Outside the Ballot Box

Preconditions for elections in Southern Africa 2005/6

Edited by Jeanette Minnie

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Southern Africa (PEPSA).

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People unlimited

Netherlands institute for Southern Africa

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PREFACE

BY CORINA STRAATSMA
CHAIRPERSON: PEPSA STEERING COMMITTEE

This is the second edition of *Outside the Ballot Box*, an initiative of the Netherlands Institute for Southern Africa (NiZA), the Media Institute of Southern Africa (MISA), the Open Society Initiative for Southern Africa (OSISA) and the Humanist Institute for Development Co-operation (HiVOS). In this edition, 14 authors write about the state of affairs pertaining to recent and upcoming elections, democracy and civil society in Southern Africa.

What role do elections play in strengthening democracy, observance of human rights and in providing capacity to poor and marginalised people to express their demands and needs? Do women participate on an equal basis? Can elections in a one-party state be free and fair? How do liberation movements behave once they are in power? Do they meet the expectations of the people that fought with them and voted for them? These are some of the questions the authors of this book are attempting to answer.

The publication is a result of an initiative of the organisations mentioned above who joined efforts in 2004 (then also including the Electoral Institute of Southern Africa) to monitor the compliance of SADC countries with the *Principles and Guidelines Governing Democratic Elections* agreed upon by SADC Heads of State, as well as tools developed earlier by EISA and the Electoral Commissions Forum in the SADC (*Principles for Election Management, Monitoring and Observation in the SADC Region*) and by the SADC Parliamentary Forum (*Norms and Standards for Elections in the SADC Region*). The first edition of "Outside the Ballot Box" was presented at an Observatory Conference in June 2005, where recently held elections in Botswana, Malawi, Namibia, South Africa and Zimbabwe were analysed, and stock was taken of the obstacles that faced forthcoming elections in Angola and the Democratic Republic of the Congo. One of the conclusions of the conference was that these guidelines, norms and standards – if harmonised – could be a very useful tool, but only if applied consistently and accompanied by sanctions in cases of non-compliance. The focus on elections and compliance with agreed standards in the SADC region is part of a broader programme on conditions for the consolidation of democracy in Southern Africa, known as the *Preconditions for Elections Programme in Southern Africa (PEPSA),* championed by MISA, NiZA and HiVOS.

During elections women are present in large numbers to cast their votes. However, when it comes to campaigning and representation in decision-making positions, women are left behind. Political parties are quick to find excuses for not including women at the top of their candidate lists, but slow in finding solutions for invented excuses such as lack of political experience, low educational levels, culture and tradition. Colleen Lowe-Morna of Gender Links writes about the huge differences between SADC states in achieving the 30% benchmark for women's representation in parliament and government. South Africa and Mozambique are leading in women's representation in parliament, but countries such as Swaziland and Madagascar are lagging far behind. She

analyses the causes, but also makes it clear that countries that adopted a quota system, such as Lesotho, have considerably improved the number of women in the sphere of governance.

Are elections a real expression of the will of the people and how vibrant is the notion of elections as a means for changing governments when voters are unhappy with them? The contrasts in the SADC region couldn't be bigger. People in Zimbabwe don't feel free to vote for the party or candidate of their choice, because of intimidation, heavy army and police presence during polls, government-controlled media and pre-electoral violence. These and other issues are described in the article by Tapiwa Zimudzi. In contrast, Malawi is a relatively 'young' democracy and voters still turn out in huge numbers to hold their government accountable and to demand service delivery. Will it last and will the enthusiasm of today not be turned into voter apathy tomorrow – if the basic needs of citizens are not met? One of the subjects discussed by author Boniface Dulani is the vital role and challenges of civil society in Malawi in sustaining and growing the country's democracy.

The voter turnout at the recent elections in Zambia was also impressive. The elections were declared free and fair and the independent media were vibrant during the campaign. Yet, civil society organisations are frustrated with the (re-elected) government. Government consults them on important issues such as the constitution and electoral law, but ignores their advice. Lucy Muyoyeta highlights the review of the constitution – which has not changed after independence in 1964 – and gives the impression that the government has developed cold feet in subjecting the proposed amendments to a broad assembly.

