



OUTSIDE THE BALLOT BOX

PRECONDITIONS FOR ELECTIONS IN SOUTHERN AFRICA 2004/5

EDITED BY JEANETTE MINNIE

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Netherlands institute for Southern Africa

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Preface

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Introduction

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Table of Contents

Preface	4
Outside the Ballot Box: An Introduction	9
<i>Angola</i>	
The Electoral Challenges Facing Angola	21
<i>Botswana</i>	
Elections and Civil Society in Botswana.....	35
<i>Democratic Republic of the Congo</i>	
Towards the 3rd Republic: Preparing for Elections in the Democratic Republic of the Congo.....	51
<i>Malawi</i>	
The Anatomy of Electoral Democracy in Malawi: Neo-authoritarianism in a Multiparty State.....	63
<i>Mozambique</i>	
A Flawed Election Process in Mozambique and a Landslide Victory for Frelimo	85
<i>Namibia</i>	
Preconditions for Free and Fair Elections: A Namibian Country Study.....	99
<i>South Africa</i>	
South Africa's Third Democratic Election: Opportunities and Challenges.....	119
<i>Zimbabwe</i>	
The 2005 Pre-electoral Environment in Zimbabwe	141
<i>Appendix I</i>	
SADC Principles and Guidelines Governing Democratic Elections	159
<i>Appendix II</i>	
Principles for Election Management, Monitoring and Observation in the SADC Region.....	167
<i>Appendix III</i>	
SADC Parliamentary Forum: Norms and Standards for Elections in the SADC Region	187

PREFACE

BY TAWANDA MUTASAH

CHAIRPERSON: PEPSA STEERING COMMITTEE

Elections represent an important dimension in the efforts towards democratic consolidation in any country, not least in African countries. Many African elections continue to fail human rights and democratic tests, and have often served as the *casus belli* for low intensity conflict or outright war. It would make a significant difference if African countries had by now not only adopted, but also were consistently using, an inviolable set of norms and standards for elections management and observation.

In August 2004, at the Mauritius Summit of Heads of State and Government, the Southern Africa Development Community (SADC) agreed to a set of principles and guidelines for democratic elections in the SADC region. The Electoral Institute of Southern Africa (EISA), the Media Institute of Southern Africa (MISA), the Open Society Initiative for Southern Africa (OSISA), the Netherlands Institute for Southern Africa (NiZA), and HIVOS, promptly responded to this development by initiating the *Mauritius Principles Observatory* project, which focuses on monitoring compliance with these principles by SADC countries. The project is, in turn, part of a broader collaboration by the five organisations on electoral reform and development in the SADC region. The *Preconditions for Elections Project for Southern Africa (PEPSA)* was formalised in 2004 to consolidate the streams of work that the five organisations were – each and in tandem – already involved with in relation to electoral reform and development.

In Southern Africa, elections have in the last decade and a half become an important site for democratic consolidation – or indeed democratic shortfall. A wave of multiparty elections started taking place in Southern Africa from the early 1990's. Three streams of political developments provided the impetus for this extraordinary phenomenon.

The formal apartheid establishment in Namibia and South Africa began crumbling in the late 1980's, ushering in a new opportunity for a more just exercise of the public franchise. Protests, negotiations and a war against South African occupation in Namibia finally led to implementation of UN Security Council Resolution 435 and UN supervised elections in 1989. A new liberal Constitution was adopted, under which the 1994 and then 1999 and 2004 Presidential and National Assembly elections were subsequently held. In South Africa, the Convention for a Democratic South Africa (CODESA) was inaugurated in December 1991, and by the end of 1993, had drafted an interim Constitution that formed the basis for the April 1994 general elections that led to majority rule. The process of transition eventually resulted in a Constitution adopted in 1996 that guaranteed multi-party democracy, regular elections, constitutional freedoms and institutions for the protection and deepening of democracy (Chapter 9 bodies in the South Africa Constitution).

The second post-1990 phenomenon that created new electoral opportunities in Southern Africa was the cessation of hostilities in Mozambique, and,

more intermittently, in Angola. The two former Portuguese colonies obtained independence after the coup in Lisbon, but almost immediately degenerated into civil wars emanating from a variety of complex factors. Chief among these was the destabilisation strategy of the South African apartheid state and avarice for the oil and diamonds of Angola on the part of international commercial and internal ruling interests; and, in Mozambique, destabilisation by the Rhodesian and South African states.

The Constitution adopted in Angola on 11 November 1975 was amended variously over the years, but notably in April and August 1992. Elections were held under the August 1992 amendments, and the Electoral Law 5 of 1992. These were never concluded, as the country returned to war. In Mozambique, following the Rome Peace Accord, an election was conducted in 1994 under international supervision, and subsequent elections were held again in 1999 and 2004. More recently, the slow journey towards stability in the Democratic Republic of the Congo has also provided the possibility of new elections in a resource-rich, conflict-ridden country.

The third stream of political developments that has contributed to a new interest in elections in Southern Africa in the last 15 years, is the wave of post-nationalist multi-party democratic elections in the region. This wave manifested itself most dramatically through the events in Zambia and Malawi, and later, with more obvious post-change failures, in the Democratic Republic of the Congo. Elections in the DRC first took place on local authority level under Belgian rule in 1957. The country's national independence elections were held in 1960, and multiparty elections again took place in 1965. These early steps in democratisation were abruptly halted in the same year by a military coup led by Mobutu Sese Seko and the murder of Patrice Lumumba. Various attempts to organise fresh elections in the 1990's were derailed by a rebellion and liberation war led by Laurent Kabila, who again enforced a one-party state when he came to power.

After independence from British colonial rule, the strong and popular nationalist leaderships in Zambia and Malawi had, whatever their successes in other fields, failed over the years to allow free democratic expression through multiparty participation. With varying degrees of intensity, they kept a tight lid on political activity in their countries, and, at the beginning of the new decade in 1990, the centre could no longer hold. Popular protest against a decaying nationalist edifice in both countries threatened to burst at the seams. The burst indeed occurred, with Presidential and National Assembly elections on 31 October 1991 ushering in a new leadership in Zambia; and the May 1994 elections in Malawi that saw 'president for life' Kamuzu Hastings Banda leaving presidential office. Subsequently, in 1996 and 2001 in Zambia, and in 1999 and 2004 in Malawi, hope has become mixed with anxiety and frustration. It has become apparent that elections, while essential, are not a sufficient condition for democratic transformation of the nation-state in Southern Africa.

The confluence of the above three factors, piqued and dramatised by the international interest in the elections in Zimbabwe in 2000, 2002 and March 2005, has over the last few years provided an unprecedented level of attention on elections as either a significant threat to, or a tremendous opportunity for, the

activation of human rights and the development of democracy in the region.

PEPSA, therefore, is timely. It is focusing energies and attention on elections and electoral reform; it is systematically observing the implementation of the SADC Principles and Guidelines Governing Democratic Elections; it is enabling the evolution of a repository of electoral information for the region; it is sensitising different sectors in civil society, government and business on electoral reform and development; and it is promoting harmonization of the norms and standards that have developed at various stages in the region. These include the SADC Principles and Guidelines aforementioned, as well as the Principles for Election Management, Monitoring and Observation (PEMMO) developed by EISA in conjunction with the Electoral Commissions Forum of the SADC region in October 2003, and the Norms and Standards agreed by the SADC Parliamentary Forum in March 2001.

This book provides a baseline study for the work that PEPSA has started. Effective future implementation of the project will require:

- capacity support for civil society in the development of comprehensive elections engagement strategies that are not limited to elections monitoring, but include advocacy and legal action on constitutional frameworks, close monitoring of electoral administration, effective voter education, media usage and oversight;
- support and development of public interest litigation on a number of laws and practices that could potentially be infracting on the even limited freedoms currently protected in the electoral laws and related legislation in the different countries of the region;
- learning and solidarity across the region as a way of strengthening transnational norms and standards in electoral management and observation;
- comprehensive learning and analysis in the region about electoral models and their suitability in given situations;
- support of other advocacy and legal strategies that defend the *rights of civil society to organise* around these issues, even though, *prima facie*, they may not appear to deliver directly on elections. A civil society that consistently fights for space across different causes and platforms, ranging from campaigns against gender violence to influencing the national budget, develops the motivation and social infrastructure for citizens to demand electoral fairness. Approached this way, elections will move from being occasional and dislocated events into opportunities for broader society to organise social values, rights, and interests, and into opportunities for politicians to seek political office to advance these interests.

PEPSA Steering Committee organisations

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INTRODUCTION

Jeanette Minnie is a South African citizen and an international Freedom of Expression and Media consultant, also known as Zambezi FoX – the name of her consultancy service. She is a former Regional Director of the Media Institute of Southern Africa (MISA) and a former Executive Director of the Freedom of Expression Institute (FXI). She has conducted extensive analysis of media freedom violations against journalists, and the media law and policy environment of the SADC region. She is particularly active in providing support to independent media organisations and associations in Zimbabwe. Minnie is a consultant to the Media Programme of the Netherlands Institute for Southern Africa (NiZA) and serves on the Steering Committee of the recently established Global Forum for Media Development. She is one of the two project coordinators of a campaign to repeal ‘insult’ and criminal defamation laws in sub-Saharan Africa.

She has published articles in various books on the themes of Ethics, Journalism and Self-Regulation and on the Growth of Independent Broadcasting in South Africa. She has written many newspaper articles on censorship, the role of the media in democracy, protection of journalists’ sources and media law and policy. She frequently conducts evaluations of media and development support projects in various countries and regions including in Africa, South Eastern Europe and parts of Asia. She was the lead consultant in an evaluation of UNESCO’s international freedom of expression strategies in 2001/2.

OUTSIDE THE BALLOT BOX: AN INTRODUCTION

BY JEANETTE MINNIE

A comparative reading of the articles in this book suggests that five of the eight countries discussed could be described as *one-party elected states* (Botswana, Mozambique, Namibia, South Africa and Zimbabwe). In these countries, the ruling parties have consistently won all national elections since holding their first multiparty elections. The African National Congress (ANC) has ruled in South Africa since its first non-racial democratic election in 1994; the Zimbabwe African National Union Patriotic Front (ZANU-PF) has ruled in Zimbabwe since its first independence election in 1980; the South West Africa People's Organisation (SWAPO) has ruled in Namibia since its first independence election in 1989; the Mozambican Liberation Front (FRELIMO) has won every election since the country's first multiparty election in 1994 and the Botswana Democratic Party has ruled since the country's first multiparty election in 1965.

Malawi is the only exception to this trend. Instead of domination by a strong ruling party, it is characterised by the extreme fragmentation of political parties arising from a severe lack of intra-party democracy and policy cohesion. This situation is fast resulting in a crisis of confidence in political parties overall and the rise of many independent candidates. The two remaining countries discussed in this book, Angola and the Democratic Republic of the Congo (DRC), are to hold national elections in the near future in the aftermath of protracted civil wars. It is too early to speculate whether a single political party will come to dominate these countries.

The countries selected for inclusion in this book are those in the Southern African Development Community (SADC) sub-region who held or were scheduled to hold national elections in 2004/5. The next annual edition of this book will therefore focus on countries that will hold or are scheduled to hold elections in 2005/6. It is difficult to know with any certainty whether elections in post conflict countries will definitely take place as scheduled. Since this book was commissioned, it has become likely that Angola will only hold its next election in 2006, while a date for the elections in the DRC is not clear at all, despite both countries having scheduled elections in 2005.

No reasons have been suggested by the various country authors for the phenomenon of one-party elected states in the SADC region, although a few discuss possible reasons for the dominance of the ruling party in purely national terms (weak opposition parties in Namibia, the 'first past the post' electoral system in Botswana and the lack of community-based opposition party organisation and policy alternatives in Mozambique). It should be explored whether this phenomenon across a number of countries is purely coincidental, or whether historical or other factors underpin it. These could include networks of solidarity among (former) liberation movements that later became elected ruling political parties, supported by broad-based trust among the electorate in the movements that liberated them from apartheid and colonial rule, and which continue to translate into votes for these parties. If so, how long can this bond

of conferred leadership of a liberation movement and support by a majority of the electorate be expected to last? And when will loyalty to a liberation movement be overtaken by more everyday considerations such as the delivery of social services, the alleviation of poverty and the state of the economy? It should nevertheless be noted that in some countries, ruling parties are making strides in relation to the general development of its people and the country as a whole (Botswana, South Africa, Mozambique, Namibia).

To what extent are voters actually influenced by current issues such as the delivery of services that contribute to their overall development and well being; to what extent does the media inform them clearly and professionally about these and other issues; to what extent does a diversity of media messages and opinion actually reach them; what is the degree of literacy in countries and what is the degree of *political literacy* in the SADC region? Are those who take a critical view of a government free to hold political and/or policy meetings and discussions? Do they enjoy the universally enshrined rights to freedom of association, freedom of thought and opinion, freedom of expression and freedom of movement? How many citizens are purely engaged in an economic or agricultural battle for survival, possibly worsened by poor health, with little energy left to consider political solutions to their plight? Do they equate their survival with the appeasement of ruling parties who command economic and political resources? These and many other questions need to be explored and answered in the future because it is these kinds of issues that begin to describe *preconditions for elections* in various SADC countries. Free and fair elections begin long before the holding of an election. It is not confined to what is right or wrong on Election Day when people cast their ballots in a box. It is about whether voters have been able to live and practise their human and socio-economic rights in the preceding four or five years since the last election – and whether they have been freely able to join with any others, formally or informally, in peacefully discussing and influencing politics in their land.

Some observers¹ have argued that the advent of multiparty elections in the SADC region during the early 1990's had more to do with liberalisation than with democratisation. In this view, liberalisation is seen as a limited opening up of political space for civil rights. It includes the writing of new constitutions that recognise individual rights, although in some instances these may be observed more in the breach than in practise, and embracing the principles of a market economy. Democracy scholar Prof. Larry Diamond, a senior fellow of the Hoover Institution at Stanford University in the USA, distinguishes between three categories of non-authoritarian regimes: pseudo democracies, electoral democracies and liberal democracies. Elections are held in all these democracies – their main difference being the degree of political competition and participation they allow. Electoral democracy facilitates the need for minimal levels of civil freedom while liberal democracy allows the meaningful practise of civil rights and participation between elections. A pseudo democracy, despite allowing elections and limited practise of civil rights, will not tolerate a change of government. Elections alone are therefore not the only or determinant consideration in evaluating the course of democratic development in a country.

Other themes that cut across the country articles in this book include the role

of the media. On the one hand concerns are expressed about continuing state control and bias in favour of the ruling party in some national broadcasters (Angola, Namibia, Malawi, Zimbabwe) and about unprofessional, poorly skilled and, in some cases, also politically controlled privately owned media on the other hand (Angola, Botswana, Malawi, Mozambique). Various media monitoring projects, a number of them implemented by the Media Institute of Southern Africa (MISA), monitored the role of the media during elections that were held in 2004 (Botswana, Mozambique, Namibia). The Media Monitoring Project of Zimbabwe, an independent NGO, monitored the recent 2005 parliamentary election in Zimbabwe, as it did during the 2000 and 2002 elections. The MMPZ describes the general state of the media in Zimbabwe well in advance of the recent election. It clearly portrays a pre-electoral environment that is not conducive to a liberal democracy – a democracy that facilitates active participation of civil society organisations, not only during formal electoral periods, but also in the political life of a country in general.

Civil society involvement in elections is another theme addressed in various articles, particularly in Botswana where the major focus of the article is on the involvement and the exclusion of civil society in the 2004 election. Reference to the role of civil society is made in various articles including emphasis on a crucial role for civil society and the media in voter and democracy education in Angola, the limited and hesitant role of civil society in Mozambique, and the role of ruling party-aligned trade unions in Namibia. Although not discussed in this book, South Africa bears the same hallmark where social movements such as the Congress of South African Trade Unions, along with the South African Communist party, have historically been part of a political alliance with the ruling ANC. In recent years the alliance has come under strain with COSATU and the SACP regularly debating whether the alliance should continue and whether the alliance serves the needs and interests of the working class.

In future, this book will also need to explore the role of voters in creating acceptable preconditions for free and fair elections. The perceptions of voters need to be interrogated in relation to elections: are voters of the view that they are giving a mandate to elected representatives when they cast their ballots; or are voters establishing a custodial relationship in which they confer an unfettered right on governments to rule? The latter scenario, which some PEPSA analysts consider to be the norm across the SADC region, creates environments in which political elites can be replicated without any true sense of accountability to the electorate. In this context, efforts to reform and strengthen electoral frameworks, institutions and practises will not result in the substantive right and freedom of ordinary people to help determine and shape their socio-economic and cultural development. In short, even a model election on voting day does not of itself produce *a government of the people, by the people and for the people*.

Voter education needs to be expanded beyond its current and narrow focus on voting procedures, to foster a much broader understanding of democracy, and the role of citizens in building it. The role of civil society in informing and educating electorates in the SADC region will have to include creating popular awareness among voters that they wield an instrument of power – their vote. It can be wielded in different ways: by casting it, or by withholding it, as an

individual decision or collectively in unison with a group of people. All options require serious consideration as to their outcomes. Voters need not be victims who feel they have no power over government, despite their right to vote. Such perceptions will lead to increasing levels of voter apathy borne out of people's disillusionment with the systems of manipulated democracy taking place in some countries.

Electoral systems are being questioned in various articles (Botswana, Malawi, South Africa, Zimbabwe). Some readers of this book, particularly those in civil society, would be forgiven if they initially found this topic as mystifying as I did. The inspiration, however, should be that all of us can master these concepts. I thank the authors of this book for the education they provided me (free of charge – at university one has to pay for this!). An important appendix in this book helps to demystify the various electoral systems by which votes are translated into legislative seats. Section 3.2 of the *Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO)* is required reading in this regard, as is the entire document in relation to many other electoral issues raised by the authors in this book. It should be noted that authors when referring to these systems use a variety of terms. The 'first past the post' (FPTP) system is also referred to as the plurality electoral system, the single member plurality system, the majoritarian system and the ward electoral system. Some of these are variations of the FPTP system. The proportional representation (PR) system, on the other hand, is also referred to as the proportional electoral system, the party list system and the list-proportional representation system.

In Malawi and Botswana the 'first past the post' (FPTP) system stands accused of perpetuating minority rule. In Zimbabwe the authors do not criticize the FPTP system as such, but express indignation at the right of the President to unilaterally appoint 20 Members of Parliament, and the right of traditional chiefs to appoint a further 10, who also happen to support the President's party. This device unfairly bolsters the chances of the ruling party in winning elections, even if it should win only 38% of the vote in Zimbabwe. The South African authors elegantly describe the virtues of the party list (PR) system in which even parties with very little electoral support are virtually guaranteed representation in the National Assembly. The PR system ensures broad inclusion of the electorate in the National Assembly, ensures that every vote counts, and in large measure produces political stability. Nevertheless, it suffers from the major drawback that MP's owe their primary allegiance to the political party that includes them on the party's list of representatives, and not to the voters. This system is also in danger of perpetuating political elites, while the socio-economic needs of voters on the ground are not necessarily met. A majority report of the Slabbert Commission in South Africa recommended a combination of both systems, although the country authors in this book believe that the momentum for changing the electoral system may have been lost. In weighing the merits of the FPTP and PR systems, electoral experts advise that in some countries the modelling of votes according to different electoral systems do not always result in a substantial change in the number of parliamentary seats allocated to various political parties, whereas in other they countries they do.

Further to the discussion on electoral systems and the role of civil society, the Namibian article in an earlier draft drew attention to political orientations towards the involvement of civil society, social movements and special interest groups in elections. These were edited for reasons of space, but are included in summary form here because they merit attention. These include *passively inclusive* systems in which all groups are allowed to operate and organise freely, either on their own or within the context of established political parties, as well as granting them multiple points of access to electoral bodies and processes (Dryzek et al, 2002: 660 in the bibliography of the Namibian article). So far preparations for elections in the DRC appear to reflect this attitude – wide inclusion of civil society in official debate, consultative bodies and policy formulation. An *actively inclusive* orientation is one in which deliberate measures are taken to facilitate the equitable participation and/or representation of marginalized groups such as women, disabled persons and the youth. South Africa's system of proportional representation, in terms of its organised focus on achieving gender quotas, would be an example. In a *passively exclusive* orientation the various social and political interests are generally tolerated, in the sense that those responsible for the electoral processes tend to refrain from doing anything that would directly facilitate or undermine the ability of any of groups to conduct lawful activities. The element of exclusion arises from weakly resourced groups that end up being marginalized. Furthermore, passively exclusive political processes tend to be buttressed by administrative secrecy and pseudo-ideologically inclined unitary notions of a public interest, as well as complex legalistic requirements designed to implicitly impede the participation of certain groups. Civil groups in Angola, Mozambique, Malawi, Zimbabwe, and to a lesser degree even some of those in Botswana and South Africa would recognize themselves in parts of this picture. *Actively exclusive* systems include explicit measures for preventing and/or impeding the formation and/or functioning of social or civil movements that are seen as being opposed to the agenda of the dominant and/or ruling socio-political interests. Systematic oppression and endemic use of violence by the state apparatus, including the use of vigilante groups and political militias are characteristic of this system. As the articles in this volume shows, Zimbabwe would top the list of counties in the SADC region that fits this mould, but the former UDF government in Malawi until the 2004 election (now under a new leadership) also showed some of these characteristics.

Gender equality receives some attention in this book, but not nearly enough. Only two articles deal seriously with this issue. The articles on Namibia and South Africa include important observations about efforts to empower women representation in government in relation to different electoral systems. Despite strenuous efforts, the percentage of women in Namibia's parliament dropped after the 2004 election and consequently the country has not achieved the 30% benchmark called for in the 1997 SADC Declaration on Gender and Development signed by SADC member states in Blantyre, Malawi. Although gender is not discussed in the article on Mozambique, it should be noted that Mozambique has achieved the 30% quota for women in parliament and in government. The South African article emphasizes that the quest for gender equality in governance cannot rely on the choice of an electoral system only. It

requires additional drive and commitment from political parties, and particularly from their political leaders. It also requires the establishment of voluntary or *involuntary* quotas for women representation in parliament. South Africa has achieved slightly in excess of the 30% quota of women representation after its 2004 election, and is beginning the quest for full parity – a quest which many would not have thought possible 10 years ago.

The demarcation of constituencies is a subject of discussion in various articles (Botswana, Malawi, Namibia and Zimbabwe). In Botswana the authors laud the relevant commission for a widely consultative and publicly inclusive process during the fact finding stage of a national delimitation exercise in 2002, and their bitter disappointment about the total secrecy surrounding the content and recommendations of the commission's report to the President. The Namibian article cites an example in which the relevant government appointed commission created an additional constituency among supporters of the ruling party in a province in which they previously had to share power with another party. The additional constituency gave the ruling party more constituencies than the opposition party, enabling the ruling party to govern the province alone. In Malawi the former UDF government created a number of additional constituencies in the South of the country where it enjoys strong support, so as to produce a higher number of MP's to represent it in parliament in what came to be a closely contested election. In Zimbabwe constituencies were delimited somewhat in advance of the recent 2005 parliamentary election. The government commission changed the geographical boundaries of three previously urban constituencies by connecting them to larger adjoining rural areas. The urban areas had previously supported the opposition party, while the rural areas had supported the ruling party. Since the rural areas contained more ruling party supporters, it became possible for the ruling party to win seats in these newly crafted constituencies, whereas previously it had stood little chance of success. The gerrymandering of constituencies is a well-known device for securing advantage by political parties, despite the existence of laws stipulating criteria for equal numbers of voters to be distributed among constituencies and consideration of the social, economic and cultural cohesion of constituencies. This is another area in which civil society needs to become pro-active and vigilant in terms of campaigning for acceptable preconditions for free and fair elections.

The appointment and functioning of electoral management bodies, generally known as electoral commissions, is an ongoing cause of concern. In South Africa and Botswana they are singled out for their professional performance, although the electoral commission in Botswana rightfully attracts the ire of the country authors in pointing out that civil society is utterly excluded from the process of appointing them. In Mozambique the electoral commission can perhaps be described as a victim of the severe distrust between the main political parties – a direct consequence of the system of party political appointment of this commission. At the same time it is also characterised by startling ineptitude. There is no transparency in the process of national verification of votes, its computer and IT systems are not aligned to those in voting stations, it does not ensure an adequate supply of materials for the registration of voters -

particularly in opposition strongholds, and the voters' rolls is still a mess. These problems are not new – they were well documented in 1999 and have become worse. At least 400 000 voters were disenfranchised by the incompetence of the commission and/or its secretarial support arm in the 2004 election, and the opposition may have been robbed of at least two parliamentary seats. No one disputes the overwhelming Frelimo ruling party victory in the 2004 election, but it is not acceptable to offer this fact as an excuse for what could have been a free, but definitely not a fair election. The tug of war between Frelimo and Renamo-PF appointed commissioners and officials cannot be allowed to continue. As in Mozambique, commissioners in Malawi are appointed on the basis of party nominations and mostly remain loyal to the party leadership that nominated them. The security of tenure for commissioners is tailored to party loyalty and discipline. There have been no less than four chairpersons at the helm of the electoral commission in Malawi between 1994 and 2004.

In Zimbabwe a number of different bodies were involved in organising the 2005 parliamentary election. The Electoral Support Commission derives from the constitution while the recently created Zimbabwe Electoral Commission (ZEC) was established to conform to the *SADC Principles and Guidelines Governing Democratic Elections*. This much discussed and controversial document has been included as another important appendix in this book. The principles and guidelines were adopted in August 2004 at a SADC Heads of State Summit in Mauritius. According to the Zimbabwean authors, the seriously opposing verdicts of observer groups in Zimbabwe's 2002 presidential election "gave rise to the need for the SADC region to devise commonly accepted standards for the monitoring and observation of elections, and a compelling need to formulate regionally accepted electoral norms and standards and electoral reforms in Zimbabwe ahead of the 2005 elections". The act that underpins the hastily crafted ZEC requires the ZEC to compile the voters' roll. The ZEC, however, only came into operation one day before the period of inspection of the voters' roll ended. The ZEC allowed the deadline to be extended by only three days. Since then the election has taken place with a resounding victory for the ZANU-PF ruling party and accusations by the opposition party that votes were added in favour of the ruling party in a number of constituencies. The allegation is based on discrepancies between results announced at local polling stations and final results announced nationally after the tabulation and reconciliation of votes. Prior to the election the opposition party, the Movement for Democratic Change (MDC), charged repeatedly that thousands of ghost or deceased voters (also referred to as 'zombies' in Zimbabwe) were included in the voters' roll. They also charged that their efforts to inspect the roll had been repeatedly frustrated. Further to these allegations, the credibility of the ZEC was under fire because its members were unilaterally appointed by the President and the vast majority were regarded as ruling party loyalists by the MDC.

Zimbabwe has been in turmoil since the defeat of the government in the referendum on constitutional reform in 2000, an event that signalled the rise of a strong opposition party. The country has been making international headlines over the past five years for its controversial policies in relation to the confiscation of land by violent mobs from thousands of white owned farmers,

the suppression of human rights NGO's and social movements such as the Zimbabwe Congress of Trade Unions, violent attacks on MP's and supporters of the opposition party, and the use of food distribution as a political tool to force allegiance to the ruling party. Public protests and all political gatherings are against the law unless sanctioned by the police, and are violently suppressed when they occur without sanction. Hundreds of human rights abuses have been painstakingly documented by civic organisations in Zimbabwe and have also been recorded in the handful of independent newspapers that still exist. The state has not licensed any non-state broadcasters, and alternative Zimbabwean broadcast journalists transmit their signals into the country from outside its borders. The economy has crumbled. The European Union and the United States have imposed travel sanctions against President Mugabe, his cabinet ministers and high officials of state, and have also frozen their foreign bank accounts and financial assets. Zimbabwe was suspended from The Commonwealth at its Heads of Summit meeting in Nigeria in 2003 and the African Commission for Peoples and Human Rights issued an adverse report on the 2002 presidential election to the African Union, a report that was suppressed by the AU for almost 18 months. The state-owned media makes no pretence of its open support of the ruling party and its hatred of the official opposition party. Led by the President, the official opposition and all human rights organisations and pro-democracy social movements are demonised as Western puppets, enemies of the state and as counter revolutionary reactionaries. Hate speech on the part of government and in the state owned media is commonplace in Zimbabwe. Since 2002, four newspapers have been closed by the state and all journalists and mass media operations require state licences to practise. Any observer groups that were perceived to be overly critical of the government in the 2002 elections were barred from observing the recent 2005 parliamentary election. President Mugabe has stubbornly stood his ground, refusing to amend any of his policies, and has so far emerged the victor. Strategies will have to be found to address this situation – not that this matter has not long been contemplated by regional and international leaders, but so far without any positive results. A real danger exists that Zimbabwe may sink deeper into the quagmire of creeping totalitarianism, and that the resentment born out of the forceful suppression of democratic contestation, will slowly give way to violent struggle.

The themes touched on in this article are by no means exhaustive of trends in the eight countries reviewed. Serious issues also exist in relation to state funding of political parties, private funding to political parties and the use of state resources by ruling parties during elections (Botswana, Malawi, Mozambique, Namibia and South Africa). In addition to Zimbabwe, the central verification of votes is also a major issue in Namibia and Mozambique, where opposition parties in Namibia and observers in Mozambique say it is impossible to fathom or monitor in any meaningful way the processes applied. Voter apathy is also becoming an issue in Botswana (where it is being proactively addressed) and a serious decline in the number of voters has been recorded in the most recent elections in Mozambique and South Africa.

Finally, the New Partnership for Africa's Development (NEPAD) and its African Peer Review Mechanism (APRM) is particularly relevant to the PEPSA

project. NEPAD's 'Democracy and Political Governance Initiative' aims at strengthening democratic consolidation in Africa. NEPAD uses four categories to characterize the state of democratic governance in countries:

- Countries that comply with the APRM obligations;
- Countries that need a little help to meet the obligations;
- Countries who need considerable persuasion to meet the obligations; and
- Countries that require political and economic reconstruction from the ground up.

The PEPSA project should be seen as a civil society initiative that contributes to NEPAD and its APRM process. A serious flaw in NEPAD has been the degree to which civil society was excluded from the initial consultative processes leading to the formulation of NEPAD and its APRM process. NEPAD has begun taking steps, however, to include civil society in its operations, which until now has primarily been conducted at the level of state. The APRM criteria for assessing good governance also contain some weaknesses. A notable weakness in evaluating African countries is the distinctive omission of the role of an independent media in contributing to good governance and the development of democracy.

Note

- ¹ Notably Dren Nupen, an independent South African consultant and commentator on elections and governance issues, in an interview for this article.

ANGOLA

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THE ELECTORAL CHALLENGES FACING ANGOLA

BY ISMAEL MATEUS

Everything seems to point towards 2006 as the year in which the next Angolan election will take place – 14 years after the first Angolan election in 1992. It is yet to be decided whether a joint parliamentary and presidential election will be held, or a parliamentary election only. While this debate continues in the National Assembly and in bilateral negotiations, the country is gradually accepting that the election year will be 2006. A diversity of inter-related problems confer a special character on the forthcoming elections, regardless of their general or merely legislative character.

Political climate

The political climate surrounding the election is characterised by excessively strong emotions – long before an election date has been established. The general climate is one of intense political pressure, mutual suspicion between the opposition and the government and countless fears within the population. After the new wave of war triggered by the last elections in 1992, numerous people still fear that the holding of elections will again trigger a return to war. Many would prefer the existing peace to an election - the idea of voting is understood as ‘playing with fire’. They fear a repeat of the events in 1975, when they were preparing to vote and instead a war erupted again; and in 1992, when after they voted, peace came to an end.

Assurances by politicians that these elections will not result in another war, mean very little to these people. One of the biggest challenges facing this election is the scepticism of the very large number of people who live in remote areas of the country, and who suffered severely during the last post-electoral war. However, a more objective analysis would suggest that a return to war seems most unlikely. UNITA’s military structure has been destroyed and the party’s present leadership has shown a clear commitment to peace and the political process. There is some fear that incidents of political violence could occur because a process of disarming the population did not take place, but these would be viewed as criminal activity by most.

Tension is mounting between the political parties, mainly between the two main contenders, the Popular Movement for the Liberation of Angola (MPLA) and the National Union for the Total Independence of Angola (UNITA). The tension has been fuelled by alleged incidents of former UNITA activists joining the ruling party – the MPLA. At the same time, UNITA is stepping up its political rhetoric and accusing the ruling MPLA of unilaterally appointing a commission to prepare the elections. No opposition members or impartial observers have been included in this commission. UNITA’s assumption is that the government is already manipulating the elections and that a pre-electoral campaign is already underway. The heated tone of the political rhetoric between the two parties, and the widespread absence of a culture of vigorous public debate, serves to increase the fear of citizens, however unlikely, that violence and war could be the end result. Some events on the ground contribute to these fears. Recently,

in the Huambo province, where UNITA held a party meeting and a public rally, many citizens were attacked on their way to the rally because they were wearing the *Galo Negro* (Black Rooster)¹ party T-shirts. This is a 1992 scenario and calls for strong preventative measures against political intolerance.

It is due to this political climate that all opposition parties in parliament blocked the government's attempt to approve a new constitution. The constitutional crisis was initially created by opposition parties who demanded that an electoral timetable should be published before negotiations around the new constitution could proceed. However, even after the schedule was published, the crisis didn't end. The opposition parties accused the government of wanting to use constitutional reform as a tactic to delay the holding of an election for a long period of time. As a consequence, reforms that were needed to improve the electoral environment and to develop national unity in a newly established democratic order, were not made. Some of these include a new electoral system, adopting a new national flag and anthem and a new system of government. The next elections will therefore take place in the framework of the present constitution and its current weaknesses – including, in some respects, its lack of separation of powers between the government, the parliament and the judiciary.

There are nevertheless some positive developments in the functioning of some public institutions. Public consultation around new legislation is becoming more common and in several cases the courts have ruled against the government.

At the same time, the MPLA has a very strong influence, even control in some cases, over community structures such as residents' associations and traditional authorities. This undermines the autonomy of these organisations. It is a serious challenge to build the autonomy of these organisations in an environment where those who control political power can easily manipulate access to resources.

It should be noted that Angola has a Government of National Unity that includes ministers or deputy ministers from opposition parties. This contributes to a lack of clarity in terms of roles and policies being defended by different political actors.

Finally, there is a dramatic difference between Luanda and the rest of the country in terms of freedom of expression, access to independent media, level of intervention by various political parties and civil society organisations and the rule of law. These attributes exist in the capital, but hardly outside of it. The situation in provinces can also vary widely and are extremely heterogeneous.

Electoral reforms and debates

Despite the growing tension, the ruling party and the opposition parties are all sincerely striving to promulgate legislation, within the existing constitutional framework, to achieve compliance with the SADC Principles and Guidelines Governing Democratic Elections. The legal reforms proposed confer on citizens their right to freely participate in the elections. Participation is considered to be an inherent right of the individual, and the exercise of that right is considered to be a moral civic duty. The bills under consideration point to a policy of political tolerance, equal opportunity in terms of access to the media and to the independence of the electoral institutions and the judicial system. Although the

proposed legislation contains nothing specific on the acceptance of the results of the elections, MPLA and UNITA leaders have committed themselves to the principle that the elections have to be recognised. There has not been an explicit linkage to the fact that this recognition will only happen when the election results are indeed accepted, but implicitly the argument corresponds to the basic idea of a transparent and inclusive election, so that parties would have no reason or standing afterwards to contest the results. It would seem that this orientation, if not in deed, at least matches the spirit of the SADC Principles and Guidelines.

In regards to the SADC Parliamentary Forum's Norms and Standards, there is a gap regarding gender, as the proposed electoral laws do not specifically establish quotas for female participation. This is not perceived to be a problem by the leading parties, because it is a political aim of parties with a parliamentary seat to increase women's participation in their structures and in their lists of party candidates. Twenty six per cent of the members of the MPLA's Central Committee are already women and it has stated that it intends enlarging this proportion. The belief is that this intention will be reflected in their list of electoral candidates. The President of UNITA, Ambassador Isaias Samakuva, has also stated publicly that UNITA will increase the participation of women in the party. With the exception of the Democratic Liberal Party (PLD), which is led by a woman and where women's participation in the leadership amounts to 60%, there is, however, great concern about this matter in relation to the remaining parties. A recommendation is therefore that an extra clause should be inserted in the electoral laws – based on the 1997 Blantyre Declaration on Gender and Development and on the SADC PF Norms and Standards for Elections in the SADC Region that recommend a quota of 30%.

A number of legal reforms are being debated. Because the constitution has not been amended, the electoral system, however, will remain unchanged. The National Assembly will continue to consist of 220 parliamentarians, of which 90 will be elected at provincial level – 5 each from the 18 provinces – and the remainder (130) at national level. In the parliamentary election citizens will vote for political parties, and not for individual candidates. Political parties will therefore draw up lists of their representatives. Some voices in the country, however, are calling for individual candidates to be allowed to stand for election at the provincial level. A debate is also taking place about whether the one chamber parliament should continue, or whether a two-chamber parliament should be established, with the second chamber consisting of traditional leaders. Alternatively, if no consensus can be reached, there should be a mechanism by which the National Assembly could confer formal power on traditional leaders. Without the Constitution's approval, there is no legal framework for such reforms, and as such these proposals are not currently attracting much debate. It is nevertheless worth noting them, because they could prove to become more prominent later on.

Eligibility criteria for elected representatives

Despite the absence of general divergence, there are small nuances of difference that could have important consequences. There are not great differences about

the criteria for eligible persons in relation to the parliamentary elections and the office of president. Both the MPLA and the opposition support the view that attorneys-general, civil servants and state-employed military and paramilitary personnel are ineligible. The MPLA is further of the view that members of the National Electoral Commission (CNE), the National Council for Social Communication and the Ombudsman should also be ineligible for any elections (municipal, legislative or presidential). In the specific case of the presidential election, the MPLA contends that any person who has not lived in the country for the past five years, should also be ineligible. The opposition would like to reduce that period to three years. Despite both parties agreeing to the principle involved, such a restriction would present a serious limitation to the rights of all persons who did not return to Angola immediately after the end of the war.

UNITA's proposals further include that any Angolan citizen with dual nationality should be ineligible for elections. The MPLA has forwarded this proposal to the National Assembly for consideration in the drafting of a new law on citizenship. Both parties agree that the president of the country should only serve two terms of office, and cannot present him or herself for a third term. It would seem, therefore, that the next electoral law will establish a two-term limit on future presidents.

In terms of presidential elections, both parties accept the principle that independent, non-partisan candidates should be eligible for office. However, the opposition proposes a minimum of five thousand signatures in support of an independent candidate's nomination, while the MPLA demands a minimum of 21 thousand signatures. It is probable that a compromise will be reached at around 10 -15 thousand signatures.

The opposition has also proposed that no active member of a political party should be allowed to run as a presidential candidate without the party's consent. This proposal is probably in conflict with the SADC Principles and Guidelines on equal opportunity in respect of the right to vote and to be voted for.

The proposals of both parties in relation to the eligibility criteria for parliamentary candidates also have a lot in common. The opposition, however, proposes that a citizen who has acquired Angolan nationality should only be allowed to run for election seven years after having acquired citizenship. This raises the question whether such a decision would amount to unfair discrimination against such persons.

The National Electoral Commission (CNE)

The greatest differences between the two main parties occur at the level of legal reforms proposed to the National Assembly in relation to the National Electoral Commission (CNE). Regarding the functions of the CNE, the MPLA is arguing that the compilation of the voters' roll is the task of the government, and that the CNE should only be responsible for supervising and implementing it. The opposition is firmly of the view that the compilation of the roll is the task of the CNE, and that it should perform all tasks and coordination in relation to it. The CNE should, according to the opposition, also be responsible for the coordination of voter education. The opposition insists that the voters' roll should not be compiled by the government, but rather by an autonomous

entity, which in fact is in accordance with the recommendations of the SADC Parliamentary Forum. These define the voters' roll as the sphere of electoral commissions, and in Angola this body is the CNE. The MPLA's insistence on the government performing this task is related to specific Angolan conditions. These include the severe lack of infrastructure and services such as telephones, postal services, roads, railways and the internet to several provinces and regions; that many citizens do not have identification documents and that these need to be provided; and the lack of institutional structures at provincial and municipal level. This discussion is still wide open.

Both parties foresee the existence of a permanent CNE in accordance with the SADC Principles and Guidelines. In regard to the length of office of its officials, the MPLA proposes a period of four years, while the opposition accepts the four years but with the possibility of renewal.

Regarding the composition of the CNE, the difference of opinion between the two parties is absolute. The opposition wants a CNE composed of 5 citizens of known competence and merit, elected by a two-thirds majority in the National Assembly; a judge from the Supreme Court; a magistrate and a Director-General also elected by a two-thirds majority of the National Assembly who will chair the CNE. All parties with parliamentary seats should have representatives on the CNE, but only in a consultative capacity. Each presidential candidate also has the right to a representative on the CNE.

The structure proposed by the MPLA differs in every aspect: a constitutional court judge that will chair the CNE; three citizens nominated by the President of the Republic; four citizens elected by two-thirds of the National Assembly and a member of the National Council for Communication - an organ also elected by the National Assembly. The MPLA's proposal pointedly excludes any representatives of political parties.

Both proposals defend a CNE with its own budget approved by the parliament.

It is worth recalling the SADC Parliamentary Forum recommendation on the independence of electoral commissions from political parties, on its members being selected by a panel of judges or the equivalent and of being approved by parliament after consultation with political parties.

The parties agree about the CNE's structures, which include provincial and municipal bodies. The opposition further proposes the inclusion of even smaller bodies at district level. But there are differences about the composition of these organs: the opposition proposes that the composition should be determined by the CNE's internal statute, while the MPLA proposes that, at the provincial level, they should be chaired by a judge from the provincial court designated by the Supreme Court and by six competent citizens designated by the provincial governor, after consultation with the political parties.

Setting election dates

The MPLA and the opposition disagree on the period of time between the announcement of the election date and the holding of the election. The opposition speaks of 120 days before the election, while the ruling party mentions a 90-day period. These dates are in harmony with the recommendations of

the SADC Parliamentary Forum, although in the Angolan case this decision is currently the responsibility of the President of the Republic. Without changes to the Constitution, this rule prevails and all indications are that it will be maintained until a new constitution is approved. In the next election, therefore, it is very probable that it will be the sole prerogative of the President of the Republic, and no one else, to fix the election date, after receiving advice from his (state) consultative organ, the Republican Council. This council includes representatives of opposition political parties, the church and civil society.

Both the MPLA and the opposition agree that the election should be preceded by a day of reflection during which no campaigning may take place and that the electoral campaign should last for one month.

A 'stone in the shoe' - the 'second round' legacy of 1992

Although the legislative package is currently under debate, a thorny problem of the past remains to be solved. After the 1992 elections and the eruption of the third war, the country did not have the conditions or opportunity to conclude the presidential elections of 1992. José Eduardo dos Santos, the candidate who got 49% of the vote, is alive, but the second most voted for candidate with 40% of the vote, Jonas Savimbi, is dead. According to Angolan law, in such a case, another election must be held in which a run-off takes place between the first and the third contender. The third contender, Alberto Neto, a university professor of the law faculty of the Agostinho Neto University, obtained less than 3% of the vote. Fourteen years later, the electorate has changed and no law anticipated that the conclusion of the elections might only happen after such a lapse of time. In terms of existing law, the presidential elections must be concluded. The President of the Republic has asked the Parliament for a clarification, which has not yet been given. In which way will the politicians decide? Will there be a conclusion of the second round of the 1992 election?

The MPLA and the opposition say no, but Alberto Neto is pressing his legal rights and long ago addressed a petition to the Supreme Court to rule on the legality of his claims. Legal opinion on the matter is divided. According to the political parties, the scenario of conclusion of the 1992 presidential elections is politically undesirable and counterproductive.

One possible scenario is the Supreme Court deliberating in favour of Neto's petition, which would result in an election between Neto and Dos Santos without any other candidate. In a second scenario, should the National Assembly formally declare that the second round of the 1992 election need not be held, it would be necessary to determine the exact date of completion of the current President's mandate. If, for example, it is decided that his term of office is the same as that of the National Assembly², then President Dos Santos has already completed his two terms of office³. If this second scenario prevails, he would not be able to run for a new and third term of office. The third scenario is the natural end of the process, with the holding of the next elections as if there was no second round pending.

The signs point towards a political solution, but in the current Angolan electoral framework, the perspective of this political and legal problem cannot simply be brushed away.

