in corrupt practices.

Othman (2001) emphasises that the national language, the ethics of equality and human dignity, and the Union of Tanganyika and Zanzibar are what overcame the ethnic hatred, religious bigotry, regional parochialism and ethnic differences, and forged national cohesion and unity. It is these values that had made Tanzania an example in a continent beset with secessionism, ethnic cleansing and religious tensions. One hopes that despite the daunting problems facing society now, there is still the capacity and patriotism within Tanzania that will look beyond sectarian interests.

## Conclusion and Recommendations

An examination of elections, state, constitutionalism and political stability in Tanzania showed the following. First, the state in Tanzania could be characterised as authoritarian. Like in most other African countries the constitution has been frequently amended to ensure that the executive, especially the President and the ruling party (CCM) become dominant and remain in power. State authoritarianism has been justified by the need to maintain order and by the ideology of developmentalism. Even after the introduction of the

multi-party system the electoral process and election system are still dominated by the ruling party (CCM). The difference between the state and CCM is still blurred.

Second, since the coming of the multi-party system, the conduct of multi-party elections has been a major source of discontent for the opposition. It seems that the electoral laws are deficient and the electoral commissions do not inspire confidence in their independence. What are required are electoral laws and truly independent electoral commissions which ensure that the playing fields are levelled and fair to all political parties.

Third, in spite of the amendment of the 1977 constitution in 1984 to provide more equality between men and women in all spheres of life, there is still a huge gap between law and practice with regard to the principle of equality. Women still face more problems than men in the electoral process. The latter are still more represented in both parliament and cabinet.

Fourth, political and economic liberalisation has brought new political and social tensions in the country, based on ethnicity, race and religion, and increasing poverty. These tensions pose a great challenge to peace and stability including the future of the union. Sustainable solutions need to be found. People should be educated about their rights and to resent corruption. Moral and professional ethics should be inculcated in public servants including provision of job security to reduce the temptations for quick money. The state should play an active developmental role besides keeping law and order. Finally, a lasting solution needs to be found to the Union question because in this era of multi-partyism and openness, it is even more important that matters are discussed and solutions found based on popular will.

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# Constitutionalism, the Electoral System and Challenges for Governance and Stability in Zimbabwe

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## Abstract

In February 2000, Zimbabweans went to the polls to vote on a draft constitution for their country. The draft contained some important provisions, amongst other things, for the reform of the country's electoral system. The draft was rejected and a bitter general election campaign ensued in the second quarter of 2000. The general election held in June 2000 and the presidential elections in March 2002 were the most violent in Zimbabwe's electoral history. These developments raise significant questions relating to constitutionalism and the electoral process in Zimbabwe. It was an admission that both constitutional and electoral reform were imperative and indeed overdue that a state-appointed Constitutional Commission (CC) was set up in 1999 after a civil

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society-driven one, the National Constitutional Assembly (NCA) had been founded earlier in 1998. In particular, the political developments since 2000 have pointedly highlighted the challenge to address the increasing deficit in democratic governance and stability in Zimbabwe. This paper attempts to assess critically developments relating to constitutionalism and the electoral system, the linkages between them, and their significance for governance and stability.

## Introduction

This article investigates the interconnectedness of processes of constitutionalism, electoral system and democratic governance in Zimbabwe. It begins by outlining the post-independence political and constitutional history of Zimbabwe. It considers the significance of the methods of coercion and violence inherited from the liberation struggle for the political process after independence. The centrality of the Lancaster House independence constitution in limiting the flexibility of the post-colonial state in the political and economic spheres is considered. In the second section of the paper, the issue of constitutionalism is then addressed showing the absence of a participatory process in constitution making and the making of constitutional amendments. This is highlighted in the account of the debate over the process of constitution making in 1999-2000.