Where does South Africa feature in this spectrum? All the institutional mechanisms are in place to guarantee free and fair elections. Is that enough to sustain a democratic state? In his outstanding article, Dale T. McKinley asks probing questions about the relationship between the socio-economic conditions of the vast majority of South Africans and the democratic framework. He also questions why there is an increasing use of the institutional and coercive capacity of the state against newly emerging and critical socio-political forces.

People vote in the hope that their social and economic conditions will improve and that economic growth will not exclusively benefit the ruling elite. They want peace and an end to political conflict and violence. The high voter turn out in the DRC underlines these expectations as the authors of the respective articles on the DRC illustrate.

These are just a few highlights to encourage you to read this book. Our hope is that the publication gives an insight into the complex dynamics of elections and the strengthening of democratic, multi- party states in Southern Africa.

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) in South Africa. She currently serves on a Task Force of the UN Economic Commission for Africa on the theme of Strengthening Africa's Media (STREAM) and serves on the Management Committee of the Global Forum for Media Development (GFMD). She is a consultant to the Media Programme of the Netherlands Institute for Southern Africa (NiZA) and to the PEPSA Programme. She also conducts evaluations of media and development projects for a variety of NGO's and international funding organisations in Africa and other regions. Minnie has conducted extensive research and analysis of media freedom violations against journalists and the media law and policy environment of the SADC region, and has published articles in various books, journals and newspapers in South Africa and internationally.

Introduction

by Jeanette Minnie

Fourteen authors have collaborated in producing this second edition of *Outside the Ballot Box*. Last year, when eight authors participated, the main focus was on national elections and good electoral practice as a major instrument of democractisation in the SADC region. This year, the main focus is on civil society as an instrument of democratisation. In addition, three articles were commissioned to discuss key problem areas that affect the region as a whole: the nature of liberation movements as governments, the struggle for gender equality in governance and the lack of harmonised African instruments to guide and assess elections.

By virtue of its theme, any discussion on the legacy of rule by liberation movements will be polemical in nature, and I invited the author of this article to tackle the subject head on. It explores the mindset of liberation movements as governments in the SADC region – those movements whose leaders and supporters fought and died, suffered torture and were separated from their loved ones through exile and imprisonment, in some instances for decades, to break the stranglehold of colonial racist rule in our part of Africa. For this reason we indeed celebrate and pay homage to our liberation movements who fought a precedent setting historical struggle (along with others on the continent), which continues as a general movement against all forms of racism and discrimination in many parts of the world today.

So it is with trepidation that we take issue with them now, in a new arena called democratisation, in which no political party or person has a historical right to rule, either as a matter of birth right or as a logical result of liberation struggle. The problem though (building on the analysis provided by author Henning Melber) is that liberation movements indeed think that the capture of the state, through the ballot or the bullet, was indeed the logical end result and point of the struggle. Accomplishing the revolution, apparently, meant installing former liberation movements as governments for ever after – the so-called "end of history."

According to this mindset, the liberation movement struggle now continues as a result of other equally powerful historical and political forces in the world, which caused liberation movements to take power in the new era of multi-party democracy in Africa. This is an impediment to the goal of the permanent revolutionary state. As such, it is not yet the end of history, and liberation movements now have to adopt new strategies to continue their hold on power. The inculcation of "patriotic history" and "selective narratives" in Namibia (Swapo) and Zimbabwe (Zanu PF) is an attempt to reinforce the grandeur and legacy of the ruling liberation movements. The trouble is, once a state has to go these lengths to proclaim its legitimacy, it confirms at the same time that there is trouble "in the state of Denmark."[1]

I was struck by Melber's quotation from the novel *Mayombe* by Angolan liberation fighter and author, Artur Carlos Maurício Pestana. It exemplifies the contradictions that many loyal liberation movement supporters – who also respect democratic values – currently feel. Many of us share the belief that the

liberation struggle was only "half the revolution" and that it was a struggle for freedom, not a struggle for loyalty to a new all-embracing party "machine". In this respect Raymond Suttner, a former South African (ANC) ambassador to Sweden, is quoted as saying "the national liberation movement refuses to acknowledge any meaningful and legitimate opposition and equates 'the national liberation movement' with the nation emerging .... [It speaks] a language of unity [that] tends to represent the unified people as embodied in the liberation movement organisation and then equates them with the people as a whole."