Media

Given that the media has a vital role to play in preparing Angolans for the elections, it should be noted that the Angolan media does not provide adequate access to information for its citizens. Both in terms of quantity of information and the quality of journalism, citizens receive little information about the political parties and about the country's political life. The circulation of information in Angola is further characterised by a high concentration of the state media: a sole daily newspaper that, even when arriving some days late, is the only newspaper that reaches most provinces in the country; a sole national radio channel (state-owned); a sole national television channel (also state-owned); and a number of private weekly newspapers confined largely to Luanda with very little circulation outside the capital. In reality they have no national impact. A slow and limited process of conversion from state owned media to publicly owned media is taking place. The reality, however, is that the state media is aligned to the government and their editors-in-chief are directly appointed by the government, with no intervention at all from a regulatory body or the National Assembly. Their contents are by and large favourable to the government and important facts of public interest are often omitted. In spite of this, there is recognition of an improvement in the state owned media over the past few years.

On the other hand, there is an almost complete absence of newspapers in the provinces of the country. This has to do with circulation and financial incapacities, but also with infrastructure limitations that have prevented privately owned newspapers from reaching the provinces outside Luanda. A new picture is slowly beginning to unfold, and a few privately owned newspapers are beginning to reach different regions. They also take a very long time to reach these remote destinations – which means that these areas are not receiving up to date news. This is an important element, as the private press has a more critical approach towards the government than the state owned media, even if the quantity of information about political issues and parties is not necessarily a lot more or a lot better.

In terms of content, the Angolan media focuses mainly on high-level political issues relevant to Luanda, including the activities of the ruling party, the MPLA, and of the biggest opposition party, UNITA. This is despite the fact that over one hundred political parties are registered with the Supreme Court, and eleven of them occupy a parliamentary seat. The excessive focus on these two parties, linked to the physical and financial obstacles that hinder the access of the media to the provinces, have resulted in an almost generic absence of knowledge on the part of many citizens that other political parties exist and/or who their leaders are. Consequently, their ideas and opinions do not reach the common citizen.

The state owned media generally do not report cases of intimidation, beatings and violence against citizens for political reasons, while by contrast, for example, the alleged desertion of UNITA activists to the MPLA receives privileged treatment, in some cases to the extent that they can be accused of propaganda. For example, the attack on citizens on their way to a UNITA rally

in the Huambo province received only a discrete mention in the state owned media, while a privately owned newspaper carried it as the front page lead. It is therefore important to refer to the SADC PF recommendations on the need to protect the rights of freedom of association and expression through codes of conduct agreed to by journalists and institutions that can enforce these codes in relation to the elections. While it is true that there should be more dissemination of facts about opposition parties, it is no less true that most of these parties produce little newsworthy activity. Notwithstanding, the frequency and detail by which particular news, mainly from the MPLA, is conveyed by the state media, demonstrates that the principle of equal opportunity in relation to access to the state media is not rigorously observed in Angola.

There is almost no community media in Angola, but some small projects such as a community newspaper in the Huambo province, serve to demonstrate the potential they could have in the national scenario.

Regulation of the media

There has been no effective media regulatory or self-regulatory body for journalists in Angola for years. In terms of regulation, the National Council for Social Communication (CNCS) was created in 1992, but after several years of hibernation, it is only now trying to establish itself and to begin functioning.

A major problem in Angola is that there are no methods of enforcing any codes of ethics for journalists. An independent (non-state) media council should be created to adjudicate complaints against journalists on the basis of an agreed code of ethics for the profession. This code should be drafted by an association of journalists (not by the state), and some efforts in this regard have been taking place. This association should also have the task of accrediting journalists (not the state) by issuing them with a press card that identifies them as a bona fide journalist, and this accreditation procedure should require journalists to sign on to the code of ethics.

Angola also lacks an enabling media law (referred to as a basic press law) to provide a framework for media regulatory issues. Such a law should be based on the values of UNESCO's Windhoek Declaration on Promoting an Independent and Pluralistic African Press - which was unanimously adopted by its General Conference in 1991; the 2002 Declaration on Freedom of Expression Principles adopted by the AU's African Commission on People's and Human Rights (ACPHR); equal party political access to the state/public media as encapsulated by the SADC Principles and Guidelines and the 2001 African Charter on Broadcasting - also endorsed by the ACPHR.

With only one year and a few months to go to the next elections, Angolan parliamentarians are discussing a new set of media laws. As pointed out above, legal reforms alone will not be sufficient to guarantee that the media will have a general code of ethics and conduct to help ensure unbiased and professional reporting. The non-state self-regulatory processes outlined above must accompany the media legal reform process.

The opposition parties have proposed a legislative package to the National Assembly, including a law to revise the CNCS and to legally enshrine a code of electoral conduct for the media.

Of much concern to journalists is that a new basic press law, which includes a framework for broadcasting regulation, is not part of this package. To promulgate legislation on the *electoral* conduct of the media, before promulgating a new basic press law, puts the cart before the horse with possibly serious consequences. A new press law proposed by the MPLA government (which attracted some serious criticism) has been on hold for some years now.

If an enabling law for the CNCS is promulgated before the new press law, the existing model of the CNCS could become entrenched. A new basic press law declaring the statutory independence of the CNCS from the state is required as a prior step. It is also a new basic press law that should establish the autonomy of journalists to formulate their own code of ethics, media council and accreditation procedures. If not, the parliament will approve a code of electoral conduct without first consulting journalists.

According to the Windhoek Declaration and the African Charter on Broadcasting, regulatory bodies that provide licences to new press organisations and guarantee the independence, impartiality and fairness of the state media, should be autonomous from the government. There is also discussion on who should be appointed to the CNCS - politicians as proposed by the political parties - or experts from the sector with recognised competence and elected by the parliament. It is only a new basic press law that will provide the broader framework from which this other legislation should flow. Without a new press law, the legal reform package - which is being considered at great speed by parliament - may in reality represent a setback. Possible negative results are that parliament could end up approving the old model of the CNCS, which may end up conflicting with a new basic press law promulgated afterwards. If this were to happen, the CNCS law would have to be amended again in an effort to harmonise it with a new press law.

The reform of the basic press law is a government initiative and a number of submissions on this proposed law have been made by civil society including the Union of Angolan Journalists (UJA), the Media Institute for Southern Africa (MISA) and the Angolan Journalists Trade Union (SJA). The recent appointment of a new Minister for Social Communication has led to expectations that the process will be speeded up and that the new press law will be tabled before parliament by the end of March 2005.

It is also the basic press law that will establish the opening of the airwaves, which is vital in terms of leveling the political playing field in the period leading up to the elections. It is firstly expected that this law will enable non-state *national* broadcasters to go on air, including the transmissions of the network of five recently established provincial radio stations of Radio Ecclésia - a broadcaster owned by the Catholic Church. Radio Ecclésia broadcasts its own independently produced news and current affairs programmes. But priority should be given to the liberalisation of the broadcasting sector as a whole, and not only to facilitate the multi-provincial expansion of Radio Ecclésia outside of Luanda. A basic press law will also bring clarification regarding the status of community radio stations, which are currently not allowed to exist, simply because the existing law neglects to mention them. Community broadcasting should be licensed and allocated frequencies separately from public and commercial broadcasting in

order to be recognised as a distinctive sector in its own right.

If the new press law is promulgated and comes into effect in the middle of this year, and should the elections take place between August and October in 2006 to avoid the rainy season, the media will only have one year in which to provide access to information on a national basis to the citizens of Angola. The fear that the new elections will again trigger a war and the slow progress of electoral reforms demand a huge civic and voter education campaign. Such a campaign would be boosted by the creation of community radio stations, regional stations and national radio stations. Radio Eclésia is the most advanced non-state project in this regard, but more projects of this nature are required to provide a bigger crop of independent and plural broadcasting alternatives. If not, the broadcasting landscape will be monopolised by the State and the Catholic Church. There are many communities who would like to begin their own community or local stations, and they are urgently needed to meet the needs of a massive civic education campaign.

Expectations for social communication in the electoral process

At all levels, Angolan political life demands the establishment of more media in the country, be they national or regional. On the other hand, the centralisation of the media in the capital of Luanda creates the situation that in small towns and rural areas across the country a citizen only has contact through the state media with the ruling party's national leaders – not even its provincial leaders. It is these provincial leaders who will be elected to Parliament in the province's name.

There are far too few media institutions in the country, with too little capacity to disseminate the huge volume of news and civic education that will be needed. It is difficult to believe that it will be possible to provide the capacity needed to solve these problems in one year alone. However, the increased efforts being made to improve the technical level of state provincial broadcasts are worth mentioning.

If all the necessary media legal reforms are made by the middle of 2005 - and even that is questionable - the country will need solid organisation in support of civic education in three crucial areas: voter education and education in democracy; the training of journalists in election coverage; and, finally, the training of electoral agents in voter registration processes and the dissemination of electoral laws and voters' rolls.

Advocacy for media legal reforms

Civil society and its support groups in the international community must exercise determined pressure on the government to submit to parliament the necessary media and social communication legal reforms. The ideal partner organisation is undoubtedly the Angolan Journalists Trade Union that must be the linkage and counterweight so that the various declarations and guiding principles mentioned above can be enshrined in the next press law, including the principle of editorial independence and the independence of the regulatory body that will licence new media and guarantee freedom of expression in the state media.

At the same time, there must be a lobby to ensure that the new laws enable the

speedy creation of new regional and national media, to avoid the polarisation of the State and the Church leading up to the election. In this respect, it will be important that civil society is prepared to engage with communities to create community radios with the sole purpose, up to the elections, of providing supportive electoral civic education. Notable civil society organisations in this regard include Development Workshop, ADRA, the Electoral Network, the NCC and local NGOs. Many of these are capable of developing the capacity to manage independent radio stations.

Immediate actions required

Whether a basic press law is promulgated or not, the important role of civic education must be stressed again. It is essential to create a network of people to undertake civic education. These people must have professional training and be equipped with a toolkit of resources - graphic and audiovisual - to mobilise the citizens to participate in the elections. The production of radio programmes has already been demonstrated to be effective in relation to debates on land issues and the constitution. Maybe it is time to start producing radio programmes in which citizens can interact with politicians and members of civil society with regard to the next elections? One such network of NGO's already exists, but the network must be broadened to include independent organisations that provide training, and other NGOs with a national scope or a strong presence in specific regions.

Another process is the training of journalists. Considering the weaknesses of the Angolan legal framework, it is fundamental to establish a timeframe for the training of journalists to cover the electoral process and the elections. The state will continue to be the main employer and most journalists involved in the process will be connected to the state. It is important that those journalists are given professional training on ethical codes and electoral conduct in compliance with various SADC and international guidelines, norms and standards.

Conflicts in and about the media

There is a real danger in Angola that the media will become a source of conflict, instead of helping to avoid it. Growing commercialisation of the media in pursuit of sensational stories to attract readers and viewers contribute to this problem. Instead of providing facilitation and offering readers and viewers an opportunity to reflect on better electoral choices, some sectors of the media tend to directly influence the vote and to take stances in favour of this or that candidate. There is also a tendency to make pre-electoral pacts in return for privileged relations after the elections. It is precisely these values that determine the exclusion of less visible candidatures.

Thus, instead of promoting diversity of views, the media tend to be agents of political polarity and to become potential manipulators. Another result of the negative tone in which they cover daily political issues, is that they inadvertently promote electoral abstention. How then can the media exercise a role to prevent, manage and transform electoral conflicts?

Pro-active measures involving the force of law is required to address these problems. The role of a credible, impartial and professional media can be one of mediation of conflict. Some electoral codes correctly include issues pertaining

to journalistic coverage as instruments to prevent conflicts. The problem with codes is that they are not compulsory. They are the result of individual or group will. There are always commercial or other group interests that undermine such codes. The mere existence of an electoral code does not prevent a media institution from breaking it. In the Angolan case, the media is too strong and the citizens too weak for public opinion to have any effect following the breach of a code. Citizens themselves are also too poorly informed about electoral issues to engage with these problems. As stated, there is a law on electoral conduct under consideration in parliament, which partly addresses these concerns. A law with penalties for breaching electoral codes is required to enforce such codes.

The new National Council on Social Communication (which should be independent from the government) must aim at achieving the goals below in relation to the *electoral* codes of conduct for the media:

- Pluralism and diversity of information that does not require or impose equal treatment of all political parties. Journalists must themselves collectively define editorial guidelines to achieve this goal.
- Pluralism and diversity of information that gives each candidate exposure according to the principles of equality and non-discrimination, but with minimum rules of editorial coverage.
- Defining the responsibilities of the state media to ensure that equitable coverage be provided to all political parties. Obligations must also be imposed on the privately owned media to respect the principle of equitable coverage.
- Recognition of the editorial independence of the media, and their right to report and express comment and opinion, including the right to carry critical comment and views from political parties about each other in the same edition or in the same report, and the right to include comment from ordinary citizens and members of civil society.
- Preventing the media from announcing electoral results until the CNE has officially announced them, and clearly defining the rules for the media in relation to the pre-electoral reflection period.
- Establishing guidelines for civic education to protect the right of citizens to keep their vote a secret, and to prevent party political propaganda or any forms of party bias in voter education.

Notes

¹ A black rooster is the symbol of UNITA.

² The National Assembly's previous mandate ended in 1996, but it continued in office because the country was at war.

³ Jose Eduardo dos Santos served his first term between 1993-1998 and his second term between 1998-2003.

BOTSWANA

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ELECTIONS AND CIVIL SOCIETY IN BOTSWANA

BY ZIBANI MAUNDENI AND TACHILISA BALULE

The increased participation of civil society in voter education and in election observation, as well as its exclusion from the process of appointing commissioners to the Independent Electoral Commission (IEC), marked Botswana's ninth general election in 2004.

This article highlights instances in which civil society played an active part in the electoral process, as well as instances in which they were excluded.

Establishment of an election management body

The establishment of the IEC was preceded by political agitation by opposition political parties, civil society organisations and the private media. Prior to the IEC, elections in the country were at first administered by the Permanent Secretary to the President and later by the Supervisor of Elections, who were both unilaterally appointed by the President. Tshosa and Lekorwe (forthcoming: 47) commented that "this naturally led to a lot of dissatisfaction among opposition parties", and they applied pressure on the government that resulted in electoral reforms leading to the establishment of the IEC in 1997.

The IEC is established under section 65A (1) of the Constitution. It consists of a judge of the High Court, who is its chairperson; a legal practitioner; and five other persons who are "fit, proper and impartial". The Judicial Service Commission (JSC), on its own, appoints the judge and legal practitioner, while the other five members are appointed by the JSC from a list of names recommended by the All Party Conference (APC). While this legal provision complies with the SADC Parliamentary Forum's Norms and Standards for Elections, it is not always followed to the letter. For instance, in 2004, in the process of filling vacancies resulting from the expiration of the terms of office of the former commissioners, the IEC secretariat published an advertisement in the local newspapers. Applications were collected and forwarded for short-listing to the secretariat of the APC - who also happen to staff the Office of the President. Although neither the SADC Parliamentary Forum nor the Principles for Election Management, Monitoring and Observation (PEMMO) recommended by the Electoral Institute of Southern Africa (EISA) and the Electoral Commissions Forum (ECF) propose this, it is not clear why an impartial statutory body such as the IEC or an independent civil society body such as the Botswana Council of Non-Governmental Organisations (BOCONGO) should not provide the secretariat of the APC. It is also worth observing that civil society does not have any role in the appointment of IEC commissioners. Ideally, civil society should have a role in the appointment of commissioners by either directly appointing some commissioners or making recommendations for appointment to the appointing authority.

In what later proved to be a secretive and non-participatory process, and in violation of the SADC Parliamentary Forum's norms and standards, the APC failed to recommend names, and the JSC alone appointed the

commissioners. Even though it is a constitutional requirement that the APC should screen the names of the other five applicants, the opposition boycotted the conference and the government ignored them. Even worse is that there are no clearly laid down procedures for the APC to follow in short-listing the candidates, opening the process to domination by the Office of the President that constitutes the secretariat.

Thus, when the APC failed to play its constitutional role, the whole process of appointing commissioners became secretive and non-participatory resulting in an unbalanced outcome. Four lawyers and only one woman were appointed as IEC commissioners. Other interest groups such as youth, women and minorities – as recommended in the EISA/ECF principles – were marginalized. But even if the JSC had taken the issue of broad representation into account, the process would still have been non-participatory and secretive since the process excluded participation by civil society.

Legal and administrative framework for free and fair elections

Most norms, standards and guidelines, such as those by the SADC Parliamentary Forum and EISA/ECF, narrowly insist on a free and fair election. But civil society should broadly insist on *participatory* elections as well. In this regard, the electoral legal and administrative framework should be amended to require:

- An adequate and participatory management structure to facilitate up-to-date management practices;
- A fair, reasonable and participatory constituency boundary demarcation process;
- An independent, impartial and adequately resourced election management body that represents a wide spectrum of interests; and
- Fair and broad-based election-related conflict management processes.

The question is how such a participatory legal and administrative framework should be established in the context of Botswana? To help answer the above question, electoral issues and processes that preceded the 2004 election are analysed below.

Delimitation of constituencies

Delimitation of constituencies is an issue that is covered in the EISA/ECF principles (it is not covered in the SADC Parliamentary Forum's norms and standards). Delimitation of constituencies was completed in Botswana in 2002 and was primarily treated as a technical issue and not as a broad socio-political issue that called for the participation of several stakeholders, including civil society. In terms of section 63 of the Constitution, the country is divided into as many constituencies as there are elected members of the National Assembly, and the power to determine their number lies with parliament alone. This process is neither transparent nor participatory. With only 7 out of 44 opposition parliamentarians, the Botswana parliament that created new constituencies for the 2004 election was primarily dominated by the ruling party, and was most likely to result in constituency numbers that were biased. The fact that parliament alone is legally authorised to determine the number of constituencies is too restrictive and non-participatory. The

process excludes broad-based consultations that could guard against abuse by the ruling party.

In addition, the appointment of the Delimitation Commission was secretive and non-participatory. The commissioners were exclusively appointed by the JSC, ignoring issues of gender and violating the EISA/ECF principles. A single appointing authority, whether it is the President or the JSC, restricts participatory decision-making and makes a mockery of democracy. Excluding IEC commissioners and civil society from the process of appointing delimitation commissioners promotes secrecy and non-accountability.

The EISA/ECF and SADC Parliamentary Forum recommendations do not address the finality of the powers of the Delimitation Commission and this seems to be an omission. The main problem of the delimitation of boundaries in 2002 was the fact that the drafting of the report was not transparent, non-participatory and insensitive to community interests. No drafts were published in newspapers for comment by the public, political parties or civil society organisations. The final report was submitted to the President alone and again was not released to the media.

In addition, it was not very clear whether the laid down criteria had been completely followed. The Constitution provides guidelines on the demarcation of constituency boundaries, and the primary technical factor is population. The requirement is to produce constituencies whose number of inhabitants is nearly equal to the population quota as is reasonably practicable.¹ The population quota for the 2002 exercise was 29 825. This was technically and legally defined to mean the number obtained by dividing the number of inhabitants of Botswana, as contained in the latest comprehensive national population census, by the number of constituencies into which the country is divided. The primary factor proved difficult to apply in Botswana because of its demographic features. Some constituencies ended up with a population averaging 19 000 while others had an average of 36 000. This is partly because the country has one of the lowest population densities in the world, ranging from 1.6 to 3.1 persons per kilometre.² In addition, the Constitution does not provide an acceptable margin of deviation from the primary factor in the demarcation of constituencies. It is in relation to such issues that the voices of civil society, particularly human rights and cultural organisations, but also political parties, should be heard.

However, in anticipation of the socio-cultural difficulties associated with the applicability of the primary factor and in compliance with the EISA/ECF principles, and as an admission that demarcation cannot be a purely technical matter, the Commission was legally authorised to consider issues such as natural community of interest,³ means of communication, geographical features, density of population and the boundaries of tribal territories and administrative districts. Consequently, in demarcating constituencies, the Commission spent time visiting various localities throughout the country, consulting ordinary people and exchanging views with them. In addition the Commission received written and oral submissions from members of the public.⁴ This part of the Commission's work was transparent, participatory and sensitive to community rights. However, as mentioned earlier, these

positive gains were later offset by the secrecy surrounding the report presented to the President. There is no doubt that many communities and some political parties were seriously hurt by the secretive nature of the Commission's procedures towards the end.

It should be clear from the above, that people are often embedded in communities of one kind or another and cannot simply be divided in a technical manner during a demarcation exercise without violating fundamental rights. The Delimitation Commission should never be legally allowed to violate the fundamental rights of communities and the Constitution should expressly require it to consult human rights and cultural organisations. Opposition parties contended that some constituencies were eventually demarcated in a manner that favoured the ruling party, thereby also casting aspersions on the impartiality of the Commission.

The 'first past the post' electoral system

An electoral system should not be perceived to work to the advantage of one political party and to the disadvantage of the rest. Neither should it advantage males and disadvantage women (EISA, 2004: 4). It is in this regard that civil society, the media and opposition political parties have come to the understanding that the 'first past the post' (FPTP) electoral system no longer adequately serves the interests of Botswana and contains the seeds of a political disaster. There is growing evidence that the electoral system favours the ruling party and does not consider the popular vote in the awarding of parliamentary seats. For instance, in 1989, the ruling Botswana Democratic Party (BDP) obtained 65% of the popular vote and this was translated into 91% of the parliamentary seats. In 1994, the BDP received 55% of the popular vote, which the first past the post electoral system converted into 91% of the parliamentary seats. In the 1999 general election, the BDP received 54% of the popular vote but un-proportionally managed to win 83% of the parliamentary seats. The trend of biased awarding of seats is continuing. In the October 2004 general election, the BDP had a popular vote of 52%, and the first past the post system converted this into 77% of the parliamentary seats. Opposition parties, civil society organisations and election observers have been calling for the introduction of the system of Proportional Representation (PR). Some observer missions, such as the Electoral Institute of Southern Africa (EISA, 2004) even called on Botswana to reform its electoral system by introducing a Proportional Representation electoral system.

IEC, civil society and preparation for the 2004 General Election

During and after the 1999 general election, civil society, the media and political parties heavily criticised the IEC for not having adequately prepared for that election: there was poor voter education; it was not characterised by a cordial working relationship between the IEC, the media and political parties; the queues were too long and the voting process was too slow. It was in the light of these criticisms that the IEC started making timeous preparations for the 2004 election, including the organisation of evaluation workshops and the holding of an electoral reform workshop. Some of the

debates in this workshop were broadcast live on *Radio Botswana*. The IEC also commissioned a Voter Apathy study that included leaders of civil society on the review panel. *Radio Botswana* and *Botswana Television* organised debates and invited the IEC, editors and journalists from the private media and researchers to debate electoral issues. The IEC initiated processes that were open, participatory and transparent.

It was commendable that the IEC handled the logistics for the 2004 general election very well. This involved hiring more than 2200 vehicles: one for each of the 2179 polling stations and at least one for each returning officer in the 57 constituencies; delivering election material to the different polling stations and hiring and training 12 000 officers to run and supervise the election. While observer missions, particularly EISA, were impressed by the way the IEC handled the logistics, it should be pointed out that the IEC ignored civil society and the private sector. It is commendable to note that the IEC hired vehicles and drivers from the local councils and land boards, and further relied on vehicles belonging to individual officers. Unfortunately, the IEC relied heavily on government departments and less on civil society and the private sector. It primarily relied on the Central Transport Organisation (CTO) - a government parastatal that normally provides transport services to the government. From a civil society point of view, it could not be right that the IEC would primarily rely on a government parastatal for hired vehicles and drivers. The hiring should have been made more open, transparent and participatory and should have been extended to the private sector as well.

IEC, civil society and voter registration

Registration of voters complied with the principles laid down in the EISA/ECF principles. It occurred in three phases: general registration that was primarily conducted by unemployed youths, continuous registration that was conducted by District Commissioners and supplementary registration again conducted by unemployed youths. General registration took place during the whole of November 2003 in 2179 registration centres. The IEC and the various civil society organisations such as Emang Basadi Women's Association and the Botswana National Youth Council (BNYC) played a leading role in encouraging more people to register.

One central issue that civil society (particularly the BNYC) should take up in regard to registration of voters was the poor training that the IEC provided to young registration officers. The general and supplementary registration processes were primarily conducted by inexperienced young people, who, according to the IEC-Gaborone audit workshop for stakeholders (23 November 2004), committed numerous inaccuracies because they were poorly trained. The BNYC should take up the issue with the IEC to provide more training to the young people it hires to conduct registration. If not, the nation will lose confidence in young people executing these tasks.

Voter education was an area in which the IEC, civil society and the media played a central role. There is no doubt that the IEC and civil society organisations approached the issue of voter apathy very seriously. For its

part, the IEC commissioned a Voter Apathy study in 2001, which generated a lot of information on voting patterns in previous elections and highlighted the unsatisfactory participation of most civil society organisations in the electoral process.

The IEC published its Voter Apathy report in 2001, which found that an overwhelming majority of young people neither registered nor voted in the 1999 general election and that this posed a challenge to youth organisations to change this. It also found that religious organisations and most membership associations did not pro-actively encourage their members to register and vote. It further found that traditional methods of communicating electoral messages through political rallies, kgotla (traditional consultative) meetings, and *Radio Botswana* were not reaching young people and a substantial number of citizens in other age groups.

In response to the report and in preparation for the 2004 election, the IEC organised a workshop for religious leaders that was hailed as a historic event, bringing together different faiths for the first time in the history of the country. Different people addressed the participants, including the Secretary of the IEC who welcomed them, the guest speaker who provided the South African experience, the coordinator of the Democracy Research Project of the University of Botswana who facilitated the proceedings and a drama group and officials from the BNYC who shared their experiences with religious leaders (IEC, 2002: 1). Around one hundred faith leaders attended the workshop, exchanged ideas, and promised the IEC their future participation in the electoral process.

The guest speaker at the national faith sector workshop, Mr Eddie Makue, Director of Justice Ministries in the South African Council of Churches, noted that religious organisations reportedly had the largest membership and yet rarely made announcements on voting and their members rarely discussed political issues. Makue observed: “By virtue of the popularity of the church, religious leaders have frequent opportunities to communicate to a large and receptive audience. The messages delivered during religious services have the potential to make considerable impact on voter attitudes and could influence turnout at elections”. He added that “churches are closed communities of congregants bound by strong affective ties, regular social interaction and high levels of respect for their leadership in whom they have unconditional confidence and trust”, and further observed that these attributes placed religious organisations in a strong position to “dramatically influence voter dispositions to elections and voting”.

Television adverts for the 2004 general election showed a pastor encouraging those who had registered to cast their ballot on Election Day. In a series of newspaper articles, Rt. Rev. Moiserale Dibeela, who had featured in IEC television adverts, and other priests urged voters to cast their ballot and to do so wisely. In “Let justice roll like a river” (*Botswana Guardian*, 29 October 2004), Pastor Dibeela urged all his countrymen to cast their vote and went on to define what factors they should consider when doing so, including voting for individuals with strong capacities rather than merely voting for a party representative. The signs were clear that the IEC had successfully

persuaded priests to play an active part in the electoral process.

Civil society organisations were invited to the national faith sector workshop to share their experiences. While the BNYC attended, some others did not, tainting their exemplary role. Leading civil society organisations should recognise the necessity of participating in such workshops, particularly where they are seen as exemplary and invited to contribute their vital experiences so that these can be noted and documented. The BNYC official present talked about their youth empowerment programmes and aims, which included:

- Increasing the number of young people voting in the 2004 general elections;
- Sensitising young people about the link between their vote and the improvement of their conditions and raising awareness of their role in maintaining a democratic culture;
- Strengthening the leadership and representation capacity of young people to play a more meaningful role in the development process; and
- Strengthening existing partnerships and establishing new ones with organisations and institutions working in the area of youth political empowerment at national and international levels.

It was revealed that the BNYC had produced a voter-training manual, had trained 22 youth trainers and 106 mobilisers countrywide, and had held five workshops for over 100 young people who intended to contest the 2004 election. This was a commendable contribution by a civil society organisation in the area of voter education and the empowerment of marginalized groups in society. The BNYC had also developed a youth manifesto (an idea borrowed from Emang Basadi), detailing issues that concerned young people and asking political parties to take them up.

Setting the election date

The setting of the election date in Botswana was less transparent and violated the EISA/ECF principles. It was perhaps the most secretive part of the 2004 election as the date was individually fixed, announced and declared by the President of the Republic. Nobody else knew the election date until the President announced and declared it. It should be noted that the President had developed a system of meeting the IEC and checking on its preparedness, without divulging the election date. However, no such arrangement existed for the media. On its part, the IEC had also developed a practise of writing letters to the Office of the President, copied to the Attorney General's chambers, informing them of the scheduling of its activities. However, it did not communicate with the media and non-governmental organisations during this process, and the lack of transparency generated uncertainty. On the basis of its reading of the Constitution, the IEC assumed that elections would either take place on the 9th, 16th or the 23rd of October. The President later announced and declared that the election would take place on the 30th of October. This confusion about the date of the elections did not promote transparency and good electoral governance.

It should also be recalled that uncertainty about the date of the 1999

election had led to the near disenfranchisement of around 67 000 voters who registered through the supplementary registration process. The President was compelled to declare a state of emergency in order to recall Parliament to legislate to prevent their likely disenfranchisement. The legal implications of the situation were huge, and resulted in the President appointing a commission of inquiry to investigate the root cause of the confusion. The situation nearly led to a court case between the President and the Attorney General. While there were no serious legal implications in 2004, the possibility of a re-occurrence remains.

The media, particularly private newspapers and *Radio Botswana*, suffered serious inconvenience as a result of the secrecy shrouding the election date. For instance, the private media speculated that the 2004 general election would be held on the 16th of October, and players such as political parties, candidates and the general public believed them. There was no doubt that the uncertainty about the election date portrayed the media as unreliable and this was negative in terms of promoting voter education.

Furthermore, political parties had to field candidates and organise campaigns, the IEC had to handle complex logistics, the media had to install and transport delicate equipment to facilitate accurate and clear reporting on electoral events, and election monitors had to train people and deploy scarce resources to all corners of the country – all this without knowing the exact day of the election.

Civil society should raise this issue with the President with the purpose of fixing the election date in the Constitution or for the purposes of allowing the IEC to fix the election date.

On a different note, civil society, the media and opposition political parties should insist that all nominations be handled by the IEC which is more accessible than the High Court. Two kinds of nominations took place separately for the 2004 election. Presidential nominations were conducted by the Chief Justice at the High Court in Lobatse (the only High Court in the country). Two kinds of complaints were registered: firstly, all political parties complained about the tedious procedures involved. For example, the BDP complained about ‘too many’ forms to be completed. Secondly, there was a problem for small parties whose supporters were scattered throughout the country where there was no High Court. It proved to be a nightmare for these parties to look for 1000 supporters from a larger area, find authenticating officers (designated police officers) in many areas and then having to travel to the High Court in Lobatse. It was not clear how the Chief Justice communicated with the authenticating officers, but the result was that some small parties failed to meet the nomination requirements and wrongly blamed the IEC for it.

Nominations for constituency and ward electoral vacancies were conducted in each constituency by returning officers who were appointed by the IEC. The Electoral Act required each candidate to be nominated by a registered person and seconded by another, and to have seven supporters who were also registered. Most of the candidates managed to complete the nomination process and were confirmed as candidates for the 2004 general

election. This was a more friendly nomination process than that of the presidential election, which was conducted by the Chief Justice. There were few complaints about the constituency and ward-based nominations, except in two cases (one in Lobatse farms and another in Gantsi farms). In both instances, the farm owners were BDP council candidates and their farm labourers felt intimidated and refused to support the nomination of the BNF candidates (interview with BNF Secretary General, 27 October 2004).

Funding of political parties and controlling election expenditures

Civil society should lobby for state funding of political parties in order to level the playing field. State funding of political parties is an old issue that always crops up at every general election, including the 2004 general election. State funding is in principle viewed as a way of promoting democracy by assisting opposition political parties to participate. While the opposition parties were united in calling for state funding, the ruling party was dismissive of it and regarded it as a waste of public resources. Yet civil society was convinced that money played a central role in deciding the winners in the 2004 general elections. The corporate community significantly contributed towards the BDP's political campaigns, resulting in unfair competition between political parties. The SADC Parliamentary Forum and EISA have called on Botswana to introduce state funding of political parties during electoral periods in order to promote a level playing field. Thus, state funding of political parties is one area that civil society should pursue in coming years.

Civil society should also lobby for the effective control of the use of money in elections. Fairness demands that there should be effective controls over campaign expenditure so as to regulate the influence of money over election outcomes. All private donations that reach a certain value should be declared. Although section 98(1) of the Electoral Act states that no person should incur an election expense in excess of P50 000 (\$US 1057), this requirement is unenforceable. Firstly, the fine of P400 or imprisonment for a term not exceeding two years or both seems to be inadequate. Secondly, the Electoral Act only provides for the monitoring of campaign expenditures after a court writ has been issued, thus excluding the monitoring of campaign expenditures beforehand. In short, the Act was designed in such a way so as to exclude the monitoring of bulk campaign expenses. Thirdly, disclosure of donations is not mentioned in the Electoral Act, creating the impression that it is not an important issue in Botswana. Civil society has no doubt that campaign expenses were very high during the 2004 elections and played an important role as evidenced by the colourful and extremely large billboards that were displayed all over the country. These are some of the issues that civil society should take up for the purpose of promoting fair competition between parties.

Emerging incidents of vote trafficking generated controversy after the 2004 general election. The IEC allowed voters to transfer after the whole registration process had been concluded and this created opportunities for vote trafficking. Transfers were carried out in such a manner that it

was neither easy to trace a voter's place of origin or to verify the area to which a voter had been transferred. It should be noted that transfers and/or trafficking were undoubtedly initiated by political parties and candidates, and not by ordinary voters. The IEC and civil society should devise a way of addressing this problem that threatens to invalidate the country's electoral gains.

The role of the Media in the 2004 election

In the pre-election period (June 2004), the Democracy Research Project opinion poll indicated that the majority of the electorate received their political news from the state/public media. When the political campaign started around July of 2004, civil society and political leaders held the view that the state/public media, particularly the *Daily News* and *Radio Botswana*, were not playing an active part in the electoral process. The general feeling was that the then Minister of Telecommunications, Science and Technology restricted the public media from covering political news, particularly news about major opposition activities. There was shock at the way the former Minister exercised control over the state media. Fortunately, from August 2004, *Radio Botswana* introduced a programme of debates, featuring parliamentary candidates from all the parties in a particular constituency, which were broadcast live every evening for almost two hours from the 18th of August until the 15th of October. These public debates were advertised in advance in the *Daily News*, giving the date, constituency and venue for the debates.

MISA Botswana commissioned an Elections Media Monitoring Study that covered the period September – November 2004. The study's objectives included:

- Determining the number of campaign stories contained in each newspaper and news bulletins of each radio and television station;
- Determining which political party received the largest share of media coverage; and
- Determining which gender received the most media coverage.

The MISA Botswana study found that the public media covered more election campaign stories (over 60%) than the private media (40%). It also found that the public media played its role very well in providing balanced and fair coverage of all contesting political parties. The study concludes that all the contesting political parties were given almost equitable coverage in the public media.

The study also found that although the private media played their part, there were signs of bias against the ruling party. This trend is attributed to the fact that since the private media survives by making profit, unlike the public media that is funded by government, the private media tended to focus on issues that were more controversial.

In terms of the study, the ruling party received the largest share of media coverage from both the public and private media. The reason for this is not attributed to its control of or favouritism by the public media, but rather to the following:

- It had a larger share of candidates contesting the elections, thereby giving it a higher probability of receiving more coverage;
- It was facing a challenge and criticism from all opposition parties in both the public and private media and this increased its coverage; and
- The ruling party campaigned hard in defending itself and its constituencies from being taken by the opposition.

The study found a considerable gender gap in media coverage in both the public and private media. Males dominated news coverage and females were only newsmakers relating to issues of controversy or under the shade of their male counterparts or partners. The gender discrepancy is also explained by the fact that there were very few female candidates contesting the elections and some political parties did not have any female candidates.

Civil society should protect the media from uncooperative ruling politicians who in 2004 compelled the alteration of broadcasting programmes to suit their needs. In particular, there is a need to guarantee the editorial independence of the public media. There is also a need to improve professionalism in the private media so that they can inform the public more effectively.

When the Director of Broadcasting announced the constituency debating programmes on *Radio Botswana* in 2004, he also promised that another programme was in the offing, which would involve public debates on both radio and television, covering parties that had fielded presidential candidates. (Mokotedi, 23 August 2004: 3). Television adverts featuring presidential candidates of the BDP, the BNF, the BCP and the NDF, misled the public into believing that presidential candidates would face one another in the debates. There was never a presidential debate. Instead, three parliamentary candidates represented the presidential nominees in two television debates. President Mogae was later quoted in newspapers saying that he did not see the value of participating in such debates. (It should be noted that in earlier elections religious leaders had withdrawn from the electoral process partly because the President was not showing up at their national prayer ceremonies). Civil society and the IEC should intervene to promote presidential debates as envisaged by *Radio Botswana* and *Botswana Television*.

The media, civil society, politicians and the IEC were convinced in 2004 that the media in Botswana did not have sufficient expertise in election reporting. This was partly because the IEC press briefings were not regular enough to enable the media to publish accurate information, and, by not having much expertise on technical issues, did not cover them as well as they should have. It was evident during that time that the private media had the heart but not the depth to analyse electoral issues. Even the national media freedom watchdog – MISA-Botswana – admitted that the media's coverage of the elections was not of the best. MISA-Botswana nevertheless asked the nation to be patient as the University of Botswana had recently introduced a degree in media studies, but had not yet produced any graduates. They believe that newspaper owners should also take the blame, as they do not always recruit the correct calibre of journalists and also remunerated journalists very poorly. Civil society may yet be called upon to intervene to rescue the situation.

In contrast, the media played a significant role during the verification of ballot boxes and papers and the counting and announcement of results. These processes were conducted at each constituency's headquarters and the media played a crucial role in the speedy broadcasting of the results. Verification of ballot boxes and papers in the constituencies had to be completed before any counting could commence and if a box did not tally, as happened in a few cases, counting and announcement of those results were significantly delayed. Party agents, election monitors, journalists and voters monitored these processes. Once verification was completed, counting followed and party agents were required to indicate acceptance of the results by signing before the results were announced. In all cases, each returning officer publicly announced the results and the journalists present (particularly from *Radio Botswana* and *Botswana Television*) faxed or phoned the information to their headquarters, which immediately broadcast the results. Teams of experts from the University of Botswana's Democracy Research Project also analysed the results on air as they came in. This continuous live announcement and analysis of results on air was a significant development in election reporting in Botswana. In many instances, the results were broadcast on air even before the IEC received them from their returning officers.

Conclusion

This article has analysed the electoral processes leading up to the 2004 election, highlighting the involvement of civil society as a positive development and its non-involvement as poor governance. Among the positive developments was the hiring of young people to conduct general and supplementary registration exercises, consultation with communities at kgotla meetings and other forums for purposes of collecting data for the demarcation of constituencies, and the involvement of non-governmental organisations and the media in voter education exercises. Negative developments included the exclusion of civil society from the process of selecting IEC commissioners, the secrecy surrounding the writing of the demarcation report and the poor training of youths involved in the registration of voters. However, the article also notes that Botswana's compliance with the SADC Parliamentary Forum's norms and standards and the principles recommended by EISA and the ECF improved during this election.

The article also considered the non-transparent manner in which the election date is set in Botswana. It noted that a secretive system in which the president alone sets the date creates serious problems for all stakeholders. Given the enormity of these problems, the article noted that the date of the election should be fixed in the Constitution.

This article has further analysed the role of the media in election coverage, noting the absence of regular press briefings, undue ministerial interference in the public media and inaccurate reporting of pre-election activities by the private media. However, the article has also noted the use of innovative live broadcasting and analysis of election results that kept the nation awake and involved in the electoral process during this period. It also noted the emerging problem of voter trafficking and the need for solutions.

Notes

- ¹ Section 65 (2) of the Constitution.
- ² *National Development Plan 8 1997/98 – 2002/2003*, Ministry of Finance and Development Planning, 1997, pp. 10 – 11.
- ³ The 2002 Delimitation Commission defined this expression to mean ‘a collection of common interests that arise from an association of a group of people brought about by natural as opposed to artificial means’.
- ⁴ *Report of the Delimitation Commission 2002*, Government Printer, Gaborone, p. 6.

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**DEMOCRATIC REPUBLIC
OF THE CONGO**

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TOWARDS THE 3RD REPUBLIC: PREPARING FOR ELECTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

BY HAMULI KABARHUZA BAUDOUIN

Overview of recent political events

The Democratic Republic of the Congo (DRC) is the third biggest country in Africa spanning a landmass of about 2 345 000km² with an estimated population of 60 million people. Since independence in 1960, the Congolese have experienced poor political leadership, internal civil conflicts, dictatorship under Mobutu Sese Seko and devastating wars until the end of the 20th century. These factors have resulted in the DRC, potentially one of the richest countries in Africa, becoming one of the poorest in the world.

Today the country is in a post-conflict transition. During the 1990's conflicts and wars erupted from the Eastern provinces bordering Rwanda, Burundi and Uganda and spread all over the country destroying social and economic infrastructures. Since 1994, these provinces have been experiencing hardships arising from the prolonged presence of refugees and 'interahamwe' militias that perpetrated genocide in Rwanda.

In 1996, with the support of Rwanda and Uganda, Laurent Kabila staged a rebellion to overthrow the decaying regime of Mobutu. Internal and international conditions were conducive to the success of the rebellion. President Mobutu had lost control of the country, the Congolese population had lost confidence in his leadership and Mobutu had also lost all international support because of his inability to carry out democratic reforms. With the support of the people, Laurent Kabila marched all the way from the Eastern Mountains into the capital, Kinshasa, on the far Western side of the country. He took power in June 1997.

Kabila did not engage in developing democracy and instituting much needed reforms. People felt that the totalitarian methods of the past had not changed. Internal discontent grew further as he reduced political freedoms. Opposition parties and civil society protested. His relationships with his Ugandan and Rwandan partners worsened.

A new rebellion started in September 1998, again with the support of Uganda and Rwanda. This time, there were numerous rebel groups, among them the *Rassemblement Congolais pour la Démocratie* (RCD-Goma), the *Rassemblement Congolais pour la Démocratie Mouvement de Libération* (RCD-ML), the *Rassemblement Congolais pour la Démocratie National* (RCDN) and the *Mouvement pour la Libération du Congo* (MLC). They fought against the central government of Kabila, which in turn enjoyed the military support of Zimbabwe, Namibia and Angola. With the support of the African Union, United Nations and the international community, a ceasefire agreement was signed in 1999. However, implementation of the agreement proceeded very slowly.

President Laurent Kabila was assassinated in January 2001. His son, Joseph

Kabila, who changed his father's political methods, replaced him. He accelerated the peace process, demanded more deployment of UN peacekeepers and engaged in dialogue with the rebel movements, unarmed opposition and civil society. The Inter-Congolese Dialogue took place in Sun City, South Africa during April 2003. An agreement was reached to form an inclusive interim government to rule the country for a transitional period of two years. Key agreed objectives of this transition period were the restoration of territorial integrity and security and the organisation of free and fair democratic elections.

The new government was installed in June 2003. Elections are planned for June 2005. They will mark the founding of the 3rd Republic, which the Congolese people are passionately anticipating. The majority of people view these elections as an historical opportunity to end military rule and to halt turmoil, corruption and mismanagement in the country. Elections are the promise of an era of human rights and social and economic progress.

Western involvement in the politics of the DRC has evolved. From active manipulation of politicians on all sides in the 1960's, there is a growing sense of common policies and concerted actions in support of reconstruction of the country. Today the *Comité international de Suivi de la transition* (CIAT), which include major western partners of the DRC such as Belgium, France, the USA and the United Nations, help to coordinate strategies in the transition period and the preparation of the elections.

A short history of elections in the DRC

In view of the slow progress of the present transitional government, there are serious doubts whether elections will take place in a conducive environment, or, for some, whether they will take place at all. Whether they take place on schedule or not, their outcome rests on the political elite's ability to establish a peaceful context in which successful elections can be held.

The Belgian colonial system did not promote intellectual, political and scientific progress in Africans. There were no Congolese university graduates by 1950, when independence movements were organised in many African countries. By 1957, some political leaders emerged from the African elite working in colonial administrative positions. In 1957, the Governor of the Belgian Congo decreed that the Congolese elite should take leading positions in city administration. Some city mayors therefore had to be elected from local communities. That was the beginning of political participation in the DRC. A few towns were selected on an experimental basis - Leopoldville (Kinshasa), Elisabethville (Lumumbashi) and Jadoville (Likasi). It was assumed that in these cities existing social and cultural organisations would develop into political parties that could compete in a multiparty election of mayors. These elections took place in December 1957. It was clear from these elections that people had voted on ethnic lines. Since the majority of the populations in Kinshasa were mainly *Bakongo* from the Bas Congo province, the majority voted for a *mukongo* head of ABAKO (Association of Bakongo), which had become a political party.