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

## Constitutionalism, the Electoral System and Challenges in Zimbabwe

## The Political and Constitutional Background

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

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

An explanation has been proffered to explain the continuity in the political culture of repression which relies on coercion and violence rather than peaceful resolution of differences and contestation. It is that intense colonial repression and war ruled out:

> open, democratic practice and tolerance and alternative views. It fostered what could be termed a 'culture of authoritarianism' that was

certainly compatible with state socialist ideology of nationalist leaders at the time, as well as a 'traditionalist' discourse which stressed strong leadership and unquestioning loyalty…. Violence in post-independence Zimbabwe was the consequence of a strong state, itself in many ways a direct Rhodesian inheritance, and a particular interpretation of nationalism (Alexander, McGregor & Ranger 2000).

This is, however, to anticipate a discussion in a later section on the electoral system and the coercion and violence that accompanied the key elections held in 2000 and 2002. What have been the principal developments in the political arena since independence in 1980? The 1980 elections ushered in Zimbabwe's first black government which was internationally recognised. The proportional representation (PR) system was used in those elections. A five per cent threshold was used in allocating seats in eight provinces. Three parties, ZANU-PF (Patriotic Front) under Robert Mugabe, PF-ZAPU under Joshua Nkomo and the United African National Congress (UANC) led by Abel Muzorewa won the black-contested seats. ZANU-PF won 57 of the 80 common roll seats, PF-ZAPU 20 seats and the UANC three seats. However, this was the last election in which the PR system was used. The subsequent elections in 1985, 1990, 1995 and 2000 were held on a 'First-Past-The-Post' (FPTP) system following an amendment to the Electoral Act. After further amendments to the Lancaster House constitution itself, an Executive Presidency replaced a ceremonial presidency in 1987, and the 20 seats specially reserved for the white minority were abolished.

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

demands emanated from opposition political parties and civil society organisations. The decline in faith in the constitutional and electoral set-up was expressed in the boycott of the 1995 and 1996 elections by some parties.

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

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

Clearly, there were notable imperfections in the constitution with respect to clauses on political and economic arrangements. At the same time, however, the post-independence government did not prove to be an ardent reformer in terms of democratisation. While majority rule for the first time extended voting rights and participation in the electoral process to all Zimbabweans, democratic values of tolerance and respect for the 'rule of law' were not strictly observed by the Mugabe government. The emphasis of the

ruling ZANU-PF party was largely on the consolidation of its hegemony over every layer of society. Dissent was frowned upon, if not crushed. It did not take long before a government of national unity collapsed under the weight of tensions between ZANU-PF and PF-ZAPU, resulting in the above-mentioned civil conflict between 1982 and 1987. Many human rights violations were committed during that conflict, in which thousands were injured, killed and displaced. The repressive tendencies of the post-independence government were given full vent during that period.

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

## Constitutionalism: The Debate over a New Constitution

The subsequent debate about constitutional reform was sparked by what was viewed as arbitrary amendments to the Lancaster House constitution for the purpose of concentration of power in the presidency. The most far-reaching was the 1987 amendment which created the executive presidency. Yet there was no participatory process encouraged in this substantial amending of the constitution. As it was observed:

the very centrality of the constitution would demand that the process of its development would be inclusive and truly 'national'. The process leading to the making of the Lancaster House constitution was widely perceived as weak…. As a result, numerous amendments were effected – many of which were also perceived to have largely entrenched the executive branch of government. It is significant, that the people were never actively involved in any of the amendments since none of the 15 amendments were subject of official public discussion beforehand nor was there extensive debate in Parliament itself (Centre for Democracy and Development 2000).

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

As we observed above, the ZANU-PF government approached the matter of constitution in a haphazard manner. A total of 15 amendments had been made to the constitution by 2000 with most of them aimed at centralising power within a powerful presidency. Amongst some of the far-reaching amendments were the following:

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

In particular, the president's powers of patronage and autocracy were enhanced with the provision to appoint up to 30 members of parliament.