These reflections begin to explain why those who disagree with their ruling party liberation movements in the SADC countries are not acknowledged as being part of the normal and legitimate contestation that characterises freedom of expression, opinion and belief in a democratic state, but instead find themselves either being ignored or accused of being "counter-revolutionaries" or even labelled as "enemies of the state". These debates about the state and future of our countries apparently belong to the liberation movement alone, and no other views count.

This is not an inspiring backdrop for those who believe in the pluralism of the democratic state. But it is as well that we begin to analyse the mindsets we are up against, because this is essential to informing strategies for the development of democratisation in some of our countries. This context also calls for a new role in voter and civic education. It is not sufficient, and will hardly make a difference, if these debates and exchanges are contained within the realm of scholars and other analysts. The Pepsa consortium looks to them to raise the issues of democratisation, but primarily targets civil society organisations and social movements to spread these debates among their members and grassroots beneficiaries. If not, the casting of ballots on Election Day will remain trapped in the rather formalistic rituals they have become in some countries. The voting rituals in South Africa and Mozambique, for example, as the respective authors indicate, are incrementally losing meaning and more and more people are electing not to vote.

Zimbabwean citizens on the other hand, who after their momentous first independence elections went through a series of less inspiring general elections, have rediscovered how important the ballot is – in the last five years lives have been lost in the course of contesting them. Ballots are so important that they are being stolen through rigged elections. Those who are stealing the ballots have also stolen the economy, causing the country to unravel at breakneck speed in a downward spiral of decay. But all is well according to Zanu PF, because they are still in control. Retaining power is what they set out to achieve in 2000 after they lost a constitutional referendum. The realisation that they had lost the majority support of their citizens who ostensibly no longer shared their vision in relation to profound matters of state, was met by the government with an all-embracing totalitarian response. That 80% of the population is currently unemployed, that inflation of over 1000% is the highest in the world and that a third of the population have fled to other countries matters little. They have achieved their goal. The revolutionary nirvana of liberation movement rule is still intact. Long live the revolution!

In Malawi and Zambia, by contrast, voter enthusiasm is as high as ever. Does it have something to do with the fact that real changes of leadership and state policy

occur in these countries and that voters understand their role and power in these processes? Democracy still means something in these countries – most visibly that voters protesting on the street and their political representatives within parties can indeed obstruct the dreams of third-term aspirants. Contrast the high levels of voter participation in Malawi and Zambia (where the electorate feels and sees it has the power to change things) with declining voter participation in South Africa, Mozambique and Zimbabwe (where voters may not share this confidence). Is it also a coincidence that civil society organisations in these countries have featured strongly in shaping constitutional and democratic debates and helping to prepare voters for elections? In Malawi, they have recently focused mainly on formal voter registration and education issues, but in the run-up to the first 2004 multi-party election, civil society laid a strong foundation for broader issues of democratisation that captured the notions of government accountability to voters, respect for human rights and the need for socio-economic development. In Zambia, likewise, groups such as the Oasis Forum, Fodep, Misa-Zambia and others have played strong roles in articulating and demanding the democratic aspirations of citizens.

It is imperative to recognise the ongoing role of civil society in developing democracies. It extends way beyond the Electoral Period and way beyond the service role of formal voter education. In fact, it would be short sighted to limit the role of civil society to this phase and issue only. It would also be short sighted to limit their role to formal electoral systems development. The greatest test of a democracy is the ability of civil society to influence the socio-economic and social policies of state, *in between elections* and during elections. This is the arena which reflects the extent of government accountability in response to the demands of its people. In many instances in the SADC region, this is the arena in which the lack of democratisation features most strongly. This ongoing role of civil society needs strong support and development by linking different sectors of civil society to each other in order to produce a stronger critical mass. The building of social movements in this respect is of vital importance for people on the ground to have impact on their governments and this objective cannot be achieved by organisations that function in isolation. Civil society organisations and voters in the SADC region generally (with some exceptions) underestimate the important link between government accountability and a unified will of public demand. It is not only the behaviour of governments and state institutions that determine democracy, it is also the behaviour of society that determines democracy. In the words of Bob Marley – "Get up, stand up, stand up for your rights!" For a lack of better words, this is what we call the "downstairs" approach in Pepsa.