During the 1950s, the historical context in Africa changed quickly. Colonised nations were struggling for independence and international recognition. In the DRC the emerging elite echoed the African struggle for independence. Political

pressure grew in Kinshasa and all the towns. Political parties were created, inspired by the 1957 experience, but also by the Belgian experience itself which some leaders had witnessed while attending the 1959-1960 Universal Exposition in Brussels.

In 1960, the Belgian government agreed to accelerate the independence process. They decided to organise general elections in the country to elect leaders who would determine the destiny of the country after them. People were given the opportunity to elect members of parliament at national level, and members of provincial councils in every province. Elections were held on 22 May 1960.

These were the first countrywide multiparty elections involving about 40 parties. Only one of these was a party of truly national dimensions: the *Mouvement National Congolais* (MNC) led by Patrice Lumumba. Others such as ABAKO and CONAKAT remained essentially ethnic or provincial in scope. The results were announced on 4 June 1960 - 26 days before independence was proclaimed.

Significant features of these elections include that:

- There was very little experience of multiparty elections. Political leaders were brought into power with little experience of constitutional drafting and implementation. The *Loi Fondamentale* – the first constitution, was drafted by Belgians and simply handed to Congolese leaders. Democracy does not only consist of political debate and electoral choice between political parties. It also consists of human rights, communication and information, broad participation of the people and good governance that provides for the social and economic progress of all. These issues enjoyed very little place in the political debates of the emerging independence leadership.
- Voter and civic education was very poor because of the weak communication and information systems in the country, particularly at the level of the population. Very few people could understand the intricacies of a modern political system. Politics took place in Kinshasa and the towns. The majority of people living in the countryside did not have any appreciable understanding of what was taking place.
- The goal of the elections was the immediate attainment of independence rather than long-term political vision and social transformation.

Independence Day was celebrated on June 30, 1960. The newly elected leaders had to take control of a country the size of Western Europe, with very little experience in governance. There were less than 10 university graduates in their ranks!

Conflicts of power, fuelled by the absence of any effective mechanisms of mediation, quickly erupted between President Joseph Kasavubu and the Prime Minister Patrice Emery Lumumba. Even the judiciary cannot guarantee settlement of conflicts at those levels of power.

Three major issues created division among the new political elite:

- The division of responsibilities and power of the president and the prime minister;
- Constitutional contestation between lobbies in support of the creation of

a unitary or a federal state; and

- Power sharing between the Eastern and Western parts of the country.

The post-independence period was a period of turbulence. Leaders of 'rich' provinces (Katanga, Kasai, Bas Congo) struggled for more autonomy or separation. Rebellions sprang up with manipulation and involvement from various colonial interest groups.

Despite a difficult context, new multiparty elections took place in April 1965. Political parties formed bigger coalitions. The main political issues were not only the form of the state (unitary or federal), but also the balance of power between the East and the West of the country.

This experience of democratic elections was halted by a military coup. In November 1965 General Mobutu, the head of the army, took power. He was complicit in the murder of Patrice Lumumba, crushed all the political parties, reduced political freedoms and installed a military regime. He tried to mobilise the support of the people in 1967 by initiating a change of the constitution through a referendum. He also called on women to participate in the decision about the constitution – the first time that women were called on to participate in the political process.

In 1970, through another constitutional change, Mobutu suppressed all political freedoms and instituted a one party state. He organised elections in which he was the only candidate for presidency. In respect of parliamentary elections, people had the freedom to elect representatives from among many candidates but all these candidates were from the same state party – the *Mouvement Populaire de la Révolution* (MPR). The new constitution reduced the eligible age of voting from 21 to 18.

In 1975, elections were again organised in terms of the one party (MPR) system. In the context of a one party state, results of presidential elections were known even before they were proclaimed. Mobutu always won with 99,9 %! The last one party election, for municipal and parliamentary candidates, was held in 1982.

But things started changing in the 1980's. The regime was worn out with corruption, injustice and repression. A few courageous politicians began denouncing the failures of the system. Thirteen members of parliament lead by Etienne Tshisekedi wrote a letter to Mobutu denouncing dictatorship and asking for a multiparty system and democratic development. They were immediately arrested and banned from the capital city Kinshasa. The struggle for democracy had started.

By 1984, civil society demanded better management of public resources and respect for human rights. At first the Catholic Bishop's Conference spoke out and started mobilising at grassroots level. Human right organisations echoed the demand for respect of human rights. In the early stages they worked underground, but later on they started speaking openly from universities. Development NGOs were created and started organising at the provincial and national level. They demanded more people's participation in decision-making and denounced corruption. As freedom of association was banned, student campuses became the bases for organising political demonstrations.

In February 1989, a student demonstration at the Lumumbashi University

ended in bloodshed. This event marked the final collapse of confidence of the Congolese people in Mobutu's regime. Pressure was building in the whole country for change.

The external context was good. The fall of the Berlin wall and the success of Perestroika in Russia brought more hope for change. In February 1990, Mobutu organised national consultations. He travelled to all provinces to 'consult the people' from February to April 1990. On April 24, he announced his conclusions in a national speech:

- The total economic and social failure of the country;
- His decision to re-introduce a multiparty system; and
- His decision to revise the constitution to adapt it to a democratic system.

With external pressure growing, Mobutu agreed to the idea of organising a national sovereign conference to debate the situation of the country and to shape a transitional period that would result in a free and fair election. This transitional period was interrupted by the war that started from the Eastern provinces. Mobutu was ousted from power in June 1997.

The three transitional periods

The Democratic Republic of Congo has experienced three transitional periods. In each one, the ruler made formal promises to the people to organise free and fair elections.

The transitional period of the National Conference (1991–1997)

During this period, the interim government established an electoral commission. It was chaired by Prof. B. Bayona with Prof. Georges Nzongola Ntalaja as vice-chairperson. Multilateral partners, government and international NGO's gave it their financial support and expertise, but the process was interrupted by the rebellion.

The transitional period of President Laurent Kabila (1997–2002)

During his 'liberation war', President Laurent Kabila promised to hold democratic elections once he was in power. But, when he came into power in Kinshasa, he halted the functioning of all opposition parties and instead created the *Comité du Pouvoir Populaire* (CPP). He said that democracy had to be shaped within the framework of the CPP. There was a widespread feeling that he had betrayed the struggle against dictatorship and that the Congo had returned to a one party system. Discontent grew and many political leaders joined a new rebellion triggered by Rwanda in 1998.

The present transitional period

This period began after the Inter-Congolese Dialogue in 2003 and continues until the forthcoming elections. Participants in the Inter-Congolese dialogue in Sun City (South Africa) represented all the relevant political forces in the DRC - rebel groups, unarmed opposition, government delegates and representatives of civil society. They all agreed to establish a government of national unity to rule the country during a transitional period with three main objectives. These are to end the war, to reunify the country and to organise free and fair democratic elections.

For most of the participants, elections are aimed at creating the 3rd Republic in which the people can elect their own leaders. Elections are an alternative

to the control of power by force. They therefore agreed to build a democratic system by organising free and fair elections at the end of the transitional period in June 2005.

The expectations of the Congolese people in relation to these coming elections are in a sense unrealistic and exaggerated. Many think that these elections will automatically bring into power leaders who will solve their misery. Others believe that they will end all conflicts forever. But this also means that most people are engaged in the process. After having heard of other similar processes in neighbouring countries, no one would like to miss this pivotal event that will hopefully launch the DRC into the democratic era.

Institutional and legal framework

Participants at the Inter-Congolese Dialogue agreed to create institutions that would reinforce democratic development. These include an Electoral Commission, a Media (Regulatory) Authority, a Human Rights Observatory (Commission), a Truth and Reconciliation Commission and a Commission Against Corruption. In June 2002, an Independent Electoral Commission (CEI) was established.

Its main task is to organise free, fair, transparent and democratic elections. The interim constitution has confirmed the existence and mission of the CEI in articles 154-160. It is an autonomous and neutral body and has been provided with a budget that can be supplemented by external partners.

The CEI is chaired by a catholic priest, Rev. Appolinaire Malumalu. Since then, however, conditions on the ground have shown that organising free and fair election in a post-conflict DRC is a very complex endeavour. There are serious doubts whether elections will take place in a favourable political environment.

The holding of elections require a complex legal framework. The parliament has to vote in the necessary basic laws. In this respect, the constitution of the 3rd Republic, as well as the electoral law, are essential tools. The constitution of the 3rd Republic has to establish the form of the state – unitary or federal. It has to be determined whether the DRC will follow a presidential, semi-presidential or parliamentary system. Many other questions also need to be resolved including whether there will be one or two chambers in parliament, how many members of parliament will be elected and what their terms of office will be. It is only the constitution, which is being drafted with the support of the international community, and complementary legislation, that will provide answers to these basic questions. A draft constitution and these laws are yet to be debated in the parliament.

The electoral law will stipulate the eligibility criteria of electoral candidates. It also has to clarify the electoral system that will be used. It will describe the voting modalities and procedures up to the publication of final results. Preliminary consultations in respect of the constitution and these laws are still taking place. But in general the preparation process is very slow. Of concern is that the legal framework for the elections has not been completed – less than 6 months before the election is due.

No proper national census has been conducted in the DRC in 20 years. There are no exact figures of the Congolese population. Planners are working from

demographic projections from which it is concluded that there are about 60 million people in the country. However, an exact number of voters is to be clearly established beforehand, as stipulated by the law on the identification and registration of voters which has already been adopted by parliament.

Voter registration is a fundamental exercise, not only because it will help guarantee the fairness of the electoral process, but also because it will help to solve the problem of nationals in the Eastern provinces where complaints about illegal immigrants from neighbouring Rwanda have become a national issue.

Since the beginning of January 2005 the Independent Electoral Commission has been deploying its members in the country and establishing its administrative network. It has established platforms for dialogue with political parties and the media. No voter education – which is critically needed - has yet taken place. Since the electoral system for the country has not yet been decided, it is not yet possible to educate voters in the use of this system. Apart from that, in terms of the budget of the CEI, there are simply no funds available to launch a voter and civic education campaign.

Compliance with SADC Principles and Guidelines

Will the elections in the DRC meet the criteria established by the SADC Principles and Guidelines Guiding Democratic Elections? These include:

- Full participation of citizens in the political process;
- Political tolerance;
- Freedom of association;
- Equal access to the state media for all parties;
- Equal opportunity to the right to vote and to be voted for;
- Independence of the judiciary and impartiality of the electoral institutions;
- Voter education; and
- Acceptance and respect of the results.

In the present day context of the DRC, all these conditions could be met. Civil society is actively mobilising for full participation of all citizens in the elections. There are no structural or political barriers to this work. The Catholic and Protestant churches have started a civic education campaign. Independent organisations such as the *Ligue nationale pour les Elections indépendante et transparente* (LINELIT), *Ligue de conscientisation des Electeurs* (LICE) and the *Ligue des Electeurs* (LE), whose members were trained in elections procedures, have sought the aid of northern organisations to support them, and are poised to carry out this work once basic electoral decisions have been made. The American NGO, International Foundation for Electoral Systems (IFES), has expanded its office and started support programmes in all the provinces. The Electoral Institute of Southern Africa (EISA) has been working with the DRC senate, political parties and civil society groups in the process of drafting a constitution to ensure that the legal framework is properly secured. Freedom of association is guaranteed in the DRC. There is growing political tolerance, although local political leaders need to be trained in election procedures, especially in Kinshasa and in other towns. The government and the Independent Electoral Commission should be more actively involved and should support this work. Active competition during the electoral

campaigns could, however, be weakened by violence in certain areas.

As with all people in the Congo, leaders of political parties have very little experience of a multiparty democratic system, and of free and democratic elections. There are more than 300 political parties registered with the Ministry of the Interior. Among them, about ten are represented in all 11 provinces. The proper functioning of political parties is a challenge in itself. Few have financial resources and are unable to conduct political campaigns in their constituencies by their own means. The larger parties were initially rebel movements whose leaders could still resort to violence.

At present most media in the DRC are interested in the coming elections. Debates are organised on national television about conditions for the elections. Radio stations and newspapers are being trained to cover political parties during their campaigns. The Independent Electoral Commission together with the Media Regulatory Authority (HAM) have set up a media and election network to monitor both public and private media coverage during the elections. Organisations like the Panos Institute in Paris and *Journaliste en Danger* (JED) are planning national training workshops for this purpose. Media pluralism is a reality in the DRC. Radio stations are present in all provinces. Newspapers enjoy freedom of speech, but a major drawback is that most of the newspapers are based in Kinshasa and do not have national distribution.

The judiciary is constitutionally independent, but it still has to prove its independence from the influence of political parties and rulers in practise. The judicial system in the DRC needs support. There is no guarantee of its ability to efficiently adjudicate cases arising out of the elections.

Providing that international support increases, the political context improves and the Independent Electoral Commission becomes fully operational, there is a reasonable chance that the major stakeholders will accept the election results.

Challenges facing the electoral commission

The first problem facing the electoral commission is its independence from political parties. Although it is a neutral body in principle, it is not certain that its members will be able to overcome partisan feelings during the electoral process. Members of the electoral commission were appointed from political groups and organisations that attended the Inter-Congolese Dialogue that are part of the transitional government. Even though its chairperson comes from the ranks of civil society and has no political colouration, the other members are from parties in power.

The second problem is its financial independence. The government and international donors provide the CIE's operational budget. The total budget for the electoral process in the DRC is estimated at US\$350 million. The government has committed only about US\$15 million. The balance has to be raised from the international community. In the first year and a half following its appointment the government released very little money to the commission, which seriously impeded its operations. Even external partners were slow to provide funds. During 2005, some funds were granted by the international community. This has allowed the Electoral Commission to start conducting missions in the provinces. Regarding the time frame, however, it is naturally

impossible to organise elections within a 6-month period. The scheduled period of the election, June 2005, will have to be delayed. But there is mounting pressure inside the whole country not to delay the elections. An announcement by the CIE chairperson Reverend Malumal in the national media that the election might have to be delayed as a result of the delays in promulgating the necessary laws and the delivery of the budget, provoked riots in Kinshasa on January 10, 2005.

The third problem is the insecurity in the Eastern part of the country, especially in Ituri in the Kivu province. Ethnic clashes have not ended in the Ituri district bordering Uganda. Militias are still bearing arms and are ready to fight despite the presence of UN peacekeepers. Rwanda recently threatened to invade the DRC to neutralise the 'interahamwe' militias, despite pressure against such a move from the international community. According to a DRC government report, Rwandan soldiers infiltrated the territory in support of a mutiny in North Kivu in December 2004. If relationships with neighbouring Rwanda and Uganda are not improved by re-establishing a durable peace in the Eastern provinces, there is a possibility that all the electoral processes could be interrupted.

The fourth problem concerns the political will of the leaders. The weakness of the present transition is said to lie in the political will of those responsible for the management of the country. Financial resources are not provided to public institutions in time to enable their proper functioning. This is the case in the Independent Electoral Commission and in many others. Some former rebel leaders in the national government have not completely relinquished control over their armed groups. This is the reason why incidents of mutiny and insubordination continue to occur in the army. Efforts to unify the army have not advanced much. Many observers believe it is fundamental to organise elections only after the army has been placed under one command. A democratically elected government would need an army to control the whole country and to keep the peace.

Conclusion

Peace, stability and progress in the DRC are key ingredients of stability in the entire Central African region. This can only be achieved through a democratic and efficient administration that is in command of power in the DRC. The people of the Congo have been struggling for democratic change for years. The current transitional period is characterised by a determination to organise elections, although these preparations are unfolding very slowly. A positive ingredient is the support of the UN and other international partners. Given the destruction of the country through years of dictatorship and neglect, international support is vital. Despite some notable concerns, solid grounds nevertheless exist for a successful election including freedom of association, a dynamic civil society, a vibrant, free and diverse media, and above all, the determination of the Congolese people to enjoy freedom in their lifetime.

MALAWI

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THE ANATOMY OF ELECTORAL DEMOCRACY IN MALAWI: NEO-AUTHORITARIANISM IN A MULTIPARTY STATE

BY NIXON S. KHEMBO

Introduction

Malawi became a multiparty state in June 1993 after more than 30 years of one party authoritarian rule. Like many countries experiencing a wave of democracy in Southern Africa, Malawi introduced several institutional and policy reforms to consolidate democracy. Key to these reforms were the promulgation of a new Constitution (1995) that provides for the holding of periodic elections, the role of civil society and the media, the formation and functions of political parties and the independence of the judiciary, among others. As part of the legal framework, enabling Acts of Parliament such as the Presidential and Parliamentary Election Act (1993) and Local Government Act (1998) were also enacted.

Multiparty elections were held in May 1994 in which the United Democratic Front (UDF) won and formed government. The Malawi Congress Party (MCP), which ruled the country for 30 years since independence from British colonial rule in 1964, was effectively ousted from power and joined other political parties in opposition. In the second multiparty elections in May 1999 the UDF was retained as the ruling party. The most recent elections were conducted in May 2004 in which the UDF still won the Presidency but, as in 1999, failed to win a majority of seats in parliament.

Elections are the major mechanism for ensuring political accountability, popular participation, representative government and for entrenching democracy and good governance. These act as prerequisites for national socio-economic development and peace. Thus, *free* and *fair* elections constitute a hub for national prosperity. However, it is not the *procedural* holding of elections alone that determines the consolidation of democracy but the *substantive* aspects of the entire electoral process. That is to say, the substance of electoral processes and administration imprint the will of the people on government as an institution based on consent and not on might.

In Malawi, it is argued, trends have shown that while the 1994 elections were lauded as *free* and *fair*, the quality of elections since then has consistently declined. For example, the 1999 elections ended in serious legal and political disputes and the 2004 elections have been described as free but *not* fair. The declining quality of elections is also a ramification of the state of institutional governance in the country. There are various reasons for this decline. Firstly, periodic elections have been conducted as mere exercises in procedure and formality. Secondly, the two previous UDF regimes under President Bakili Muluzi thrived on weak electoral institutions characterised by widespread informality that undermined the integrity of the electoral process and institutions. Thirdly, the political economy of elections in which the role of donor aid has played a leading role

has been a source of political uncertainty. Fourthly, the fledgling political parties, weak civil society and centralised state media have been constraints on the institutionalisation of democracy. Finally, the institutional instability of the Malawi Electoral Commission (MEC) and the tendency to rely on judicial resolution of political disputes undermine intra-party conflict resolution and management and deter the growth of intra-party democracy.

Deepening democracy entails more than holding periodic elections and creating a set of institutions. It also involves developing a generally accepted set of values that ensure free and fair electoral practices predicated on representation, accountability, inclusiveness, transparency, gender equality, political tolerance, political inclusion and participation and respect for diversity. The *modus operandi* of the two regimes that ruled the country from 1994 to 2004 however, relied more on the politics of exclusion and violence to retain power and influence. Malawi's claims to adhere to democratic practices are contradicted by a lack of electoral integrity, political corruption, wide spread economic exploitation and political violence. Electoral or *procedural* democracy has been pursued at the expense of *substantive* democracy in the sense that the quality of electoral administration has declined over the recent past. The efficacy of the prerequisites for effective election administration and management has been uncertain in the country.

The constitutional and legal framework

The constitutional and legal frameworks are basic aspects of the state that provide the environment in which elections take place. The framework must secure basic human rights of all electoral contestants and conform to international norms and standards. However, in Malawi, constitutional and legislative provisions governing elections are very limited particularly on the implementation of electoral reforms, especially when compared to the provisions of the Principles for Election Management, Monitoring and Observation in the SADC region¹.

Malawi launched a *liberal* Constitution in 1995 preceded by the promulgation of the Presidential and Parliamentary Elections Act (PPEA) of 1993, the Local Government Act (1998), the Decentralization Policy (1998) and the Communications Act (1998). These legal instruments provide a clear constitutional and legal framework for electoral administration and management in the country. The PPEA, for example, mandates the Malawi Electoral Commission (MEC) to conduct elections in a *free* and *fair* manner, deal with electoral disputes and conflicts equitably and liaise with electoral stakeholders on the administration of elections. However, it is not enough to have a sound constitutional and legal framework without constitutionalism. *Constitutionalism* requires that political power be exercised according to the rule of law. Democracy - *a government of the people, by the people and for the people* - rests on the notion that the basis of government is the *free will* of the people expressed by way of *free* and *fair* elections in which the franchise is universal. And yet, free and fair elections alone do not create constitutional government.

The Malawi case has demonstrated that grandiose constitutional and legal instruments can be undermined by *political informality* that compromises the enforcement of electoral law and institutions. Indeed, it is argued, “ [when]

you talk of the use of public resources, the law is very clear but it's a matter of implementing it. There is a need to put in place mechanisms to enforce the law."² The Malawi political and electoral system, in a nutshell, has been tainted by the lack of effective implementation and accountability mechanisms. Disregard of electoral law has been the *modus operandi* for violating the principle of political equality in the electoral process. To achieve political equality and participation it is also important that the electoral system and gender equity be addressed beyond electoral participation.

The Constitution of Malawi has also exposed cryptic loopholes with the recent resignation of the State President from the party that sponsored him into office. This has left many questions unanswered; for example, whether his resignation is constitutional or not; whether he should remain an independent President of the country or not after having been elected on a *party ticket*; and whether he can legally join or form another political party. However, it has been argued that since the President is elected *directly* by the electorate under equal suffrage he cannot be removed from office on the basis of having been elected on a party ticket. Furthermore, like any other Malawian, the President has the constitutional right to associate with any other party outside parliament – fearing of course that should he form a new party that may contest and win any parliamentary bi-election there would be a ‘constitutional crisis’ since its mandate would run beyond the life span of the current parliament.³

The adequacy of the constitutional and legal framework has further been placed under strain with the emergence of 38 independent MPs (from a total of 193) in the 2004 parliamentary elections and, subsequently, an independent State President as well. Most of the independent MPs were former ruling party members who were frustrated by irregularities in the primary elections held by the party in which incumbent MPs and those loyal to the party president were dubiously nominated to run for parliamentary seats. However, some came from the opposition parties basically for similar reasons while few were independent candidates from the beginning. As an illustration, out of a total of 317 independent candidates, more than 200 came from the Southern region, which is the stronghold of the ruling UDF party.

The electoral system

Electoral systems determine how votes are translated into seats. Electoral systems affect the behaviour of the voter. They also have a bearing on whether the elector votes for a party or for persons. Since the advent of multiparty democracy in 1994 Malawi follows the ‘first past the post’ (FPTP) electoral system. Malawi is therefore a majoritarian system and operates on the basis of the Single Member Plurality. As a majoritarian system, political parties and the electorate propose individual candidates or persons for electoral contestation. This means that any contestant of an election that gets more votes than the other (a simple majority) is declared winner of the election. Indeed, democracy is in principle, rule by the *majority*.

It is important to note that the type of system selected has an impact on participation in governance, especially that of women and other disadvantaged groups. For example, the evidence in SADC shows that those countries that use

the Proportional Representation system (in which the electorate votes for parties and not for persons) have more women in parliament and local government than those that use the FPTP system (ECF & EISA, 2003). The following principles must lie at the heart of the electoral system: *broad representation* of diverse political interests and population groups; *inclusiveness* and the political participation of key actors; political *accountability* of Members of Parliament to the voters; a *transparent* and *legitimate* election process and outcome; and the entrenchment of a culture of *intra-party democracy* that ensures the credibility and legitimacy of the nomination process within parties (ECF and EISA 2003).

The problem with majoritarianism in Malawi is that it results in *minority* rule. For example, in 1994 Bakili Muluzi won the Presidency with 47.1 % of the votes cast and in 2004, Bingu Wa Mutharika won with 36% of the total votes cast. This is the case because the winner in each constituency is the candidate who receives a minimum of one more vote than all the others combined. This system may mean that a party with a minority of votes countrywide becomes the ruling party and it may also unduly disadvantage small parties. By allowing minority parties to rule, this system may encourage party fragmentation and/or formation by ambitious and enterprising politicians.

The Malawi scenario indicates that political representatives largely account to their political parties and not to the electorate (despite the FPTP system), and that the political and electoral systems exclude the majority from political participation. Although Malawi has put in place some of the prerequisites for the efficient conduct of free and fair elections, these are not adequate. The nature of the FPTP electoral system, lack of intra-party democracy, lack of political accountability and transparency, gender inequality and weak institutionalisation of political parties, electoral bodies and civil society lurk at the heart of the challenges for democratisation.

Institutionalisation of the political system

Malawi follows a presidential system of government. Three features define a presidential system; firstly, executive power is vested in a one-person office; secondly, the executive has his own electoral mandate, in other words, he or she is elected and not dependent on the confidence of the legislature; and thirdly, the executive is in office for a fixed term: s/he cannot be sent away by the legislature through a motion of no-confidence. The last two features of the presidential system point to the separation of powers as an underlying principle of presidentialism. According to Cranenburgh, “Malawi is an intermediate case: the president has only a weak veto, which is, however, offset by his power to call referenda” (Salih, 2003 p.192).

In Malawi, cabinet ministers also serve as Members of Parliament. However, this “may enhance the power of the executive through its possibility to control the legislature thus leading to executive dominance; and conversely, the legislature may achieve a degree of control over (part of) the executive, forming a counterbalance to executive power” (Cranenburgh, *ibid.* p.193). But Cranenburgh also says that “despite constitutional proclamation of parliamentary supremacy, legislative-executive fusion usually strengthens the position of the executive” and that “none of the institutional and legal features allowing a powerful

presidency has been changed with the transition to multi-party politics” (ibid.). Cranenburgh also argues that “the executive has to work with a legislature containing opposition parties, or in the most extreme case, the possibility of ‘co-habitation’ with a legislature controlled by the opposition” (ibid.). This is currently the case in Malawi following the resignation of President Mutharika from the ruling UDF party⁴ signifying the argument that “in the functioning of such semi-presidential systems, much will depend on the party political constellation represented in both branches of government” (ibid.).

Most SADC countries have election management bodies (EMBs) in the form of Independent Electoral Commissions (IECs) and a range of models have been adopted. Some of the main constraints to their operation include limited independence, unclear mandates and inadequate resources. Controversies have arisen with respect to the appointment procedures and tenure of members of the EMB, which undermine the legitimacy and credibility of the electoral process.

The executive, i.e. the State President, has constitutional powers to appoint members of the Malawi Electoral Commission (MEC), including its chairperson. These appointments are done in consultation with political party leaders in parliament who nominate commissioners to be considered for the MEC as party representatives. The MEC has often been accused of bias and failure to discharge its mandate independently of the executive and political parties. The challenge facing the MEC includes the fact that the MEC chair is vulnerable to influence by the President who is often a party president as well, and therefore may give partisan orders to the MEC over and above receiving reports of the activities of the MEC as the President of the country. Furthermore, commissioners are appointed on the basis of party nominations and mostly remain loyal to the party leadership that nominated them. The security of tenure for commissioners is tailored to party loyalty and discipline. As a result, they are politically vulnerable to intra-party politics and instability. The 1999 and 2004 elections ended in legal and political tussles and are cases in point. The MEC has been institutionally unstable with a high turnover in leadership – there have been no less than four chairpersons at the helm of the MEC between 1994 and 2004. Security of tenure is therefore uncertain. Furthermore, the MEC has rarely accounted to the National Assembly for the conduct of its duties. There are no effective sanctions imposed on the MEC by the National Assembly. A contributory reason may be that the MEC relies on external donor funding for its operations and conduct of elections. Finally, the composition of the MEC is yet to be gender balanced.

Intra-party democracy, conflict resolution and management

Political parties, in particular, suffer from a lack of institutionalisation and internal factionalism. Parties are too frequently based on unquestioning support of strong leading individuals, instead of deriving cohesion from shared political principles and policy. Instead of formal legal rules and constitutional frameworks, “personal motives and idiosyncrasies determine outcomes to a significant extent” (ibid.). These processes are further complicated by “the hybrid character of African political institutions” which “show a combination of institutions ‘implanted’ by the colonial powers, African political heritages and post-independent political

developments. The resulting political systems challenge the categories political scientists developed for Western political systems” (ibid.). Thus, ethnic, tribal, religious and political conflicts proliferate the African continent sometimes with no end in sight. Political parties inadvertently become the haven for mayhem.

Election-related conflict, ECF and EISA (2003) assert, is one of the major threats to democracy and political stability in the SADC region. Political conflicts and intimidation in Malawi are a common phenomenon. Intra-party power struggles, personality clashes, electoral conflicts and factionalism are highly visible. “Conflicts among political parties are a logical consequence of the pursuit of their various objectives, whether these are venal or honourable. If parties are defined as facilitators of the selfish interests of their leaders, conflicts are likely to arise because of clashes among the selfish ambitions of politicians in different parties” (Maliyamkono and Kanyongolo 2003 p. 262). Yet Malawian political parties are weak and lack intra-party conflict resolution mechanisms. At the heart of political conflict in Malawi lies a pejorative view that politics is a dirty game or a game of tricksters. This view is permissive of political conflict and violence, especially when politics is also seen as the only way of earning a living. Thus, “the view of politics as being fundamentally non-conflictual is not facilitative of the creation of conflict management mechanisms” (ibid. p. 263). At best, the absence of intra-party conflict resolution mechanisms result in the courts of law becoming the dominant mechanism of political dispute settlement. Court resolution of political disputes occurs far too frequently, and also places political strain on judicial institutions.

Civil society and the media

One true mark of political liberalisation in the country is the availability of more political space for electoral and political actors to enjoy their civil and political rights and liberties. The civil society, in general, has utilised this space to effectively hold political actors accountable. Examples of their resolve to stop abuse of power include their advocacy against attempts to amend the Constitution to allow the former President, Bakili Muluzi, to extend his rule initially for an *open term* of office and, later, for a *third term* of office in 2003.

Civil society played a significant role in the transition to multiparty democracy in early 1992-3. More recently civil society and NGOs were also instrumental in fighting the aborted impeachment of three High Court judges by parliament in 2001-2. In pursuit of political accountability, civil society and NGOs have been promoting the fight against corruption. The role of these organisations has also been marked by efforts to promote political representation and inclusion especially in terms of gender equity by organisations such as Women and Law in Southern Africa (WILSA), Malawi CARER, the Civil Liberties Committee (CILIC) and others. NGOs such as the Institute for Policy Interaction (IPI) have been focusing on conflict resolution and management. In late 2004 they were also involved in campaigns and advocacy for democratic governance beyond Malawi, in solidarity with their counterparts in Zimbabwe and Zambia.

However, many of these organisations remain underdeveloped, sometimes personalised by founder directors and in need of finance and management skills. They are constrained by the NGO Act (2001), which forbids them from

indulging in ‘partisan politics’. Commentators have argued that civil society and the media in Malawi are only now beginning to mature and to consolidate their roles. Civil society organisations have also gone in circles, being proactive at some point and reactive at others. As Chirwa puts it:

“The advent of multi-party politics has ushered in a new generation of these institutions. There are three differences between them and their predecessors. Firstly, the new institutions operate in a liberalised political environment and are thus free to engage both the state and the society. Secondly, the majority of the new institutions are heavily influenced by the winds of political fashion. They are concerned with showier political and economic concepts and ideologies – such as human rights, empowerment, gender equality, poverty reduction, political participation, sustainable development, and others of that nature. Political changes at the global level, and the interests of donors, have contributed to these. Third, unlike during the one party era, there is greater involvement of these institutions in issues of politics. This was also the case during the colonial period.” (Chirwa in Ott et al, op.cit. p. 88).

To be specific, it is argued, civil society in Malawi’s democratisation has “tended to be event driven, and hence unsystematic in their effort to engage both the state and society in a sustained process of political *transformation*. As a result, Malawi’s democratisation remains a *regime transition* rather than a *moral imperative* and *social process*” (Chirwa, *ibid.*). While enjoying autonomy from the state, these institutions remain elitist in their outlook, donor dependent, lack trust among themselves and frequently relate poorly to the state and society. As non-elected institutions in a democracy, they face the brunt of the crisis of political legitimacy.

However, the 2004 elections have shown how the media can be a powerful political instrument. State media, in particular, has been vulnerable to political centralisation, manipulation and abuse by incumbents. For example, the *Malawi Broadcasting Corporation* (MBC) and *Malawi Television* (TVM) – major state media outlets in the country – were operating for years without being licensed (Muwamba, 2004).⁵ Thus, the state could not effectively monitor the two institutions for content, frequencies and political bias prior to the issuing of their licences. These are the most powerful media outlets in the country with the potential to carry voter and civic education to the grassroots. Perhaps for that reason, both in 1999 and 2004, the two institutions were the subject of electoral complaints as they overtly performed their roles in a biased manner towards the ruling UDF party and its candidates. Indeed, state media remained partisan during the two previous elections (see Khembo, 2004a and Khembo, 2004b).

The state of the private media is largely characterised by skewed ownership of media institutions in favour of politicians and political families. For example, the leading daily papers, namely, the *Nation* and the *Daily Times* are the private properties of leading politicians and families.⁶ Thus it is difficult to secure the independence of the media although the Communications Act (1998) and the Presidential and Parliamentary Election Act (1993) provide for equitable media coverage of all contesting electoral parties. That is, the electoral process is supposed to be managed under the rubric of political equality and fairness.⁷

Furthermore, regional consensus in the SADC region stipulates that “all contesting parties and candidates should have equal access to the public

media; media regulations should be issued by an independent media authority responsible for monitoring and regulating the media on a continuous basis; and that media coverage of the elections should be subject to a code of conduct designed to promote fair reporting” (ECF and EISA 2003).

What is problematic is the fact that even where the MEC is informed by electoral actors of the bias perpetrated by the state media, the commission often abdicates responsibility and does little if anything to address the imbalance. The Malawi Communications Regulatory Authority (MACRA), entrusted with the responsibility to oversee the electronic media in the country, also shifts responsibility to the MEC. What is clear, however, is the lack of political will on the part of the state to implement the legal and policy framework designated to promote equitable media coverage for all electoral actors.

It is evident that the legacy of ‘a culture of fear’ left by the former one party state still exists in media institutions where media personnel are politically controlled and directed.

In short, civil society and the media need to play concerted roles in enhancing political accountability, participation, a plural and democratic political culture, improving the quality of political representation, disseminating civic and voter education, linking the governors and the governed and, above all, being the voice of the voiceless.

THE ELECTORAL CYCLE

The electoral cycle is wider than polling and constitutes the *pre-election*, *election* and *post-election* phases of the electoral process.

Pre-election phase

The Constitution of Malawi gives the MEC the power to demarcate parliamentary constituencies so that they are equitable, accessible and demographically representative. The 2004 elections, however, were not preceded by a constituency demarcation exercise ostensibly because of a lack of funds. Section 76 (2) of the Constitution mandates the MEC to demarcate constituencies on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register subject only to consideration of population density, ease of communication and geographical features and existing administrative areas. It empowers the commission to review existing constituency boundaries at intervals of not more than five years and alter them in accordance with the principles laid down in subsection 2 (a).

In 1964 Malawi had 53 constituencies, in 1973 there were 63 constituencies, in 1983 this rose to 101 constituencies, in 1987 there were 112 constituencies, in 1992 there were 141 constituencies, in 1994 the number grew to 177 and now in 2005 there are 193 constituencies respectively (see Patel in Ott et al, 2000 p. 31). When demarcation was last conducted before the 1999 elections, it was sponsored by foreign donors and became a field of disputes. The process, moreover, “was not in tune with the principles laid down in the constitution” as reflected by the fact that a small constituency contained about 4, 000 eligible voters in Nkhata Bay East as compared to a large constituency in Machinga North with 40, 000 voters (ibid.). Politically, the process was contentious

because some political actors argued that the ruling UDF was influencing the MEC to demarcate more constituencies in the Southern region where the ruling party had its stronghold. In this way, they argued, the exercise was a partisan political instrument. It has been argued that “given the size, population and the economic conditions of Malawi, the ideal size of parliament is 150 members and yet currently there are 193 MPs. Expanding the size of Parliament is only going to expand the expenses of Parliament and not in any way going to make it a more efficient body” (Patel, *ibid*). The delimitation process should be managed by an independent and impartial body. Indeed the philosophy behind demarcation is that of *political equality* and *fair representation*. Surprisingly, as shown above, some constituencies in Malawi remain bigger and more populated than others. There are more constituencies in parts of the country perceived as strongholds of the ruling UDF party. In a political system with executive dominance like Malawi, this may hardly be a coincidence. Undoubtedly, the executive exerts some influence on electoral institutions such as the MEC, which may be a conduit of ruling party interests on constituency demarcations.

The role of political parties

Political parties in any democracy are key electoral institutions. In fact, it is said, “political parties are the central institutions through which people express their democratic will at the polls.”⁸ In most SADC member states, political parties are required to register in order to operate legally and take part in an election. The amount of time political parties are given to register may be contested if the parties are not given enough time to meet all requirements. The process of party registration should not violate the principle of freedom of association.

The Registration of Political Parties Act (1993) is a *liberal* legal instrument that governs the registration of political parties in Malawi.⁹ Under the rubric of the Act, it is relatively easy to form, register and maintain political parties, however dysfunctional they may be. That is, the party formation, registration, electoral participation and parliamentary representation thresholds are low (see Hug 2001). Malawian political parties, however, are highly centralised, personalised and fragmented. The power of political parties is a determinant of the trajectories of state power. At the party level, party presidents in Malawi virtually own the party as an institution; that is, its fleet of vehicles, finances, offices and personnel are under the control of the president. By clinging to the party as personal chattel, political leaders have earned splits among the rank and file of their parties. Furthermore, political parties in Malawi are weak electoral competitors ostensibly because they are largely centralised and personalised to such an extent that they are unlikely to survive without suffering from factions and splits. For example, in the post 2004 elections two major political parties, namely, the UDF and AFORD, have been subjects of deep splits and power struggles. Owing to internal political bickering, the two parties registered huge losses in the 2004 parliamentary elections in which the UDF won only 49 seats down from 85 seats and AFORD 6 seats down from 30 seats, respectively, in 1999. New parties have proliferated, led by disgruntled politicians thereby heightening electoral contestation and conflicts. The party system has been fragmented. For example, Malawi had about 10 political parties in 1994; 18

parties in 1999; and by 2004 the figure rose to 28 parties contesting for the support of 5.7 million eligible voters.

Political parties and the nomination process

The nomination process (party primaries) in political parties is not a straightforward matter in Malawi. The behaviour of party leaders has been the main source of discontent with the process in many political parties. The hallmark of party nominations since 1999 is the imposition of party candidates whether at sham party annual conventions or at primaries. Party primaries are hardly transparent and accountable. This form of nomination favours candidates loyal to the party leader to the exclusion of others. In the ruling UDF, the imposition of candidates in the 2004 presidential and parliamentary elections prompted district governors to bemoan the tendency:

“You cannot just impose a choice on millions of people. If that is what is called democracy, then I would rather be undemocratic ... it is wrong that after you have already had your food, you queue up again when other people have not eaten. It is called greed, and this is what Muluzi is doing.”¹⁰

The result of this protest was the massive emergence of independent parliamentary candidates in the 2004 elections particularly in the Southern region, stronghold of the UDF party. This was coupled by further infiltrations by smaller parties such as the Republican Party (RP) and the defunct National Democratic Alliance (NDA).

In the AFORD party, president Chakufwa Chihana personalised the party and enjoyed absolutist powers to a great extent. Chihana, who had challenged the MCP rule under Dr. Banda, became so engrossed with power that in the run up to the annual party convention in 2002 he warned all those not loyal to him in the party that “I will hunt them down whether in parliament or outside once the mandate is given to me.” He added: “as President of AFORD, I don’t fear anyone and anyone who is not loyal to me is disassociating himself from the party.” However, “Chihana is no longer the leader he was before. He was dominant in the North but that is no longer the case now and his very henchmen have labeled against him ... people gave him too much respect because he faced Dr. Banda at a very difficult time. But, he later lost his grip on the country’s political scene. He has been moving his party from one alliance to another without consulting.”¹¹

Political parties are themselves the catalyst for the emergence of independent candidates and the centralisation of power in independent Members of Parliament. The emergence of independent candidates is a direct revolt against parties distributing patronage through the imposition of candidates. Neo-authoritarianism in political parties has catapulted the intra-party revolutions that now threaten the very survival of major political parties.

Voter registration

ECF and EISA (2003) have argued that the purpose of voter registration is to identify those persons who are eligible to cast a ballot on Election Day. The current practice is that the MEC is responsible for compiling a national voters’ roll and undertaking voter registration. However, the transparency and legitimacy of the voter registration process has been disputed, resulting in lack

of acceptance of elections results. Conflicts associated with the voter registration process include the legislative prescription for voting, the time allocated for the process and for inspection of the voters' roll and accuracy of the voters' roll. What is important is that the registration process should be guided by some principles. That is to say, "the voters' registration process should promote broad participation and should not inhibit the participation of eligible voters; and that eligible voters should be provided with a continuous and accessible voter registration facility" (ECF and EISA 2003). Irregularities such as the failure by the MEC to provide adequate registration materials and poor and scanty voter and civic education marred the 1999 and 2004 elections in Malawi. The use of multiple voters' rolls in 2004 caused confusion, administrative bottlenecks and electoral fatigue. Voter registration exercises were postponed twice in 2004 and the period of voter registration had to be extended. There were instances of multiple voter registration, double registration, under-age registration, registration of intruders from other constituencies, poor communication and lack of voter verification due to the inaccessibility of voter facilities.¹²

The campaign process

The period between the conclusion of nomination of candidates and Election Day is intended for political parties to conduct political campaigns. During the campaigning period, however, competing parties and candidates tend to ignore the MEC's electoral code of conduct for parties and resort to unlawful practices such as the designation of 'no-go' areas and preventing rivals from entering these zones.

In Malawi candidates are given more than two weeks to campaign for the presidential and parliamentary elections. However, there are many violations of the electoral code of conduct. These violations include buying of voter certificates, abuse of state resources by incumbents, instigating political violence, abduction of candidates and lack of enforcement of the law and electoral code by the MEC.¹³ What is more disturbing is that past campaigns show that political parties in Malawi lack ideological roots, do not have affirmative measures on women, are weakly institutionalised and routinely personalise electoral campaigns.

Use of public resources

Not all political parties and candidates have equitable access to public resources. Ruling parties in SADC have an unfair advantage when it comes to "using public resources to which they have exclusive access for campaign purposes or to further their political ends" (ECF and EISA, 2003).

In this regard, the electoral process in Malawi has often digressed from electoral norms and principles. That is to say, the ruling UDF party has enjoyed a monopoly of access and use of state resources to the dire exclusion of other electoral players. For example, the UDF "has gone ahead to claim that people should support it because it has access to development resources. It is difficult, therefore, to distinguish party from state functions because Muluzi's public meetings have always been UDF events whose party symbols and yellow colours are displayed in abundance." In other words, "the political elite, including President Muluzi, seemed to think that popular support required acts of direct patronage" (Khembo 2004a p. 90). Centralisation of party institutions and

resources has stifled the development of intra-party democracy in Malawi. What is more, incumbent parties have often disregarded the rule of law on the use of public resources for political campaigns.

Political violence and intimidation

There can only be free, fair, credible and legitimate electoral processes in a climate that is free from political violence and intimidation. To create a conducive environment for free and fair elections, analysts, argue “all electoral stakeholders should commit themselves to a culture of peace and tolerance at all times; all electoral stakeholders should put into place programmes that cultivate and promote a culture of peace and tolerance before, during and after election day; and that an enforceable code of conduct regulating the behaviour of political parties and their supporters should be adopted through a consultative process involving the EMB, political parties and other electoral stakeholders” (ECF and EISA 2003).

That the UDF regime under President Muluzi was a violent one especially during electoral periods is well documented. For example, on January 29, 2003 four Members of Parliament were roughed up by UDF party agents for their anti-third term sentiments; on February 1, 2003 there were violent clashes and arson at the Polytechnic campus in Blantyre arising from protests for and against the third term bill; on March 6, 2003 party hooligans invaded the Blantyre Magistrates Court and beat up four people attending the trial of Blantyre Urban Governor, Eric Chiwaya; on August 17, 2000 main opposition leader, Gwanda Chakuamba, and his party officials “escaped a night of shooting as they drove from a rally at Chulu in Kasungu district in preparation for a by-election. Youths led by UDF Young Democrats leader, Sam Zimba, trailed the Chakuamba/Ntaba vehicle to Kasungu police station” and “Zimba attacked a policeman who tried to block the intimidators from intruding into a cell and lay their hands on Chakuamba.” Failing to do this, “they smashed the windows of the vehicle in which Chakuamba and Ntaba had arrived at the police station” (see Khembo 2004 a p. 104). All this was a consequence of politicising the Police Force under the Muluzi UDF regime.