Although the provisions which restricted changes to the Lancaster House constitution expired in 1990, the government was somehow not keen to change it to improve conditions for democratisation. There did not exist a political vision relating to how to craft a more responsive constitution in the post-Lancaster House era. Issues such as electoral reform, land redistribution and gender equity were not addressed through a constitutional review during

the early 1990s. This was partly explicable in terms of a weak political opposition in the aftermath of the merger between ZANU-PF and PF-ZAPU in 1989. Furthermore, civil society was not as active and strong as it would become in the late 1990s.

It was therefore not surprising that the initial clamour for constitutional review emerged from outside the ruling ZANU-PF party. Civil society organisations and opposition parties sought constitutional reform because the existing one was seen as serving the interests of the elite in power. In their view, no significant political and social change could occur without the rewriting of the constitution. More generally, the regional conjuncture was one in which progressive constitutions were being crafted in such countries as Botswana and South Africa. The first salvo was fired by a broad alliance of civil society organisations that founded the National Constitutional Assembly (NCA) in 1998. The NCA spelt out its objectives as follows:

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

Some of the more obvious shortcomings of the existing constitution have already been referred to in preceding sections. More specifically, the NCA singled out several clauses in the constitution which it argued were not justifiable in a democratic society. It was observed, for example, that the protections in the Bill of Rights were not as wide as is desirable in a democratic society (National Constitutional Assembly 1998). It was further argued that the electoral process as defined and prescribed in the constitution was not conducive to the holding of 'free and fair elections'. Some 14 amendments had been made in a space of 17 years and such a process undermined the constitution, it was asserted. It was against this background that the NCA strongly argued that 'any changes or amendments to the constitution need the participation and approval of the people'.

How did the ZANU-PF government respond to this growing pressure for constitutional reform? It was reluctantly persuaded that such reform was overdue but its authoritarian tendencies made it difficult for it to craft a

consensual approach to reform with other parties including the NCA. Not surprisingly, the government sought to monopolise the process at every stage. There were at least three positions, at the beginning of 1999, on how constitution making should be conducted. Two of the positions emanated from within ZANU-PF itself. The first was termed the 'Mugabe Way' that drew from President Mugabe's approach that:

> the procedure which all along I thought we would adopt is one which would first enable our party at the provincial and then at Central Committee level to address the matter and come to some initial conclusions on the various parts of the constitution needing amendment. The views of other organizations will be collected in the process but only for consideration by us and in comparison with our own… (Mugabe as quoted on 21 March 1998).

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

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

This left the NCA approach as the main challenge to the envisaged 'constitution making from above'. Arguing for a broader participatory constitution-making process ('constitution making from below'), it was envisaged that the process would be inclusive and open. While there was basic agreement on the case for a new constitution, there was polarisation of positions on the process to follow in crafting one. The resultant stalemate on this issue led to an unprecedented constitution-making exercise. The ZANU-PF dominated exercise was represented by a government-appointed Constitutional Commission that consisted of 400 members of whom 150 were parliamentarians. The Commission gathered views from the public for six

months in 1999 and then submitted its findings to President Mugabe. However, the provisions under which the Commission was set up still gave considerable powers to him to amend the draft constitution. This is what subsequently transpired.

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

Eventually, the credibility of the CC exercise was thrown into serious doubt when its draft omitted and misrepresented some of the citizens' views on what the new constitution should contain. For instance, consistent sentiments had been expressed in public hearings and in other submissions that the extensive powers of the President should be reduced considerably, that the legislature should be strengthened significantly, that the size of the Cabinet should be reduced to between 12 and 15 posts, and that an independent electoral commission should be appointed. Most of these and other recommendations were ignored or fudged, and the public and voters were not amused. To complicate matters, the President himself made critical statements about certain provisions including those relating to land. The draft of the CC was decisively rejected in a vote in February 2000. The NCA had contributed to that rejection through its 'no' campaign which found resonance amongst the electorate. What followed was a stalemate on the future direction of the reform process.