The authors in this book emphasise many themes and issues, but my attention on occasion was attracted to lines that did not constitute the main argument, but provided a snapshot of a moment or conditions on the ground. In the Angolan article by Nuno Vidal – a veritable gold mine of information on the political context and state of civil society in the country - the following lines are pertinent: "SOS-Habitat's coordinator, Luis Araújo, has been arrested a number of times. During a recent public demonstration (camping with several activists in a community of evicted persons) he pointed out that the poor people affected were treated as if they were the garbage of Angola and that several so-called human

rights activists were not willing to take any concrete solidarity actions in the field, restricting their contributions to theoretical approaches in conferences inside and outside the country." A great deal more solidarity and civil society activism of the kind described by Araújo is required in relation to democratisation. These actions, based on their grassroots authenticity, concretely illustrate the democratic challenges of our countries. Without them the theoretical discourse will not be adequately substantiated and will ring hollow to those who need to listen.

Tawanda Mutasah focuses on a larger terrain and presents us with the challenges of harmonising principles, norms and standards on the African continent, if the continent wishes to rise above the present acrimony of conflicting verdicts on the fairness of elections. The rules need to be understood, they need to be the same and they need to be applied equally. This discourse on principles, norms and standards is what we call the "upstairs" approach in Pepsa. But it is not all "upstairs", Mutasah makes a strong call on the executive branches of government to recognise and incorporate the valuable work done by civil society organisations and parliamentarians in the formulation of norms and standards for elections, and proposes the need for new continental bodies, incorporating civil society, to play a role in these. He notes the important correlation between the state of democracy in countries and the state of elections in countries. We are lined up behind him in an imaginary march of solidarity when he says "... sovereignty resides in the people of a nation, and not in an abstract territorial concept nor in the institution of State ..." We are applauding when he points out that "... the international response to African democracy and human rights problems is not always altruistic, nor is it necessarily (always) principled," and we ululate when he says, "It is well and good that there is a commitment to being African. But surely the quintessence of being African should be about saying 'never again' to human rights abuses and democratic arrest."

As powerfully stated by Meike de Goede, one of the three authors on the Democratic Republic of the Congo (DRC): "The peace in the DRC is a warlord's peace." Whether the peace will hold after the Congolese voted recently in July and October 2006 under a multi-party system for the first time in 41 years, is an open question. She argues that it is unlikely that these elections will result in an unfolding process of democratisation, because the belligerent leaders were lured into making peace and conducting elections for the worst of reasons: "Stop fighting, join the transitional government and fill your pockets ... If the [warlords] lose their position in government as an outcome of these elections, the real threat exists that some of them may opt to return to war." Equally unpalatable is that the voters may well vote for the strongest of these military leaders, not for any reason of policy or prospect of development, but as a means of securing the best armed protection for their communities in future. "This context explains why leaders with an unbelievably bad human rights record are often massively elected in post-war elections, and why such elections have been declared as free and fair by international observers." As she explains, in the politics of survival, "assessments for peace are made not so much of who could be the best winner, but who could be the least-worst loser", i.e. who is the least likely to go back to war.

Nevertheless, a good deal of optimism informs the other two articles on the DRC that focus on civil society and the media. Over 25-million Congolese citizens

(estimated at 50% of the population) registered to vote in these elections. In an earlier version of one of the articles, the author, Donat M'baya Thsimanga, expressed his disbelief that the elections had actually taken place. The logistics in a country five times the size of France, and almost without infrastructure, took on huge dimensions: 50,000 polling stations, 33 candidates for the presidential elections, 9,700 candidates for 500 seats in the legislative elections, 80,000 Congolese police officers, 17,000 UN peacekeeping forces and 1,200 soldiers from the European Union Forces (Eufor). In the first round, the elections were mostly peaceful, barring the momentary but deadly outbreak of violence in Kinshasa just before the results were announced between the militias of the two main rivals, President Joseph Kabila and Vice-President Jean-Pierre Bemba.