Role of security forces

Between 1994 and 2004, the Malawi Police Force increasingly became centralised and politicised by the ruling elite. Indeed, UDF officials were implicated in the 2004 post election violence perpetrated by the police in which several people were shot dead. It was disclosed that “some UDF officials accompanied the police that shot some people as a way of stopping riots which followed the announcement of results of the Presidential and Parliamentary elections in May 2004.”¹⁴ There has been systematic politicisation of the police force since 1994. For example, political critics of the ruling UDF party have been beaten and victimized by the UDF Young Democrats on several occasions and places, including inside police stations. And yet, the culprits were never arrested and tried in a court of law. Ultimately, police officers perceived to be aligned to the opposition were also the subject of political violence and intimidation (see Khembo, 2004a). To secure the independence and professionalism of state security agencies it is necessary that security forces maintain a neutral

role in the provision of election security; security forces should be regulated by a code of conduct contained in the electoral law and their behaviour should not intimidate voters; the EMB should meet regularly with the security forces to discuss issues relating to polling day security, national security during the election period, and any other logistical assistance that may be required; and that special provision should be made for the security forces to vote prior to election day if they are required to be deployed away from their constituencies on that day (see ECF and EISA 2003).

Security forces during elections mainly constitute the police. The police forces in Malawi are professional in their routine duties. However, during the 1994-2004 period the police was subservient to party politics and tended to protect and promote the interests of the ruling UDF party and its elite. The UDF regime under Muluzi went further to harass and intimidate police officers with impunity. For example, UDF senior official, Morris Kachimbwinda, known as “Ninja”, beat up a police officer in the central region and was only arrested after the 2004 elections under President Mutharika’s administration. One caveat is that police officers should engage in electoral discussions with stakeholders in between electoral contests. They should also receive adequate resources and training which is currently lacking.

Funding of political parties and political corruption

The majority of SADC member states provide public funding to political parties for election and sustainability purposes. This is necessary in order to level the playing field and to strengthen the democratic process.

Political parties in Malawi have a weak financial and material base. State funding is only extended to political parties represented in parliament. The fragmentation of the party system ahead of the 2004 elections has seen more parties enter parliament thereby eroding their numerical representation and, therefore, their share of state funding. Accountability for funds by parties is problematic, even among those parties in parliament. Thus parties largely rely on the fortune and benevolence of individual leaders and charity. For example, the ruling UDF, apart from state resources, depends on the finances of its national party chairman and former President, Bakili Muluzi. The party acknowledges that president Bakili Muluzi is the sole financier of the ruling party and that the UDF would “struggle badly” if he were to leave the party. To be sure, “UDF is a very poor party. It has no money. Without President Muluzi’s financial help, we would only be relying on the funds that parties get from parliament.”¹⁵ Political corruption, understood as behaviour that undermines the integrity of and values upon which the political system rests, is visible particularly during elections:

“Just take the presidential behaviour of dishing out money to people at rallies and allowing MPs to beg at such rallies. Who checks on such behaviour and who audits such money? What is the use of the Budget Session of our Parliamentarians? If Bakili Muluzi cannot go to an area, does it mean the people in that area have no needs demanding money in this country? Where does Bakili get such money to dish out at will like this?”¹⁶

Similarly, the Alliance for Democracy (AFORD) is split due to the

personalisation and centralisation of power in the party. A faction and the National Executive Committee of the party led by its Secretary General, Wallace Chiume, recently suspended president Chakufwa Chihana from the party on allegations that he abused his power for personal gain. All that can be said is that weak political parties are a recipe for fragile democracy and unstable political systems and government.

Civic and voter education

All SADC member states, excluding Zimbabwe, undertake civic and voter education with the assistance of NGOs and other organised civil society formations. Most civic and voter education programmes, however, are inadequate in terms of content, quality and frequency and tend to be over-reliant on donor funding. Rural voters, especially those residing in remote areas, women and the youth, do not always have access to voter education programmes. Illiteracy is also an obstacle to voter education. It is widely accepted that these problems contribute to voter apathy, which is mostly prevalent among the youth of the region. More importantly, the citizenry cannot make informed choices and democratic decisions in the absence of balanced information.

During the 2004 elections in Malawi, NGOs were accredited far too late by the MEC, were significantly under resourced and were accused by some parties of peddling political bias. They were also lacking in technical and human resource capacity to deliver civic and voter education to the electorate. Thus civic and voter education was not adequate and government largely left the responsibility for the funding of civic and voter education agencies to donors. Political parties abused traditional chiefs to engage in party politics rather than using them for disseminating voter and civic education objectively and marginalized groups such as women, the disabled and the youth were neglected (see Khembo, Kabemba and Mcheka, 2004). What is doubtful, however, is whether education provided only during election time is adequate for the political socialisation and conscientisation of the masses.

The election phase

Polling stations

Ideally, ECF and EISA recommend that to ensure easier access, minimise waiting time and enhance efficiency there should be as many polling stations as population density and settlement patterns demand and that party agents and any persons authorised to be present in the polling station, should receive training in the voting process as well as in their role and function at the polling station. In Malawi, however, the use of multiple voter's rolls, lack of adequate staff training and shortage of voter materials compromised efficiency at the voting centres. In the 2004 polls, the Public Affairs Committee (PAC) made allegations of "bogus stations" (see Khembo, Kabemba and Mcheka 2004).

Secrecy of the ballot and other election materials

The secrecy of the ballot and other accessories is one of the great pillars on which free and fair, credible and legitimate elections rest. That is to say, the voting station should be laid out in such a way that no one is able to see how voters are marking their ballot papers; there should be clear procedures for the

provision of necessary assistance to the disabled, illiterate and elderly voters that protect, as far as possible, their right to vote secretly; and that where ballot papers are designed with a counterfoil and serial number all precautions should be taken to ensure that it is impossible to reconcile cast ballots with the names of individual voters (ECF and EISA 2003).

The secrecy and security of the ballot in the 2004 elections was questionable. For example, during voting day some already marked ballot papers were found at one of the polling centres at the Catholic Institute (CI) in Blantyre City. This prompted some members of the public to beat up the MEC and security officials. When this happened, suspicion and allegations of vote rigging were raised in other parts of the country as well (Khembo, Kabemba and Mcheka op.cit.).

Vote counting and tabulation

Vote counting is done manually at the polling station, with varying degrees of acceptability by the political parties and voters. In Malawi the MEC creates a Tally Centre for the tabulation of electoral results. The transportation and transparency of ballot papers between centres of voting and counting is a potential source of suspicion and electoral fraud.

The transmission of elections results from the districts to the MEC has often been controversial in Malawi. Firstly, District Officers appointed by the executive as returning officers are not fully trusted by the opposition parties. There is an unnecessary delay in transmitting electoral results from the district offices to the central Tally Centre. For example, during the 2004 polls some party and civil society monitors at the Civic Centre in Blantyre urban abandoned the results *en route* because of fatigue. Secondly, MEC officials also appointed by the executive on recommendation from their respective parties are suspected of partiality. Thirdly, due to a lack of funding, parties usually fail to monitor the electoral process properly thereby relying on civil society and ruling party agents to do so. Tabulation of results in 2004 was hardly transparent and efficient at the MEC Tally Centre in Blantyre. Finally, external observers do not provide effective monitoring as they often arrive too late to become properly conversant with the political and logistical terrain.

Announcement and acceptance of results

The integrity of electoral results can be enhanced in several ways such as the following: result centres should be open to the public and used to ensure acceptance of election results; the electoral legislation should establish a specific time frame in which results must be announced in order to reduce uncertainty and minimise potential conflict or fraud; electoral legislation should indicate clearly who has the authority to announce the results; election results should be announced publicly; a time frame should be set for the confirmation of results and the allocation of seats; and the MEC report on the elections should contain a detailed account of the number of eligible voters who registered and the number of registered voters who voted. Moreover, conflict resolution should be one of the pillars to be implemented with a view to minimising post election conflict. This means that a culture of acceptance of election results needs to be cultivated through civic education and promotion of a transparent electoral process.

It is not a coincidence that both the 1999 and 2004 presidential election

results in Malawi were contested in court. In 1999 the results were contested on the basis of the technical notion of what constitutes a ‘majority’ – is it a majority of the registered voters or a majority of the eligible voters? The case in 2004 concerned accusations of outright vote rigging.¹⁷ The MEC Chairman, James Kalaile, did not provide full disclosure of how many registered voters had actually voted, how many spoiled votes there were and how the MEC planned to dispose of extra ballot papers that had been at the centre of rigging allegations. The announcement was unduly delayed, and the swearing in ceremony of the new President took place immediately after the announcement without giving any time for the electoral disputes to be settled. This ambush of the electoral process took place after more than 6 people were killed in post-election violence.

The post-election phase

The conduct of credible, cost effective and sustainable elections requires that a post-election review be held, either by means of an evaluation by independent consultants, agreed upon by the election body, or by use of opinion polls, exit polls and research (ECF and EISA 2003). The post-election review is conducted in the interest of improving the conduct of future elections. However, the process of evaluation tends to exclude stakeholders in the election. Analyses of the electoral process and electoral results need to be as inclusive as possible. This means that in order to evaluate the process effectively it is necessary to include in the evaluation electoral stakeholders such as electoral commissioners and staff, political parties, observers, media, voters and other civil society organisations; the results of the evaluation process should be shared with the electoral stakeholders; the electoral body should submit a final report on the elections to an appropriate institution; and the electoral body should be evaluated after every election. The responsibility to hold public institutions accountable in Malawi rests with the Public Appointment Committee (PAC) of Parliament. However, the PAC has financial and technical constraints such that it only meets erratically to deliberate on appointments and appraisals of the MEC. When it finally summoned the MEC after the 2004 polls, for example, no clear sanctions were given. For the most part, post-election analyses of elections are dominated by civil society and donor agencies with a limited mandate or ability to enforce accountability inside the realm of state.

Post-election disputes

Post-election conflicts are common in Malawi and erode the confidence in and integrity of the electoral process. However, in principle, there should be clear provisions for appeals against the results and any other matters related to the conduct of the elections. Any conflict management structures established in addition to recourse to the appropriate jurisdiction should operate in the post-election period in order to facilitate the settlement of disputes (ECF and EISA 2003). Indeed, the courts in Malawi perform a key role in post-election conflict resolution mainly due to the fact that alternative mechanisms for conflict resolution and management outside the judicial process are almost non-existent. However, this role and exercise of the right of appeal is a source of the rampant ‘judicial settlement’ of politics, which may affect the administrative and technical efficiency and political independence of the courts.

Government formation and post-election coalitions

As described above, it is easy to establish political parties in Malawi. Thus, entrepreneurial politicians find it easy to form new parties. To understand the motivation for party formation it is necessary to explain the nature of government in Malawi. Coalition governments are either incubated before or after elections. Their motives vary from time to time and from one political grouping to another. What is clear is that they seek political power, resources and domination in the political system. Ultimately, this power is displayed by political groupings that control the executive. As the saying goes, what matters for most politicians and political parties in the course of forming government are what some observers pointedly described as the ‘politics of the belly’. In the absence of ideological contestation between political parties in Malawi, coalitions and alliances are motivated by the need for political survival and access to public resources rather than institutional development. Political parties and leaders go into government with or without electoral mandates and undermine the confidence of the electorate in the integrity of government.

For example, the former UDF regime often lacked a parliamentary majority but implemented constitutional reviews via patronage and corruption. Constitutional review seems to have become a standard mechanism to check executive or even legislative power. Outside parliament, the regime has sustained itself in power through patronage driven coalitions and alliances in which it went to bed with AFORD in 1994 and various other small parties in 2004. Furthermore, it has been easy for the regime to manipulate the National Assembly because Malawi has a unicameral parliament despite the constitution providing for a Senate. The Senate was repealed by parliament in 2001.

Conclusion

Malawi has been a multiparty democracy since 1993. After 30 years of authoritarian one party rule, the country reverted to multiparty politics through a national referendum held in June 1993. Since then several institutional, legal and constitutional reforms have taken place to entrench democracy in the country. However, weak institutions of governance, the phenomenon of weak electoral and political institutions, biased state media, donor dependency, lack of technical and administrative capacity and electoral conflicts constitute caveats to be overcome in order to consolidate democracy in the country. Perhaps more than anything else, the moulding of a democratic political culture among the populace, the promotion of intra-party participatory democracy and the establishment of conflict resolution mechanisms remain areas of need to be analysed and addressed. Central to the challenge of democratisation are the consequences of embedded political informality and the centralisation of political power that undermine the integrity of formal institutions and electoral processes. To be sure, “given the presence of multiple and divergent interests in society, government ‘by and for the people’ must mean not simply government by the majority of the people, but by as many people as possible.”¹⁸

Notes

- ¹ ECF and EISA, *Principles for Election Management, Monitoring and Observation in the SADC Region*, section 3.1.
- ² At a Constitutional Review Conference held in Mangochi District on 20 December, 2004, the UDF Deputy Secretary General, Paul Maulidi, argued that Malawi had a sound legal framework for holding free and fair elections. However, the will to implement the framework and mechanisms to hold those accountable who divert the process, were lacking (see Anthony Kasunda, ‘UDF admits flouting law’ in the *Daily Times*, 21 December, 2004 p. 1).
- ³ See Joseph Langa and Bright Sonani, ‘Lawyers debate Bingu’s future’ in *The Nation*, 7 February 2005.
- ⁴ State President, Dr. Bingu Wa Mutharika, resigned his membership of the ruling UDF party on Saturday 5 February 2005, after having been involved in acrimonious intra-party power struggles with former President Bakili Muluzi, who had since become national party Chairman of the UDF. The position of chairman in the UDF has enormous powers and the chairman stands above everybody else in the party. Muluzi has attempted to use this position to fend off Mutharika’s *zero tolerance on corruption* policy. This confrontation led to a situation in which Mutharika’s government was being undermined. The implementation of this policy is seen as political witch hunt by members of the former regime headed by Muluzi (1994-2004), especially by those implicated in corruption scandals.
- ⁵ For example, Emmanuel Muwamba wrote that the MBC and TVM were only licenced by the Malawi Communications and Regulatory Authority (MACRA) after the 2004 elections. It was only after this process that the two state media institutions could be monitored for content and frequencies under section 46 and 54 of the *Communications Act* (1998). See ‘TVM, MBC Licensed’ in *The Nation*, 1 December 2004.
- ⁶ For example, both the Nation Daily and Weekend Nation newspapers are owned by veteran politician and former cabinet Minister, Aleke Banda, while both the Daily Times and the weekly Malawi News are owned by the family of the former President, Dr. Hastings Banda.
- ⁷ *The Parliamentary and Presidential Election Act (1993)* section 58 promotes political equality when it states that “every public office and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely”. *The Communications Act (1998)* section 87(1)[b] states that the “MBC shall provide public broadcasting services in accordance with the following principles – the encouragement of free and informed opinion on all matters of public interest; [d] respect for human rights, the rule of law and the Constitution of Malawi; (2)[a] function without any political bias and independently of any person or body of persons; (2)[b] support the democratic process; (2)[d] provide balanced coverage of any elections”. To buttress this provision institutionally, section 45[1] of the Act states that “the [Malawi Communications Regulations] Authority shall regulate the provision of broadcasting in Malawi in the manner which it considers is best suited [f] to ensure equitable treatment of

political parties and election candidates by all broadcasting licensees during any election period.”

- ⁸ See Kondwani Mwalughali, ‘Who will be laughing in 2004?’ in *The Chronicle*, 8-13 July 2003 p. 6
- ⁹ Under section 5-7 of the Act, one can register a political party if s/he provides a list of names and addresses of no less than 100 registered members that are citizens of Malawi; have attained voting age of voters in parliamentary elections; submit two copies of the party constitution, rules and manifesto; submit a list of names and addresses of office bearers of the party and that the Registrar of political parties may reject the application of a party if the application is not in conformity with this Act; the name of the party is (i) identical to the name of another registered party, (ii) nearly resembles the name of another registered party and (iii) is provocative or offends public decency; and that (iv) the purpose of the party is unlawful.
- ¹⁰ District governors for Chiradzulu and Zomba districts, Ackim Ntaja and Mawu Lumwira, were respectively summoned and fired from their party positions, their official party vehicles confiscated and forced to walk on foot from Sanjika Palace in Blantyre. This was as a result of their opposition to the manner in which President Muluzi and his henchmen had handpicked a Presidential candidate for the party, Dr. Bingu Wa Mutharika in the May 2004 polls. See Gideon Munthali, ‘Anti-Mutharika Governors fired – forced to walked from Sanjika’ in *The Nation*, 11 July 2003 p. 1-2.
- ¹¹ See Jacob Jimu, ‘Chihana paying for squandering people’s goodwill – heading towards a political grave’ in *The Nation*, 7 February 2005 p. 19.
- ¹² See Khembo, Kabemba and Mcheka, 2004, *Elections and Democratisation in Malawi: An Uncertain Process*, Electoral Institute of Southern Africa (EISA) Report, Johannesburg.
- ¹³ See Khembo, Kabemba and Mcheka op.cit.
- ¹⁴ See Ellen Lusinje, ‘UDF officials named in May shootings’ in *The Nation* 27 January 2005.
- ¹⁵ These were the sentiments of UDF Deputy Secretary General, Paul Maulidi, cited by Pilirani Semu-Banda, ‘Why UDF wants Muluzi as Chair’ in *Weekend Nation*, 26-27 April 2003 p. 1.
- ¹⁶ ADCOM, *Social, economic and political concerns* in Ross, 2004
- ¹⁷ See Bright Sonani, ‘Tsunami has hit UDF – Muluzi’ in *The Nation*, 7 February 2005.
- ¹⁸ See Lijphart 1999 cited by Cranenburgh in Salih 2003 p.189.

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MOZAMBIQUE

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A FLAWED ELECTION PROCESS IN MOZAMBIQUE AND A LANDSLIDE VICTORY FOR FRELIMO

BY JOSEPH HANLON

After closely contested elections in 1994 and 1999, the national elections in 2004 confirmed Mozambique as an elected one-party state similar to South Africa, Botswana and Namibia - raising important questions for civil society and the media. Notable features of the 1-2 December 2004 elections included the collapse of the opposition, the willingness of the ruling party to steal the election if necessary, the obsessive secrecy of the National Electoral Commission, and the flaccid nature of the local media. The electoral process was also more partisan than it had been in the past. There is no doubt about the landslide victory of the ruling Frelimo party, but all international observer groups were sharply critical of aspects of the election process, especially the secrecy surrounding the tabulation of votes.

Parties, results and rules

Frelimo was the only liberation movement that fought the war leading to independence in 1975. It then introduced a one-party state that continued until the 1994 election. Renamo was created by the Rhodesian security services as an opposition guerrilla movement in the late 1970s and taken over by the apartheid state in South Africa, with covert US backing. With the end of the Cold War, backing for the apartheid state and for Renamo ended and a peace accord was signed in 1992. By the end of the war, according to United Nations estimates, Renamo controlled 23% of Mozambican territory and 6% of the population. With donor support, Renamo tried to convert itself from a guerrilla force into a political party, and gained significant support in the centre of the country.

Frelimo and Mozambique have only had three presidents – Samora Machel who was killed in a mysterious plane crash in South Africa in 1986, Joaquim Chissano who took over and was twice elected president, and now Armando Guebuza. Chissano could have stood once more, but under increasing pressure inside the party, he agreed not to stand again. Afonso Dhlakama became leader of Renamo in the early 1980's.

As Tables 2 and 3 show, the second multiparty election was closely contested and Renamo appeared to have established itself as a serious opposition party. Analysts, the press and Frelimo all predicted that the 2004 elections would again result in a closely fought contest, which did not turn out to be the case. The next biggest surprise of the 2004 election was the low turnout (37% of voting age adults and 43% of registered voters).

For the first time, there was a third opposition party in 2004. Raul Domingos, who had been the Renamo negotiator in the 1990-92 peace talks and then deputy head of the party, was expelled from Renamo in 2000. But he did unexpectedly badly, gaining only 2.7% of the presidential vote. His Party of Peace, Democracy and Development won only 2% of the parliamentary vote, not enough to gain a seat because of the threshold condition that requires a

party to win at least 5% of the national vote.

There were two other presidential candidates and 18 other small parties on the ballot papers, but none gained more than 1% of the vote.

Table 1 - Turnout (million voters)

1994	1999	2004
5.6	5.3	3.3

Table 2 - Presidential elections (million votes)

Political Party	Candidate	1994	1999	2004
Frelimo	Chissano	2.6 (56%)	2.3 (52%)	-
	Guebuza	-	-	2.0 (64%)
Renamo	Dhlakama	1.7 (34%)	2.1 (48%)	1.0 (32%)

Table 3 - Parliamentary elections (number of seats)

Political Party	1994	1999	2004
Frelimo	160	133	129
Renamo	90	117	112
Other	0	0	9

The president is directly elected and must win more than half the vote. If this does not occur, there has to be a run-off between the two top candidates. Parliament is elected on a party list basis. Each of the 11 provinces represents a constituency.

Mozambique's election system is based on the registration of voters and voters' photo ID cards. Voters were newly registered in 1999 and this register was updated in 2003 and 2004. Voters normally vote in the same place that they were registered. Each voters' roll has up to 1000 names and each polling station has up to 1000 voters. Thus a school will be a 'polling centre' and each classroom will be a 'polling station'. Each polling station is independent, with its own staff of five people and its own voters' roll. Voting was carried out over two days, on 1 and 2 December 2004. Party agents, national and international observers and the media enjoyed free access to polling stations. At the end of voting, ballots are counted immediately in the polling station, in the presence of agents, observers and the media. A summary result sheet is posted on the polling station door (to enable parallel counts), given to each party agent, and sent to the national and provincial electoral commissions. Tabulation is complex and controversial and is discussed below.

The two main parties and the administration of elections

Renamo's collapse as an opposition party largely reflects its failure to convert itself from an armed movement into a political party. Its president, Afonso Dhlakama,

maintains tight control over the party - to the extent of sometimes paying small expenses with cash from his pocket. He makes all decisions unilaterally, and negotiations in parliament and the National Electoral Commission (CNE) are often delayed while MPs or CNE members talk to him by mobile phone to receive instructions.

Dhlakama is afraid of allowing anyone to gain enough power within the party to threaten him, and he has steadily expelled or marginalised qualified and competent people who have risen through the ranks, such as Raul Domingos. The result is that although the party has members and activists in most parts of the country, it has a very weak party structure and lacks the ability to mobilise its supporters. A clear warning in this regard was signalled in local elections in November 2003 in the 33 largest cities and towns. Turnout was high and Renamo did well in the six cities in which it concentrated its forces and created something like a normal party organisation. But in other cities where Renamo did well in the 1999 national elections, but failed to consolidate in 2004, turnout was low and Renamo did badly. Renamo supporters will attend rallies, but without organised militants to encourage them to vote, they stay at home.

Frelimo, by contrast, has stayed together and been well organised for more than 30 years. Party unity is maintained at all costs and people are never expelled from the party. Two results of this are that decisions are often simply not taken when there is no consensus and that party members are not punished for misconduct and corruption. But there are often intense debates within the party, and the replacement of Chissano by Guebuza reflects pressure from the inside for a clean up. Frelimo has maintained a party structure from the one-party state era that reaches down into every neighbourhood and village and which has been well adapted to fight multi-party elections. After he was named presidential candidate in 2003, Armando Guebuza spent the next year travelling around the country rebuilding the structures of the party and consolidating their loyalty to him. The effect was clear in the presidential elections, when the party was able to ensure that its core supporters turned out to vote. Although the vote for the Frelimo president has been steadily declining, as reflected in Table 2, Guebuza still gained nearly as many votes as Chissano.

By contrast, Dhlakama and the rest of the opposition received only half the votes they had gained in 1999. There was huge abstention from mostly opposition voters. There seem to be three reasons for this:

- Lack of organisation, as discussed above.
- A negative campaign message. Afonso Dhlakama's campaign emphasised his claim that he had been cheated out of victory by Frelimo-organised fraud in 1994 (manifestly false) and 1999 (possible). He rejected international advice to emphasise a more positive line about the future and what his government would do. Analysts said his message was entirely negative and that it conveyed a sense that he was not worth voting for because he would not be allowed to take office. The voters agreed and decided the day would be better spent planting their seeds than voting for Dhlakama.
- Renamo is not seen as an alternative government. Dhlakama's view of being in opposition is to oppose and block almost any government initiatives, usually through disruption and boycott. Renamo has never

presented serious alternative policies and proposals to those of Frelimo, nor has it tried to challenge the government on policy grounds. Parliamentary sessions are broadcast live on the radio and are widely listened to. Renamo's repeated disruptions (including using horns and whistles to drown out one of President Chissano's state of the nation speeches) have tarnished Renamo's image and confirmed the view that Frelimo is the natural party of government.

Renamo's position has been difficult from the beginning. It did not win the civil war and eventually had to recognise the existing government; it never had majority support and tended to be the home of dissidents and those who had fallen out with Frelimo. Initially, through the peace talks and up to the first election, Renamo's only power lay in the staging of walkouts and boycotts as a way to force concessions. A part of its failure to become a viable party lies in the continuation of these tactics, instead of presenting alternative policies. Furthermore, Dhlakama has a total mistrust of Frelimo and the government, and believes that Frelimo can only be kept in check through the presence of large numbers of Renamo representatives at all levels. Boycotts therefore tend to be resolved by giving Renamo more posts.

This has led to a complex and party-based electoral system. The National Electoral Commission (CNE) is composed of 8 members nominated by Renamo and 10 nominated by Frelimo, with a supposedly independent chair. This is a full time, permanent body. There are also provincial and district electoral commissions, with a majority of Frelimo members and a minority of Renamo members. There are Technical Secretariats for Electoral Administration (STAE) at national, provincial and district level, and they actually do the work. STAEs are formally part of the civil service, but they have a Renamo and Frelimo deputy director at each level, and there are Renamo nominated computer technicians at national and provincial level. Distrust between the parties is so high that all warehouses have three locks, with Renamo, Frelimo and a director having keys; access to computer systems similarly requires three passwords. Because Renamo is always in a minority and can be outvoted, its only power is to delay, so it walks out of meetings or refuses to use its keys to open warehouses or computer systems. This has the effect of delaying all electoral processes, sometimes substantially.

***Deixar andar* and the tightening of Frelimo control**

The government of Joaquim Chissano was widely accused of having an attitude of *deixar andar*, which translates as 'let it be' or 'don't bother'. This combines with an environment in which many trained people have several jobs that result in many tasks being left to the last minute. This had a serious impact on the electoral machinery since deadlines were repeatedly not met and tasks were implemented carelessly. The 2004 elections were less organised than those in 1999 and 1994, despite the fact that people were more experienced.

Renamo complains bitterly about Frelimo dominance of the civil service, inherited from the one-party state era. The reality, however, is much more subtle. Many senior people are not Frelimo members and at lower levels there are many Renamo supporters, especially in the centre of the country. But it is

also clear that key officials, especially at senior level, are people who have good party contacts and can be trusted by Frelimo. Senior STAE computer officials, in particular, have high level Frelimo links. In an era of *deixar andar*, this means that people who are corrupt, incompetent, or who simply fail to do their jobs are often protected rather than disciplined.

This combination proved to be important in four areas in this election: the registration of voters, updating the voters' roll, issuing of credentials, and computerisation (dealt with in more detail below).

In July 2004 the registration of voters started late because materials were ordered late, and in insufficient quantities. Frelimo tends to have more support from the urban and better educated citizens in the North and South of the country; while Renamo tends to have more support in rural areas, among the more poorly educated, and in the centre of the country. Registration tended to start in urban areas and move to rural areas. The number of people wanting to register had been underestimated and registration brigades, especially in Zambezia province, which is strongly Renamo, ran out of fuel and film for photo identity cards before they reached many Renamo areas. This left thousands of people unregistered. It seems to be a case of incompetence and 'deixar andar', but it also benefited Frelimo.

The handwritten voters' rolls from 1999 were supposed to be computerised, but this had not been completed by the time of the 2003 update. At the 2003 local elections the voters' rolls were in chaos and tens of thousands of people were disenfranchised. By mid 2004, the voters' rolls had still not been cleaned up. Finally, a partial update was done with the help of the UNDP. It became clear that the original computerisation had not been supervised or checked. There were many typing mistakes; people were entered twice or not at all, and so on. Work on the rolls continued until two days before the election, but the rolls were still not fully updated or clean by this time.

Observers and party agents who are assigned to polling stations (known as delegates) require credentials and identity cards, issued at national or provincial level. The issuing of credentials to Renamo and independent domestic observers proceeded slowly. In some areas observers and Renamo delegates never received credentials. The problem of credentials containing errors - such as the wrong identity card number - was widespread; when delegates arrived at polling stations on the first voting day, many were turned away saying their credentials were not valid or even forged or altered because of these errors. Was it just 'deixar andar', or was it intentional that these errors only affected Renamo?

This type of biased behaviour by senior staff at local level did not occur in previous elections and is partly a response to the more partisan nature of the electoral machinery imposed by Renamo. People in electoral administration increasingly do not think of themselves as state functionaries, but as representatives of political parties. This matter raises some complex questions.

All observer groups have criticised the party-based nature of the electoral machinery as dysfunctional, and called for a neutral or independent CNE. But is that possible? In approving the most recent electoral law in 2003, Renamo took up an idea suggested by civil society that the presidents of the electoral commissions be nominated by civil society. Under the 2003 law the electoral

commission selects its chair from a list of nominees submitted by civil society. Frelimo, however, ensured that someone considered to be pro-Frelimo was nominated in each election of a commission president, and then used its built-in majority to appoint that person. The presidents are therefore Frelimo appointees in reality and not independent appointees from civil society.

With the growth of an independent civil society, some media and NGOs have seen their role as being anti-Frelimo, while some prominent people within Frelimo have set up NGOs. Others seem more independent and neutral, while some of the Frelimo-aligned and anti-Frelimo groups have, in practice, proved to be legitimate and effective civil society organisations. However, Frelimo has begun to actively promote the creation of Frelimo-aligned NGOs. Thus, the main domestic observation was done by a coalition of seven prominent NGOs called the *Electoral Observatory*. But Frelimo created its own Observer Forum, which quickly pronounced the election “free, fair and transparent”.

In such an environment, it becomes very difficult to create ‘neutral’ and ‘independent’ institutions. International observers and some Mozambicans are calling for more neutral electoral bodies, but how can this be achieved?

Pre-election campaigning and the media

The 43-day electoral campaign was largely peaceful and often festive. With both sides predicting a close election, there were some tensions and a few incidents early in the campaign, but both sides seem to have calmed their young supporters, and the campaign was largely peaceful and took place in good spirits. Campaigning consisted mainly of large rallies in cities and towns with caravans of cars and bicycles. Parties handed out T-shirts, cloths, caps and so on. There was little discussion of policy. Frelimo mainly stressed the success of its rule, while Renamo argued that the government was corrupt and ‘communist’.

The government allocated 45 billion meticaïs (over US\$2 million) to finance political party campaigns, as called for in the electoral law. In contrast to past elections, there was no donor money for parties. Frelimo received \$550,000 and Renamo \$500,000. Frelimo estimated that it spent \$10 million on the campaign. Renamo had much less money, and the difference in spending power was obvious.

Observers and the correspondents of the *Mozambique Political Process Bulletin* noted widespread use of state vehicles in the Frelimo campaign in violation of the electoral law.

The electoral law imposes conditions of balance and fairness on the state-owned media during the electoral campaign. Both radio and TV had nightly programmes on the campaign. The European Union observer mission monitored the national media and found that the state-owned *Radio Mozambique* and *TVM* were “reasonably balanced. The incumbent party received more coverage, but not to an unusual degree”. The state-owned daily *Notícias* gave 57% of its coverage to the government and Frelimo and 19% to Renamo. State-owned radio and TV were also required to allocate airtime for party political broadcasts - although some small parties did not use their airtime.

Private and independent media tended to be more sympathetic to the opposition. Overall, however, coverage of the election campaign was flaccid and

dull. Normally the media, both private and state, simply quoted or interviewed candidates. There was no attempt to challenge the weak points of the two main parties – corruption and inaction, particularly in the justice sector, by the government, and the lack of an alternative policy on the side of Renamo. Nor did the local media play a part in investigating fraud and misconduct. This was done by foreign journalists and observers.

Polling day and stuffing of ballot boxes

At least 85% of the nearly 13 000 polling stations opened on time and operated well. Observers had high praise for the dedication and competence of the staff and for the good conduct of the voters. But the range of problems that affected the other 15% was widely considered unacceptable.

Mozambique delayed until the last possible date to hold the 2004 elections, by which time the rains had begun. Planning for delivery of materials to polling stations had assumed dry weather, so many polling stations opened late. The *Mozambique Political Process Bulletin* estimated that 700 polling stations, mostly but not entirely in pro-Renamo areas, did not open, or did not have the correct voters' roll, or were in the wrong place, or opened so late that people could not vote. It is estimated that at least 400 000 people could not vote due to poor organisation or bad weather.

Problems in other polling stations included lack of access by observers and delegates and late openings. In some places Renamo delegates and national observers were arrested. The Carter Center accused the police of being biased toward the ruling party.

The widespread stuffing of ballot boxes was totally unexpected. In at least 300 polling stations staff manufactured an inaccurate result sheet or physically placed extra ballot papers into boxes. In nearly all cases the extra votes were for Guebuza and Frelimo. The stuffing became apparent because it was so obvious in some places. Turnout nationally was only 43%, but there were dozens of polling stations based on 1999 registers in which everyone on the register voted – no one died in the past five years, no one moved away, no one was ill or away on polling day – and they almost all voted for Guebuza. In most of these cases Renamo was not allowed to have delegates in the polling stations and observers were not allowed to be present. Stuffing seemed most serious in the Tete province, where an extra 100 000 votes were recorded, but also in the Gaza and Niassa provinces. The stuffing of ballot boxes was not enough to affect the presidential race or the parliamentary majority, but it did cost Renamo at least two seats in the Tete province.

Observation and parallel counts

The election was monitored by 3900 national observers, 488 international observers and 520 journalists. The coverage was good and there were early reports of the low turnout and normal running of most polling stations, as well as of ballot box stuffing and other problems.

Posting the results on the polling station door makes it easy to conduct parallel counts. These are obviously done by the two main parties, but there were two other public parallel counts that were important. *Radio Mozambique* had more than 200 journalists who simply read out the results live on the air from early

on the morning of Friday 3 December. By 7.30 am the Frelimo landslide and low turnout was clear. By the time the radio stopped its reports on Sunday, it had read out results from more than half of all polling stations. As we note below, the official count is long and slow, and there is no question that the very clear result that emanated from the *Radio Mozambique* parallel count helped to build an atmosphere of calm.

The Electoral Observatory, with the help of the Carter Center, did a more careful sample parallel count, in trying to obtain results from every 16th polling station. They obtained results from 98% of their sample of 792 polling stations and their prediction was accurate within 0.5% of the final results. They presented their results to the CNE and the political parties.

Secrecy, computers and tabulation

Mozambique has a unique, complex, long and secret system of tabulating votes. Each polling station sends their result sheets to the provincial and national electoral commissions, and all spoilt ballot papers to the National Electoral Commission (CNE) in Maputo. At provincial and national level, the result sheets are entered into a database. At that time, a few consistency checks are made. The provincial electoral commissions then produce a CD-Rom of the provincial results and sends it to the CNE, along with any result sheets that could not be entered into the database because of errors on the sheets or errors in the underlying database (see below). Several thousand result sheets were sent to Maputo. Provincial electoral commissions are supposed to report within one week, but not a single one met the deadline.

At national level STAE tries to correct problems in the result sheets and include them in the final count. They also compare the national database with the provincial CD-Rom, and make ‘corrections’ to try to make the two agree. Finally, the CNE reconsiders all spoilt ballots (300 000 in 2004), accepting about one-third, which is then added to the result. Final results were not announced until 21 December - 19 days after the election and four days after the legal deadline.

Mozambique’s long and secret tabulation process is unique and has drawn extensive criticism from international observers. Both the SADC Parliamentary Forum and the Electoral Institute of Southern Africa (EISA) criticised the length of time it takes to count votes in Mozambique. EISA noted that on average southern African countries report results within five days, compared to more than two weeks in Mozambique.

The entire tabulation process is done in secret, without observers or party agents present. Former US President Jimmy Carter said that this was the 53rd election he had observed. On looking back to the 1999 elections he said the “amount of corrections made to the results in 1999 exceeded anything in any similar election I have ever witnessed” and the exclusion of more than 600 polling stations that year was “extraordinary. It is simply hard to believe that so many result sheets could not be used”. Yet 2004 was worse. Even more corrections were made in secret, and more than 700 polling stations were excluded. No explanation was given, although the CNE spokesperson claimed that some result sheets had been stolen.

Because of the experience in 1999, international observers led by the European Union began to press for more transparency in the tabulation processes several months before the election – but the CNE never budged. Unusually, the European Union Observer Mission never signed a memorandum of understanding with the CNE, because they could not reach agreement on this matter. Jimmy Carter stressed that the level of access was unacceptable and that in elections in other countries “we have rarely been excluded from any significant part of the process.”

Obsessive secrecy dogged the entire process. The law requires that the CNE publish a list of polling stations, and everyone assumed that the CNE would publish the list that linked voters’ rolls to polling stations. Instead, the CNE said this list was a “state secret”, and it only published a list of how many polling stations there would be at each polling centre. For example, the list would give a school name and say there would be 5 polling stations in it, but would not give the numbers of the accompanying voters’ rolls. Indeed, a complete list of the overall voters’ roll was never published.

But it was computerisation that caused most of the problems. The informatics department of STAE is headed by officials with close links to the Frelimo leadership, and even Frelimo members of the CNE were unable to move them. In both 1999 and 2004 the tabulation software was written in-house and contained errors, but was produced so late that the software could not be properly tested and was never published for an independent check. In both cases there was a last minute independent audit, which criticised the security provisions, particularly that senior people in the STAE informatics department had access to the computer database, which would allow them to make unrecorded changes. In 2004 the software was still being corrected after voting had taken place and was distributed late to provincial electoral commissions, causing delays in the provincial counts. When the provinces began to enter data, they discovered major errors in the underlying database, which should have contained a corrected list of voters’ rolls at all polling stations. Instead there were many errors because of the careless, rushed and last minute entering of data.

Former US President Jimmy Carter publicly questioned the outcome of the 1999 election both in his press briefings and in meetings with CNE president Rev. Araújo Litsure. The difference between Joaquim Chissano and Afonso Dhlakama was only 205 000 votes. Carter noted that the final tabulation and correction process was done entirely in secret and that polling stations with more than 300 000 voters – more than the difference between the two candidates – were excluded from the presidential race without any explanation to observers or party delegates. More evidence has emerged over the extent to which secret ‘corrections’ were made to the data in 1999. The final results were not produced by the official computer system, but on a STAE laptop, and changes were being made up to the last minute. It has also been reported by several independent sources who were inside STAE in 1999 that computer technicians from STAE made ‘corrections’ at provincial level, after observers and party delegates could no longer view the data, but before it was presented to provincial electoral commissions.

Concerns about the tabulation of votes in 2004 were increased by the refusal of the national STAE office to publish the final data on a polling station by station basis. Instead it only published the results of individual polling centres. In a large school with 10 or 15 polling stations, it would have been easy to add a new polling station or to change data for individual polling stations, without the changes being obvious. Nationally, there were 241 000 more votes in the presidential election than in the parliamentary election. In Nampula province, in particular, nearly one in ten people voting in the presidential election did not vote in the parliamentary election. Strangely, no observer in Nampula ever noticed voters skipping the parliamentary ballot box. It may be that the extra 241 000 votes came from ‘corrections’. The decision in 2004 to carry out a parallel count conducted by the *Electoral Observatory*, a coalition of NGOs, was driven in large measure by concerns about the fallibility and insecurity of the official computer tabulation system.

Brazão Mazula, head of the *Electoral Observatory* and a former president of the CNE, commented, “if you want to prepare a fraud, you start by disorganising the process”. He thought preparation was more careless in 2004 with much more preparation left to the last minute than in the past. It is clear that the need to correct the widespread errors during the secret final correction process would have left substantial room for manipulating the results, if the need had arisen in 2004.

SADC guidelines, norms and standards

National observers from the *Electoral Observatory* and international observers from the Carter Center, European Union and the Commonwealth all highlighted irregularities in the electoral process. They were also critical of the electoral administration for its partisan nature, for its lack of care in conducting its work and for its tendency to leave things to the last minute. They all stressed that the shortcomings and irregularities were not enough to change the overwhelming victory of Frelimo, but they all noted that there were enough irregularities to take parliamentary seats away from Renamo. The Carter Center said that the “serious weaknesses” and irregularities “undermine the credibility of Mozambique’s electoral authorities”.

In broad terms, the Mozambican elections of 1994, 1999 and 2004 meet eight of the 10 SADC Guidelines and Principles Governing Democratic Elections, but do not meet most of the Principles for Elections Management, Monitoring and Observation (PEMMO) in the SADC region. The eight principles that are met include: full participation of citizens; freedom of association; political tolerance; elections held at regular intervals; equal access to the state media; equal opportunity to stand and vote in elections; voter education; and the ability to challenge the election results. The two principles not met were also the subject of criticism by observer groups. These include the lack of impartiality of the electoral institutions and also that the official results were not accepted by the opposition.

The 2004 election, however, met only two of the six PEMMO principles: a comprehensive legal framework and equitable use of media and public resources. In relation to the four remaining PEMMO principles observers expressed the

following observations.

- The importance of transparent and accessible pre-election procedures: The failure to publish the voters' roll and the argument that the list of polling stations was a "state secret" were criticised by most observers. There was also criticism of the partisan nature of the police and of Frelimo using state resources, notably cars.
- The organisation and management of the election phase, including the location of polling stations, their layout, and access to them; the secrecy of the ballot, and the counting process: Layout of polling stations and the secrecy of the ballot was well done throughout. Location of polling stations was generally acceptable, although most observer groups noted that some polling stations in rural areas were 20 km or more away from voters and were not in the place where voters had registered - in violation of the CNE's own regulations. Although counting in the polling stations was normally excellent, the tabulation process at provincial and national level was sharply criticised.
- The post-election phase: More than a month after the election, full results had still not been announced. Confusion about the voters' roll meant that it was impossible to produce "a detailed account of the number of eligible voters who registered", as specified by PEMMO. The process was not transparent and the opposition did not accept the results.
- The requirements for unhindered, credible, professional and impartial monitoring of the electoral process: Most observer groups criticised the lack of access to the secret tabulation and correction process, which did not meet international standards and made it impossible for them to make a judgement about the final phase of the electoral process.

The challenge to civil society and the media

The tendency within Frelimo has been to argue that its landslide victory was so clear that allegations of fraud and misconduct should be ignored. This presents a challenge to civil society and the media, many of whom exercise caution in challenging Frelimo in the context of the elected one-party state. The *Electoral Observatory* found itself in a difficult position – its parallel count confirmed the Frelimo landslide victory, but its observers also suffered arrest and discrimination and they found many examples of fraud and misconduct. The *Electoral Observatory* and the local media chose not to challenge the electoral authorities directly, leaving it to international observers and foreign journalists instead. But the present opposition is clearly unelectable, and Frelimo seems to have established itself as the natural party of government for the next decade at least. The only checks and safeguards will come from a more active media and civil society.

NAMIBIA

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PRECONDITIONS FOR FREE AND FAIR ELECTIONS: A NAMIBIAN COUNTRY STUDY

BY PHANUEL KAAPAMA

Introduction

The constitution Namibia adopted on the eve of its independence in 1990 placed the country on a liberal political path, based on the principles of electoral choice in a multiparty democratic system. Chapter 3 of the constitution makes provision for a set of entrenched individual rights that are protected from state interference, and which may not be restricted by the electoral majority. These include the rights to equality and freedom from discrimination, freedom of association including the freedom to form and join political parties and the freedom of assembly, freedom of speech and expression including the freedom of the press and other forms of media, as well as the freedoms of thought, conscience and belief.