While ZANU-PF has now shelved the process by cynically stating that it was no longer 'a priority', the pressure for movement grows from the NCA and opposition parties including the Movement for Democratic Change (MDC). Constitutional reform cannot be postponed indefinitely. Sooner or later, ZANU-PF will have to respond to the intensifying pressure. Several possible scenarios have been posited. One is that a bi-partisan committee of Parliament should be appointed to review the rejected draft, and then submit

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

## Review of the Election Management and the Electoral System

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

- The Delimitation Commission,
- The Electoral Supervisory Commission,
- The Election Directorate, and
- The Registrar-General.

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

A major limitation of the Delimitation Commission is that there is no involvement by interested stakeholders in the delimitation of constituencies. Such stakeholders include political parties, civic groups, women and youth organisations. Thus the limitation relates to an absence of a constitutional provision for public participation in the delimitation process. The Commission

report is submitted to the President who may raise objections if he is in any way dissatisfied with it, but the public is denied the same privilege (Electoral Supervisory Commission 1997). In the same way and for the same reasons as voters rolls are subject to public inspection, a report of the Commission should be inspected and verified by members of the public before it is finalised.

A perennial problem encountered by Delimitation Commissions in their tasks has been that voters' rolls have not been up to date. This is a handicap to the Commission in the drawing up of constituencies. There have therefore been several recommendations made to improve the transparency and effectiveness of the Delimitation Commission. First, the consultation process in the appointment by the President of the Commission members should be more broadly based. The Judicial Service Commission, rather than the Chief Justice alone, should be the body to be consulted. Second, a preliminary Delimitation Commission report should be published in the Gazette, and be open for inspection and comments by the public before the submission of the report to the President. Third, the Commission should be convened well in advance of a general election to allow sufficient time for proper performance of its functions with the participation of the public (Electoral Supervisory Commission 1997). The credibility of future Delimitation Commission reports will hinge on whether they meet these basic conditions and expectations.

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

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

The ESC is funded by Parliament through the Ministry of Justice, Legal and Parliamentary Affairs; its budget is thus determined by the Ministry which decides on how the allocated funds should be used. At the end of each election, the ESC submits a Report to the President on the conduct and outcome of the election. Previous reports have covered such issues as voter registration,

financing of campaigns, election monitoring, incidents of intimidation and violence, media coverage, vote counting and announcement of election results (Electoral Supervisory Commission 1995).

Some analysts have argued that the ESC is largely impotent because the Constitution does not extend any executive power to it (Compagnon & Makumbe\ 2000). In view of its limited and ambiguous powers, meagre budget and resources, the ESC is constrained in exercising its supposedly 'supervisory role' in the electoral process. The powers, authority and resources that should have accrued to the ESC have instead been dispersed to the Election Directorate and the Registrar-General of Elections. In sum:

> The ESC has been rendered useless in Zimbabwe as it only supervises and does not run elections. Election administration and management is split among many organs, which compromises co-ordination and the quality of the decision-making process. The election process is not managed, administered and controlled by the ESC, but by the Registrar-General. The impartiality of the Commission is compromised because the President, a contestant in the elections, appoints and can remove members of the Commission… (Zimbabwe Electoral Support Network 2002).

This state of affairs runs counter to the Southern African Development Community (SADC) Parliamentary Forum's recommendation that complete independence and impartiality of the Electoral Commission should be reaffirmed in the constitution, with the commissioners selected by a panel of judges in consultation with all stakeholders.

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

- co-ordinating the activities of ministries and departments of government in regard to delimitation of constituencies, the registration of voters, the conduct of polls and all other matters connected with elections;
- giving instructions and making recommendations to the Registrar-General in regard to the exercise of his functions under the Electoral Act; and other persons in the employment of the state for the purpose of ensuring the efficient and proper conduct of elections; and

- generally ensuring that elections are conducted efficiently, properly, freely and fairly (Government of Zimbabwe 1996).

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

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

- The registration of voters;
- The provision of electoral staff;
- The declaration of election results; and
- The custody of election materials (Government of Zimbabwe 1996).