For those who may not be familiar with the DRC, it may come as a surprise to learn that there are dozens of newspapers and radio stations, and a number of television stations in the country. Privately-owned media has mushroomed under favourable legislation, but many are owned by politicians or their proxies in the guise of independent media. (A similar situation exists in Malawi.) The state-owned media operate directly under the control of the ruling party (the party of President Joseph Kabila), and substantially denies access to competing views, another hugely unacceptable feature of many SADC and other African countries. The main issue in the context of democratisation, however, is the existence of well over 100 community radio stations, mostly in the conflict-ridden Eastern provinces. They appeared to have played the most constructive role in serving the rural public, where most Congolese reside, with relevant information about the elections. The model of networking and synergising the capacities of a number of community radio stations to provide comprehensive electoral education and coverage, can indeed be regarded as a model of best practice that should be replicated in other countries. It is inspiring that those who face the biggest challenges sometimes provide the best solutions in the most adversarial of conditions. It is also an example of constructive local and international civil society cooperation.

The DRC is also rich in civil society organisations. Baudouin Hamuli Kabarhuza rightly emphasises in his article that "warring parties could not – and should not – be left to their own devices without the voice of the people being heard!" The Congolese already began marching in the DRC in the early 1990's under the umbrella of the Sovereign National Conference in efforts to claim a political space for the voice of civil society. Over time they succeeded and were directly involved in the peace negotiations – the Inter-Congolese Dialogue. They also manage peace programmes pushing for the end of war and elections, monitor and defend human rights – including by the development of networks to link and focus these organisations, and a substantial number of their leaders chair important transitional government institutions. Civil society is also active in monitoring and condemning the plunder of the country's rich natural resources by foreign companies and warlords. They are playing important roles in developing a Peace and Stability Pact in the Great Lakes Region where instability plagues a substantial number of nations surrounding the DRC and which bleeds across their porous borders. Civil society organisations in the DRC are surprisingly well organised across sectors and within combined national fora. It is obvious

from the afore mentioned that the DRC is rich in human talent, but their civil institutions will continue to need major international support to continue the struggle for democracy to overcome the decades of damage wreaked by war over access to natural resources and territorial power, in the absence of a strong and stable state.

A casual observation in the article on civil society in the DRC states, almost as if it was a shortcoming, that civil society is more operational in rural than urban areas. This bodes well for democratisation in the country, and usually the opposite state of affairs abounds in other SADC countries. Being confined to capital cities or larger towns, is a distinct weakness in Africa repeatedly underlined as a serious limitation by many civil society commentators. The professionals and elites who live in the cities cannot bring about democratisation by themselves. They also have more access to social and economic development opportunities than those in rural areas. Again, networks are needed to overcome the urban-rural divide, because the cities must be connected to the villages and the villages must be connected to the capital. If not, inequalities spire out of control leaving resentment in the wake of rural populations. These divisions, in turn, are also exploited politically, as the case of Zimbabwe shows.

One of the major recommendations of the concise and neatly packaged article on Zimbabwe focuses on the necessity of "a breakthrough to the village". Tapiwa Zimudzi writes that the rural electorate has for decades been prevented by the authoritarian state "from accessing the same information and exercising the same rights that the urban electorate have been able to enjoy." For this reason, Zanu PF has been able to control them, and they constitute a considerable proportion of the voters. But over the past few years their economic conditions have deteriorated so badly, that they are much more open to alternative views. Boniface Dulani in Malawi, in relation to a very different context, also emphasises the importance of rural outreach and inclusion if NGO's are to remain relevant.

Zimudzi and other authors, including Dulani in Malawi, Lomcebo Dlamini in Swaziland and Lucy Muyoyeta in Zambia, also call for model democratic practices within civil society organisations to avoid undermining their credibility and authority. Zimudzi refers to lapses of democratic practice within CSOs and Dulani comments on civil society leaders singing one tune before they meet with government representatives, and singing another tune afterwards. In Swaziland, civil society activity is often restricted to a few leaders who do not pro-actively involve the members in the operations of their organisations, resulting in a predictable lack of support for the organisation in the moments when it is really counts.