To create a political and electoral environment that is conducive to the promotion of these constitutional provisions, the following legislative and statutory instruments were adopted to regulate the conduct and administration of elections:

- Electoral Act (Act 24 of 1992),
- Electoral Amendment Act (Act 23 of 1994)
- Electoral Amendment Act (Act 30 of 1998)
- Electoral Amendment Act (Act 11 of 1999)
- Electoral Regulations (Gazetted 19 September 1992)
- Electoral Regulations (Gazetted 5 November 1992)

The first democratic elections under the principle of universal suffrage were held in 1989. These elections were held to appoint a Constituent Assembly, as provided for under Resolution 435 of the United Nations Security Council, and were supervised by the United Nations Transitional Assistance Group (UNTAG). All subsequent elections, however, have been regulated and administered on the basis of the above-mentioned electoral laws and regulations. These include the 1994, 1999 and 2004 Presidential and National Assembly elections, the 1992, 1998 and 2004 Regional and Local Council elections, as well as a host of by-elections in regional and local authorities.

This article discusses the electoral systems and institutions of Namibia, as well as the participation of role players and stakeholders, with a view to assessing whether the human rights enshrined in the constitution are adequately being observed.

Electoral institutions

Delimitation commissions

The Namibian Constitution under Article 104 empowers the President to institute Delimitation Commissions that are mandated to create new electoral regions and constituencies. In the course of their work, such Commissions are guided by the provisions of Sub-section 2 of Section 5 of the Regional Councils

Act, 22 of 1922, which urge such commissions to take the numbers of eligible voters, geographic features, existing infrastructure and the socio-economic characteristics of respective areas into consideration in the process of their demarcation. Since attaining independence 15 years ago, three such commissions have been established. The findings and recommendations of Delimitation Commissions are not only crucial in the context of Regional Council and Local Authority elections, but have a bearing on elections in general.

The Delimitation Commissions can engage in practices known as gerrymandering, which refer to practises whereby the demarcation boundaries of constituencies and regions are manipulated in favour of certain political parties, with the objective of securing victory. The recent separation of the ruling South West Africa Peoples' Organisation (SWAPO) party stronghold of Epuriko from the fold of the Otjinene constituency, to establish it as a constituency on its own, came under a barrage of heavy criticism from some political parties. This separation raised the number of constituencies in the Omaheke region from six to seven. Prior to the 2004 Regional Council elections SWAPO found itself in the uncomfortable position of having to share power in the region with one of its political rivals, the Democratic Turnhalle Alliance (DTA), as both parties had an equal share of three constituencies each. Following the new demarcation, SWAPO walked away with four constituencies compared to the three of the opposition, and was therefore not required to enter into a power sharing arrangement as before.

The Electoral Commission of Namibia (ECN)

The Electoral Commission of Namibia (ECN) was established in terms of Sections 3 and 4 of the Electoral Act (Act 24 of 1992). As the official electoral oversight body, the ECN is primarily responsible for directing, supervising and controlling, in a fair and impartial manner, the various aspects of all the elections that are held in Namibia. These include the registration of voters; the preparation, publication and maintenance of voters' rolls; registration of political parties and the implementation and certification of elections.

The appointment of commissioners to serve on the ECN takes place in terms of the provisions of the Electoral Amendment Act (Act 30 of 1998), which requires public nomination of persons who are qualified and interested in serving as electoral commissioners. This is followed up by the short-listing of nominees, who are then interviewed in a transparent process at open public meetings. The final step in this process entails the appointment by the State President of five candidates from the eight recommended by the Selection Committee.

The ECN reports to Parliament, and the terms of its members should not exceed five years, although upon the expiry of each term the incumbent commissioner(s) may become eligible for re-appointment.

The Directorate of Elections

The 1992 Electoral Act provides for the establishment of the Directorate of Elections, which is entrusted with the responsibility of rendering administrative support to the ECN. The Director of Elections, who acts as the Secretary of the ECN, heads the Directorate, and is appointed in terms of Article 5 of the 1998 Electoral Amendment Act. The Directorate of Elections consists of a

permanent staff of approximately 20 persons, who, at the time of preparing and conducting elections, is reinforced by additional staff on temporary secondment from various government agencies.

Various studies conducted prior to 2004 attest to the fact that the electoral laws, bodies and procedures in place have succeeded in instilling public confidence in the electoral process. For example, a study commissioned by the Economic Commission for Africa (ECA) and conducted by the Multidisciplinary Research and Consultancy Centre (MRCC) of the University of Namibia (UNAM), found that 67% of Namibian voters generally believe that the electoral laws in place provide sufficient scope for credible electoral processes, which are acceptable to both participants and observers (MRCC, 2002: 43).

Electoral and voting systems

There are various types of electoral systems that determine how the votes cast by the electorate will be translated into duly elected candidates. The choice of any electoral system has political consequences, for instance in terms of multipartism, disproportionality inclusions and accountability.

Currently the Presidential and Regional Council elections are conducted in terms of the 'first past the post' system. Since this system is based on smaller single-member districts, it tends to be generally associated with issue-based politics and tends to promote closer voter-representative interactions. However, among the drawbacks that are commonly cited with regard to this system, is the fact that it tends to distort proportionality by manufacturing electoral majorities. Any party and/or candidate can assume political office in a country, region or constituency without having obtained an outright majority of votes. This can take place at the expense of parties or candidates with a combined higher majority of votes, resulting in such parties or candidates and a large segment of the electorate, who voted for them, being excluded from governing structures altogether (Keulder, 2002: 2–3).

The other system is based on proportional representation or the Party List electoral system, which is used in both the National Assembly and Local Authority elections in Namibia. In the case of electing the 72 members of the National Assembly, Article 49 of the Namibian Constitution requires each contesting party to nominate a list of its candidates. In this context a quota system for allocating the preliminary shares of seats based on the number of votes received is applied, while the remaining seats are allocated according to the highest remainder method¹. This method enables very small parties who may not obtain the minimum percentage to qualify for a single seat or a few more additional seats. It is therefore regarded as an essential component in giving these elections the necessary attributes of active inclusion.

Moreover, apart from simply allowing smaller political interests to organise themselves, this system is also supposed to promote the equitable representation of marginalized groups such as women, disabled persons and the youth in the affairs of the state. For instance, the 2004 National Assembly elections saw the election of a number of young political activists who had served in the youth wings of various political parties. In the case of SWAPO, close to 10 out of 55 newly elected members of Parliament are either former or present leaders in its

youth wing, the SWAPO Party Youth League (SPYL).

The same cannot be said about women representation in the new National Assembly, which witnessed only a slight increase of less than one percent (from 26.4% to 27.3%). Gender equality advocates are very disturbed by this poor performance of women candidates for three reasons. Firstly, Namibia will not be able to achieve the 30% benchmark called for in the SADC Gender Declaration, which calls for 30% women representation in all decision-making bodies by 2005. Secondly, women voters accounted for 52% of all voters registered for the 2004 Presidential and National Assembly elections. Thirdly, although women candidates accounted for more than 30% of the names tendered on the lists of the contesting political parties, their names were mainly placed at the lower ends of these lists.

This outcome seems to have vindicated the Women Manifesto Network, a Namibian NGO working in the gender and governance sectors, which in the past argued that a proportional representation system was not a guarantee of gender equality by itself. Instead it advocated for the enactment of 50/50 equal Gender Presentation legislation, which would have obliged all political parties to submit 'zebra-style' candidates' lists.²

However, even in the context of the local authority elections in which the contesting parties and associations were compelled to ensure that at least 50% of the candidates were women, and were compelled to make use of the zebra-style lists, the outcome has not been much different. Despite the fact that all major political parties nominated more women than men, the percentage of women elected to local authority structures in 2004 declined from 43.6% to 42.8%. This was again due to the fact that the names of potential women local government councillors were placed towards the lower end of the various party lists.

Despite its comparative advantages, therefore, the proportional representation system also has its flaws. One of these is that it tends to increase the distance between elected representatives and voters. This arises from the fact that the basis of representation is a list compiled by a political party and not a clearly defined geographical constituency. As a case in point there were numerous instances reported after the May 2004 local authority elections, in which some political parties were accused of altering the composition and/or the sequence of their lists of candidates, and which resulted in the imposition of 'un-elected' candidates on the people. In view of such acts the suitability of the proportional representation electoral system for the promotion of local democracy, and in particular the right of the electorate to choose leaders who they can hold accountable, can be seriously undermined.

Moreover, the proportional electoral system requires solid and well-organised political parties and therefore tends to promote the entrenchment of a system based on political parties. This reduces the chances of individual (independent) candidates to effectively compete for political office. Over the 15 years of its existence as an independent country, Namibia is still to witness a single independent candidate availing him or herself to run for office in the National Assembly.

The electoral laws make provision for three voting systems; the ordinary vote cast by persons voting in the constituencies in which they are registered; the

authorised vote that is reserved for electoral officials and police officers who may be deployed to undertake electoral functions in constituencies other than those in which they are registered and the tendered vote to accommodate those voters who may need to vote at polling stations in constituencies other than those in which they are registered. The tendered voting system was introduced in view of the high rate of urbanisation, which according to the 2001 National Population and Housing Census stands at 5.6 per cent. This system of voting is only used in the context of Presidential and National Assembly elections.

Some stakeholders in the 2004 Presidential and National Assembly elections raised concern about the tendered voting system, which is accused of having significantly slowed both the progression of voting at some polling stations, as well as the counting and final verification of votes. Much displeasure was also recorded in relation to the 'unusually' high number of tendered ballots, which at some polling stations accounted for double the number of ordinary votes.

However, doing away with the tendered voting system would not be a viable option, as this could lead to the disenfranchisement of a significant number of potential voters, who due to the socio-economic conditions of the country are forced to migrate in search of work and reside in various locations within a relatively short period of time.

Prospects for equitable participation in the electoral process

The electorate

Both the constitution of the Republic of Namibia and the electoral laws deriving from it, strictly advocate for the principle of universal suffrage. If the official demographic statistics are anything to go by then an impression may be created that this principle is being adhered to. However, as it will be pointed out below, not all eligible voters were able to freely exercise their political rights, and to elect their leaders through a democratic process of voting, during recent elections.

The voter registration process requires applicants to provide proof of their age and Namibian citizenship by presenting their official documents of identification. The enforcement of this requirement has threatened to disenfranchise some voters, especially those in the Tsumkwe and Western Caprivi constituencies, the majority of whom belong to the culturally and socially marginalized indigenous San communities. The majority of voters in these communities continuously encounter difficulties in obtaining relevant identification documents.³ In order to accommodate potential voters without official identification, the electoral law is lenient and allows for the registration of such persons by way of sworn statements by two other persons who are already registered as voters.

This provision has drawn heavy criticism because it presents opportunities for fraud.⁴ For instance, the National Society for Human Rights (NSHR), a Namibian non-governmental organisation, voiced concern with what it described as an irregular incident at one supplementary voter registration point in Windhoek. It alleged that these provisions were abused when more than a dozen people who could not identify themselves were irregularly registered without the required documentation.⁵ This concern was echoed by various political parties because as many as 30% of the names on the voters' roll were entered through the process of sworn statements. In their view this procedure

threatened the integrity of the voter registration process, and consequently the credibility of the electoral process.

In another case a group of eligible voters living abroad in the United Kingdom were disenfranchised, despite the fact that a number of Namibian foreign missions were commissioned by the ECN to serve as polling stations. It is estimated that there are more than 20 000 eligible voters who currently reside in the UK. Most of them could not vote in the 2004 Presidential and National Assembly elections, as no prior provision was made for them to register. In the end only 10 votes were registered from the London polling station, while the rest of these voters were disenfranchised because they could not produce voter registration cards.⁶

It is not only important for citizens to vote; it is even more important that their votes are counted. In its preparation for the three elections that took place in November 2004, the ECN earmarked an amount of close to N\$1,5 million (US\$242 000) for activities geared at increasing citizens' understanding of democratic processes and to ensure their effective participation in the electoral process.⁷ However, the fact that 11 421 of the votes cast in the 2004 Presidential elections were rejected as spoilt ballots, warrants some serious attention as to the effectiveness of voter education programmes.

Apart from the fact that voter and civic education remains crucial for countering public apathy, as expressed in low voter turnout, as well as declining political activism and the pervasive and at times misplaced mistrust of the political system, the logistics that are in place for the conducting of polls can equally bolster or detract voters' interest in voting. For instance, congestion at polling stations is a nuisance that some voters are not prepared to put up with. Therefore the ECN replaced the manual tracing of voters' information by introducing an electronic voter's roll, which tremendously expedited the voting process.⁸ However, since this system was only introduced at close to 300 polling stations in urban constituencies across the country, it came as no surprise that some voters at polling stations in highly populated informal and rural settlements were noted to have walked away from polling stations before they were able to vote, due to long queues experienced at such polling stations.

Finally, the issue of the confidentiality of the vote is crucial to a free and fair electoral process. It was reported that there are close to 30 000 visually impaired voters in Namibia, whose rights to elect their leaders by secret ballot has remained under constant threat. Therefore, with the unveiling of a Braille tactile folder that was used for the first time in the 2004 Presidential, National Assembly and Regional elections, this risk seemed to have been minimised.⁹ However, it was reported that visually impaired voters encountered some problems in terms of understanding how the process worked, and therefore could not cast their vote independently - but needed the hands of polling officials to guide them. This was attributed to the lack of sufficient voter education programmes for the visually impaired.

Political parties and party funding

The formation and registration of political parties is done pursuant to the spirit of the Constitution, which recognises and protects the rights of citizens to participate in peaceful political activity, as well as to form and/or join political parties. Part IV of the 1992 Electoral Act outlines the framework for the

registration of political parties, whose principal object should be to participate in and promote elections.

In its quest to promote the survival of multi-party democracy, Namibia is one of the fourteen African countries that provide public funding to political parties. Although, the funding that Namibia provides to the parties was judged by IIDEA (Boer, 2004: 8) to be too marginal to make a significant difference in the electoral process, the fact remains that it is very helpful to the recipients. In view of the vast size of Namibia and its dispersed population, this contribution is deemed extremely helpful in complimenting the cost of transportation, which remains the biggest item of expenditure during election periods. The second largest item of expenditure is the production of campaign materials such as posters and mock ballot papers.¹⁰

Therefore, all political parties that are represented in the National Assembly are entitled to receive public funding, which is calculated in proportion to the votes received by each party in the most recent National Assembly election. For instance, as indicated in Table 1 below, the ruling party SWAPO received more than 75% of the almost N\$16 million allocated by the state in the 2004/5 financial year for the funding of those political parties that are represented in the National Assembly.

Table 1 - Approximate Allocation of Funding to Political Parties (2000 – 2005) in Million Namibian Dollars (N\$)

Parties Represented in the National Assembly	Percentage of Votes	2000/1	2001/2	2002/3	2003/4	2004/5
Congress of Democrats	10.0	1.25	1.4	1.8	1.9	1.6
DTA-UDF Coalition	12.5	1.57	1.8	2.3	2.4	2.0
Monitor Action Group	0.7	0.08	0,1	0.1	0.1	0.1
SWAPO party	76.8	9.6	10.8	13.8	14.7	12.2
Total	100	12.5	14.1	18.0	19.1	15.9

Source: Boer, 2004: 10

The formula for the distribution of state funding has continued to raise serious questions in terms of the levelling of the political playing field for all contestants. The parties receiving lesser amounts of public monies have voiced their concern regarding the fairness of the elections, by claiming that they were being subjected to political exclusion.

One of the conditions for access to public funding is that political parties must account for the usage of such funds by way of submitting audited annual financial reports to Parliament through the Office of the Auditor General. So far none of the recipient parties have ever opened their books to public scrutiny. This blatant violation of the provisions of the electoral law is being blamed on the fear by some parties that disclosure of their sources of funding could expose them to political victimisation.¹¹

Although political parties are also required to disclose all private donations in excess of N\$500, there are no detailed guidelines for regulating such contributions. Concerns therefore arise about the safeguarding of the right of the public to know,

but also for safeguarding the democratic processes from being hijacked by the interests of moneyed groups and individuals (Boer, 2004: 11). As it stands, this policy vacuum could be exploited to grease the wheels of corruption and feather the nests of a few elite families and their cronies. *The Namibian* newspaper¹² reported a case involving Alliance Media, one of the foremost outdoor advertising agencies in Namibia, who confirmed that it had made an exclusive offer to the ruling SWAPO party to make free use of its billboards across the country. In return the company asked for better business opportunities, in the form of new billboard sites, including those belonging to the government.

In his quest to seek remedies for these situations, the Auditor General lodged a formal complaint with parliament in June 2004, to which the latter responded by promising that new rules requiring public disclosure would be introduced after the 2004 Presidential and General Elections (Boer, 2004: 10).

Political trends as reflected in elections results

An analysis of the electoral trends over the last 16 years, as reflected in Table 2 below, points to the fact that Namibia has and continues to evolve in the direction of a one-party dominated multi-party democratic system. With moribund opposition parties in the process of continual decline, the state of governance is increasingly exposed to the risk of becoming less and less responsive to the true concerns of the public. The outcome of elections is a far-gone conclusion in which the ruling party SWAPO is guaranteed of victory with ease.

Table 2 - Results of Past General Elections

Party	1989		1994		1999		2004	
	%	Seats	%	Seats	%	Seats	%	Seats
ACN	4.17	3	-	-	-	-	-	-
CoD	-	-	-	-	9.94	7	6.94	5
DTA	29.17	21	20.83	15	9.48	7	5.55	4
FCN	1.39	1	-	-	-	-	-	-
MAG	-	-	1.39	1	1.35	1	1.39	1
NMDC	-	-	-	-	-	-	-	-
NNF	1.39	1	-	-	-	-	-	-
NPF	1.39	1	1.39	1	-	-	-	-
NUDO	-	-	-	-	-	-	4.17	3
RP	-	-	-	-	-	-	-	-
SWANU	-	-	-	-	-	-	-	-
SWAPO	56.94	41	73.61	53	76.3	55	77.88	55
UDF	5.55	4	2.77	2	2.93	2	4.07	3
Total	100	72	100	72	100	72	100	72

Source: ECN

Various factors account for the poor performance of the opposition parties, such as the fact that the ruling party enjoys enormous advantage of occupancy. For instance, these would include its final say in the appointment of persons entrusted with responsibilities to regulate and manage elections and its more

than two thirds majority in both houses of parliament, which it could use to manipulate the formula for the allocation of funding to political parties.

However, the poor performance of opposition political parties cannot entirely be attributed to the comparative advantage enjoyed by the ruling party, as there are flaws within these parties that undermine their cause. Some of the opposition political parties lack both quality and depth in their leadership. This is evident in the quality of manifestos that some parties present to the electorate. Other testimonies to this effect include the fact that the opposition seems to be sleeping on duty, as in the case when they claimed they were not aware of the release of the provisional voters' roll by the ECN for public inspection. Another example is one in which they consented to the alphabetical allocation of public broadcasting air-time, which allowed the ruling party SWAPO to enjoy exclusive coverage on public radio and television in the last and critical days prior to the commencement of voting.

Moreover, the continuing fragmentation within and across the rank and file of these parties also greatly contribute to the better performance by the ruling party SWAPO. Of late, some of these parties have also realised that perhaps the better option may be to join SWAPO, since they do not stand a chance of beating them at the polls. The opposition political parties also shot themselves in the foot when they failed to mount significant election campaigns in the four central Northern regions, where a significant number of voters reside.

Civil society

Dryzek, Hunold, Schlosberg, Downes and Hernes (2002: 668) describe civil society as that segment of society that represents decentralised sub-politics, through which non-state actors create political space for themselves to address various issues faced by society.

The media

Over the years the media in Namibia have continued to operate in an environment that can generally be described as being free of excessive government or ruling party interference.

The media can play two crucial roles in elections, which at times are confused with one another. The first is the granting of free advertising space to political parties on mainly the state owned broadcasting media, and which parties can use as political soapboxes or any other unconcealed political propaganda. Secondly, the media also plays the more critical role of journalistic coverage of the activities of political parties during elections, which is governed by the principles of objective journalism.¹³

With regard to the allocation of air-time to political parties the *Namibia Broadcasting Corporation* (NBC) established the following formula in 2004 – 60% coverage on a proportional basis to all parties represented in the National Assembly, while the remaining 40% had to be shared by all participating political parties. In practice this translated into 150 minutes for the ruling SWAPO party, 31 minutes to the Congress of Democrats (CoD), 30 minutes to the Democratic Turnhalle Alliance (DTA), 19 minutes to the United Democratic Front (UDF), with the smaller parties - the Republican Party (RP), Namibia Movement for Democratic Change (NMDC), South West Africa

National Union (SWANU) and the National Unity Democratic Organisation (NUDO) - all receiving 13 minutes of airtime on the public television service.¹⁴ The NBC initially claimed that this formula was dictated by the provisions of the Namibia Communications Commission Act. However, when it later transpired that these provisions were not applicable, it described the decision as a discretion of its own editorial policy. When queried on the matter, Prime Minister Theo-Ben Gurirab endorsed the application of proportional allocation of airtime as a “general principle of democracy” that is not unique to Namibia.¹⁵

The media’s coverage of the activities of political parties during the 2004 election was monitored by MISA-Namibia, the national chapter of the Media Institute of Southern Africa (MISA) in Namibia. MISA-Namibia commissioned the Institute for Public Policy Research (IPPR) and Mediatenor, a South African based media monitoring company, to conduct the monitoring. Their research produced the following valuable findings. Quantitatively, the ruling SWAPO Party enjoyed the lion’s share of coverage in both the print and broadcast media. The combined coverage afforded to all the opposition political parties amounted to 57%, compared to 43% for SWAPO alone.

Understandably, there were controversies regarding equitable state television coverage of the campaigning activities of the various political parties. An agreement had been struck with all the parties that the political rallies of parties on television and radio would be broadcast in alphabetical order. Although SWAPO is not the last political party in terms of the alphabet (the UDF is), the NBC nevertheless broadcast the rallies of SWAPO as the last party to be covered. The ruling party therefore enjoyed exclusive coverage for the last ten days of the campaigning period and just before the voters went to the polls. This naturally resulted in an uproar. The NBC disingenuously justified this shuffling of parties on the basis that “the UDF is smaller than SWAPO and did not have as many rallies to be covered compared to that of the SWAPO Party”.¹⁶

The media monitoring study noted that, in terms of content, coverage by the country’s leading print media houses turned out to be overwhelmingly negative towards all parties. State television broadcasts showed a more variable result. On the main evening news broadcast, which enjoys one of the highest viewership ratings, all parties received negative coverage except for the ruling SWAPO party. Discussion on the television talk show programme, *Talk of the Nation*, was characterised by ‘mind numbing’ neutrality, while the current affairs television programme, *News Journal*, actually favoured the opposition political parties in terms of positive coverage.¹⁷

Non-governmental organisations (NGO’s)

Since the 1989 transitional election, Namibian civil society has continued to take a keen interest in the country’s electoral processes. The main role and participation of Namibian NGO’s in elections, however, appear to lie in the area of election observation, with much less activity taking place in relation to voter education and creating platforms of political debate. Notable role players include the Council of Churches of Namibia (CCN) and the Non-Governmental

Organisation Forum (NANGOF) that organise election observation teams from volunteers in local communities.

These actors continue to engage the ECN on the issue of only being granted the status of domestic observers, rather than the higher status of monitors. Their appeal for monitoring status is being hampered by the ECN's fears that it could lead to direct interference that could prove detrimental to the autonomy of the electoral process.

The Namibian Society for Human Rights also participates in its own right in the process of monitoring the electoral process by dispatching its human rights monitors to supplementary voter registration points, as well as to party campaign rallies. In the latter respect it monitors the extent to which parties ensure an atmosphere for the free expression of political convictions, without threat or intimidation.

Social movements

This category of civil society organisations includes membership organisations whose primary role is to preserve and advocate the interests and aspirations of the groups they represent. They include women, farmers, environmental, youth and human rights organisations, as well as trade unions and chambers of commerce and industry. Apart from the churches through the Council of Churches in Namibia (CCN), few of the Namibian social movements play an active role in the non-partisan promotion of free and fair public elections.

It should be noted that the National Union of Namibian Workers (NUNW) has vigorously defended the rights of workers to participate in democratic processes such as elections. It lobbies both employers and the ECN to create conditions that will ensure that workers are not disenfranchised. The NUNW, however, is an affiliate of the ruling SWAPO party. This relationship derives mainly from the fact that the earliest stirrings of the Namibian liberation struggle combined labour and popular political mobilisation in the petitioning of various United Nations structures. Therefore, to a large extent, the activities of the trade union movement in the electoral process in Namibia is of a partisan nature, and geared to securing victory for SWAPO.

Although the Namibian Chamber of Commerce and Industry (NCCI) does not play a direct role in elections, individual private companies make valuable contributions to help ensure the right of citizens to vote. For instance, in the harbour town of Lüderitz, the ECN deployed a helicopter sponsored by the Samcor Diamond Company as a mobile polling station, which was used to allow deep-sea fishermen to participate in the elections. In addition, several companies across the country also allowed their workers to take time off from work in order to exercise their democratic right of voting.¹⁸

Towards a culture of good electoral practice

A number of administrative and procedural problems in the 2004 elections threatened to derail the electoral process. To a large extent these problems point to a lack of transparency on the part of the electoral bodies. Perhaps more elaborate checks and balances are needed in the way elections are regulated and administered.

Inspection of the voters' roll

The ECN, through its Director of Elections, is entrusted with the responsibility of compiling and revising the voters' roll in preparation for each pending election. The roll should then be made available for inspection at various specified places. This is primarily done to provide public accountability by allowing the participation of various stakeholders and the general public at large in the process of verifying the final voters' roll.

Whether this requirement was met in the process of preparing for the 2004 Presidential and National Assembly elections, remains a subject of intense debate. On its part, the ECN claimed that it adhered to all the provisions by ensuring that copies of the provisional voters' roll were displayed in public at magistrate's offices countrywide between 14 - 29 October 2004. Some of the political parties claimed that they were not informed of this, and were therefore under the impression that the voters' roll was still in the process of being compiled. This problem underscores the lack of pro-active measures on the part of both the ECN and political parties in their observance and application of the provisions of the electoral laws. For instance, in the interest of promoting an atmosphere favourable to the holding of free and fair elections, nothing in the relevant Act would have precluded the ECN from notifying political parties and members of the public regarding the release of the provisional voters' rolls for public inspection, as well as urging their active participation. On their part the political parties appear to have been sleeping on duty, as nothing in the Act would have stopped them from seeking information regarding this process, rather than to be woken from their slumbers by the release of the final voters' roll - three day before the commencement of voting.

Provision and accounting of electoral material

Some of the political parties were enraged by a number of issues regarding the manner in which the ECN provided and accounted for election materials and equipment in the 2004 elections.

For instance, the fact that the tender for the printing of ballot papers was awarded to NAMPRINT, a local company with close links to the ruling SWAPO party, was a bone of serious contention. The ECN defended its decision, by arguing that there were procedures in place which were applied in the awarding of this tender, including site inspections to establish conformity to various requirements, such as those pertaining to security and logistical arrangements for the delivery of the ballots papers to polling stations.¹⁹

In view of a previous Regional Council by-election in May 2004 in the Otjinene constituency, where a shortage of voter registration and polling materials had resulted in the disenfranchisement of some voters, the ECN opted to print many more than the 1,2 million ballots that were required for the 2004 Presidential, National Assembly and Regional Council elections. An additional 1,65 million ballots papers were printed.²⁰ Some political parties were very critical of this state of affairs, and the ECN consequently undertook to account for the ballot papers issued to each polling station, in terms of those used, unused and spoilt.

It was also alleged that some ballot boxes bore the same numbers, and that political parties were not informed about the number of seals that had been produced for ballot boxes by the ECN.²¹ The inclination of the ECN in many of these instances is to narrowly meet only the minimum requirements as stated in the electoral laws, rather than the building of public confidence by pro-actively providing additional relevant information in the electoral process. Therefore, although the ECN may have had good intentions in many instances, this lack of transparency creates an atmosphere of doubt.

Counting and verification of votes

The Electoral Regulations provide for the counting of votes at a pre-determined centralised point in each constituency. After completion of counting at the centralised point, the provisional results are then transmitted by fax to the Central Election Result Centre (CERC) in Windhoek, where final verification is done before the results are released.²² Concerns were expressed regarding the 'extraordinary' secrecy that surrounded the result verification process, to the extent that some of the participating political parties claimed that they did not have a clue as to what the verification process entailed.²³

The biggest confusion in the entire 2004 election unfolded when 22 ballot papers from the National Assembly elections were discovered under mysterious conditions by a passer-by on 25 November 2004. The ballot papers were strewn in the bushes of the Swakop River to the south of Okahandja. All these ballots were marked as opposition party votes, and with the exception of one, they were all completely intact and depicted the secret polling stamps at the back.²⁴ In an attempt to clear the air, various ECN officials offered differing hypothetical explanations for this fiasco. For instance, the Director of Elections tried to shift the burden of proof to those who discovered the ill-fated papers, although he conjectured that the ballot papers might have fallen off a truck "or something" while being transported.²⁵ Whereas, on his part, the chairperson of the ECN argued that given the suspicious manner in which the papers were discovered, the possibility that the ballot papers may have been planted, could not be ruled out completely. This he predicated upon the fact that some stakeholders were overly inclined to discredit both the ECN and the entire electoral process.²⁶ He further pointed to the fact that since the papers were marked with the secret stamp, this was testimony that there was no intention on the part of anyone to rig the elections. Moreover, he also argued that the secret stamp markings on these papers could mean that they had already been counted, and therefore formed part of the results as certified and released by the ECN.²⁷ Both these hypotheses featured prominently in the replying affidavits tendered by the ECN to the legal challenge mounted, not unsurprisingly, by the CoD and the RP.

Another issue of concern was the fact that after the announcement of the final result, which marked the official conclusion of the electoral process, it later emerged that close to 800 ballot papers from foreign missions were not included in the officially released tallies. The ECN argued that since these ballot papers only accounted for an insignificant 0.01% of the total votes cast, it was not in the interest of the electoral process to continue withholding the official announcement of the result beyond the five days of counting. Therefore, after

it had consulted with the political parties, it proceeded to announce the result, despite the fact that it was still awaiting these ballot papers.²⁸ Although it cannot be disputed that these ballots would not have changed the result of the election, the crucial question remains as to whether acts of this nature should be seen as good practice on the part of the ECN.

Overall, the fact that the electoral process was buttressed by thick clouds of extraordinary administrative secrecy may have undermined public confidence in the elections, and may also prove precarious to democratic authenticity in the long run.

Grievance procedures and conflict prevention

In terms of section 43 of the 1992 Electoral Act, the ECN is required to initiate a process of negotiation that culminates in the signing by all registered political parties of an electoral code of conduct. The code recognises the fact that free and fair elections hinge on the freedom of political campaigning. This is interpreted broadly by not only emphasising the right to free expression of political convictions without threat or fear of intimidation, but equally as the duty of political parties to share in the responsibility of ensuring the freedom of others to express their own independent opinion.

The adherence of political parties to the code is generally satisfactory, although some political leaders occasionally make themselves guilty of engaging in hate speech and other forms of bigotry and public incitement.²⁹ Only isolated and minor incidents of violence were reported, such as in the town of Ongwediva in Northern Namibia between the supporters of the ruling SWAPO party and the CoD, who accused one another of having initiated an incident of stone throwing.³⁰

The code also provides for weekly consultative meetings between the ECN and the various political parties, as an avenue for dealing with electoral grievances that may arise from time to time. However, the Namibian electoral laws and regulations have come under criticisms for not providing sufficient scope for systematic and speedy resolution of grievances. Such a view is contained in a study conducted by the MRCC in which 29% of respondents voiced their concern that current legal provisions do not contain adequate mechanisms for resolving electoral conflicts (MRCC, 2002: 43).

A testimony to this effect is the cloud of political uncertainty that hovered over the 2004 Presidential and National Assembly elections due to a court case in which the CoD and RP challenged a decision of the ECN, following the latter's rejection of a request by the two parties to delay the final certification of the election results. The initial request by the two parties was predicated upon what they saw as the urgent need for an independent, all inclusive and open auditing process for the verification of the final outcome of the voting and counting processes, in view of the various administrative and procedural controversies that were outlined above.³¹

In their current form the Namibian laws for elections provide a protracted process for resolving disputes of this nature, which contribute to the prolonging of political uncertainty. For instance, the electoral law debar any other persons and/or institutions, apart from the members of the ECN, from accessing

the sealed packets of election materials that are returned to the Director of Elections for safekeeping. As a result, the aggrieved parties had to seek a court order in 2004 to be given the right of access to the close to 6 000 pages of original documentation that were transmitted by presiding officers from the 1 168 polling stations, as well as from returning officers in the country's 107 constituencies. The complainants passed this first hurdle when the High Court granted them the order on December 16, 2004.³²

In terms of the electoral law, any complaints about electoral irregularities should be lodged with the Registrar of the Court within 30 days after the conclusion of the electoral process. After this the CoD and the RP were given five days to provide the court with security to the tune of N\$ 200 000, which was reserved for the covering of costs that could be incurred by witnesses or the persons or parties who were respondents in the case. After that the ECN and other respondents had to be informed of the complaints through a notice given to them within ten days of the application. The Registrar is also under obligation to notify all concerned in the trial, ten days before the case is heard. The law further states that no election shall be set-aside on grounds of any irregularity if the court decides that the irregularities did not affect the outcome of the election (Lodge, 1999: 59).

This analysis clearly reveals that the requirements of the present mechanism for resolving electoral disputes are passively exclusive in character; they are embedded with numerous legalistic complexities and impose a high price tag on the process.

Conclusion

The 2004 Namibian elections did not receive an all-inclusive stamp of approval from officially accredited international and domestic observer missions. In terms of being free and fair, these observer groups provided somewhat qualified certifications of the elections. Various media institutions hailed the electoral process, but also did not give it a totally clean bill of health. These pronouncements mean that there is scope for significant improvement in the way elections are regulated, managed, observed and monitored in Namibia.

This paper concurs with the view expressed by the African Union observer mission who called for a more inclusive Electoral Act that empowers the ECN to ensure compliance with norms and standards governing elections in the SADC region and beyond.³³ In our view this should include the broadening of consultative processes initiated by the ECN beyond the confines of political parties, to include non-partisan actors in civil society. The electorate has an active and substantial role to play in the preservation of credible elections. Transparency and accountability in electoral institutions and processes are vitally important in this regard. It is important to underscore the need for Namibia to overcome its narrow focus on the provisions of the electoral law, to ensure that electoral bodies and parties act proactively in promoting free and fair electoral processes in Namibia.

Notes

- ¹ The highest remainder method is sanctioned under Schedule 4/4 of the Namibian Constitution, and works as follows: suppose a party receives 36 of the 72 elected parliamentary seats, by virtue of having secured 50.7% of the votes in a National Election, under the highest remainder method it will have to compete for any left over seats with all other parties who also gained a surplus percentages of votes. If no other party has a surplus percentage larger than 0.7%, then the party with 36 seats receives the first of the remaining seats. The next remaining seats would also be allocated to the party with the next highest surplus percentage.
- ² The Namibian Newspaper, Wednesday November 24, 2004
- ³ The Namibian Newspaper, September 22, 24, 2004
- ⁴ The Namibian Newspaper, Wednesday, September 24, 2003
- ⁵ The Namibian Newspaper, September 30, 2004
- ⁶ New Era Newspaper, Wednesday November 17, 2004
- ⁷ The Namibian Newspaper, Thursday, October 14, 2004
- ⁸ The Namibian Newspaper, September 22, 2004
- ⁹ The Namibian Newspaper, October 13, 2004
- ¹⁰ Derived from interviews by a reporter of The Namibian Newspaper with spokespersons of some of the political parties. October 13, 2004
- ¹¹ The Namibian Newspaper, October 11, 2004
- ¹² Friday, October 15, 2004
- ¹³ Insight Namibia Magazine, December 2004, pp. 25
- ¹⁴ New Era Newspaper, Wednesday November 3, 2004
- ¹⁵ New Era Newspaper, Friday November 5, 2004
- ¹⁶ New Era Newspaper, Wednesday November 3, 2004
- ¹⁷ Insight Namibian Magazine, December 2004, pp. 25
- ¹⁸ New Era Newspaper, November 17, 2004
- ¹⁹ The Namibian Newspaper, October 13, 2004
- ²⁰ The Namibian Newspaper, Friday, November 12, 2004
- ²¹ The Namibian Newspaper, Monday November 29, 2004
- ²² ECN Official Public Statement, published in The Namibian Newspaper of Monday November 29, 2004
- ²³ New Era Newspaper, Monday November 22, 2004
- ²⁴ New Era Newspaper, Monday, November 29, 2004
- ²⁵ The Namibian Newspaper, Monday November 29, 2004
- ²⁶ New Era Newspaper, Monday, November 29, 2004
- ²⁷ The Namibian Newspaper, Monday November 30, 2004
- ²⁸ New Era Newspaper, Thursday, November 25, 2004
- ²⁹ The Namibian Newspaper, Thursday, October 14, 2004
- ³⁰ The Namibian Newspaper, Tuesday November 23, 2004
- ³¹ New Era Newspaper, Monday, November 22, 2004

³² The Namibian Newspaper, December 17, 2004

³³ New Era Newspaper, Monday, November 22, 2004

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SOUTH AFRICA

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SOUTH AFRICA'S THIRD DEMOCRATIC ELECTION: OPPORTUNITIES AND CHALLENGES

BY KHABELE MATLOSA AND SYDNEY LETSHOLO

Introduction

South Africa held its third multiparty general election in April 2004 – exactly 10 years after the first multiparty election that brought about majority rule. The second general election in the new democratic order took place in April 1999.

The 2004 election was crucial in many respects. It established a platform for key political actors to re-craft and re-frame South Africa's democratic governance and development for the next decade. The South African government undertook a review of the country's first 10 years of democracy to identify and address persistent socio-economic and political problems. The review resulted in the presentation of a vision and strategic plans for the country's democratic transformation until 2014. The policy thrust of the ANC's 2004 election manifesto, "A People's Contract to Create Work and Fight Poverty", was based on the best-case scenario for South Africa's next 10 years of democracy.

The election also formed part of the national celebrations of South Africa's 10 years of democracy. The festivities were marked by pomp and ceremony culminating in the official inauguration of President Thabo Mbeki on 27 April 2004. During the course of the year, various government departments showcased their successes over the past decade. Opposition parties, however, in particular the main opposition party, the Democratic Alliance (DA), raised concerns about the celebrations being used for political gain by the ruling African National Congress (ANC) government in advance of the election and utilising public and state resources in the process.

This article aims to review the historic general election of 2004 with a view to identifying the opportunities and challenges it posed for democratic transformation and consolidation in the country. The article discusses the electoral process taking into account the three stages of the election, namely the pre-election stage, the polling stage and the post-election stage.

The legal framework

The constitutional and legal framework for elections in South Africa is informed by the country's 1996 Constitution that precisely defines how government is constituted, especially in relation to the legislative and executive branches. In terms of Article 46(1) of the Constitution, the South African parliament consists of no fewer than 350 and no more than 400 elected members. The main functions of parliament are:

- To make laws;
- To provide checks and balances (separation of powers) in governance;
- To provide accountability and transparency in governance;
- To provide oversight over other organs of government; and
- To provide representation and legitimacy in governance.

Having been duly constituted through an election, the national parliament “elects the President who is the head of the executive branch of government, and who is responsible for governing in conjunction with the cabinet, which he appoints” (Butler, 2004:105). In line with this provision as prescribed by Article 86(1) of the Constitution, Thabo Mbeki, the president of the ANC, was re-elected as the country’s president after the 2004 election. The president is assisted by a deputy president, whom he appoints, and who is also a member of the cabinet. The president’s tenure of office is 5 years and the Constitution limits the period to a maximum of two terms (10 years). President Mbeki is currently serving his second and last term of office. The cabinet’s main responsibility is the formulation of government policies in line with the Constitution. The cabinet is accountable to the parliament. In essence, therefore, general elections take place to constitute the national assembly; the national assembly in turn gives birth to the executive through the election of the president; and the president appoints the cabinet.

South Africa’s electoral system is governed by the 1998 Electoral Act, which specifies who may vote, how the voting process takes place and how the votes are translated into parliamentary seats. The Act provides a detailed legal framework for the management of elections as well as a code of conduct for political parties during elections. The management of elections is the sole responsibility of an autonomous and impartial Independent Electoral Commission (IEC). The IEC is a statutory body established through a 1996 act of parliament. The IEC comprises 5 members, one of whom is a judge, appointed by the President to serve on the Commission for a period of 7 years. The commissioners are recruited through an advertisement in the media, placed by the Constitutional Court, calling for applications from suitable candidates. The judges of the court proceed by screening the applicants and preparing a short-list of qualified candidates. Interviews of the short-listed candidates are then conducted at public hearings by a panel consisting of:

- The president of the Constitutional Court as chairperson;
- A representative of the Human Rights Commission;
- A representative of the Commission on Gender Equality; and
- The Public Protector

After the public hearings, the panel recommends 8 nominees to the Portfolio Committee for Home Affairs (a sub-committee of parliament). Upon consideration by the Home Affairs Portfolio Committee, the full national assembly approves the names of five selected commissioners through a resolution. The resolution is then submitted to the Minister of Home Affairs who in turn submits the names to the President for official appointment. The current members of the IEC are:

- Dr. Brigalia Bam;
- Professor Herbert Vilakazi;
- Judge Ismael Hussain;
- Ms Thoko Mpumlwana; and
- Mr. Fanie van der Merwe

The IEC is assisted in discharging its responsibility of managing elections by a secretariat headed by the Chief Elections Officer (CEO), Advocate Pansy

Tlakula. The IEC managed the 2004 election with diligence and professionalism, which earned the confidence of all stakeholders including the political parties. The manner in which the IEC is appointed, and the professional conduct of the IEC in managing elections in South Africa, is increasingly becoming an example of best practise in Africa and particularly in the SADC region.

The electoral system and political parties

The electoral model in use in South Africa since 1994 is the List-Proportional Representation (PR) system. According to Nohlen, a pure PR electoral system is one “which, without natural or artificial hurdles (the size of constituencies or thresholds), aim at attaining the highest possible degree of proportionality” (cited in de Ville, 1996:19). According to Faure and Venter “South Africa used the British First-Past-The-Post (FPTP) system of electing representatives for parliament for more than eighty years. It remained essentially unchanged since the implementation of unification in 1910 until its replacement by a new electoral system with the 1993 Interim Constitution and the subsequent election of April 1994. Towards the end of the 1980s, it became clear that South Africa was irrevocably moving towards some major form of political transition and also a new electoral arrangement. The five years that preceded the adoption of the Interim Constitution in 1993 witnessed intensification in the debate on electoral options for the new South Africa” (2004:2).

However, the South African model is not as straightforward as it seems because the PR model applies only in so far as elections for the national assembly are concerned. Local government elections make use of a hybrid system that combines the constituency-based FPTP electoral model with the PR model. The rationale is to ensure the broadening of participation and representation in the national and provincial legislatures so as to nurture and deepen political reconciliation and stability. At local government level, however, the hybrid system is used to combine the desired outcomes of the PR system with the positive features of the FPTP system – accessibility and accountability to the electorate.

The 1996 Constitution requires the electoral system to result in proportional representation in general terms. “The system chosen to fulfil this mandate for national parliament was a highly proportional party list system, in which each party draws up closed and rank-ordered national and provincial lists of candidates for parliament. Elections are held every five years” (Butler, 2004:105). South Africa has used the List-Proportional Representation (PR) system since 1994 in which the entire country is considered as one constituency with various voting districts. Parties contesting elections prepare lists of candidates for the 400 member national assembly and the provincial legislatures according to the following guidelines:

- A National Assembly list comprising 200 (of the 400) candidates;
- A National Assembly list comprising an additional 200 candidates drawn from across the various provinces of the country (to ensure provincial representation in the National Assembly); and
- Nine provincial lists comprising candidates equivalent to the number of seats available in each provincial legislature (Thomas, 2004; Cherry, 2004; Southall, 2004).

Thus, unlike in the FPTP system of the apartheid era, the political parties prepare lists of candidates who contest elections - not as individuals chosen to the legislature to represent constituencies - but as representatives of parties in the legislature. The subsequent allocation of seats is a relatively technical process that uses the 'Droop' quota. This is the threshold that is used in highest average List-PR systems and the quota "is ascertained by the following formula: total vote divided by the number of seats plus one, then one is added to the product" (Reynolds and Reilly, 1997:140). In terms of this formula, the South Africa PR system provides a relatively low threshold for parties' access to parliament in the SADC region (see Table 1), compared to Mozambique that requires a threshold of 5%. The main purpose of a threshold is to determine inclusion and exclusion of parties in the legislature on the basis of votes cast per party.

The South African Constitution does not prescribe a predetermined or explicit threshold, as this was perceived as undemocratic, exclusionary and discriminatory. The threshold quota is determined in each election primarily by voter turn out and the calculation of seats won by each party. The outcomes of the 1994, 1999 and 2004 elections were derived using this calculation and culminated in the results as illustrated in Table 1, Table 2 and Table 3.