These extensive functions make the Registrar-General of Elections very central, and therefore powerful, in the entire electoral process. This centrality is enhanced by other provisions in the Electoral Act such as the one that the Registrar-General 'shall not be subject to the control of any person or authority other than the Election Directorate'. At the same time, any weakness or limitations in the discharge of these multiple functions would have negative ripple effects on the rest of the electoral process. The impartiality and efficiency of the Registrar-General's office have been questioned by opposition political parties, NGOs and the media, especially with regard to its conduct of the 2002 election. An example of this critique is that:

> the transparency of the electoral process was fatally flawed by the refusal of the Registrar-General's office to make public, at any stage, a consolidated voters roll. This made it impossible for the public and political parties to inspect the roll and to raise objections, or even to assess the national electoral base. Such a fundamental failure in itself rendered the election open to abuse since it was impossible to identify voters or rectify the register (Zimbabwe Electoral Support Network 2002).

# Constitutionalism, the Electoral System and Challenges in Zimbabwe

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

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

> the political, economic and social climate of present-day Zimbabwe and the interest to be served have evolved to levels which have led the ESC to consider whether or not the existing machinery that has been 'patched-up' here and there over the years still adequately meets the expectations of the people for a system capable of delivering elections which they will readily endorse (Electoral Supervisory Commission 1997).

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

> an electoral machinery must, in a democratic system, ultimately be the tool of the people and in establishing it, no effort must be spared to avoid creating an institution which may be viewed as a tool of the government of the day. There is need to dispel the perception that the government and the ruling party manipulate the system at the expense of democracy (Electoral Supervisory Commission 1997).

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

A second set of recommendations consisted of the provisions in the draft constitution crafted by the Constitutional Commission in 1999. They reflected broadly those made in the ESC workshop report and centred on the

establishment of what was termed an Independent Electoral Commission. The envisaged Commission would consist of six members appointed by the President. Its functions would be:

- To organise, conduct and supervise elections;
- To register voters and ensure the proper maintenance of voters rolls;
- To determine the boundaries of constituencies;
- To consider and advise on all proposals to alter the boundaries of wards or other electoral divisions of provincial council or authority areas; and
- To formulate and implement civic education programmes relating to elections (Constitutional Commission 1999).

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

## The Electoral System and Conflict Management

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

There are presently no conflict-resolution structures on election-related issues at the ESC, Election Directorate and Registrar of Elections Office. Election petitions and grievances are made to the High Court (Electoral Supervisory Commission 1996).

A petition could be made to the High Court on matters such an undue election of a Member of Parliament on grounds of corrupt practice, illegal practice, disqualification, irregularity or 'any other cause' by another candidate or registered voter in a particular constituency. Prior to 2000, the major landmark case of a successful election petition was that by the then

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Harare South Independent candidate, Margaret Dongo, against Vivian Mwashita who had stood on a ZANU-PF ticket during the 1995 elections. The case provided an opportunity to scrutinise the manner in which elections are run administratively. The pertinent issues which came under the spotlight were the state of the voters' roll, the definition of who is an eligible voter, and the management of the polling and counting processes (Zimbabwe Council of Churches 1995). The case highlighted the need for an accurate voters' roll which was absent in this particular instance. The election was re-run and won by Margaret Dongo leading to the disqualification of Vivian Mwashita. This was the first time in Zimbabwe's electoral history that a successful challenge had been through an election petition.

This 1995 case was a harbinger of a spate of election petitions made following the 2000 parliamentary election. More than 30 petitions, mostly against ZANU-PF candidates, were filed in the High Court by the MDC. Most petitions cited vote buying, intimidation and violence and flouting of electoral regulations. The big number of petitions underscored the lack of respect of 'electoral rules of the game', and absence of conflict mediation mechanisms. This is the context in which one international observer mission enjoined that:

> an internationally accepted Code of Conduct needs to be developed for political parties and party candidates… and that mechanisms for conflict management and conflict resolution need to be developed to resolve electoral violence, such as forums to encourage political party dialogue (Electoral Commissions Forum of SADC Countries 2000).