Zimudzi in Zimbabwe expresses criticism of the role of the church, pointing out that although individual clergymen and some religious groups have bravely spoken out against repression in the country, they failed to address and pressure the state about the underlying political and economic causes that lead to it. A new religious movement has now arisen to unite and rally the diverse political and social forces who are fighting for democratic change in the country. It distinguishes itself from other religious groups by saying that it will not only protest acts of violence, but will also seek to change the environment which has allowed the violence to occur. It has also received a mandate from CSOs to play a unifying role among them and in relation to opposition political parties.

Focusing on the women's movement, Zimudzi also makes reference to Women of Zimbabwe Arise (Woza), famous for its many spirited protest marches against the impact of the current political and economic environment on women. "[Woza] has also recently established a male wing of its organisations known as Men of Zimbabwe Arise (Moza)". How is this for lateral thinking? The sisters are showing what needs to be done, and are getting the men in line! But very importantly, he also describes the debates taking place among those that support change about the strategies that are required to lift Zimbabwe out of its quagmire, including those who believe that mass protest on the street is a serious strategic mistake.

It has also taken women to show that it is possible for civil society to have a major impact on regional inter-governmental policy. The 1997 SADC Declaration on Gender and Development, that sets a 30% target of women in decision-making positions, was largely the result of civil society lobbying. These lobbies include men, but mainly consist of women. This declaration, which is not even binding, is a standard reference in gender discourse across the SADC region, among governments and civil society alike. Most governments in the SADC region are trying hard to achieve the target. The Gender Protocol Alliance in the SADC region, who takes nothing for granted (and takes no prisoners), has steadfastly been campaigning over the last few year to elevate the status of the Declaration into that of a Protocol – a binding instrument. By their calculations, they are probably only one year away from achieving this target. (And yes, they use log frames and time lines, with almost the same precision of the US military of who invented them). They are coordinated by the formidable Colleen Lowe Morna who has provided a lucid article on the state of Gender, Democracy and Elections in the SADC region. She points out that the electoral system of Proportional Representation (the party list system) considerably increases the chances of women being elected into office, and even more so when combined with quotas. She also points out that creative solutions for increasing the number of women in parliament are also possible in the First Past the Post system, as in the case of Tanzania, where it has also been combined with a quota system.

The electoral systems used by various countries (the process of translating voters into electoral seats) are motivated by complex factors as well as tradition. The weaknesses of the PR model are under the spotlight in South Africa where the Congress of South African Trade Unions (Cosatu) is seriously considering whether to push for changes in the country's electoral system. The main problem is that office-bearers elected under the party list system are accountable to the political parties who included them on their lists, rather than to the voters of the constituency whom their party assigns them to. As a case in point, most voters in South Africa have no idea who their MP's are. MP's mostly regard themselves as cadres of the party that appointed them, and shore up the party's positions in parliament. Loyalty and service to the party is the only thing that counts. It should be evident that at a conceptual level this electoral system fits neatly into the mindset of the ruling liberation movement, the ANC.

The article on South Africa's third local government elections in this edition could as well have been named after the famous South African novel, *Cry the*

Beloved Country.[2] The development indicators cited by Dale McKinley for the country with a population estimated at 40-million are alarming, indicating widespread and increasing poverty. A survey this year by the Institute for a Democratic South Africa (Idasa) shows that the number of people living under 1 US$ a day – the measure of absolute poverty – has more than doubled since 1994. The 2005 UNDP Human Development Index places South Africa 120th out of 177 countries, and behind Palestine, which ranked 102nd. In McKinley's words, "Every major piece of research conducted over the last several years both by the state and independently, exposes the neo-liberal 'democratic' growth myth for what it is."

The majority of the poor no longer bother to complain to their elected local government representatives. Little of their plight is recorded in the mainstream media. Instead, they march and protest against poor delivery of basic services such as water, housing and electricity. At the last count in 2005, almost 900 such protests had taken place across the country since 2000. Already poor and largely voiceless, the state has moved against them by banning many of their marches on highly questionable grounds, leaving the police to forcefully halt them. The police also conduct raids in shack dweller communities detaining 'leaders', some of whom have been tortured in prison. Beatings are common place.