The political opportunity presented by the transition and the low threshold of the electoral model triggered a mushrooming of political parties in the first democratic election as shown in Table 1. However, despite the proliferation of parties, the main players in South African politics after this election were the ANC (63% of the votes), National Party (20% of the votes), Inkatha Freedom Party (11% of the votes), Freedom Front (2% of the votes), Democratic Party (2% of the votes) and the Pan-Africanist Congress (1% of the votes). Since then, it has become abundantly evident that despite the multiplicity of parties and broad representation in parliament, that the ANC has become a hegemonic force in South African politics. This phenomenon is further borne out by the results of the 1999 and 2004 elections (see Tables 2 and 3).

As was the case in 1994, the ANC scored a landslide victory in the second democratic election in 1999, snatching 66% of the total valid votes, while the main opposition, the Democratic Party, was able to pocket only a paltry 10%. The ANC electoral hegemony is firmly entrenched in South Africa and the election result of 2004 reinforces the dominant party system marked by an overwhelmingly strong ruling party on the one hand and exceedingly enfeebled and fragmented opposition parties on the other. In fact, as parties began to gear up for the 2004 election, the ANC's primary goal was to maintain its political hegemony. The opposition parties did not aim at winning state power, only at narrowing the margin of the ANC's already presumed victory - and even this required a spirited fight.

So far, post-apartheid South Africa has held three general elections in 1994, 1999 and 2004. The fourth general election is due in 2009. It has also held two local government elections in 1995 and 1999 and its third local government election is scheduled for 2005.

Table 1 - 1994 South African Election Results

Party	Total Votes	% of Votes	Parliamentary Seats	% of Seats
African National Congress (ANC)	12 237 655	62.65	252	63
National Party (NP)	3 983 690	20.39	82	20.5
Inkatha Freedom Party (IFP)	2 058 294	10.54	43	10.75
Freedom Front (FF)	424 555	2.17	9	2.25
Democratic Party (DP)	338 426	1.73	7	1.75
Pan-Africanist Congress of Azania (PAC)	243 478	1.25	5	1.25
African Christian Democratic Party (ACDP)	88 104	0.45	2	0.5
African Moderates Congress Party (AMCP)	27 690	0.15	0	0
Soccer Party	10 575	0.05	0	0
Keep it Straight and Simple (KISS)	5 916	0.03	0	0
Workers Rights Peace Party (WRPP)	6 434	0.03	0	0
Workers List Party (WLP)	4 169	0.02	0	0
Ximoko Progressive Party (XPP)	6 320	0.03	0	0
African Muslim Party (AMP)	34 466	0.18	0	0
African Democratic Movement (ADM)	9 886	0.05	0	0
Dikwankwetla Party of South Africa (DPSA)	19 451	0.10	0	0
Federal Party (FP)	17 663	0.09	0	0
Luso-SA Party (LUSAP)	3 293	0.02	0	0
Minority Front (MF)	13 433	0.07	0	0
Total	19 533 498	100	400	100

Source: Independent Electoral Commission (IEC)

Table 2 - 1999 South African Election Results

Party	Votes won	% of Votes	Parliamentary Seats	% of Seats
African National Congress (ANC)	10 601 330	66.35	266	66.5
Democratic Party (DP)	1 527 337	9.56	38	9.5
Inkatha Freedom Party (IFP)	1 371 477	8.58	34	8.5
New National Party (NNP)	1 098 215	6.87	28	7
United Democratic Movement (UDM)	546 790	3.42	14	3.5
African Christian Democratic Party (ACDP)	228 975	1.43	6	1.5
Freedom Front (FF)	127 217	0.80	3	0.75
United Christian Democratic Party (UCDP)	125 280	0.78	3	0.75
Pan-Africanist Congress of Azania (PAC)	113 125	0.71	3	0.75
Federal Alliance (FA)	86 704	0.54	2	0.5
Minority Front (MF)	48 277	0.30	1	0.25
Afrikaner Eenheidsbeweging (AEB)	46 292	0.29	1	0.25
Azanian Peoples' Organisation (AZAPO)	27 257	0.17	1	0.25
Abolition of Income Tax and Usury Party (AITUP)	10 611	0.08	0	0
Government by the People Green Party (GPGP)	9 193	0.06	0	0
Socialist Party of Azania (SOPA)	9 062	0.06	0	0
Total	15 977 142	100	400	100

Source: Independent Electoral Commission (IEC)

Tables 1, 2 and 3 clearly illustrate that the PR system allocates parliamentary seats to parties in almost direct proportion to their electoral strength. This demonstrates the fairness and inclusive nature of this system. For instance, the ruling ANC won 62.65% of votes and 63% of the seats in 1994. In 1999, the ANC won 66.35% of the votes and 66.5% of the seats. In 2004, the ANC won 69.68% of the votes and 69.75% of the seats. Such a close correlation of votes and seats won by parties is a rare commodity under the FPTP system. While often criticised for lack of accountability by MPs, given their strong link to the party rather than to the electorate, the Proportional Representation (PR) system is nevertheless reputed for a number of inherent values. These include advancing

democratic governance by broadening the representation of key political forces in the legislature, the inclusive nature of the political system, the promotion of reconciliation in post-conflict societies and, as importantly, facilitating gender balance in the realm of governance as illustrated in Table 4.

Table 3 - 2004 South African Election Results

Party	Total Votes	% of Votes	Parliamentary Seats	% of Seats
African National Congress (ANC)	10 880 915	69.69	279	69.75
New National Party (NNP)	257 824	1.65	7	1.75
Inkatha Freedom Party (IFP)	1 088 664	6.97	28	7
Independent Democrats (ID)	269 765	1.73	7	1.75
Democratic Alliance (DA)	1 931 201	12.37	50	12.5
Pan-Africanist Congress of Azania (PAC)	113 512	0.73	3	0.75
African Christian Democratic Party (ACDP)	250 272	1.6	6	1.5
Azania Peoples' Organisation (AZAPO)	39 116	0.25	2	0.5
United Democratic Movement (UDM)	355 717	2.28	9	2.25
United Front (UF)	11 889	0.08	0	0
Freedom Front+ (FF+)	139 465	0.89	4	1
United Christian Democratic Party (UCDP)	117 792	0.75	3	0.75
Minority Front (MF)	55 267	0.35	2	0.5
The Socialist Party of Azania (SOPA)	14 853	0.1	0	0
New Labour Party (NLP)	13 318	0.09	0	0
The Organisation Party (TOP)	7 531	0.05	0	0
Keep it Straight and Simple (KISS)	6 514	0.04	0	0
Nasionale Aksie (NA)	15 804	0.1	0	0
Peace and Justice Congress (PJC)	15 187	0.1	0	0
The Employment Movement of South Africa (EMSA)	10 446	0.07	0	0
Christian Democratic Party (CDP)	17 619	0.11	0	0
Total	15 612 671	100	400	100

Source: Independent Electoral Commission (IEC)

Table 4 - Gender Balance in the South African Parliament, 1994-2004

Year	Size of Parliament	Number of Women	% of Women
1994	400	111	27.7
1999	400	120	29.8
2004	400	131	32.8

Source: Morna, 2004; Gender Links website, 2004

Women's participation in the South African parliament has increased progressively over the years since 1994. With a parliament of 400 seats, women occupied 111 seats constituting 27.7% of the total in 1994. This situation improved considerably in the country's second democratic election of 1999, when the number of women in parliament soared to 120 or 29.8% of the total parliamentary seats. This approximated South Africa's commitment to the 1997 SADC Declaration on Gender and Development signed by member states in Blantyre, Malawi, through which SADC states committed themselves to achieving equal gender representation in key organs of governance and at least 30% women representation by the year 2005. It is noteworthy that following the 2004 election, South Africa has actually exceeded the 2005 target of 30% women representation in parliament. The current women representation in parliament is 131 or 32.8% - almost 3% above the SADC benchmark for 2005 and about 17% shy of equal (50%) gender representation in the legislature. There is no doubt that the PR system has contributed significantly to this positive trend. An important additional requirement, however, is the commitment of South Africa's political parties to incubating a political culture that embraces gender equality in governance. It should be emphasised that the PR system on its own may not be an adequate catalyst for gender equality in the legislature. To establish gender equality needs additional drive and commitment from political parties, and particularly from their political leaders. It also requires the establishment of voluntary or involuntary quotas for women representation in parliament.

The electoral system: unfinished business

By all indications the PR electoral model has served the country relatively well over the last 10 years. It has certainly helped to ensure broad representation of key political parties in the legislature; it has contributed to greater numbers of women in parliament and in the executive branch of government; it has facilitated reconciliation and peace following a protracted violent conflict, thereby acting not only as a conflict management instrument, but also as a facilitator of political stability. It has also enhanced participation of the electorate in the political process - especially in elections - by ensuring that all votes count. All valid votes are counted in the calculation of election results in a way that ensures that political parties earn their legislative seats in proportion to their actual electoral strength.

Notwithstanding all these positive attributes of the PR model, the model is under question in South Africa, particularly since the country's second

democratic election in 1999. One major critique of the PR system is that it centralises power within political parties and consequently suffers from a severe lack of accountability of MP's to the actual electorate. MP's may take the attitude that they have been elected into parliament not so much by the voters, but rather by the party leadership that placed them on the party's list. They are beholden to the party's leaders and the interests of the voters may come second to the party's requirements. This results in the paradox of a faceless MP without a distinctive constituency and without accountability to voters. Faure and Venter says this shortcoming "is seen as the most serious in that it suppresses communication between voters and the representatives: the MPs are responsible to parties and not sufficiently responsive to the needs of voters" (2003:7). However, the key question around this paradox is whether in fact lack of accountability of MPs is a factor of an electoral model alone or a wider political problem linked to the broader political culture obtaining in a country.

As part of the political settlement of its protracted violent conflict, South Africa adopted a provisional constitution in 1993. This constitution provided for the holding of elections on the basis of an electoral model that would ensure proportional representation. It was this model that was adopted during the transitional election of 1994. Constitutional amendments were introduced in 1996, but these did not oblige the country to change this model. The PR model was therefore followed in the 1999 election again. The 1996 Constitution, however, anticipated refinements to or a change of the electoral system following the 1999 election and before the 2004 election. The general debate that ensued in the light of this constitutional provision prompted the government to appoint a task force on electoral reform. A commission called the Electoral Task Team (ETT) was established on 20 March 2002 chaired by Dr. Frederik Van Zyl Slabbert. Its mandate was to (a) draft new electoral legislation as required by the constitution and (b) formulate the parameters of new electoral legislation to prepare for the scheduled National and Provincial elections of 2004 or any earlier election, should the need arise (Report of the Electoral Task Team, 2002:3).

An international conference was jointly organised by the ETT, the Konrad Adenauer Stiftung and the Electoral Institute of Southern Africa (EISA) in Cape Town on 9-10 September 2002 to engage in this debate and to consider regional and international perspectives and experiences (Konrad Adenauer Stiftung, 2003). A main feature of this conference was that no consensus emerged regarding a preferred electoral model for South Africa. Some participants argued in favour of Mixed Member Proportional Representation, whereas others argued for the retention of the full List-PR system. Public opinion on electoral reform, however, was overwhelmingly in favour of retaining the present List-PR system. This was confirmed by a public opinion survey undertaken by the Human Sciences Research Council (HSRC) covering a sample of 2 760 South African citizens of voting age selected randomly. According to Southall and Mattes (2003) "the survey asked ... respondents a series of questions about their opinions of the current electoral system. Looking across the questions, it is clear that a substantial majority feels that, overall, the present system is fair. About three-quarters say they are 'satisfied' with 'the way we elect our government'

(74%) and agree the system is ‘fair to all parties’ (72%). Approximately two-thirds feel that ‘all voters were treated equally’ in the 1999 elections (68%) and that ‘all parties were treated equally’ in 1999 (63%)”.

The Slabbert Commission undertook its work with diligence. The Commission conducted stakeholder workshops and interviewed political parties and other key stakeholders. The Commission also engaged the HSRC to conduct the abovementioned survey. Members of the task force were, however, divided in the end and two schools of thought emerged. A majority of commissioners were in favour of a Mixed Member Proportional representation system that would lead to the introduction of 69 multi-member constituencies from which 300 MPs would be elected via the FPTP system and 100 MPs on the basis of a closed party list. A minority of commissioners argued for the retention of the current system on the basis that its potential strengths outweighed its perceived weaknesses. As a result of this divergence of opinion, two reports were issued - the main report that called for a change in the system and a minority report that called for the retention of the current PR system.

The ETT submitted both reports to the Minister of Home Affairs and the matter was subsequently presented to cabinet. According to Faure and Venter “the government’s reaction to the ETT report was that the status quo would be maintained and that the newly elected government in 2004 would review the report and make a decision in preparation for the 2009 poll” (2003:8). There were various factors that influenced the government’s decision not to undertake electoral reforms in line with the majority position of the ETT. Roger Southall (2004) isolates five reasons:

- Challenges posed by the introduction of a new model in respect of civic and voter education shortly in advance of the 2004 election;
- The perceived fairness and representivity of the PR system, in particular its inherent virtues in a post-conflict South Africa;
- The system had become familiar and was easy to understand, and less complex compared to the proposed new MMP model;
- The system had proved itself to be conducive to gender equality in the realm of political governance; and
- The fact that the commission itself was divided on the need for electoral reform.

The frank debate triggered by the ETT considerably enriched the policy and academic discourse on electoral models in the country. It is possible, however, that the electoral reform process will not be revisited. It would come as no surprise if no further efforts were made by the South African government towards electoral reform in respect of the 2009 election and beyond.

The electoral process and outcome

Voter registration

The IEC organised the first round of voter registration on 8 and 9 November 2004. There was concern among various stakeholders about the timing of the exercise. The period coincided with school vacations and more importantly, first time voters would be pre-occupied with preparing for their final school exams. In an effort to avert a possible decline in registration statistics of eligible voters, the

IEC announced that there would be a second round of registration on 24 and 25 January 2004. By 24 January the IEC had registered 19.4 million voters, 1.3 million more than in the 1999 election. Confusion about voting outside of the country was also clarified. According to the IEC, only two categories of voters abroad were recognised: those absent from South Africa on government service and members of their households; and those temporarily absent from South Africa on holiday, studying abroad, on business or taking part in a sporting event.

The independence of the judiciary in South Africa is undisputed. This was confirmed again when the Constitutional Court, despite a furore in the country, ruled that all prisoners, regardless of the nature of their crime, were eligible to register and vote in the election. In previous elections, only awaiting trial prisoners and those whose sentences allowed them an option of a fine enjoyed the right to vote. Some observers argued that the ruling had broadened the parameters of the country's democracy, while others opined that the judgement was stretching the country's democracy beyond limits (Letsholo, 2004: 105). Nonetheless, the registration of prisoners duly took place. Table 5 below reflects voter registration statistics and voter turn out in the country's three democratic elections (1994, 1999 & 2004):

Table 5 - Voter Registration and Voter Turnout, 1994-2002

Election Year	Voting Age Population (VAP)	Registered Voters	% of VAP Registered	Turnout Registered	Turnout VAP
1994	22, 709, 152	N/A	N/A	N/A	86, 0 %
1999	22, 589, 369	18, 172, 751	80.4 %	89.3 %	71.6 %
2004	27, 436, 819	20, 674, 926	75.4 %	76.7 %	57.8 %

Source: Strategic Insights, Vol. III, Issue 5

Table 5 clearly shows a decline in both registration and voter turnout in South Africa's three democratic elections. According to Piombo (2004), participation in the national elections has decreased by 30% between 1999 and 2004 (evaluated as a percentage of voting age population, VAP). A number of factors account for the declining voter turnout since 1994. Chief among these are:

- voter apathy;
- increasing maturation of democracy and declining political incentives for citizen participation in elections; and
- competition between participation in elections and socio-economic pressures such as unemployment, poverty and chronic ailments such as HIV and AIDS.

Use of public resources: the public broadcaster

Several months before South Africa's first democratic election in 1994, the ANC insisted that the government establish an Independent Media Commission (IMC) to monitor the conduct of the state broadcaster to ensure the equitable treatment of contending political parties. The IMC no longer exists, and its

functions in respect of media coverage during elections were transferred to the Independent Communications Authority of South Africa (ICASA), the statutory body responsible for broadcasting and telecommunications regulation in the country.

Perhaps the major controversy around use of public resources during the pre-election period in South Africa's 2004 election was when the public broadcaster, the *South African Broadcasting Corporation* (SABC), aired the launch of the ANC's election manifesto on a live television broadcast (see Mbaya, 2004). Predictably, and perhaps understandably, the opposition parties were outraged, charging that the public broadcaster was exhibiting political bias. After a formal public hearing, ICASA dismissed these complaints on the grounds that the event fell outside the "election period", and therefore were not in breach of any electoral rules or policies (Louw, 2004: 9). The public broadcaster argued that it was simply televising the "first important presidential speech" of the year. Unconvinced by this assertion, the opposition parties demanded from the public broadcaster that they receive the same privilege as the ruling party, which the SABC refused. As Mbaya aptly opines, ICASA's explanation did not necessarily quell criticism "regarding the SABC's role of serving the African National Congress (ANC) government ... in this case, [the SABC] seemed to have flouted it's own house rule [by] not taking cognisance of [it's] editorial code which enjoins fairness in the conduct of its news and current affairs programmes" (2004:74).

Political violence and conflict management

The spotlight of observers of the 2004 election focused mainly on KwaZulu-Natal (KZN), a province with a history of political violence. Historically, the KZN has always been a political battleground between the ANC and the IFP. In previous years political rivalry between these two parties also extended itself into other parts of the country, particularly the East Rand, Soweto and the Vaal Triangle in the Gauteng province. However, there has been a notable decline in political violence since 1994. Piper (2004) asserts that in 1994 more than 1, 000 people died in the three months preceding the election in Kwazulu-Natal. In 1999 the figure had declined to about 100. The decline in political violence in various provinces, and especially in the KZN, afforded contesting parties the opportunity to tackle issues arising from their manifestos. Piombo (2004) argues that by 2004, politics had become so routine in the country that political leaders and analysts worried not so much about voter intimidation and political violence, but more about voter apathy. Additionally, the commitment and adherence to the code of conduct signed by all contesting parties in Pretoria on 1 March 2004, substantially assisted in reducing incidents of violent conflict. Over and above the code of conduct, other institutional mechanisms for the constructive management of the 2004 election included conflict panels in all the provinces, party liaison committees and the electoral court. All these structures were coordinated by the IEC and proved useful in managing election-related conflicts.

Party campaigns

Vigorous political campaigning took place in all nine provinces of the country. For the purposes of this discussion, political campaigns in only two provinces

will be discussed, namely KZN and the Western Cape. It is common knowledge that until 2004, the ruling ANC only managed to win elections in seven of the nine provinces. The Western Cape proved elusive because it was co-governed by opposition parties through alliances, while the IFP enjoys significant support in KZN. Since most of the parties' manifestos tackled the same issues, campaign strategies were the key defining features that differentiated parties. All the manifestos focused on six big issues: poverty, HIV and AIDS, crime, corruption, macro-economic policy and foreign policy - especially in relation to Zimbabwe (Kabemba, 2004: 38). It was essential to reach voters at the crucial moment shortly before they cast their ballots. Various strategies were adopted to reach voters including advertisements, pamphlets, posters, billboards, news media, political rallies and house-to-house campaigning.

Campaigns in KwaZulu-Natal

According to Rapoo (2004), the race for KZN took place between the ANC and the IFP. The ANC formally launched its political manifesto and national campaign at the Harry Gwala Stadium in Pietermaritzburg on 11 January 2004. The ANC left nothing to the imagination regarding its intentions and nature of its electoral strategy - it wanted to leave no stone unturned in its resolve to capture the province from the IFP. Compared to opposition parties, the ANC decided to embark on a new campaigning strategy. The party organised visits by national and provincial leaders to key IFP strongholds such as Msinga, Ulundi and Nongoma. According to Piper (2004) this strategy could be read as a determination to ensure that political freedom would finally penetrate every corner of South Africa, at least during election time. For the ANC in KZN, the turn away from rallies to personal contact reflects a national concern to re-root the party amongst an increasingly disillusioned electorate (Piper, 2004: 23). In the 1999 elections, the ANC and the IFP obtained 39.38 % and 41.90 % of the votes respectively. This effectively meant that the IFP led the provincial government. Piper (2004) asserts that in the 2004 election the ANC was willing to do everything in its power to reverse this result. In terms of election themes, violence and the issue of which town should become the legislative capital of the province, were emphasised in the ANC's campaign. The choice of these themes reflected an attempt to target middle-ground voters, specifically those residing in Pietermaritzburg, who might have feared that should the IFP retain the province, the legislative capital would be moved to Ulundi. There was also intense speculation within the ANC and the media on the issue of the new premier, should the ANC win the election. It was believed the position would be given to either Deputy President Jacob Zuma or to the (ANC) MEC for Transport in the province, Sibusiso Ndebele.

Mottair (2004) maintains that the IFP campaigned intensively in KZN paying particular attention to its traditional strongholds of power in rural and peri-urban areas. On the other hand, in an unforeseen move, the IFP formed a coalition with the Democratic Alliance (DA). Dubbed, the "Coalition for Change", political commentators viewed this move as a sign that the IFP believed it could not retain control of the province on its own. The coalition predictably placed much emphasis on the failures of the ANC national government including poor service delivery in key areas, the lack of job creation and other

poverty alleviation measures, slow economic growth, the slow and reluctant implementation of policies and systems in the fight against HIV/AIDS and the inability to speedily reduce high levels of crime - and promised to do better (Business Day, 2004: 7). Furthermore, an attempt was made to invoke fear and suspicion in the electorate in relation to the ANC's democratic intentions. The DA was obsessed with the prospect of President Thabo Mbeki running for a third term, although he was only about to start his second one.

Despite fears of political violence, no major incidents were reported in KZN. Political maturity had finally taken root. Since the leader of the IFP had threatened long before the election that he would not accept the outcome should his party lose to the ANC, tight security measures were put in place. The "Coalition for Change", however, failed to win the contest with the IFP achieving 36.82% of the vote and the DA managing only 8.35%. The ANC obtained a convincing 46.98%. After much speculation, the ANC announced Sbusiso Ndebele as the new premier of the province.

Various reasons have been suggested for the strong performance of the ANC in the province. The ANC's focus on the issue of retaining Pietermaritzburg as the legislative capital of the province proved to be effective. According to Habib (2004), the ANC also presented itself as sympathetic to voters from Asian origin, many of whom reside in this province. The ANC's stance in the Israeli-Palestine conflict would have attracted Muslim support. The ANC may also have made tactical inroads into the Tamil constituency. Daniel (2004) asserts that the ANC's hosting of the Liberation Tigers of Tamil Eelan (LTTE) from Sri Lanka earlier in the year, and the presence of Thabo Mbeki at the Tamil New Year's celebration only four days before the election, paid off handsomely.

Campaigns in the Western Cape

As in KZN, political control in the Western Cape had long evaded the ANC. The most convincing explanation concerns the formation of alliances. For instance, in the run-up to the 1999 election, the Democratic Party (now DA), the New National Party (NNP) and the African Christian Democratic Party (ACDP) formed an alliance to keep the ANC out of power in the province. These parties obtained 38.39%, 11.91% and 2.79% of the vote respectively. Faced with a daunting challenge, the ANC could only manage to capture 42.07% of the vote. In an attempt to avoid history repeating itself in the 2004 elections, the ANC formed an alliance with an unlikely party, the NNP. Relations between the DA and the NNP had soured immediately after the 2000 local government elections when the latter pulled out of the alliance. However, as the campaign progressed, and with the NNP showing little impact, many within the ANC believed that the ANC could capture the Western Cape without them. The alliance continued, but some analysts predicted that the NNP would cease to exist after the election.

The DA launched its national manifesto in the Western Cape, clearly following the trend initiated by the ANC in terms of launching national party electoral campaigns in the hotly contested "opposition" provinces (Rapoo, 2004: 19). Some analysts contend that the political campaigns in these provinces reduced the political process to a circus. According to Hendricks (2004) the DA campaigned in areas like Woodstock and Mitchell's Plain with

the hope of making inroads into both Coloured and Afrikaner constituencies by spreading the message that a vote for the NNP translated into a vote for the ANC. The DA's election slogan "South Africa deserves better" was met with mixed reaction. There were allegations that the slogan had racial connotations. Constant references to Zimbabwe, corruption, ruling party non-delivery and the "whiteness" of the DA's party leadership made it difficult not to perceive the DA as playing the race card and subtly appealing to race sentiment (Hendricks, 2004: 177). Much as the party denied this accusation, the ANC made sure it exploited the opposition's slogan in this way. A highlight of the DA's campaign strategy was when its leader, Tony Leon, unsuccessfully challenged President Mbeki to a live television debate.

On the other hand, as it had done in other provinces, the ANC strategically deployed high profile people like Mbeki and Zuma in door-to-door visits in the Western Cape, including in traditionally white and coloured suburbs. Hendricks (2004) argues that any house that President Mbeki walked into, and in which he listened to the concerns of residents and promised to do something about, was to translate into a vote for the ANC.

The ANC obtained 42.25% of the vote in the Western Cape, while the NNP managed only 10.88%. This reinforced the views of some ANC insiders that the party could easily have won the province on its own. The best the DA could manage was 27.11%. Political analysts maintained that the victory of the ANC would finally bring to an end the political circus that came to be associated with the province. As expected, the party announced Ebrahim Rasool as the new premier of the Western Cape. The NNP, on the other hand, seemed poised to go down in history as the party that sold out the white vote in the apartheid era and the coloured vote in the post-apartheid era (Hendricks, 2004: 177).

The unsuccessful attempts by the ANC to win KZN and the Western Cape in the 1994 and 1999 election was now a thing of the past. For the first time in the history of democratic elections since 1994, the outcome of the 2004 elections gave the ANC a mandate to govern all nine provinces of South Africa.

Voting and counting

The Election Regulations published on 7 January and 16 February 2004 in the *Government Gazette* provided detailed descriptions of how the election had to be conducted in compliance with the Electoral Act (Kotze 2004). The regulations outlined the voting districts and voting stations, special votes, voting on polling day, mobile voting stations, counting of votes, and the role of party agents on the day of voting. Table 6 illustrates the number of polling stations in all the provinces and the number and percentages of votes cast.

Table 6 shows that the Eastern Cape had the largest number of polling stations (4115) and the Northern Cape the least (412). Nationally, 15 863 554 people voted, a number which the IEC described as satisfactory. As per the mandate of the Constitutional Court, all prisoners were given the right to vote. The IEC reported that a total of 47,170 prisoners had registered. Mobile voting stations were used for this purpose and there were no logistical problems in this regard. The only problem encountered was that unregistered voters insisted on voting and had to be denied. For the purpose of counting votes in the polling stations, the Election Regulations provide for the following procedure:

Table 6 - Polling Stations per Province

Province	Voting Stations	Votes Cast	% Poll
Eastern Cape	4 115	2 310 226	79.31
KZN	3 556	2 807 885	72.84
Gauteng	2 098	3 553 098	74.23
Limpopo	2 000	1 686 757	74.80
Western Cape	1 348	1 621 835	71.27
North West	1 246	1 353 963	75.55
Mpumalanga	1 128	1 157 963	78.30
Free State	1 063	1 042 120	77.76
Northern Cape	412	329 707	74.70
Total	16 966	15 863 554	

Source: Election Update, February-June 2004

- All the ballots have to be verified (the number of ballot papers issued for both the national and provincial elections are compared to the number of ballot papers counted);
- Counting of votes per party then commences and all the ballot papers are scrutinised to ascertain whether any of them should be rejected as a spoilt ballot;
- After the final counting, the totals are recorded and the results determined;
- The presiding officer then completes the results slip, and sends it in a sealed envelope to the municipal electoral officer (MEO) who then captures the results on the electronic system;
- An independent auditor at each MEO office verifies the results slip against the results on the electronic system: if they match, the auditor enters the auditor code and submits the results;
- The auditor's report is then signed and faxed to the provincial IEC office (PEO); and
- All the results are consolidated at the central Results Operations Centre in Pretoria, and finally the IEC completes the final seat allocation for the legislature (Kotze, 2004).

This procedure has been commended as being effective and for having increased the pace of recording and capturing votes.

Election results

The April 2004 election re-enforced two key trends: firstly, the ANC increased its electoral dominance; and secondly, the opposition parties became even weaker and more fragmented. It was always expected that the ANC would remain in power; the key question was about the margin of its victory.

A new opposition party elicited much interest. Erstwhile executive member of the Pan Africanist Congress (PAC), Patricia de Lille, resigned from the party

several months before the election to form the Independent Democrats (ID). The party surprised many analysts with its first ever performance in the 2004 election.

Table 3 reflects the growing electoral gap between the ANC and the opposition parties. The ruling party increased its tally of 66.4% in 1999 to 69.7% in 2004. De Lille's ID performed beyond anyone's expectations and managed to surpass seasoned political 'horses' like the ACDP, PAC and AZAPO. Nationwide, the ID accumulated 1.7% of the vote. The most disappointing performance was by the NNP (an ostensibly tired horse overburdened by apartheid baggage), which until the 1999 elections had been one of the two strongest opposition parties (the other was the DA). However, after the party was co-opted by the ANC in the 2004 elections, the NNP could only manage a paltry 1.65% compared to 6.9% in 1999. On the other hand, the DA increased its margin from 9.6% in 1999 to 12.4% in 2004.

The immediate aftermath of the election

On 18 April 2004, the IFP announced that it was contesting the IEC's declaration of the elections as free and fair on two grounds (Piper, 2004: 23). The IFP claimed that the names of 367 731 people who had voted did not appear on the voter's roll and that the IEC had not responded to the IFP's 42 complaints of violence and intimidation before announcing the poll as free and fair (Piper: *ibid*). Realising that these complaints would not bear any fruit, the IFP withdrew its legal challenge a day before Mbeki was to be sworn in as the President of South Africa. This fuelled comment that the IFP was not serious about allegations of election irregularities in KZN, but was merely strengthening its position at the negotiating table (Mottiar, 2004: 229).

A matter of more serious concern was the question of the IFP's participation in national government and in the KZN provincial government (Kotze, 2004: 221). The exclusion by the ANC of the leader of the IFP from the cabinet, caused further tension between the two parties. President Mbeki had earlier invited members of the IFP to fill two deputy ministerial posts. However, in the light of the exclusion of their leader, the party's National Council withdrew their names. As a result of the IFP's stance, President Mbeki appointed two other deputies: Ntopile Kganyago (UDM) for Public Works and Gert Oosthuizen (ANC) for Sport and Recreation (Kotze, 2004: 221).

The aftermath of the 2004 election produced the total collapse of the NNP. According to Booysen (2004), the NNP's poor electoral performance naturally precipitated a chain reaction of further identity and leadership crises. It came as no surprise when the party was eventually co-opted by the ANC. Predictably the DA accused the NNP of betraying the trust of voters. As a reward for 'cooperating' with the ANC, the former NNP leader, Marthinus van Schalkwyk, was appointed as the Minister of Environmental Affairs and Tourism.

Conclusion

This article has reviewed South Africa's democratic election of 2004, focusing particularly on the constitutional and institutional framework for the management and conduct of the election. This framework suggests that the legal foundation in South Africa is sufficiently robust and solid to ensure fair play,

despite some allegations of abuse of state resources by the ruling ANC party. The electoral system in place has served the country well in relation to post-conflict challenges such as the promotion of reconciliation, national unity, peace and stability. The election management body, the IEC, undertook its duties in a diligent and ethical manner delivering a quality election and could serve as an example of best practise in Africa. Remaining challenges include prudent utilisation of public and state resources by the ruling party; public debate around possibilities for further refinement of the electoral system; consolidation and further improvement of gender representation in key organs of government; and consolidation of the institutional mechanisms for the management of election-related conflicts.

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ZIMBABWE

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THE 2005 PRE-ELECTORAL ENVIRONMENT IN ZIMBABWE

BY REGINALD MATCHABA-HOVE AND ANDREW MOYSE

[This article was commissioned and written before Zimbabwe's parliamentary elections on 31 March 2005]

Introduction

Democracy, good governance, observance of human rights and the rule of law are universal values. Free and fair elections are an essential component in building democracy, conflict prevention and conflict management. It is therefore not surprising that flawed electoral processes are a known cause of conflict. Consequently, good management of electoral systems can play an important role in conflict prevention and management (5,7,16). Zimbabwe has experienced several early warning signs and symptoms of intra-state conflict. There are several aspects to that conflict, including the highly publicised land question. However, the parliamentary elections of 2000 and the presidential elections of 2002 clearly illustrate that flawed electoral processes have had a significant impact on the crisis in Zimbabwe.

Zimbabwe is scheduled to hold parliamentary elections on 31 March 2005. These elections will be observed within the context of the various African and regional (SADC) norms, standards and guidelines on elections, in particular the SADC Principles and Guidelines Governing Democratic Elections. The major opposition party, the Movement for Democratic Change (MDC), has been consistently prevented by the state from campaigning freely. Civil society organisations, including the media, face major restrictions when carrying out voter education and other election-related activities. The recent electoral reforms that were introduced in January 2005 are not far reaching and are unlikely to have a significantly positive impact on the elections. Unless there are significant improvements on several fronts, it is difficult to perceive how these elections could be considered to be free or fair.

Elections in Zimbabwe

Both the 2000 parliamentary elections and the 2002 presidential elections were not deemed to be either free or fair by a number of reputable domestic, regional and international observer groups. In 2002, these groups included the Zimbabwe Election Support Network (ZESN), the SADC Parliamentary Forum, The Commonwealth and the World Council of Churches. Several areas of concern were noted. These included election-related violence, media bias and flawed electoral laws and processes. The African Commission on Human and People's Rights (ACHPR) and the 4th Africa Development Forum also referred to these matters in reports presented to the African Union and the United Nations Economic Commission for Africa (UNECA) in Addis Ababa in July and October 2004 respectively (3, 19). However, there were also a number of regional and international bodies including the SADC Ministerial Task Force, the Organisation of African Unity (now the African Union) and the observer missions from South Africa and Namibia, who declared the same elections to

essentially reflect the will of the people of Zimbabwe. Nevertheless, most of these organisations also pointed out areas that required significant reform. This split verdict underscored the need for the SADC region to devise commonly accepted standards for the monitoring and observation of elections, and a compelling need to formulate regionally accepted electoral norms and standards and electoral reforms in Zimbabwe ahead of the 2005 elections.

Civil society and the electoral reform project

Ideally, the post-2002 electoral reform agenda should have urgently picked up from where the aborted national constitutional reform exercise ended (11, 21). Unfortunately, for obvious reasons, the ruling party and government were no longer interested in either constitutional reform or electoral reforms. It was only in the middle of 2004 that, for a variety of domestic and possibly predominantly foreign imperatives, the government and ruling party became a little more responsive to calls for electoral reforms.

The Zimbabwe Election Support Network (ZESN) - a network of 36 civil society organisations with chapters in all the provinces of Zimbabwe - launched an electoral reform exercise in 2003, a year after the dust of the 2002 presidential elections had somewhat settled (25). The network has four national task forces: election monitoring/observation; voter education; media monitoring and information dissemination; and research and advocacy.

The electoral reform project essentially attempted to build on some of the milestones that had been achieved domestically during a constitutional reform campaign initiated by the National Constitutional Assembly (NCA), a civil society organisation, and a parallel and competing constitutional reform exercise initiated by the government. In addition ZESN was able to benefit from the inter-party mediation efforts of three bishops: one from the Catholic Church; a second from the Zimbabwe Council of Churches (ZCC) representing the Protestant churches; and a third from the Evangelical Fellowship of Zimbabwe (EFZ) representing the Pentecostal churches. A strategic relationship with the Electoral Institute of Southern Africa (EISA) was also established. A steering committee facilitated by ZESN, but also consisting of key civil society organisations such as the ZCC, the NCA, EISA, the Centre for Peace Initiatives (CPI) and some academics and representatives of the churches was formed and met every fortnight. Significantly, the Electoral Supervisory Commission (ESC) seconded two of their staff to attend the meetings as observers. It was agreed that emphasis would initially be placed on seeking local solutions and to be followed up by engaging colleagues in the SADC region, the African continent and other developing countries. It was politically and practically expedient to seek out and examine African and other developing region models of electoral reform.

The formal launch was in Harare in August 2003. At the launch, colleagues from sister civil society organisations in the region and the African continent were invited to share their experiences of electoral reform in their countries. This was followed up by a series of regional feedback meetings, culminating in a second national meeting in Harare in March 2004.

In June 2004 the ruling party announced that they would be in favour of introducing some electoral reforms that would include, *inter alia*, an 'independent

electoral commission', special electoral courts, voting in one day, doing away with mobile polling stations and introducing translucent ballot boxes. In July 2004 during the opening of the last session of Parliament, the president formally announced that the executive would be introducing legislation to enable "significant electoral reforms...including the establishment of an independent electoral commission". This was followed up a day later by Zimbabwe hosting a meeting of the SADC Electoral Commissioners Forum (ECF). ZESN was invited to attend some of the 'open' sessions of this meeting.

Several days later, ZESN and EISA held a successful regional conference on electoral reforms that was attended by representatives of civil society, electoral commissions and parliamentarians from all SADC countries. The Speaker of the Parliament of Zimbabwe opened the conference and the Speaker of Lesotho's National Assembly, who was also the then Chairperson of the SADC Parliamentary Forum, delivered the keynote address. In addition to parliamentarians from all three parties represented in Parliament, other key political party leaders not in Parliament, such as the ruling party's information secretary, Dr Nathan Shamuyarira, and the MDC's secretary for elections, Mr. Remius Makuwaza, also participated fully in the proceedings. One of the highlights was a session where Dr Shamuyarira, the MDC secretary general Professor Welshman Ncube and the chairperson of ZESN, shared a platform discussing electoral reforms in Zimbabwe.

A number of suggestions were made on how the electoral reform agenda could influence the proceedings of the August SADC Summit in Mauritius. ZESN and the Crisis in Zimbabwe Coalition (CZC) followed this up by lobbying the SADC Summit in Mauritius on the SADC Principles and Guidelines Governing Democratic Elections. This included a meeting with the Prime Minister of Mauritius in his capacity as the new SADC Chairperson.

Up to this point, although rather late, Zimbabwe was on the right path by harnessing multi-party and civil society stakeholder involvement. However, a worrying trend was the ruling party and government's tendency of hijacking and then diluting civil society-led initiatives, as had occurred in 2000 during the national constitutional reform campaign.

The content of the electoral reforms

By and large, there was broad agreement within civil society on the content of changes that were required to enable free and fair elections in Zimbabwe. Civil society argued that Zimbabwe had to comply with the international protocols on democracy and human rights and the rule of law that it had signed and ratified. Civil society also placed special emphasis on African and regional (SADC) instruments, norms and standards. These international and regional instruments encapsulate the values we all share as members of the human race. It cannot be possible that democracy and free elections are only good for 'Westerners' but not for Africans. Some of the major international and regional instruments on elections include the following:

- The United Nations Universal Declaration of Rights, Article 21. (18)
- The International Covenant on Civil and Political Rights (ICCPR), Article 25. (9)

- The African Charter on Human and People's Rights (The Banjul Charter), Article 13. (1)
- The African Union and The New Partnership for Africa's Development (NEPAD). (2)
- The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa. (12)
- The African Union (AU) Guidelines for African Union Electoral Observation and Monitoring Missions. (5)
- The Harare Commonwealth Declaration. (8)
- The SADC Treaty, in particular Articles 4 & 5. (17)
- The SADC Parliamentary Forum (SADC PF) Norms and Standards for Elections. (14)
- The SADC Declaration on Gender and Development. (13), and
- The SADC Principles and Guidelines Governing Democratic Elections. (15)

The latter instrument, the SADC Principles and Guidelines Governing Democratic Elections, was agreed at the Grand Baie SADC Heads of State Summit in Mauritius held on 16-17 August 2004. They are to be administered by the SADC Organ on Defence, Politics and Security Co-operation, currently chaired by South Africa. Key provisions include:

- [7.3] Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
- [7.4] Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes (as provided for under section 2.1.5); and
- [7.5] Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security.

Recent developments and challenges

Recent developments are at best confusing when trying to predict the path ahead. There have been some encouraging signs. Equally too, there have been other rather discouraging trends.

- The electoral reforms introduced by the ruling party and government through parliament is a step in the right direction. These include the introduction of the Zimbabwe Electoral Commission (ZEC), electoral tribunals, voting in one day, counting of votes at the polling station, translucent ballot boxes and doing away with mobile polling stations. However, these measures came rather late and fall far short of the demands to create an enabling environment for free and fair elections;
- The ZEC is a function of a recent act of parliament, while the existing Electoral Support Commission and Delimitation Commission that have remained are entrenched in the Constitution. No attempt was made to amend the constitution so as to enable a more acceptable electoral legislative environment;

- The Delimitation Commission completed its work long before the completion of the compilation of the voters' roll. It is therefore not clear what criteria was used to redraw existing constituency boundaries, removing three constituencies and creating three new constituencies;
- The ZEC was appointed on 1 February 2005, only two months before Election Day. The initial two-week period of inspection of the voters' roll ended on 30 January 2005. After appeals from many quarters, this was extended to 4 February 2005. Furthermore, voter education and voter information were inadequate. Meanwhile, the new Electoral Commissions Act vests the ZEC with the responsibilities of voter education and voter registration, including the compilation of the voters' roll. Also, with only two months remaining before the election, it would have been expecting rather too much that the newly created ZEC would have sufficient time and resources to fully carry out its mandate;
- The tabling of the very restrictive NGO Bill (24) on the eve of the elections, which prohibits foreign funding to NGOs in the spheres of human rights, democracy and governance, mitigate against free and fair elections. The Zimbabwe Electoral Commission Act (23) restricts voter education to the control of the ZEC and also restricts foreign funding for elections to civil society organisations;
- The new Electoral Act explicitly states that only civil servants can be accredited as election monitors by the ESC while civil society domestic monitors have been relegated to the inferior role of observers. Meanwhile, the Act allows the ESC to appoint members of the security services (the army, police, prison services, etc) to its secretariat (22);
- Far too much power is vested in the President, who is a very interested party in the electoral process since s/he, along with his/her party, also has to submit to regular elections. The incumbent state president appoints all the principal officers of the various electoral bodies. In addition, the Constitution also gives him/her inordinate powers to amend any section of the Electoral Act as s/he sees fit;
- Whereas the term of parliament is five years, the presidential term is six years. This is a recipe for potential conflict, should we ever have a sitting president from a different party to the one with a majority of seats in parliament;
- Zimbabwe is still one of the few remaining countries in the region without a fixed period of two (or more) terms for the executive presidency;
- Zimbabwe has retained the 'first-past-the-post' Westminster electoral and parliamentary system with no element of proportional representation. In this 'winner takes all' system, it is possible for one party to occupy all the seats in Parliament with less than 50% of the electorate having voted for it. Alternatively, a party may be voted for by over 40% of the national electorate yet fail to gain a single seat. This is a recipe for conflict, as was witnessed in Lesotho in 1998. Zimbabwe witnessed a similar scenario during the 1990 elections when the new opposition Zimbabwe Unity Movement (ZUM) obtained about one third of all popular votes, which translated into only three seats in Parliament. This anomaly must be rectified;
- The number of elected members of parliament (MPs) is 120, each representing

a constituency. However, the president is empowered to appoint (literally hand pick) twenty non-constituency MPs without consulting anyone. Ten chiefs representing the country's ten provinces are also appointed MPs, to make a total of 150 MPs. The ten traditional leaders tend to vote with the governing party of the day. The 30 non-elected MPs have the same rights as elected MPs. It is therefore possible for a party to lose the parliamentary elections and despite this still end up with a majority of seats in Parliament, courtesy of the President. Picture this scenario. At a general election, Party A manages to obtain only 50 seats out of 120. Party B, however, manages to garner a majority of 70 seats, that is, 20 more seats than Party A. So you think Party B has won? Not really. The sitting president, who happens to be from Party A, then exercises his/her prerogative to unilaterally appoint the additional twenty MPs, plus the ten chiefs who happen to vote along with Party A. In effect, Party A now has an absolute majority of $(50 + 30 = 80)$ eighty seats versus the now 'minority' 70 seats of Party B. Again, this is a recipe for conflict;

- The acquittal by the High Court of Mr. Morgan Tsvangirai, the leader of the opposition MDC, from charges of high treason, has created a more favourable electoral environment;
- It is instructive that at its recent 27-29 January 2005 meeting in Abuja, Nigeria, the Executive Council of the African Union finally accepted the adverse reports on Zimbabwe that was prepared by the African Commission on Human and People's Rights (3). Also in January 2005, the African National Congress of South Africa publicly expressed its concern about the electoral environment in Zimbabwe, in particular the unreasonable restrictions on the opposition MDC's ability to campaign freely (4);
- The recent 'deportation' (on two occasions) of a delegation of the Congress of South African Trade Unions (COSATU), who were on a fact-finding mission to Zimbabwe, has impacted negatively on prospects for internal and regional conciliation ahead of the elections;
- It was not surprising that a number of western countries introduced a motion in the UN General Assembly in November 2004 on the human rights situation in Zimbabwe in general, and on the prospects for free and fair elections in 2005 in particular (20). Equally, it was not surprising that developing country allies of the Zimbabwe government shot down the resolution. Nevertheless, the fact that such a resolution was introduced in the UN is significant. In the meantime both the European Union and the USA government further extended the time frame of their 'targeted sanctions' against the Zimbabwe government;
- The recent internal contradictions within the ruling party resulting from the long repressed 'succession debate', but which eventually surfaced around their December 2004 party congress, have added more confusion and uncertainty about the political environment as the country heads towards the elections;
- The recent calls by most national leaders, including the state president, for zero tolerance towards electoral-related violence, is a positive development. However, reports from sister civil society organisations that monitor incidents of violence on the ground indicate that it may be too early to conclude that

levels of violence have actually significantly declined;

- Repressive legislation curtailing fundamental freedoms such as freedom of assembly and stifling the operations of a free media still exists, in particular the Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA). While the recent statutory instrument on fair coverage in the public broadcasting/electronic media is to be welcomed, this has come too late to have any significant impact on the coming elections. In addition, the recent forced closure of *The Weekly Times*, the fourth newspaper to be closed down by the statutory Media Information Commission in just over two years, is another step in the wrong direction.
- The SADC Principles and Guidelines Governing Democratic Elections are very clear that if a SADC state is to invite a SADC mission to observe the elections, the invitation should be made at least 90 days before the election date. Regrettably, the invitation to SADC and other international observers were only issued about one month before the election date. In effect, this will not enable the SADC team to make any meaningful suggestions as to how to improve the electoral environment in good time.