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

These recommendations for conflict management and resolution mechanisms were ignored when the 2002 presidential election was organised. Disputes over electoral irregularities increased and cast a dark shadow over the election outcome, apart from 54 politically related deaths. This led to a

rejection of the outcome by such influential observer groups as the European Union and the Commonwealth Observer groups and the SADC Parliamentary Forum. In particular, in its norms and standards for free and fair elections, the SADC Parliamentary Forum itself stressed that it was imperative to institutionalise conflict management, mediation and resolution structures. Reiterating that there was little consensus on the major national issues on the way forward in Zimbabwe, one NGO recommended the establishment of an electoral tribunal that would deal with election cases and appeals (Zimbabwe Electoral Support Network 2002).

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

## Challenge for Government and Stability

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

Let us however begin by defining our understanding of democratisation. It is a concept that relates to the process of creating and sustaining structures of democracy in a particular society. Democracy itself has been defined as a system or form of regime whose legitimacy derives from the principle of

popular sovereignty, that is to say, ordinary citizens are equally endowed with the right to rule themselves. The basic attributes of democracy therefore include the rights to vote, to belong to a party of one's choice, to freedoms of expression, movement and association. As we have already observed, the conduct of free and fair elections on a regular basis is an indispensable ingredient of a democratic system. Broadly speaking, there needs to be a wide consensus on 'rules of the game' of political competition so as to ensure the legitimacy and credibility of elections. Furthermore, the rule of law is an important foundation of democracy. However, by its very nature, democratisation is always 'work in progress'. No society can claim to be completely democratised! Countries can be at different stages of democratisation. History, economic development and culture make an imprint on the pace and quality of the democratisation process in a particular country.

The key attributes of democratic governance therefore include the right of citizens to hold decision makers accountable, the existence of inclusive and fair rules, institutions and practices, the institutionalising of gender equality in public and private spheres of life and decision making, and freedom from discrimination based on race, ethnicity, class, gender or any other attribute (United Nations Development Program 2002). In Zimbabwe, the conditions for democratisation appeared to have been improving between 1996 and 1999 against the background of the ferment in civil society for reform, and a certain level of tolerance on the part of the state. However, the conditions for reform were not sustainable. Authoritarian repression became pronounced in 2000 in the run-up to the election of that year, and it has not abated since.

In particular, the orchestration of intimidation and political violence especially by ZANU-PF from 2000 onwards reflected the slide into authoritarianism. This was consolidated by legislation passed in 2002 just prior to the presidential election of that year. The legislation was the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), the Citizenship of Zimbabwe Amendment Act and the General Laws Amendment Act 2002. Modelled on the Law and Order Maintenance Act (LOMA) of 1960, POSA criminalised criticism of the President and required any organiser of a meeting to give four days of written authority to the police or regulating authority. POSA was extensively used during the 2002 election campaign to prohibit pubic meetings and demonstrations. It substantially curtailed freedoms of movement, speech, expression and association which are guaranteed under the Constitution (Zimbabwe

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Electoral Support Network 2002). Under AIPPA, foreign journalists were barred from working in the country, a new regime of licensing journalists was introduced and the freedom of expression by the media was threatened and curtailed. The Citizenship of Zimbabwe Amendment Act outlawed dual citizenship but was largely seen as targeting whites who were seen as supporters of the opposition (Zimbabwe Electoral Support Network 2002). Such prominent democrats as the late Sir Garfield Todd and his daughter, Judith Todd, were amongst those denied the right to vote in the 2002 election. Finally, the General Laws Amendment Act made it difficult for NGOs to receive registration to provide voter education (which in itself infringed Section 20 of the Constitution). Significantly for the electoral process, the Act made members of the Public Service the only persons qualified to be appointed election monitors. This meant that ordinary persons recruited and trained by civic organisations could not be appointed as monitors but only as observers (Zimbabwe Electoral Support Network 2002).

In combination, the above-mentioned legislation has narrowed whatever democratic space had existed prior to 2000. The legislation had the effect of creating conditions for a dictatorship. Hence the campaign for resistance from both domestic and international forces. For instance, the credibility of the 2002 election has remained disputed by domestic organisations such as the Zimbabwe Electoral Support Network (ZESN) and the MDC, and such international organisations as the SADC Parliamentary Forum, the European Union and the Commonwealth. The election outcome itself is being contested by the MDC in Zimbabwe's High Court. The immediate challenge for democratic governance in the country is the creation of 'an enabling environment' that creates a climate of confidence in which reform can take place. We saw how constitutional reform remained stalled, and how the credibility of the electoral process had declined. That confidence cannot be created and nurtured while repressive legislation remains on the statute books. As the Commonwealth Observer group enjoined:

> The provisions of the General Laws Amendment Act, POSA and AIPPA which impede the freedoms of association, movement and speech should be repealed (Commonwealth Observer Group 2002).

In sum, the preconditions for democratic governance in Zimbabwe include the scrapping of repressive legislation on which the current government has relied upon to contain the situation. But this will not be enough. There needs to be

built a framework of trust and confidence between the main political parties namely MDC and ZANU-PF. An initial attempt at an inter-party dialogue between the two floundered due to persisting mistrust and continued state repression. It has been observed that election irregularities have sometimes led to serious instability as in Côte d'Ivoire, Lesotho and Madagascar amongst other countries. Several factors account for this, including disagreement over election rules and regulations, relative advantages which incumbents have over opposition parties, a feeling by people and political parties that they do not own the electoral process (The African Centre for the Constructive Resolution of Disputes 2002). These factors mar democratic governance in the Zimbabwean context, and so far restraint has ensured that widespread violence and instability do not occur.

Clearly, an important pillar for democratic governance will be a reformed electoral system. As we observed, there exists a consensus over the need for such a reform that would make the system transparent, fair and independent from political pressure. We concur with the sentiment that:

> had a more transparent electoral process been established under a truly impartial authority, the credibility of the Presidential election could have been considerably enhanced (Commonwealth Observer Group 2002).

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

- An Independent Electoral Commission which is adequately staffed and equipped to be fully responsible for all aspects of electoral administration and management;
- Legislation which provides for publication of a preliminary and subsequently final voters' roll in sufficient time prior to an election (Commonwealth Observer Group 2002);
- All parties should subscribe to a Code of Conduct regarding the activities of political parties and candidates during the campaign and election period;
- Regulations governing the use of public media by the parties and a Code of Conduct on media coverage and advertising during the campaign and election period need to be revised (Commonwealth Observer Group 2002);

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- Review of the Constituency delimitation exercise and the number of polling stations attached to constituencies; and
- A well-organised and on-going voter education programme conducted by election officials, parties and civil society (Commonwealth Observer Group 2002).

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

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


## Conclusion

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

that if reforms and political compromise remain elusive, the country could experience greater instability.

The paper begins by providing the historical, political and constitutional context that has shaped Zimbabwe's post-independence politics generally, and developments in the constitutional and electoral arenas more specifically. For instance, the legacy of violence as a political instrument of coercion can be traced back to methods used by the colonial state, and later by the post-colonial state to maintain a stranglehold on power. It is argued that coercion and violence are deeply ingrained in Zimbabwean political culture and this is illustrated by more recent legislation which gives extensive and arbitrary powers to state institutions to control the media, opposition parties and civic organisations.

The electoral system is then examined and its weaknesses identified. It is observed, for example, that there has been a domestic debate for the reform of the system, and that some of the proponents of that reform were the previous leadership of the Electoral Supervisory Commission. Other proponents for reform have included regional and international election observer groups. The controversial elections of 2000 and 2002, which were accompanied by considerable violence, highlighted further the imperative of electoral reform. The paper, however, shows that electoral reform cannot be undertaken in isolation from broad constitutional reform, an issue that has also been on the country's agenda in the past five years.

Zimbabwe's prospects for democratic governance and stability hinge on whether there are both electoral and constitutional reforms based on a national consensus. Conflict management and resolution mechanisms will need to be built into the electoral and constitutional structures and processes.

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