It is most probable that Zimbabwe will hold its elections on schedule in 2005 with insufficient electoral and political reforms on the ground, resulting in the possibility of a *third successive disputed election*. This is a recipe for conflict. Under such conditions, even before elections are held, it would be very difficult to declare any elections either substantially free or fair. For this reason it was urgently necessary to reform Zimbabwe's electoral system and bodies long before this election, and it is critical that the necessary reforms are made before the next parliamentary elections to prevent conflict.

The way forward

Although the SADC Principles and Guidelines Governing Democratic Elections have shortcomings, it is important that the government complies fully with the letter and spirit of the document.

There is no shortcut to genuine discussions involving a broad section of stakeholders within Zimbabwe. The efforts of churches and others in civil society that have been battling to initiate genuine dialogue and conciliation must continue and be encouraged. Equally, the efforts of regional mediators need to be encouraged.

Despite the severity of the current and future restrictions on civil society, it will need to devise more innovative ways to continue playing a positive role in the electoral process and help prevent conflict. Emphasis is still on mediation and encouraging confidence building measures on all sides. In particular, it is important to encourage the eventual creation of a multi-stakeholder conference on the way forward. The positive example of Lesotho with the development of the interim inter-party political authority (IPA) should be encouraged. In Ghana, a similar mechanism, the Inter-Party Advisory Committee (IPAC) was established in March 1994 after the flawed 1992 elections. However, as the Election Day approaches, civil society will also have to make adequate preparations for domestic monitoring and observation, especially in the current restrictive environment. In addition, there is a need for credible election

observers from the region and the continent to be fully conversant with the situation in Zimbabwe. Further, it would be ideal to agree on a common electoral observation tool, so as to avoid vastly different verdicts on the same event. In this connection, the November 2003 Principles for Election Management, Monitoring and Observation (PEMMO) provided by EISA and the SADC Electoral Commissioners Forum, along with civil society organisations in SADC, provides the most useful tool (11).

In the medium term, there is a need for follow up on the translation of regional and international conventions into domestic legislation and practice.

There is simply not enough time to adequately prepare for elections on 31 March 2005. The elections could have been scheduled for as late as 30 June 2005 without any legal problems. It would have been in the national interest to postpone the elections until most of the necessary ingredients for free and fair elections were in place. It is pointless to hold flawed and disputed elections that will plunge the country into further crisis. It appears that the ruling party favoured elections in late March for a variety of reasons. These probably include that by March/April, the land is generally green and many would have harvested, no matter how small the amount. If the harvest is poor, the impact is more likely to be felt later in the second half of the year. Secondly, the ruling party is probably of the opinion that the opposition is not, for various reasons, ready for a general election and that delaying the election would give the opposition more time to plan. Finally, in the event of a disputed election, the ruling party intends to capitalize on the 25th silver anniversary of Independence to which heads of state and other dignitaries would be invited on 18 April 2005, thereby conferring some legitimacy on the election results should they win.

The media and elections

Ever since the emergence of the country's first viable political opposition towards the end of 1999, the media has found itself at the centre of ZANU PF's violent struggle to beat off the political threat from the MDC.

Prior to this date the government appeared content to maintain its control of the media using colonial era laws and intimidation to discourage journalists and publishers from conducting serious investigations into government's activities.

The single greatest event that shocked the government out of its complacency was the rejection by the Zimbabwean electorate of its draft constitution in a national referendum in February 2000. This event more than any other also defined the nature of today's media landscape because civil society, in collaboration with the privately owned Press, particularly the relatively new *Daily News*, overcame a tidal wave of propaganda in the government-controlled media that promoted acceptance of the government's draft constitution.

But the constitutional referendum provided the government with a useful tool to measure the increasing public resentment to its rule - and clearly identified activist civil society organisations and the private media as the most dangerous threats to its political survival.

Oppressive media legislation

A host of blatantly unconstitutional and repressive laws have been promulgated that effectively emasculate the privately owned media and deprive the nation

of its rights to freedom of expression, including the right to be informed. Four newspapers have been closed down under these laws (the *Daily News* and its sister weekly paper the *Daily News on Sunday*, *The Tribune* and *The Weekly Times*). Scores of journalists have also been arrested, harassed, assaulted and thrown out of work. A recently launched newspaper published outside the country, *The Zimbabwean*, has been viciously criticised by the government's Media and Information Commission (MIC).

Large parts of the country were closed to the distribution of independent newspapers in the countdown to the 2002 presidential election and the parliamentary election before that. This remains the case today. Thousands of copies of newspapers were destroyed, and vendors and readers alike were attacked and terrorised. In one instance a reader was killed because he possessed a copy of *The Daily News*. In another, two suspected MDC supporters were beaten to death by ruling party supporters who believed they were doing their "patriotic duty" as a result of the propaganda they had been subjected to by the government-controlled media, according to evidence led in the High Court.

Over recent months, four local journalists working for international media organisations were also persecuted by the security agencies. Three of them fled the country in February 2005 after their offices were repeatedly raided and searched without a warrant and the journalists variously accused of spying and transmitting information prejudicial to the state. This follows the highly publicised expulsion of a number of foreign correspondents from the country in recent years.

Access to Information and Protection of Privacy Act (AIPPA)

The AIPPA, promulgated soon after the 2002 presidential election, is the main instrument being used to gag the privately owned press in the country. This patently unconstitutional piece of legislation essentially turns the business of gathering and disseminating news - the very essence of free expression - into a privilege controlled under the Act by excessively restrictive clauses that carry heavy criminal penalties including custodial sentences.

The authorities have also used this law, among others, to arrest and harass scores of journalists with the clear intention of discouraging them from investigating and reporting on the excesses of government.

The AIPPA provides for a statutory Media and Information Commission (MIC) to licence and regulate "mass media" in the country, with the exception of broadcasting services that are regulated under the Broadcasting Services Act. The AIPPA defines "mass media" so broadly that the definition even includes small NGO and civil society media disseminated beyond their members to any sections of the public. The MIC was ostensibly set up to "regulate" the media and promote media diversity. Instead, it has wide powers of control and restriction. It has used them effectively to close newspapers and through state registration and accreditation (licensing) procedures determines who may publish "mass media" in the country and which individuals may practice as journalists. Such forms of licensing of print media and journalists (as opposed to simple registration requirements for the purposes of information) are internationally condemned in many declarations and in court findings as a violation of the freedom of the media.

But while the MIC has continued to hound the private press, it has been conspicuous by its silence on the deteriorating standards of journalism at the government-controlled media. For instance, on 23 February 2005 *The Herald* and *Chronicle* selectively used South African President Thabo Mbeki's interview with *The Financial Times* to suggest that the authorities' governance of Zimbabwe had a regional seal of approval. The papers narrowly used excerpts in which Mbeki described as an "exaggeration" a statement by US Secretary of State Condoleezza Rice that Zimbabwe was one of the world's "outposts of tyranny" to give the impression that Mbeki approved of government policies. His condemnation of governance in Zimbabwe, particularly the irregular nature of the voters' roll, the persecution of the opposition and the way land reform was implemented, was censored. Zimbabwe Television (ZTV) (22/02/05, 8pm) handled the story in the same manner. A more accurate representation of Mbeki's interview appeared in *The Financial Gazette* on 24/02/05.

It is such unprofessional conduct by the government media that repeatedly confirms their status as unreliable sources of information and slavish defenders of government policies. Such unprofessional journalism should, under AIPPA, attract the MIC's response, but the commission has remained deafeningly silent on such matters, corroborating allegations that the MIC is selectively applying the law.

Legal challenges to the MIC's decisions, particularly a constitutional challenge by journalists to the requirement that the state has to accredit them before they can practise as a journalist, was initially unreasonably delayed in the courts and was then the subject of a controversial Supreme Court ruling declaring that Zimbabwe's Constitution protects the fundamental right to freedom of expression - *but not the means of exercising it*. Judicial officers dealing with related media challenges, particularly those of *The Daily News*, which challenged its forced closure, have been intimidated both publicly in the government-controlled media and privately.

In short, the media have suffered, along with other sections of civil society, from the subversion of the fair administration of justice and the due process of the law.

Other, equally restrictive laws also affect freedom of expression and the operations of the media.

The Public Order and Security Act (POSA)

The Public Order and Security Act is primarily aimed at restricting Zimbabweans' freedom of assembly and association. Any gatherings or meetings, including meetings of political parties, may only take place after police permission has been sought and granted. A great many of these are consequently prohibited, but the POSA also provides severe sentences for those (including the media) ridiculing the presidency and the uniformed forces. This law has targeted cartoons as well as party political advertisements and robust comment and opinion in the media.

The Criminal Law (Codification and Reform) Bill

A new law about to be forced through Parliament, despite an adverse report from its own legal committee declaring that a number of clauses violate the

constitution, makes provision for a jail term of up to 20 years for simply “communicating ... material” falsehoods. The Criminal Law (Codification and Reform) Bill makes it a criminal offence to communicate “to any other person a statement which is wholly or materially false with the intention, or realising that there is a real risk, of inciting or promoting public disorder or public violence or endangering public safety or adversely affecting the defence and economic interests of Zimbabwe, or undermining public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or interfering with, disrupting or interrupting any essential service.”

Another clause also makes it an offence for any citizen, either in Zimbabwe or outside the country, to make an “abusive, indecent or obscene statement” about the presidency, even if it is true.

This truly draconian piece of legislation will not only make it extremely difficult for the media to report on important issues, but it is certain also to silence potential sources of information who will be terrified of falling foul of the law by “communicating” information that cannot be proven conclusively. Journalists and publishers too, will be reluctant to publish any story that is disputed for fear of risking lengthy jail terms. Such legislation is generally referred to as ‘insult laws’, many of which have recently been repealed in a number of developing countries in South America and in Africa, in recognition of the fact that they unduly protect public officials from legitimate public scrutiny.

Faced with such viciously repressive instruments, the privately owned media have no chance of fulfilling their role as watchdogs of government activity. Nor will they be able to report on the partisan activities of the police force and other security agencies, which continue to persecute the political opposition and critics of government.

State regulation and control of the broadcast media

At the same time the government has hijacked the national public broadcasting corporation, now known as *Zimbabwe Broadcasting Holdings* (ZBH), and uses it relentlessly to disseminate propaganda discrediting the opposition and enhancing the image of the ruling party.

Despite the fact that the national public broadcasting corporation’s monopoly of the airwaves was declared unconstitutional by the Supreme Court years ago, government has not licensed any independent broadcast media in the country.

The Broadcasting Services Act (BSA)

The Broadcasting Services Act ostensibly allows for other broadcasting entities. The BSA, however, contains so many restrictive clauses and demands such exorbitant application fees that it is financially not feasible for private investors or community broadcasters to establish independent broadcasting stations. Although the Broadcasting Authority of Zimbabwe has recently invited applications from aspirant broadcasters, there should be no illusion that government is about to grant equitable access to the airwaves.

In the 2002 presidential election, ZBH (then known as the Zimbabwe Broadcasting Corporation) drew up its own regulations governing party political access to its services but then went on to ignore them. During that election the ZBC carried a total of 402 election campaign stories in its television news

bulletins in the three months leading up to Election Day. According to the Media Monitoring Project of Zimbabwe (MMPZ), an independent research organisation, 339 of them (84%) favoured ZANU PF's candidate, Robert Mugabe. Only 38 stories (or just 9%) covered the activities of the opposition MDC. But virtually all of these were used to discredit the MDC's presidential candidate, Morgan Tsvangirai. ZBC's radio stations followed a similar pattern. But the most telling statistic to emerge from the monitoring project's research was that of a total of 14 hours and 25 minutes that ZBC-TV news bulletins devoted to that election campaign, Mugabe and the ruling party was granted 13 hours and 34 minutes, or a little more than 94%. This compares to just 31 minutes and 30 seconds (4%) for the MDC.

In relation to the forthcoming parliamentary elections the government gazetted the Broadcasting Services Regulations (Access to Radio and Television during an Election) Regulations on 16 February 2005. These set out clear rules for ensuring that the main political parties contesting the election are granted "*equal opportunities*" to access all the stations of the national public broadcasting corporation, ZBH, in relation to election programmes and advertising. The regulations also demand that ZBH (the licensee) "*ensure that during an election period, news and current affairs programmes relating to an election are presented in a balanced, fair, complete and accurate manner*", and that presenters and reporters do not present their own personal views. Notably, this reference to fair and accurate news and current affairs coverage significantly extends the minimum standards set out in the SADC Principles and Guidelines Governing Democratic Elections.

The major weakness of these regulations is that the pro-government broadcasting regulatory authority, the Broadcasting Authority of Zimbabwe (BAZ), polices them. Monitoring of the news and current affairs broadcasts of the various ZBH services by the MMPZ suggests the ZBH is not adhering to the election broadcasting regulations. While the main opposition party is receiving significant access to ZBH for the first time since the party's birth in 1999, disturbing incidents in the weeks immediately prior to the 2005 parliamentary election seriously undermine belief in the organization's commitment to the regulations. For example, on March 1st ZTV misled its audiences when it announced that it would broadcast an independent candidate's manifesto after the main evening news bulletin, but then broadcast the MDC's manifesto instead. Consequently, members of the public not interested in the independent candidate's manifesto, would have missed the MDC's manifesto. Also, ZTV aired an interview with the MDC's secretary for economic affairs, Tendai Biti, on March 7th. Inexplicably there was a sudden loss of transmission for the duration of the interview in Bulawayo, and in Gweru and Mutare the same transmission was severely disrupted. ZBH chairman, Rino Zhuwarara blamed the government-established company, Transmedia, which is responsible for transmitting ZBH's signal.

In the week ending March 6th, 33 (83%) of the 40 election campaign stories carried on ZTV, Radio Zimbabwe and Power FM (all ZBH stations) were positive portrayals of ZANU PF's activities. Only four (10%) reports were on the MDC campaign, and the remaining three featured an independent candidate's attack

on his former party, the MDC. While the ZBH's reports on the MDC desisted from vilifying the opposition party, most of the stories featuring the ruling party included segments vilifying the MDC.

The government-owned press and hate speech

Similarly, the government has seized the mainstream national newspapers that were once protected by a nominally independent trust, to promote the image of the ruling party and to persecute individuals and organisations critical of government's abuse of power. The main daily and Sunday newspapers of the *Zimbabwe Newspapers* group, whose editorial content is now directly controlled by the Department of Information, are also used to disseminate hate messages, often racist and insulting, against those considered to be 'enemies' of the state.

The intention of this approach appears to be to dehumanise all persons and organisations that oppose and criticise the government's policies to such an extent as to imply they no longer deserve to have their basic rights protected.

More than any other factor, the public 'hate' campaign that continues to appear in the government-controlled print media has created an atmosphere of fear and anxiety, undermines public faith in the media to inform them fairly and accurately, and threatens the very fabric of society with its divisive invective. Most troubling is the role government officials play in propagating this dangerous propaganda that clearly violates the promotion of political stability and political tolerance clauses that appear in various protocols.

This extreme and dangerous practice is an intolerable abuse of the publicly owned media, which, in most democracies, have a mandate to provide fair, accurate and unbiased coverage of events and issues affecting the interests of the people. However, this section of the media in Zimbabwe have not merely failed to live up to this duty, they are manifestly used to misinform and confuse the public, especially during election campaigns. For example the government-controlled media, have, in past elections, been used to sow confusion over what documents are required to vote, or to register as a voter.

SADC and AU guidelines on the media

These conditions in Zimbabwe's media landscape make a mockery of the international covenants Zimbabwe has signed guaranteeing freedom of expression and association and electoral integrity. The only certainty this restrictive climate guarantees is that there cannot be a free and fair election in March 2005.

The measures that have created this intimidating and hostile media climate constitute a fundamental violation of all the conditions relating to the media raised in the SADC Principles and Guidelines Governing Democratic Elections, adopted by SADC countries, including Zimbabwe, in August last year. The SADC Principles and Guidelines notes that SADC countries are committed to "*promote the development of democratic institutions and practices...and (to) encourage the observance of universal human rights as provided for in the Charter and Conventions of the African Union.*" Presumably this includes the *Declaration of Principles on Freedom of Expression in Africa* (28) adopted by the AU's African Commission on Human People's Rights in Banjul in 2002. This declaration is the guarantee that should protect media freedom and diversity in SADC countries, but which has

been so badly trampled in Zimbabwe.

By the SADC inter-governmental organ's own standards there is no chance that a free and fair election can be held in Zimbabwe under such circumstances and without the repeal of all the repressive legislation restricting the operations of the media and the exercise of the nation's constitutionally guaranteed rights to freedom of expression.

Recommendations on the media

Laws restricting the free operations of the media must be repealed without delay. The most important of these is AIPPA, but the Public Order and Security Act also plays an important part in suffocating the free flow of information and the intimidation of media workers.

- The Broadcasting Services Act must be amended to allow for the formation of a Broadcasting Authority of Zimbabwe that is independently appointed and has the power to issue private broadcasting licences without reference to government.
- A new Broadcasting Act is required to establish and entrench the independence of ZBH, the national public broadcaster. ZBH should be controlled by an independent governing board, preferably appointed by an all-party parliamentary committee. The editorial integrity of ZBH should, in turn, be protected in law from any political interference. Attempts to influence ZBH staff improperly should be a criminal offence.
- A truly independent electoral commission should have responsibility for regulating the media on the basis of commonly agreed ethical guidelines for election coverage. (27) In this regard the Election Guidelines prepared by the MMPZ prior to the 2000 general elections should be recommended. (10)

Conclusion

In conclusion, the concepts of democracy, good governance, respect for fundamental human rights and the rule of law are not alien to Africa. Flawed electoral processes are a known cause of intra-state conflict. It is therefore imperative that electoral processes are democratised as much as possible so as to prevent conflict. The electoral process and environment must be guided by the fundamental values of democracy, human rights and the rule of just law that all humans should cherish. In this connection, it is important to utilize the various regional, continental and international mechanisms. While the situation in Zimbabwe appears gloomy, there is every need to continue encouraging dialogue, conciliation and electoral reforms. Failure to do so will result in inevitable conflict. It is therefore incumbent upon civil society in the region and the continent to play a much more active and visible role as we approach the 2005 and future elections.

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APPENDIX I
SADC PRINCIPLES AND GUIDELINES GOVERNING
DEMOCRATIC ELECTIONS

SADC PRINCIPLES AND GUIDELINES GOVERNING DEMOCRATIC ELECTIONS

1. INTRODUCTION

SADC region has made significant strides in the consolidation of the citizens' participation in the decision-making processes and consolidation of democratic practice and institutions. The Constitutions of all SADC Member States enshrine the principles of equal opportunities and full participation of the citizens in the political process.

The Southern African countries, building upon their common historical and cultural identity forged over centuries, agreed to encapsulate their commonality into a single vision, that of a SHARED FUTURE. In this context, in 1992 the Southern African countries meeting in Windhoek, the Republic of Namibia, signed a Treaty establishing the Southern African Development Community (SADC).

Article 4 of the Treaty stipulates that “human rights, democracy and the rule of law” are principles guiding the acts of its members. Article 5 of the Treaty outlines the objectives of SADC, which commits the Member States to “promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective. It also commits Member States to “consolidate, defend and maintain democracy, peace, security and stability” in the region.

The Protocol on Politics, Defence and Security Cooperation provides that SADC shall “promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the Charter and Conventions of the Organization of African Unity [African Union] and the United Nations.”

In addition, the Strategic Indicative Plan for the Organ (SIPO), as the implementation framework of the Protocol, emphasizes the need for democratic consolidation in the region. The development of the principles governing democratic elections aims at enhancing the transparency and credibility of elections and democratic governance as well as ensuring the acceptance of election results by all contesting parties.

The Guidelines are not only informed by the SADC legal and policy instruments but also by the major principles and guidelines emanating from the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa – AHG/DECL.1 (XXXVIII) and the AU Guidelines for African Union Electoral Observation and Monitoring Missions – EX/CL/35 (III) Annex II.

2. PRINCIPLES FOR CONDUCTING DEMOCRATIC ELECTIONS

2.1 In the event a Member State decides to extend an invitation to SADC to observe its elections, this shall be based on the provisions of the Protocol on Politics, Defence and Security Cooperation.

2.2 SADC Member States shall adhere to the following principles in the conduct of democratic elections:

2.2.1 Full participation of the citizens in the political process;

- 2.2.2 Freedom of association;
- 2.2.3 Political tolerance;
- 2.2.4 Regular intervals for elections as provided for by the respective National Constitutions;
- 2.2.5 Equal opportunity for all political parties to access the state media;
- 2.2.6 Equal opportunity to exercise the right to vote and be voted for;
- 2.2.7 Independence of the Judiciary and impartiality of the electoral institutions; and
- 2.2.8 Voter education.
- 2.2.9 Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land.
- 2.2.10 Challenge of the election results as provided for in the law of the land.

3. MANDATE AND CONSTITUTION OF THE SADC OBSERVERS MISSION

- 3.1 In the event a Member State deems it necessary to invite SADC to observe its elections, the SADC Electoral Observation Missions (SEOM) have an Observation role. The mandate of the Mission shall be based on the Treaty and the Protocol on Politics, Defence and Security Cooperation.
- 3.2 The Chairperson of the Organ shall officially constitute the Mission upon receipt of an official invitation from the Electoral Authority of a Member State holding the elections.
- 3.3 The Chairperson of the Organ shall mandate the Executive Secretary to issue a Letter of Credential to each Member of the SEOM prior to their deployment into the Member State holding elections.
- 3.4 The constitution of the Mission should comply with the SADC policies relating to gender balance. While recognising that the Members of the Mission may come from different political parties in the home countries, they should behave as a team.

4. GUIDELINES FOR THE OBSERVATION OF ELECTIONS

- 4.1 SADC Member States shall be guided by the following guidelines to determine the nature and scope of election observation:
 - 4.1.1 Constitutional and legal guarantees of freedom and rights of the citizens;
 - 4.1.2 Conducive environment for free, fair and peaceful elections;
 - 4.1.3 Non-discrimination in the voters' registration;
 - 4.1.4 Existence of updated and accessible voters roll;
 - 4.1.5 Timeous announcement of the election date;
 - 4.1.6 Where applicable, funding of political parties must be transparent and based on agreed threshold in accordance with the laws of the land;
 - 4.1.7 Polling Stations should be in neutral places;
 - 4.1.8 Counting of the votes at polling stations;
 - 4.1.9 Establishment of the mechanism for assisting the planning and

deployment of electoral observation missions; and

4.1.10 SADC Election Observation Missions should be deployed at least two weeks before the voting day.

5. CODE OF CONDUCT FOR ELECTION OBSERVERS

5.1 The code of conduct for the elections observers of SADC is consistent with those of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa -AHG/DECL. 1(XXXVIII). In this regard, the SADC Election Observation Missions shall adhere to the following code of conduct:

5.1.1 Must comply with all national laws and regulations;

5.1.2 Shall maintain strict impartiality in the conduct of their duties, and shall at no time express any bias or preference in relation to national authorities, parties and candidates in contention in the Election process. Furthermore they will not display or wear any partisan symbols, colours or banners;

5.1.3 Shall neither accept nor attempt to procure any gifts, favours or inducements from a candidate, their agent, the parties or any other organisation or person involved in the electoral process;

5.1.4 Shall immediately disclose to the relevant SADC structures any relationship that could lead to a conflict of interest with their duties or with the process of the observation and assessment of the elections;

5.1.5 Will base all reports and conclusions on well documented, factual, and verifiable evidence from a multiple number of credible sources as well as their own eyewitness accounts;

5.1.6 Shall seek a response from the person or organisation concerned before treating any unsubstantiated allegation as valid;

5.1.7 Shall identify in their reports the exact information and the sources of the information they have gathered and used as a basis for their assessment of the electoral process or environment;

5.1.8 Shall report all information gathered or witnessed by them honestly and accurately;

5.1.9 Shall, when meeting election officials, relevant state authorities and public officials, parties, candidates and their agents shall inform them of the aims and objectives of the SEOM;

5.1.10 May wish to bring irregularities to the attention of the local election officials, but they must never give instructions or countermand decisions of the election officials;

5.1.11 Will carry any prescribed identification issued at all times, and will identify themselves to any interested authority upon request;

5.1.12 Will undertake their duties in an unobtrusive manner, and will not interfere with the election process, polling day procedures, or the vote count;

5.1.13 Will refrain from making personal or premature comments or judgements about their observations to the media or any other interested persons, and will limit any remarks to general information

about the nature of their activity as observers;

- 5.1.14 Must participate in the briefings/training provided by the SEOM;
- 5.1.15 Must provide their reports on time to their supervisors and attend any debriefings as required; and
- 5.1.16 Should work harmoniously with each other and with observers from other organisations in their area of deployment.

6. RIGHTS AND RESPONSIBILITIES OF SADC ELECTION OBSERVERS

- 6.1 The rights and responsibilities of the SOEM are based on the SADC experience and the AU Guidelines for Electoral Observation and Monitoring Missions. Accordingly the following shall be the rights and responsibilities of the SADC Elections Observers:
 - 6.1.1 Freedom of movement within the host country;
 - 6.1.2. Accreditation as election observers on a non-discriminatory basis;
 - 6.1.3. Unhindered access to and communicate freely with the media;
 - 6.1.4 Free access to all legislation and regulations governing the electoral process and environment;
 - 6.1.5 Free access to electoral registers or voters' roll;
 - 6.1.6 Unimpeded and unrestricted access to all polling stations and counting centres;
 - 6.1.7. Communicate freely with all competing political parties, candidates, other political associations and organisations, and civil society organisations;
 - 6.1.8. Communicate freely with voters without prejudice to the electoral law proscribing such communication in order to protect the secrecy of the vote;
 - 6.1.9 Communicate with and have unimpeded and unrestricted access to the National Election Commission or appropriate electoral authority and all other election administrators;
 - 6.1.10. The SEOM shall be headed by an appropriate official from the Office of the Chairperson of the Organ who shall also be the spokesperson of the Mission;
 - 6.1.11. Send regular reports on the electoral observation process to the Representative of the Organ on issues that may require urgent consideration;
 - 6.1.12 Issue a statement on the conduct and outcome of the elections immediately after the announcement of the result; and
 - 6.1.13 Prepare a Final Report within 30 (thirty) days after the announcement of the results.

7. RESPONSIBILITIES OF THE MEMBER STATE HOLDING ELECTIONS

- 7.1 Take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of the country;
- 7.2 Establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible

- voters and compilation of voters' registers, would be addressed;
- 7.3 Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
 - 7.4 Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes as provided for under 2.1.5 above;
 - 7.5 Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;
 - 7.6 Ensure the availability of adequate logistics and resources for carrying out democratic elections;
 - 7.7 Ensure that adequate security is provided to all parties participating in elections;
 - 7.8 Ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/or other observers/monitors;
 - 7.9 Encourage the participation of women, disabled and youth in all aspects of the electoral process in accordance with the national laws;
 - 7.10 Issuing invitation by the relevant Electoral Institutions of the country in election to SADC 90 (ninety) days before the voting day in order to allow an adequate preparation for the deployment of the Electoral Observation Mission;
 - 7.11 Ensure freedom of movement of the members of the SEOM within the host country;
 - 7.12 Accreditation of the members of the SEOM as election observers on a non-discriminatory basis;
 - 7.13 Allow the members of the SEOM to communicate freely with all competing political parties, candidates, other political associations and organisations, and civil society organizations;
 - 7.14 Allow the members of the SEOM to communicate freely with voters except when the electoral law reasonably prescribes such communication in order to protect the secrecy of the vote;
 - 7.15 Allow the members of the SEOM an unhindered access to and communicate freely with the media;
 - 7.16 Allow the members of the SEOM to communicate with and have unimpeded access to the National Election Commission or appropriate electoral authority and all other election administrators;
 - 7.17 Allow the members of the SEOM free access to all legislation and regulations governing the electoral process and environment;
 - 7.18 Allow the members of the SEOM free access to all electoral registers or voters' list;
 - 7.19 Ensure that the members of the SEOM have an unimpeded and unrestricted access to all polling stations and counting centres.

APPENDIX II

PRINCIPLES FOR ELECTION MANAGEMENT, MONITORING AND OBSERVATION IN THE SADC REGION

PRINCIPLES FOR ELECTION MANAGEMENT, MONITORING AND OBSERVATION IN THE SADC REGION

As Adopted on 6 November 2003 at the Kopanong Hotel and Conference Centre, Benoni, Johannesburg.

Formulated by the Electoral Institute of Southern Africa (EISA) and the Electoral Commissions Forum of SADC Countries (ECF).

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1. EXECUTIVE SUMMARY

Principles for Election Management, Monitoring and Observation in the SADC region is the product of an initiative that originated at a Southern African Electoral Forum Conference held from 11-14 June 2000 in Windhoek, Namibia. The Forum drew together more than 100 participants from governments, electoral commissions, political parties, civil society and research institutions and electoral and political experts from the SADC region. These stakeholders exchanged views about the determinants of best electoral practice, especially those issues related to improving election management, monitoring and observation, and enhancing the transparency of the electoral process.

The aim of the conference, whose theme was *In Pursuit of Electoral Norms and Standards*, was to define a set of criteria to guide electoral practice and to foster a sound, enabling environment in which elections can take place. The Forum underlined the need for the development of what was then referred to as regional norms and standards, to provide benchmarks for national discussions and to offer a guide to 'best electoral management practice'.

The Forum recommended that a Task Team of six to eight experts reflective of the diversity of the participants be established. The Task Team was to consult widely in the region to develop further the framework for election standards identified during the Forum, assess regional experience, and highlight best practice for the entrenchment and deepening of democracy. At the conclusion of the Task Team's work a draft document was produced and presented to a conference of SADC electoral stakeholders, who examined it, further enriched it and adopted it unanimously.

This final document reflects the outcome of the process and underlines the need to have a sound political, constitutional and legal dispensation that supports free and fair, credible and legitimate elections as a precondition for democratic election management.

The document is structured in such a way as to reflect the chronology of events in the management of elections. It begins by discussing the requirements for a sound political and constitutional dispensation that will give birth to an election regime and its supporting electoral institutions. It then looks at the three stages of the electoral process – the pre-election (preparatory) phase, the election phase and the post-election phase. These three phases are all equally important to the procedures and processes necessary to deliver free and fair, credible and legitimate elections in a climate of peace and stability. Specific regional trends

and challenges are identified for all three phases and recommendations made for best practice in the management of elections. Because they cut across all the phases, election monitoring and observation are treated separately and are included in the document before the conclusion.

The recommended principles address the following major issues:

- the need for a comprehensive constitutional and legal framework;
- the importance of transparent and accessible pre-election procedures (including the delimitation process, voter registration and candidate nomination);
- the equitable use of the media and public resources and issues of political party finance;
- the organisation and management of the election phase, including the location of polling stations, their layout, and access to them; the secrecy of the ballot, and the counting process;
- the post-election phase, including the settlement of election disputes and ways of ensuring that results are acceptable;
- the requirements for unhindered, credible, professional and impartial monitoring and observation of the electoral process.

2. INTRODUCTION

Southern Africa has made significant progress in the past decade in institutionalising democracy. This is reflected in a number of developments in SADC countries including the holding of successful multi-party elections in several of them in the past ten years. There is evidence of increased popular participation in governance, and dialogue between governments and stakeholders have taken root. Democratic institutions have been set up and a number of major constitutional, legal and administrative changes have been undertaken with the objective of consolidating and deepening democracy.

Regional structures have also been established to support such a process. These include the SADC Electoral Commissions Forum (ECF), the Electoral Institute of Southern Africa (EISA), the SADC Electoral Support Network (ESN) and the SADC Parliamentary Forum. These organisations have committed themselves to supporting the growth and deepening of democracy in the sub-region. In pursuit of these aims election observers are sent to monitor and observe elections in the region, training is provided for election personnel and a number of other activities are undertaken.

Experience in the region and beyond has shown that deepening democracy entails more than holding periodic elections and creating a set of institutions. It also involves developing a generally accepted set of values that ensures fair electoral practice predicated on representation, accountability, inclusiveness, transparency, gender equality, tolerance and respect for diversity. These basic values have been agreed upon by the SADC countries and are expressed in the various declarations and instruments to which they are signatories: the Harare Declaration of 1991, the Windhoek Declaration on the Freedom of the Media (1991), the SADC Treaty of 1992 and the 1997 SADC Declaration on Gender and Development. In 2001, SADC leaders identified as part of their common agenda the promotion of common systems and political and other shared values

transmitted through institutions that are democratic, legitimate and effective; as well as the consolidation and maintenance of democracy, peace and security. This led, among other things, to the adoption by SADC member states in 2002 of a Regional Indicative Strategic Development Plan (RISDP).

Although they are an important expression of political will, commitment to these instruments alone does not necessarily translate into 'best' democratic practice, which is a critical element of democracy. Accordingly, there is a need for a common definition and a common understanding of what constitutes 'best' democratic practice. This can only be reached through a process of dialogue between the major stakeholders in the electoral process and by learning from experience.

In March 2001 the SADC Parliamentary Forum released *Norms and Standards for Elections in the SADC region*. This document provides a framework from a parliamentary perspective that addresses the political environment conducive to the holding of free and fair elections. The initiative by the EISA/ECF Task Team, therefore, intended to complement the work of the Parliamentary Forum by addressing the more technical and procedural aspects of, and requirements for good electoral practice.

3. INSTITUTIONAL CONTEXT OF ELECTIONS IN SADC COUNTRIES

3.1 Constitutional and Legal Framework

The constitutional and legal frameworks are fundamental documents of the state that provide the context and legal environment in which elections take place. The Constitution of any country should both provide the legal framework for that country and serve as the basis for the conduct and delivery of free, fair, credible and legitimate elections.

Most SADC countries have committed themselves to upholding the fundamental rights and freedoms embodied in their constitutions as well as to multi-party elections that are free, fair, credible and legitimate. The majority have enacted legislation to govern the general conduct of elections. However, in general constitutional and legislative provisions relating specifically to elections are very limited. Even where provisions exist, they tend not to contain adequate detail about the management of elections. Moreover, in former one-party systems, constitutional and legislative provisions have not been re-aligned to conform to the requirements of democratic plural politics.

Recommended Principles

The constitutional and legal framework should:

- guarantee fundamental freedoms and human rights, promote good governance and the values of political stability;
- provide for mechanisms with which to address conflict management in the electoral process;
- make provision for the review of the Constitution in keeping with principles of democratic practice;
- provide explicitly for gender equality and affirmative action as a temporary measure until balanced representation is achieved;
- provide a clear statement on the type of electoral system;

- provide for the regular scheduling of elections;
- provide that elections be held not fewer than 45 and not more than 90 days from the setting of an election date;
- not violate the principles of fundamental human rights and freedoms (for example, specific provisions for the respect of human rights such as freedom of association and freedom of expression), which freedoms should include the right to form and belong to political parties or to be independent candidates;
- be drafted in plain language and translated into the languages of the country;
- provide for the establishment of an independent and impartial electoral management body;
- enact constitutional and legal provisions, which deal specifically and in detail with electoral issues and should include a right of appeal for aggrieved persons.

3.2 Electoral Systems

An electoral system is a method by which votes are translated into legislative seats. The choice of system therefore determines the nature of representation and the format by which seats are allocated. Of the four main electoral systems used throughout the world (see below), the two most dominant in the SADC region are the Single Member Plurality System, also known as First-Past-the-Post (FPTP), and the Proportional Representation (PR) system. The type of system selected has an impact on participation, especially that of women and other disadvantaged groups. The evidence in SADC shows that those countries that use the PR system have more women in parliament and local government than those that use FPTP.

Whereas these electoral systems have shaped the nature of representation in the legislature, some SADC governments also use a system of specially appointed seats, which allows the ruling party to appoint between four and thirty MPs to occupy special seats in the legislature. In this regard, ruling parties in the SADC region have tended to enjoy undue political advantage relative to opposition parties, which has triggered discontent, political tensions and conflict in some SADC countries. However, in a few countries this system has been used positively to place women and representatives of other disadvantaged groups in parliament and local government.

Recommended Principles

- Each SADC State should adopt an electoral system in accordance with its own political dispensation, history and party system.
- The electoral system should be entrenched in the Constitution.
- The Electoral Act should clearly set out the form, content and operation of the electoral system adopted.
- All stakeholders, particularly the electorate, should understand the type of electoral system in use; how the state determines the allocation of legislative seats; the nature of representation and the political consequences of the chosen system.
- Electoral systems should promote and protect fundamental human rights

as well as the secrecy of the ballot.

- Positive measures such as affirmative action, including quotas for women and other disadvantaged groups, should be adopted as part of intra-party and national electoral systems, and mechanisms put in place to ensure their enforcement.
- The following principles must lie at the heart of the electoral system:
 - broad representation of diverse political interests and population groups;
 - inclusiveness and the political participation of key actors;
 - political accountability of Members of Parliament to the voters;
 - a transparent and legitimate election process and outcome;
 - the entrenchment of a culture of intra-party democracy that ensures the credibility and legitimacy of the nomination process within political parties.

TYPES OF ELECTORAL SYSTEMS

The four main types of electoral system and their essential characteristics

(a) *Single Member Plurality (SMP)*

Commonly known as 'First-Past-The-Post' (FPTP), this system is considered the simplest. The country is divided into electoral constituencies, each of which chooses only one candidate as its representative in the legislature. The winner in each constituency is the candidate who receives a minimum of one more vote than each of the other candidates, and does not have to obtain more votes than all the others combined. Although this system may mean that a party with a minority of votes countrywide becomes the ruling party and although it unduly disadvantages small parties, the SMP system is reputed to entrench the accountability of the MP to the constituency. The majority of SADC States (8) use the Single Member Plurality system.

(b) *Single Member Majority (SMM)*

In a Single Member Majority (SMM) system the country is also divided into constituencies but the advantage of the SMM over the SMP system is that the winner must obtain an absolute majority of votes in the constituency. Although this system is not commonly used in the SADC region, some states use it for presidential elections. Where a presidential candidate fails to secure an outright majority, a run-off election is often required.

(c) *Proportional Representation System (PR)*

Although there are various types of Proportional Representation systems, the commonly used variant is the closed party list system. In most PR systems the whole country is taken to constitute a single constituency so no constituency delimitation process is required, as would be the case with the FPTP and SMM. The PR system generally ensures that all parties contesting an election have some representation in parliament in proportion to the total number of valid votes cast. Although this system is reputed to ensure better representation and a better reflection of public

opinion, it tends to link Members of Parliament to parties rather than to the electorate. Only four SADC countries operate the PR system.

(d) Mixed Member Proportional System (MMP)

The Mixed Member Proportional system combines the key elements of the FPTP and the PR systems. The system allows for some Members of Parliament to be elected through the FPTP system while others occupy legislative seats through the closed party list system. Although many ordinary voters find the MMP confusing it tends to maximise the positive aspects of both the PR and the FPTP, namely broad representation and accountability. On the other hand, the MMP also embodies the negative aspects of both PR and FPTP. Only two SADC countries have adopted the MMP system.

3.3 The Election Management Body (EMB)

Most SADC countries have election management bodies (EMBs) in the form of independent electoral commissions (IECs), and a range of models has been adopted. Some of the main constraints to their operation include limited independence, unclear mandates and inadequate resources. Controversies have arisen with respect to the appointment procedures and tenure of members of the EMB, which undermines the legitimacy and credibility of the electoral process.

Recommended Principles

- Government must adequately fund the EMB in order for it to deliver a credible and legitimate election. The EMB must promote financial sustainability and cost-effective management of elections. The size of the EMB should be manageable to ensure the efficient, effective, consensual and financially sustainable administration of elections.
- The composition of the EMB should be representative of the society, and the body should comprise at least 30% women. Consideration should be given to appointing independent persons known within the society for their integrity. It is recommended that at least one of the commissioners should be a person who holds or has held high judicial office (a high court or supreme court judge). A percentage of EMB commissioners should be full-time members in order to ensure organisational and institutional continuity.
- Appointment and dismissal procedures should be clearly articulated and the process undertaken in a manner that is impartial, accountable and transparent. These procedures should also take into consideration the need to ensure institutional continuity.
- The EMB should be accountable to the National Assembly/ Parliament through, for example, the Public Accounts Committee rather than a ministry, and should be required to report to the national legislature annually on its activities.
- The budget for the EMB should be decided by a vote in the National Assembly/Parliament.

3.4 Conflict Management

Election-related conflict is one of the major threats to democracy and political stability in SADC. Historically adjudicatory institutions such as the courts, and

more particularly the electoral courts, have dealt with election-related disputes and conflicts.

Alternative dispute resolution and conflict management processes such as mediation, arbitration and conciliation are potentially a more accessible, cost-effective and rapid means by which to address such disputes. Only a few countries have instituted these processes.

Recommended Principles

- The legislative framework should incorporate alternative conflict management processes.
- The EMB, political parties and civil society should facilitate the establishment of conflict prevention and management processes to deal with election-related disputes, including such strategies as stakeholder liaison committees.
- Independent, skilled and well-trained mediators and arbitrators should staff the conflict management panels established by the EMB.
- Agreements reached through mediation, conciliation and arbitration should be enforceable by law.
- Appeal procedures should be established for all elections and should be dealt with by the courts.

4. PRE-ELECTION PHASE

4.1 Delimitation¹

In most SADC countries the EMB is responsible for the delimitation of constituencies, however some countries appoint special commissions to handle delimitation. The establishment, composition and status of an EMB apply equally to a delimitation commission. In most cases the mechanisms for establishing the body responsible for delimitation are entrenched in the Constitution.

It is important to note that the delimitation process is a technical exercise that can be used to achieve political goals. It is therefore important that the process be guided by clear criteria (see Table 1).

Table 1 - Delimitation of Constituencies

Delimitation should ensure that each constituency contains approximately the same number of eligible voters. The following considerations should be taken into account:

- i) population density
- ii) ease of transport and communication
- iii) geographical features
- iv) existing patterns of human settlement
- v) financial viability and administrative capacity of electoral area
- vi) financial and administrative consequences of boundary determination
- vii) existing boundaries
- viii) community of interest

¹ Sometimes referred to as demarcation.

The delimitation process should:

- be managed by an independent and impartial body that is representative of the society, comprising persons with the appropriate skills;
- be conducted on the basis of clearly identified criteria such as population distribution, community of interest, convenience, geographical features and other natural or administrative boundaries;
- be made accessible to the public through a consultation process;
- be devoid of manipulation of electoral boundaries to favour particular groups or political interests;
- be conducted by one body;
- include all spheres of government, both national and local.

4.2 Voter Registration

The purpose of voter registration is to identify those persons who are eligible to cast a ballot on Election Day. The current practice in SADC is that the EMB is responsible for compiling a national voters' roll and undertaking voter registration. In many SADC countries the transparency and legitimacy of the voter registration process has been disputed, resulting in a lack of acceptance of the election results. Conflicts associated with the voter registration process include the legislative prescription for voting, the time allocated for the process and for inspection of the voters' roll and the accuracy of the voters' roll.

Recommended Principles

- The voter registration process should promote broad participation and should not inhibit the participation of eligible voters.
- Eligible voters should be provided with a continuous and accessible voter registration facility.
- There should be sufficient time for eligible voters to register, for public inspection of the voters' roll, for objections and for the adjudication of appeals.
- Cost effective voter identification protocols should be established to enable inclusion of the maximum possible eligible voters while minimising multiple or illegal voter registration – for example, the development of a multi-purpose national identity card to accompany a national population register.
- Provision should be made for political parties to monitor the voter registration process through party agents appointed by them.
- Parties should have access to the voters' roll, without charge.
- Voting rights should be based on considerations that include:
 - citizenship;
 - legal age of majority (this may differ from country to country);
 - residency requirements, if applicable;
 - any other additional grounds for disqualification (e.g., prisoners in detention, persons with a criminal record, mentally disadvantaged, and so on).

4.3 Registration of Political Parties

In most SADC member states political parties are required to register in order to take part in an election. A time limit for registration is usually imposed.

A healthy multi-party democracy requires the participation of a number of political parties.

The amount of time political parties are given to register may be contested if the parties are not given enough time to meet all requirements. The process of party registration should not violate the principle of freedom of association.

Recommended Principles

- A registrar of political parties should be established and qualifications and disqualifications for registration should be clearly provided for by law.
- While the registrar of political parties must conform with certain regulatory requirements such as candidate or party deposits, signatures of registered voters, and the submission of party names and logos, these regulations should not be so stringent as to exclude parties from participating in the elections.
- The criteria for registration of political parties should be clearly defined and transparently applied, and should include appeal mechanisms.
- Political parties should be required to sign an electoral code of conduct upon registration.

4.4 Nomination Process

The commitment to deepening democracy must apply to intra-party democracy. The selection of candidates at party level is not always democratic and there is a general absence of mechanisms to encourage diversity and equal representation. Intra-party selection procedures should not undermine democratic values or impede the representation of women and other disadvantaged groups. With respect to the nomination process at national level, concerns have been raised in some countries about the lack of accessibility of nomination centres, which sometimes results in the disqualification of candidates.

Recommended Principles

- The process of nomination of candidates (both independent and party candidates) should be transparent.
- Candidates should be able to submit their nomination papers in the electoral area that is accessible to them, for instance the constituency in which they seek election.
- Candidates should have sufficient time to comply with the requirements of the nomination process.
- There should be an attesting officer or commissioner of oaths in every constituency, to facilitate easy access and speedy compliance.
- There should be sufficient time for the public to inspect candidate nomination lists and for objections to be lodged and disputes resolved.
- Before contesting an election political parties should be required to ensure equal gender representation and at least 30% of women candidates by 2005, in line with the 1997 SADC declaration on gender and development.

4.5 Campaign Process

The period between the conclusion of candidate nomination and Election Day is used by political parties to mount heightened political campaigns. Sometimes in SADC countries, insufficient time is allocated for this purpose. During the campaign period, competing parties and candidates tend to ignore the code

of conduct and resort to unlawful practices such as the designation of ‘no-go’ areas, preventing rivals from entering those zones.

Recommended Principles

- At least two weeks should be allotted for parties and candidates to carry out their election campaigns.
- In the campaign process, parties and candidates should adhere to the electoral code of conduct that guides their behaviour.

4.6 Media

Most SADC constitutions guarantee freedom of the press as a fundamental right. However, in many countries the ruling party dominates the public media. Though the emergence of independent media has had the effect of challenging this monopoly there is still a perception that in some cases the public media are not sufficiently accountable to the populace, often resorting to sensational and biased reporting.

Recommended Principles

- All contesting parties and candidates should have equal access to the public media.
- Media regulations should be issued by an independent media authority responsible for monitoring and regulating the media on a continuous basis.
- Media coverage of the elections should be subject to a code of conduct designed to promote fair reporting.

4.7 Use of Public Resources

Not all political parties and candidates have access to public resources – governing parties in SADC have an unfair advantage in this area, using the public resources to which they have exclusive access for campaign purposes or to further their political ends.

Recommended Principles

- The use of public assets and funds for party political purposes should be regulated in order to level the playing field for political competition.
- The use of public resources for political campaigns and political party activities should generally be avoided but, if permitted, access thereto must be equitable and be paid for, and conditions for such access and payment must be clearly provided for in the law.
- Political parties and candidates should account to the EMB for the use of such resources.

4.8 Political Violence and Intimidation

There can only be a free, fair, credible and legitimate electoral process in a climate that is free from political violence and intimidation. However, election-related political violence and intimidation has occurred in certain SADC member states. There is therefore a need to create a culture of peace and tolerance and general agreement on what constitutes acceptable and unacceptable conduct.

Recommended Principles

- All electoral stakeholders should commit themselves to a culture of peace and tolerance at all times.

- All electoral stakeholders should put into place programmes that cultivate and promote a culture of peace and tolerance before, during and after Election Day.
- An enforceable code of conduct regulating the behaviour of political parties and their supporters should be adopted through a consultative process involving the EMB, political parties and other electoral stakeholders.

4.9 Role of Security Forces

The role that should be played by the state security forces – army, police and intelligence – in protecting the security of the election process has not been properly established in SADC countries. It is generally the police who keep the peace on a daily basis, including on Election Day. They play a critical role in protecting the integrity of the electoral process. However, the presence of security forces around polling station may intimidate and instil fear in voters.

Recommended Principles

- Security forces should maintain a neutral role in the provision of election security.
- Security forces should be regulated by a code of conduct contained in the electoral law, and their behaviour should not intimidate voters.
- The EMB should meet regularly with the security forces to discuss issues relating to polling day security, national security during the election period, and any other logistical assistance that may be required.
- Special provision should be made for the security forces to vote prior to Election Day if they are required to be deployed away from their constituencies on that day.

4.10 Political Party Finance

The majority of SADC member states provide public funding to political parties for election purposes. This is necessary in order to level the playing field and to strengthen the democratic process. However, in some countries, public funding is not provided, and political parties do not always disclose the sources of foreign funding. In some cases this has led to suspicion and tensions, particularly between ruling and opposition parties.

Recommended Principles

- Public funding should be extended to all parties (and independent candidates) contesting elections who can demonstrate a track record of support in the most recently held elections, based, for example, on their share of the popular vote.
- The EMB should be responsible for regulating the use of these public funds and beneficiaries of the funds must provide verifiable accounts to the EMB.
- Consideration should be given to the establishment of rules governing the disclosure of all sources of funding of political parties.

4.11 Civic and Voter Education

All SADC member states undertake civic and voter education with the assistance of Non-Governmental Organisations (NGOs) and other organised civil society formations. Most civic and voter education programmes are inadequate, in terms

both of content and frequency, and tend to be over-reliant on donor funding. Rural voters, especially those residing in remote areas; women and the youth do not always have access to voter education programmes. Illiteracy is also an obstacle to voter education. It is widely accepted that these problems contribute to voter apathy, which is most prevalent among the youth of the region.

Recommended Principles

- In the interest of deepening democracy, enhancing participation and encouraging informed choice, civic and voter education should be given high priority in the SADC region.
- To ensure consistency and quality control, overall responsibility for the co-ordination of civic and voter education should rest with the EMBs.
- Voter education should be provided in the general context of a commitment to civic and democracy education throughout the country, even between elections.
- Governments should prioritise the funding of civic and voter education by providing for it in the state budget prior to the elections.
- Civic and voter education should be provided in a manner that is non-partisan, independent, co-ordinated and consistent.
- An effort should be made to ensure that rural voters are given special attention and that the participation of women and the youth in the elections is encouraged.
- Civil society capacity such as NGOs, Community Based Organisations (CBOs), faith based organisations (FBOs) and other institutions should harness and support civic and voter education to ensure effective distribution throughout the country.
- Existing forums, such as traditional ones, should also be used to educate and inform voters about the elections.
- Political parties should provide their supporters with civic and voter education and information about the voting process which should be consistent with the voter education and information provided by the EMB.

5. ELECTION PHASE

Increasing popular participation in the electoral process is an important way of strengthening democracy. This can only be achieved if the public has confidence in the electoral process and if it is accessible to them. Lack of confidence and limited access may lead to voter apathy, as reflected in the generally poor voter turnout evident in some countries.

5.1 Polling Stations

The location of polling stations plays an important role in ensuring easy access to the process. The selection of polling stations is usually based on a number of factors such as the number of voters per station, the proximity of the station to voters, adequacy of lighting and communications, transport and other logistical considerations.

In most SADC member states, there is an imbalance between infrastructure and services in urban and rural areas; polling stations in urban areas tend to be

more easily accessible and better serviced than those in rural constituencies.

Recommended Principles

- An effort should be made to design election materials that are accessible to disadvantaged voters such as the blind and the deaf. In the absence of these materials, assistance should be provided to enable such voters to vote.
- Where applicable, special arrangements should be made to allow special categories of voters, such as voters living abroad and prisoners, to vote.
- Polling station should be situated in venues that are accessible to all voters, especially the elderly and the people with disabilities.
- To ensure easier access, minimise waiting time and enhance efficiency there should be as many polling stations as population density and settlement patterns demand.
- Public buildings such as schools should be given priority as polling stations. If necessary, mobile units should be used.
- Polling station staff should be recruited in a non-partisan manner by the EMB and should receive training well in advance of Election Day.
- Selection criteria for the recruitment of polling staff and performance management processes should be institutionalised by the EMB.
- Party agents, and any persons authorised to be present in the polling station, should receive training in the voting process as well as in their role and function at the polling station.

5.2 Secrecy of the Ballot

The secrecy of the ballot is one of the great pillars on which free and fair, credible and legitimate elections rest. To avoid suspicion, mistrust, political violence, intimidation and fear of political retribution and victimisation voters, election officials, party agents and party supporters need to be assured that their vote will be secret.

The majority of SADC member states observe the secrecy of the ballot. However, there have been cases where attempts to undermine the secrecy of the ballot through misinformation and intimidation have been reported.

Recommended Principles

- The voting station should be laid out in such a way that no one is able to see how voters are marking their ballot papers.
- There should be clear procedures for the provision of necessary assistance to disabled, illiterate and elderly voters that protect, as far as possible, their right to vote secretly.
- Where ballot papers are designed with a counterfoil and serial number all precautions should be taken to ensure that it is impossible to reconcile cast ballots with the names of individual voters (e.g. by marking their identity number on the counterfoil).

5.3 Ballot Papers, Ballot Boxes and Election Materials

The majority of SADC member states, including those that have electronic voting systems, use ballot papers and ballot boxes. In most cases the EMB oversees the production and security of voting materials. In a few cases, election materials are printed abroad. If not properly handled by the EMB, the procurement,

distribution and types of election material may generate conflict.

Recommended Principles

- Ballot papers should be designed and printed under the management of the EMB and in conditions of strict security. The design of ballot boxes and all election materials should be consistent.
- Ballot papers, rather than tokens or envelopes, should be used.
- All necessary election materials (ballot boxes, ballot papers, voter registers, indelible ink, etc) should be distributed to all voting stations on time and in more than sufficient quantities.
- Election material should be procured in a transparent manner.
- Ballot papers should be designed so they can be easily understood by voters.
- Sensitive election materials such as ballot boxes and ballot papers should be stored and delivered under strict security in order to prevent electoral fraud.
- Appropriate methods should be put in place to prevent multiple voting.
- At the opening and closing of the poll, the procedures for handling and sealing ballot boxes should be open to the scrutiny of those party agents and other observers who may be present.
- In the event that ballot boxes and other sensitive election materials have to be stored overnight, party agents and observers should be allowed to remain at the polling station with the boxes. Alternatively, provision should be made for them to place their own seal on the ballot boxes.

5.4 Counting

In SADC countries vote counting is done manually, at the polling station, with varying degrees of acceptability by the political parties and voters. To enhance the credibility and transparency of the count, several SADC countries are establishing results centres to provide a national record of the results. The transportation of ballot papers between centres of voting and counting is a potential source of suspicion and fraud.

Recommended Principles

- The EMB should retain overall responsibility for the management of the counting process.
- Procedures for counting should be known to those election officials, party agents, observers and any other authorised persons who are permitted to be present during the count.
- The counting process should take place in the polling station immediately after the close of voting.
- If the voting station is to function effectively as a counting station it must have adequate lighting, communication systems and security.
- Where feasible, the staff who count the votes should not be the same as those who have been involved in the voting process.
- Counting staff should be given effective training.
- When the counting process is completed the results should immediately be announced and posted at the counting station.

6. POST-ELECTION PHASE

6.1 Announcement of Overall Results

In most SADC countries, the EMB is responsible for officially announcing the election results. Slow tabulation and poor infrastructure and coordination leading to significant delays in announcing results are common. This leads to suspicion and a reduction in the degree of acceptance of the results, both of which undermine the integrity of the electoral process.

Recommended Principles

- Result centres should be established in all SADC countries and should be open to the public and used to ensure acceptance of election results.
- The electoral legislation should establish a specific time frame in which results must be announced, in order to reduce uncertainty and minimise potential conflict or fraud.
- Electoral legislation should indicate clearly who has the authority to announce the results.
- Results from the result centres should be announced publicly.
- Timeframes should be set for the confirmation of results and the allocation of seats.
- The EMB report on the elections should contain a detailed account of the number of eligible voters who registered and the number of registered voters who voted.

6.2 Acceptance of Results

In some SADC countries electoral outcomes have been disputed for a variety of reasons. These include dissatisfaction with the ‘winner-takes-all’ system, which leads to a feeling of exclusion from the process; and with a lack of transparency and accountability.

Recommended Principle

- A culture of acceptance of election results needs to be cultivated through civic education and the promotion of a transparent electoral process.

6.3 Post-Election Review

The conduct of credible, cost effective and sustainable elections requires that a post-election review be held, either by means of an evaluation by independent consultants, agreed upon by the EMB, or by use of opinion polls, exit polls and research. The post-election review is conducted in the interest of improving the conduct of future elections. In most SADC countries EMBs undertake a post-election review that makes recommendations for future elections. However, the process of evaluation tends to exclude stakeholders in the election.

Recommended Principles

- In order to evaluate the process effectively it is necessary to include in the evaluation electoral stakeholders such as EMB Commissioners and staff, political parties, observers, media, voters and other civil society organisations.
- A results programme should be designed to indicate how many women, men and young people of various ages voted. This provides useful information for future electoral planning and voter education.

- The results of the evaluation process should be shared with the electoral stakeholders.
- The EMB should submit a final report on the elections to an appropriate institution.
- The EMB should be evaluated after every election.

6.4 Post-Election Disputes

Post-election disputes emerge when parties that have lost the elections do not accept the results. It is therefore very important that mechanisms be put in place to deal with these disputes as they have the potential to undermine the integrity of the electoral process and lead to either overt or covert social conflict.

Recommended Principles

- There should be clear provisions for appeals against the results and any other matters related to the conduct of the elections.
- Any conflict management structures established in addition to recourse to the appropriate jurisdiction should operate in the post-election period in order to facilitate the settlement of disputes.

7. ELECTION MONITORING AND OBSERVATION

Election monitoring and observation have become an integral part of the electoral process in SADC countries, with most accepting monitors/ observers from international, regional and national organisations. Such monitors/ observers have come to play an important role in enhancing the transparency and credibility of elections and the acceptance of results.

Although the terms ‘monitoring’ and ‘observation’ are often used interchangeably it is worth noting that the two processes are, in fact, fairly distinct, albeit intertwined. Observation refers to information gathering or on-site fact-finding and making an informed judgement about the credibility, legitimacy and transparency of the electoral process. It is often carried out by external agencies that cannot intervene in any material way in the voting and counting operations. Monitoring refers to information gathering and examination and evaluation of the electoral process. It is often carried out by domestic agencies that are able to draw the attention of the presiding officers to observed deficiencies in the voting and counting operations.

Election monitoring and observation may take two main forms: (a) long-term, covering all the phases of the electoral process and (b) short-term, covering mainly polling day activities. These processes are key instruments for evaluating and assessing whether or not the electoral process in any given country has been conducted in a free, fair, transparent and credible manner. In addition, monitoring and observation can assist a country holding elections to prevent, manage or transform election-related conflicts through impartial and timely reporting as well as identifying strengths and possible weaknesses of the election process as a whole.

In the SADC region bodies such as the Electoral Commissions Forum of SADC countries (ECF), the Electoral Institute of Southern Africa, the SADC Parliamentary Forum, the SADC Electoral Support Network and many national and regional civil society organisations, including NGOs, FBOs and

trade unions, have become increasingly involved in election observation/monitoring.

Recommended Principles

- As far as possible monitoring and observer missions should deploy a pre-election assessment team to the host country many months before polling day to ascertain whether or not preconditions exist for them to dispatch a mission. These preconditions include free political activity and guarantees that monitors and observers may move around freely and engage with organisations of their choice to assist with their assessment of the electoral process.
- Observer and monitoring missions must prepare timeously for election observation and monitoring so that adequate logistical arrangements can be put in place well in advance of polling day.
- Observer and monitoring missions must ensure that all participants declare any conflicts of interest prior to taking part in the mission.
- Election monitoring and observer missions must collectively possess adequate knowledge of the SADC region in general and the country holding the elections in particular.
- The EMB or relevant authority must invite observer missions timeously to allow the mission to prepare adequately.
- Monitoring and observer missions must be accredited by the EMB of the country or by whichever other body may be relevant.
- The EMB must ensure that the accreditation process for observers and monitors is speedy, efficient and non-discriminatory.
- Upon accreditation, election monitors and observers must be accorded the same protection by the law and the authorities as any citizen of the host country.
- Monitoring and observer missions must compile a comprehensive checklist defining the scope of their assessment of the electoral process.
- Monitoring and observer missions should interact with all the actors in the electoral process and organise briefing and debriefing meetings with key stakeholders or role-players, including the EMB, media, political parties, civil society organisations and security forces.
- Monitoring and observer missions should produce and distribute widely impartial, credible and professionally written press releases and interim and final assessment reports, which will help the EMB and other interested parties identify any constraints on or shortcomings of the electoral process. Such constraints and shortcomings should be taken into consideration by the EMB and other interested parties when preparing for the next round of elections.
- Timely reports from election monitoring and observer missions may be used to help electoral conflict management bodies prevent or manage potential conflict.
- The EMB must, in consultation with key electoral stakeholders, develop a code of conduct for election monitors and observers to ensure acceptable conduct in accordance with the Constitution and laws of the country holding elections.
- Monitors and observers should use the principles contained in this

document as a basis for assessing future electoral processes in the SADC region.

- It is critical that codes of conduct do not impinge on the ability of monitors and observers to discharge their duties freely.
- A standard code of conduct for election monitors/observers should seek to uphold their behaviour in line with, *inter -alia*, the following values:
 - to abide by the Constitution and the laws of the host country;
 - to respect the cultures and traditions of the host country;
 - to declare any conflict of interest prior to taking part in the mission;
 - to act in a strictly impartial and unbiased manner in relation to all electoral stakeholders, including voters, political parties or candidates, and the media;
 - to refrain from actions that could lead to a perception of sympathy for a particular candidate or political party;
 - to refrain from wearing any party symbols or colours;
 - to contribute to the legitimisation or otherwise of the electoral process and its outcome;
 - to support the enhancement of and respect for basic political, social, legal and other human rights in the host country;
 - to increase public confidence in the electoral process;
 - to offer support and show empathy to those directly involved in the electoral process;
 - to uncover and make public any observed irregularities and malpractices in the electoral process for possible redress by relevant institutions;
 - to exercise sound judgement and the highest level of personal discretion at all times.

8. CONCLUSION

The ECF and EISA acknowledge that democratic governance is a major challenge facing the SADC region today and that elections occupy a place of cardinal importance in a democracy. This document provides a comprehensive guide for the management, observation and monitoring of elections in the SADC region. It proposes, in a succinct manner, imperatives for the entrenchment of a working democracy in the region and in particular the holding of free, fair, legitimate and credible elections as one of the key pre-requisites for the nurturing and consolidation of democracy.

The recommendations are based upon the firm conviction that their adoption will:

- instil the necessary trust and confidence in the management of elections at all levels;
- encourage a greater sense of ownership of the electoral process by the general public;
- increase participation in elections by all the people of the region.

In this way the Southern African region will make commendable strides towards ensuring successful elections, free of conflict and controversy. These conditions are a prerequisite for regional peace, stability and development, all of which would add value to democratic consolidation in the region.

APPENDIX III

SADC PARLIAMENTARY FORUM: NORMS AND STANDARDS FOR ELECTIONS IN THE SADC REGION

SADC PARLIAMENTARY FORUM: NORMS AND STANDARDS FOR ELECTIONS IN THE SADC REGION

Adopted by the SADC Parliamentary Forum Plenary Assembly on the 25th March 2002, Windhoek, Namibia

A. INTRODUCTION (abridged)

The following recommendations are targeted at strengthening electoral institutions, reforming outdated legal frameworks and electoral practices, and entrenching the democratic process in the conduct of elections, thus minimising disputes over the outcome of elections among contesting political parties. These recommendations are expected to significantly contribute to political stability in Southern Africa.

B. PREAMBLE

Cognisant of the above situation, we the election observer delegations of the SADC Parliamentary Forum created pursuant to Article 10(6) of the SADC Treaty:

- **Recalling** the Commitment of the Heads of States and Government to democracy and to the individual's inalienable Right to participate by means of free and democratic processes in framing the society in which he or she lives; and to peace and stability in the SADC region; the Windhoek Declaration on Freedom of the Press; the Blantyre Declaration on Gender Equality of 1997; the Harare Declaration of 1991 and other International Conventions and Instruments to which all SADC countries are Signatories;
- **Recalling** the provisions of Article 5 of the Constitution of the SADC Parliamentary Forum which inter-alia, calls for the promotion of the principles of human rights and democracy and the encouragement of good governance, transparency and accountability within the SADC region.
- **Recalling** the role of the SADC Parliamentary Forum in Election Observation in the SADC region;

for the purpose of institutionalising and strengthening electoral institutions including democratic processes DO HEREBY make the following recommendations relating to elections and individual rights; elections and the Government; and fostering transparency and integrity in electoral process.

C. RECOMMENDATIONS

PART 1 - ELECTIONS AND INDIVIDUAL RIGHTS

1. Registration and Nomination

Problem

While Voter registration is a prerequisite to smooth elections it is common knowledge that some individuals intending to exercise their right to vote or to be voted as candidates in an election have been prevented from doing so through cumbersome voter registration requirements, nomination technical details, removal from the voters' register, intimidation

through political violence and kidnapping of candidates. For a voter to be properly identified as a national of a particular state, there is need to have an identity.

Recommendations

- (i) The right to vote and to be voted for should be accepted as a birth right in accordance with the Universal Declaration of Human Rights and the Convention on the Elimination of all Forms of Discrimination Against Women. Therefore, eligible individuals should have the right to non-discriminatory voter registration and nomination procedures. This right should be enshrined in the constitution of a country.
- (ii) There should be provisions and practical arrangements for continuous voter registration and an updated voters' register must be made available to all stakeholders in the elections.
- (iii) During nomination and selection of candidates all political parties contesting elections must ensure adequate gender balance in compliance with the SADC Blantyre Declaration on Gender and Development (1997) calling on all political parties contesting an election to commit themselves to a minimum of 30 per cent women party candidates by the year 2005.
- (iv) Provision be made for people with disabilities to participate fully in the electoral process.
- (v) Provisions should be made to ensure that prospective voters are provided with a form of national identity card in good time for registration.

2. Voting and Secrecy

Problem

There are numerous cases in our countries whereby eligible voters have been unable or prevented from exercising their right to vote through violence, lack of information on location of polling station, intimidation and misinformation.

Furthermore, there are situations whereby the secrecy of the ballot has been severely compromised by making voters queue behind their party candidates, village headmen and threats based on the ability of competing candidates/parties to use modern communication equipment to tell which way a voter has voted.

Recommendations

- (i) The right of eligible individuals to vote unimpeded and the right to vote in secrecy in a ballot box should be protected and enshrined in the constitutions of the SADC countries.
- (ii) Any measures such as political violence, kidnapping, murder, threats and sanctions such as denial of development opportunities in opposition controlled areas that prevent eligible individuals to register to vote and to vote in secrecy should be perpetually outlawed by SADC member states.
- (iii) Illiterate persons, old people and persons with disabilities should be given assistance when voting by persons of their choice.

3. Freedom of Association and Expression

Problem

It is common in some of the SADC countries that members of the electorate have been intimidated, beaten up, tortured and even murdered for belonging to opposing parties and for openly expressing their support for their preferred party. Yet one of the fundamental principles of multi-party democracy and political development process is that there should

be freedom of association and expression. This principle is violated from one election to another.

Recommendations

- (i) The sanctity of the freedom of association and expression should be protected and strictly adhered to.
- (ii) Relevant electoral laws and code of conduct should provide for this sanctity.
- (iii) Governments should establish by law ad hoc Electoral Tribunals to enforce electoral laws and codes of conduct during elections. They should deal with election conflicts.

PART 2 - ELECTIONS AND THE GOVERNMENT

1. Commitment to Pluralism, Multi-party Democracy and Politics

Problem

The meeting welcomed the commitment to pluralism and multi-party democracy in the first place by all SADC countries. However, the meeting noted that there is still inadequate and lip service commitment to multi-party democracy and politics among some of our leaders and politicians. They talk democracy but use undemocratic means to gain or remain in power. Yet the success of multi-party democracy and politics depends to a large extent on Government, political parties and other stakeholders committing themselves to upholding the values and practices that go with these concepts. The existence and sustainability of pluralism, multi-party democracy and politics again depends on the Government's belief in a democratic culture and wish to practice democracy. It calls for the Government to be tolerant of opposing political views and to harmoniously co-exist with opposition political parties.

Recommendation

The concepts of pluralism, multi-party democracy and politics should be enshrined in the constitution as the preferred form of political development and a basis for good governance. All stakeholders should commit themselves to pluralism, multi-party democracy and politics as a condition for participating in the political process of the country.

2. Date of Elections

Problem

In most SADC countries the date as to when elections are held is a prerogative of the ruling party if not of the President or Prime Minister. The announcement for when the elections will take place is often not made in good time and as such does not allow all stakeholders to prepare for elections. This has been one of the many sources of election conflicts resulting in some opposition parties boycotting the elections.

Recommendations

- (i) SADC Governments should ensure that the dates for general election are fixed by provisions in their Constitutions or electoral laws.
- (ii) If this is not possible the Head of Government should be required by the electoral law to give adequate notice of not less than 90 days (3 months) and not more than 120 days (4 months) from the date of dissolution of Parliament for an election date to give sufficient time to the Electoral

Commission to prepare for the elections and to demonstrate fair play.

- (iii) The Parliament of each SADC State should be involved in the alteration or fixing of election dates.

3. Misuse of Public Resources and Funding of Political Activities

Problem

In most countries the ruling party and its government seek an unfair advantage over opposition parties through the use of public funds and assets for its political activities, particularly meeting campaign expenses. When opposition parties get a share of public funds, there are complaints that such funds are inadequate and payment is delayed and given at the will of the ruling party to the disadvantage of opposition parties.

Recommendations

- (i) In the interest of creating conditions for a level playing field for all political parties and promoting the integrity of the electoral process, parties should not use public funds in the electoral process. The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage.
- (ii) Where a policy decision is taken to financially support political parties with taxpayers' money, which is necessitated by the poor resource background of most political parties, an agreed upon formula must be used and adhered to in allocating funds to the contesting parties. A commonly used formula is according to the number of seats each party holds in Parliament.
- (iii) Those countries that are not yet funding contesting political parties should introduce the necessary legislation to do so in order to foster uniformity and levelling the playing field.
- (iv) There must be accountability in the use of public funds.

4. Government, Political Parties, NGOs and the Media

Problem

In the majority of SADC countries the state owned media is controlled by Government. This often causes imbalance in the playing field between the stakeholders mainly the ruling party and opposition parties. It contributes to lack of transparency through selective reporting. Where the opposition parties are given airtime, it is too short and the timing may be inappropriate. The recent emergence of a vibrant private media has greatly contributed to some balance in political coverage of both ruling and opposition parties.

Recommendations

- (i) Governments should take the emergence of private media as a healthy development in the institutionalisation of the democratic process, the conduct of elections and should therefore refrain from taking decisions and actions that thwart the development of a strong private media. There should therefore be a domestic information law that reaffirms the existence of private media.
- (ii) Governments should take cognisance of the fact that the involvement of political parties in the electoral process fosters the transparency of the system and generates public confidence in the system. Opposition parties should therefore also be given equal opportunity and agreed upon time and space on the state owned media to put their announcements and

broadcasts and advertisements. This is a true test of the Government's commitment to pluralism and multi-party democracy and a democratic political process.

- (iii) The role of the civil society, mainly in election monitoring and civic education, should be recognised by Governments.

5. Electoral Commissions

Problem

Electoral Commissions do play a very important role in the preparation for and conduct of elections. However, the establishment, composition, status, independence, impartiality and professionalism of some of the Electoral Commissions have come under serious scrutiny and doubts particularly from opposition parties and members of the public. These commissions are accused of being pro the ruling party that has appointed them.

Recommendations

- (i) In the interest of promoting and entrenching pluralism, multi-party democracy and the integrity of the electoral process, the complete independence and impartiality of the Electoral Commission in dealing with all political parties should be reaffirmed in the constitution.
- (ii) The commissioners should be selected by a panel of judges set up by the Chief Justice or the equivalent, on the basis of the individual's calibre, stature, public respect, competence, impartiality and their knowledge of elections and political development processes. The selection of commissioners should be done in consultation with all political parties and other interested stakeholders. The selected commissioners are to be approved by Parliament.
- (iii) To further enhance the independence and impartiality of the Electoral Commission it should have its own budget directly voted for by Parliament and not get its allocation from a Ministry or a Government Department.
- (iv) The Electoral Law should empower the Electoral Commission to recruit and dismiss its own support staff on the basis of professionalism and competence rather than getting seconded staff from Ministries and Departments. Such staff have no loyalty to the Electoral Commission.
- (v) Security of tenure of electoral commissioners should be entrenched in the constitutions of the SADC countries.

PART 3 - FOSTERING TRANSPARENCY AND INTEGRITY IN THE ELECTORAL PROCESS

It is necessary to start this section by defining what the terms transparency, levelling the playing field and free and fair elections mean in the context of managing elections. These concepts are important in fostering transparency and integrity in the electoral process.

Transparency

Transparency refers to the degree of openness in the election process. It is important in the conduct of elections in that it enables the public at large, political parties and candidates to be informed on a timely basis about developments concerning electoral matters. It is a confidence building measure.

Level Playing Field

In the context of elections, the expression “level playing field” refers to a requirement that the election rules and regulations apply fairly to all political parties and candidates. It requires that the Electoral Commission deals openly and on equal terms with each of the political parties to enhance transparency.

Free and Fair Elections

Whether elections are free and fair is a judgmental position on the whole process of conducting elections.

Problem

Experience has so far shown that the above three concepts feature prominently when elections are held in any of the SADC countries. Opposition parties often complain about the lack of transparency in the manner in which Electoral Commissions manage elections, the playing field being skewed in favour of the ruling party and for the losing parties the elections being not free and fair. What is discussed below are some ingredients of good practices that Governments should seriously consider adopting to enhance transparency, ensure a level playing field, and guarantee free and fair elections.

1. Registration of Voters***Problem***

Registration of voters in SADC countries is a once off thing, done when elections are eminent. Experience shows that this practice leaves out a substantial proportion of eligible voters. A properly compiled register of voters provides a sound basis for the organisation of free and fair elections. The compilation of a satisfactory voters' register is a biggest test of the impartiality and technical competence of the Electoral Commission.

Recommendation

Registration of voters should therefore be a continuous exercise and not just wait for an election.

2. Voter Education

In some cases voters' education is left to NGOs and political parties. Due to lack of funds it is inadequately funded and poorly managed.

Recommendation

The Electoral Commission should be required by law to provide for a satisfactory and adequately funded voter education programme that helps voters to be acquainted with the voting procedures and other aspects of civic awareness.

3. Boundary Delimitation Commissions***Problem***

The main function of a Boundary Delimitation Commission is to draw the boundaries of constituencies in a fair manner applying a stipulated formula such as the electoral quota that uses the average electorate of the constituencies as the basic size of the electorate to be placed in a constituency. Experience has shown that this is not always adhered to.

Recommendations

- (i) In the interest of promoting plural, multi-party democracy and enhancing integrity of the electoral process, the independence and impartiality of the Boundary Delimitation Commission in drawing up constituency boundaries should be reaffirmed in the constitutions of SADC countries.

The tenure of office of the Commissioners should be guaranteed in the constitution.

- (ii) The drawing up of constituency boundaries should be left to the technical competence of the Boundary Delimitation Commission without political interference. The Commission should consult stakeholders in this process. Gerrymandering should be outlawed.
- (iii) Recommendations of the Boundary Delimitation Commission should not be altered by any stakeholder.

4. Nomination Process

Problem

The nomination process has been a vulnerable stage in election preparation. Prospective candidates have been prevented from submitting their nomination papers due to violence, procedural deficiencies and inadequate role of the courts.

Recommendation

It is therefore recommended that technical requirements/rules should be kept to the absolute minimum. The Electoral Commission should have powers to extend the time for particular nomination centre and prospective candidates should have the right to appeal to the High Court.

5. Election Campaign

Problem

Election campaign in a number of SADC countries is often riddled with violence, murder, intimidation, destruction of property, unequal access to state owned media and accusations by opposition parties of a lack of a “level playing field” among the parties contesting an election.

Recommendations

The Electoral Commission and all stakeholders in the electoral process should therefore be required by law and be empowered to ensure that political parties and candidates should denounce violence in elections in order to ensure that:

- unimpeded freedom of campaign throughout the country;
- free and unimpeded access to Voters’ Rolls;
- all Government Security Forces should act impartially and professionally;
- Presidential candidates must be provided with free and adequate security during the election process;
- equal and free access to the state owned media;
- a code of conduct developed through consensus from all political parties to guide behaviour in the conduct of campaigns; and
- reasonable safeguards at political meetings, rallies, polling stations and party premises.

The ad hoc Electoral Tribunal shall enforce the foregoing recommendations.

6. Funding of Political Campaigns

Problem

The funding of election campaigns is an area where the misuse of public funds is common and the playing field is not even. Experience in most countries is that the ruling party is well resourced (financially and assets wise) while opposition parties are poorly funded.

Ceilings on political expenditure are either not there or ignored by all. The rich engaged in lavish expenditure to win votes.

Recommendation

The Electoral Commission should therefore be legally empowered to prohibit certain types of expenditures so as to limit the undue impact of money on the democratic process and the outcome of an election. It should be empowered to ensure that proper election expenses returns are submitted on time, to inspect party accounts, and for parties to have properly audited and verified accounts.

7. Role of the Courts

Experience shows that the courts come into the electoral process in terms of:

- (i) handling appeals during the registration and nomination stages;
- (ii) dealing with election offences; and
- (iii) attending to election petitions.

Problem

In most countries the courts are either under-funded or understaffed or too bureaucratic to deal promptly with election petitions and offences. Yet the courts are an important player in ensuring a plural and multi-party democratic process.

Recommendations

- (i) The courts should be strengthened in terms of both human and financial resources to enable them adequately deal with election petitions and offences and to ensure a level playing field and free and fair elections.
- (ii) There must be time limits for resolving election petitions.
- (iii) In enhancing democracy all electable positions should be subject of judicial review.
- (iv) All cases emanating from electoral petitions should be subject to electoral review.

8. The Electoral Commission and the Media

Problem

Technical competence, impartiality in dealing with political parties and independence of government control are not the only qualities of a good Electoral Commission. A good relation with the media is a desirable quality in that it fosters public confidence in the electoral process. Experience from the SADC countries is that the relations between the Electoral Commission and the private media are not good. Yet the media plays an important role in terms of fostering the integrity and transparency of the Electoral Commission and on building public confidence in the activities of the Commission. Therefore, the Electoral Commission and the media should view themselves as allies and not as adversaries in the institutionalisation of the democratic process in the conduct of elections.

Recommendations

The following good practices are offered for adoption by Electoral Commissions in our Region:

- (i) periodic meetings with representatives of the media at every important stage of the electoral process as a way of communicating with the general public; and
- (ii) general media briefings and general statements to the media to avoid misrepresentation.

9. Polling Stations

Problem

In some SADC countries, polling stations are in private houses, shops and stores. This compromises the integrity of the voting process and the secrecy of the ballot.

Recommendation

Polling stations should be public places such as schools, tents, mobile vehicles that are neutral.

10. Ballot Boxes

Problem

The nature of ballot boxes has become the subject of concern in the voting process. Some countries still use opaque wooden boxes, which defeat the call for transparency in the electoral process. Other countries are a step ahead in that they use transparent ballot boxes in line with the general call for transparency in the electoral process.

Recommendation

Those SADC countries that still use opaque wooden ballot boxes are urged to discard them in favour of transparent ballot boxes.

11. Counting of Votes

Problem

The counting of votes is another area in the electoral process riddled with accusations of elections being rigged in favour of the winning party. The system of transporting ballot boxes from polling stations to a central counting centre creates opportunities for missing ballot boxes and other ballot boxes being sneaked in. This is a violation of free and fair elections.

Recommendations

- (i) The counting of votes should be done at the polling station where the candidates and/or their election agents are present. Such candidates and agents should be allowed to remain with the boxes from closure of polling station to counting of the votes.
- (ii) There should be immediate release of official election results on completion of counting, signed by returning officers and confirmed by party agents.
- (iii) Verification and reconciliation of ballots should be done before counting begins and this should be done in the presence of candidates and all their agents.
- (iv) In the event of a long lapse of time between the completion of voting and the commencement of the counting, the ballot boxes should be sealed and opened in the presence of all polling agents.
- (v) The Electoral Commission should prepare and make available a timetable of the electoral process, including the acquisition of electoral materials, packaging and distribution to polling centres. The timetable, including all stages of electoral events, should by law be made accessible to all stakeholders.

12. Acceptance of Election Results

Problem

It is common in some SADC countries that both ruling and opposition parties do not easily accept election results. Some ruling parties as well as opposition parties do not accept

the legitimacy of each other. In some cases, opposition parties are denied funds that are due to them. The tendency therefore is for opposition parties to act outside parliamentary jurisdiction.

Recommendations

- i. The culture of accepting election results should be cultivated and encouraged, especially when election observers have certified the results as free and fair.
- ii. Political parties contesting elections must accept defeat after fair contests.

13. Managing Post Election Conflicts

Problem

Lack of confidence, trust and dialogue has led to conflicts among political leaders before, during and after elections.

Recommendations

- i. There is need for consensus building.
- ii. There is need to create an institutional machinery at the SADC Parliamentary Forum level to handle conflicts that arise before, during and after elections.
- iii. SADC countries should work out a mechanism of ensuring that there is a harmonious relationship and cooperation between the ruling parties before and after elections.

14. Role of Observers

Problem

There is a growing realisation among SADC countries that have embraced multi-party democracy that the presence of observers (local, regional and international) generates confidence in the political process and international standing of the country. It often assists the electorate and the losing political parties and candidates to accept the election results if the election is judged by the observers to have been held under legitimate conditions. However, what is disputed is what constitutes free and fair elections and on the part of the host government who should be allowed to observe the elections. Some international bodies and local observers are suspected of having their own agenda and may not be impartial and have therefore been barred by host governments from observing the elections.

Recommendations

Despite these concerns, election observers should be accepted as part of the process to institutionalise multi-party democracy and as a mechanism to persuade governments to adhere to the ingredients of free and fair elections. These ingredients include:

- i. acceptance by all political parties that all eligible citizens have had a fair opportunity to register as voters and to cast their votes;
- ii. political parties contesting the election having a fair opportunity to campaign including an equitable access to the state owned media;
- iii. the Government of the day creating a “level playing field” condition in which all political parties have the opportunity to put their policies and programmes to the electorate;
- iv. the removal of any existing state of emergency before an election campaign begins;

- v. certification by all Polling Agents that the voting was free and fair at respective polling stations;
- vi. the acceptance by the host government of election observers as a factor in fostering transparency, integrity and in institutionalising the democratic process in the conduct of elections;

15. The Role of the SADC Parliamentary Forum in Election Observation

Problem

The Forum has been experiencing difficulties in some member countries in respect of timely accreditation; confusion about who has authority to invite the Forum to observe the Elections; and a common understanding of how the lessons from observing elections are shared with the stakeholders. A problem also exists in SADC because of the absence of a regional body that can assist in resolving electoral disputes.

Recommendations

- (i) The SADC Parliamentary Forum should continue to observe elections so as to promote democratic practices and sustainable peace in the region in line with the objectives of the Forum.
- (ii) SADC Parliamentary Forum Observer Missions should observe the pre-election (including voter registration), election, and post-election periods. The timing of the pre-election entry point shall be determined by the Secretariat in consultation with stakeholders.
- (iii) The SADC Parliamentary Forum should widely circulate its election Observation Reports and engage stakeholders in the aftermath of elections.
- (iv) All Governments should endorse a standing invitation to the SADC Parliamentary Forum to observe elections whenever they are held in any SADC country without having to wait for a formal invitation from the host Government.
- (v) In line with the SADC Declaration which inter-alia calls upon all Governments to ensure the full participation of women with a minimum of 30% of women in all areas of decision making, including Parliaments. The reform of all laws that impede the full participation of women in elections, electoral processes and management of elections. To this end, each and every recommendation automatically incorporates provisions that are designed to advance the women's role in the governance of SADC countries.

16. Code of Conduct for the Forum as Regional Observers

Problem

Whereas observers have the noble duty to see that elections are held in a free and fair atmosphere it does not mean that they are 100% impartial. Some election observers may have their own hidden agendas. They therefore cannot carry out their work without some guidelines on their behaviour. However, SADC Parliamentary Forum undertakes to observe elections impartially in line with the Constitution and Code of Conduct for the Forum.

Recommendations

Election results should be accepted by both ruling and opposition parties and

what is due to opposition parties should be given without delay in accordance with the law.

It is therefore recommended that Governments should take a policy position recognising the role of observers, as long as:

- i. observers must be non-partisan at all times and seen to be so. They should not express partisan political views whether by word, symbol, conduct, song or otherwise;
- ii. to respect the laws of the host Government;
- iii. to respect the role, status and authority of the Electoral Commission and presiding officers at all times;
- iv. not to communicate with the voters at any time within the precincts of the polling station;
- v. not to interfere in the electoral process at any time; and
- vi. to channel any complaints they may have to the relevant Government and electoral officials.

17. Reform of Electoral Laws

Problem

Some of the electoral laws are cumbersome and bureaucratic. This leads to the difficulties of attainment of good electoral standards and norms within the region.

Recommendation

There is need to harmonize SADC countries electoral laws. This will enhance and promote the attainment of plural politics, democracy, peace and stability in the SADC region.

D. CONCLUSION

The above recommendations on norms and standards in conducting plural and multi-party elections, if adopted and implemented by the SADC Governments, would certainly go a long way to entrenching a democratic culture, in minimising conflict and contributing to political stability and peaceful development in Southern Africa.

The SADC Parliamentary Forum should set up a monitoring mechanism to ensure successful implementation of the recommendations.

OUTSIDE THE BALLOT BOX: PRECONDITIONS FOR ELECTIONS IN SOUTHERN AFRICA 2004/5

Edited by Jeanette Minnie

The process of a free and fair election begins long before and is not confined exclusively to the fairness of events on Election Day.

Do voters in the SADC region enjoy their universally enshrined rights to freedom of association, freedom of opinion and expression, and freedom of movement? Are those who take a critical view of government free to hold political meetings and gatherings? How many citizens are purely engaged in an economic or agricultural battle for survival, possibly worsened by ill health, with little energy left to consider political solutions to their plight? Do they equate their survival with the appeasement of ruling parties who command economic and political resources? What is the degree of literacy, and what is the degree of *political literacy* in the SADC region? It is these issues that begin to describe preconditions for elections in various SADC countries.

Other essential preconditions include the choice of electoral system by which votes will be translated into parliamentary seats, the professional administration of elections, and the impartial observation of elections. It would make a significant difference if African countries had by now not only adopted, but were also consistently using, an inviolable set of norms and standards for election management and observation.

The articles in this book discuss these and other issues in relation to the elections that were held or are scheduled to take place in the SADC region in 2004/5.