These phenomena accompany a marked decline in the number of people voting in the country. A total of 19.5-million votes were cast in South Africa's historic first non-racial democratic election in 1994. In the most recent 2004 general elections, only 15.6-million (56% of eligible voters) cast their votes. Just under 7-million people eligible to vote, did not bother to register, despite widely publicised voter registration exercises. Of those registered to vote, over 5-million chose not to vote. And while the ruling ANC party consistently wins a large majority of the actual votes, when set against the number of eligible voters in the country, only 38% of the voting population are giving them an active mandate. The voiceless poor have largely opted out of the electoral process, because it delivers so little to them.

McKinley says these statistics and many others he cites in his article can be explained: "Rather than seeing development as a 'metaphorical' house whose ability and habitability requires, first and foremost, the laying of a foundation of basic needs/services for the majority who live in it, they have chosen to focus on supporting and strengthening the upper 'floors' in the (vain) belief that doing so will not only make the house look more presentable but will somehow work its way down to the foundation. This constitutes nothing less than a reverse, neo-liberal developmental logic and ... approach."

Across the border in Mozambique, the country faces the prospect of holding three elections at different levels of government in three successive years beginning in 2007. Electoral arrangements cannot be made, because the passage of a new electoral law is being delayed through the profound mistrust that exists between the ruling party (Frelimo) and the main opposition party (Renamo). The main issues, according to Gil Lauriciano and Ericino de Salema, revolve around the composition of the National Electoral Commission and the possible lowering of the electoral threshold (the minimum number of votes required for a

party to win a seat in parliament). This could cause some of Renamo's coalition partners to desert them. The authors describe a fragile civil society, impeded by many years of colonialism and subsequent Marxist-Leninist rule, but who are beginning to spread their wings by venturing into the area of policy formulation. They emphasise that the profound mistrust that exists between the two main parties, the further distrust of Renamo of NGOs, and the government's lukewarm tolerance of them, provides a difficult climate for NGO's to progress in. They emphasise that this culture of distrust must be overcome in the interests of developing a constructive and participatory democratic process.

Despite four attempts, Zambia has not amended its constitution since gaining independence in 1964. Both the founding constitution and the drafts subsequently produced, have taken place with very little involvement of the general population. The most recent attempt which led to a draft being tabled in 2005, more closely resembles the aspirations of broader society, despite a number of flaws. The government, however, is opposed to some of its key recommendations. Several laws are also in dire need of reform, particularly to bring them in line with constitutional principles. Lucy Muyoyeta describes the strong role of civil society in Zambia in these and other processes, including being at the forefront of removing the one-party state in 1992 and more recently in pressing for the removal of immunity from former President Chiluba, so that he could face corruption charges in court. Civil society also mounted a spirited campaign to prevent him from pursuing a third-term in office. Various media associations combined their synergies in campaigning for the reform of broadcasting legislation to bring about an editorially independent and professional public broadcasting service and to ensure independent regulation of the airwaves, and won their battle! Since 2003, however, when parliament amended these laws, the Minister of Information and Broadcasting Services has been refusing to implement them. The matter is being fought in court, and a widely held perception is that the ruling party used the legal battle to retain control of the state broadcaster until at least after the recent election.

Zambian civil society has been a significant driving force for change in the country. It is therefore highly regrettably to learn from the author that they suffered from a lack of sufficient resources during the recent election to play their dynamic role. Civil society organisations in Zambia, as is the case elsewhere in the SADC region and on the continent overall, are almost entirely dependent on external donor funding. It is great pity when donors diminish their funds for civil society in countries where progress is being made, because this may undermine sustained change, particularly where civil society has demonstrated the ability to play a key role in transformation.

The million dollar question in Swaziland is whether political parties have been legalised or not. The historic introduction of a new constitution does not address this question explicitly, although it does recognise the rights of freedom of association, freedom of expression and other related rights. This may mean that political parties can be formed, but it may not mean that they can contest elections. The electoral law, which provides for the *tinkhundla* electoral system, is still in place. This system only allows electoral contest between individual candidates, and not between parties. Government leaders are also obfuscating

the issue, but are mostly suggesting that the *tinkhundla* system will remain, unless a constitutional challenge in court succeeds in overturning it. In the meantime, the next election is scheduled for 2008, and political parties need to begin organising now to participate in it.

Until recently, civil society in Swaziland knew what they were opposing – the absence of constitutionally guaranteed human rights and the absence of a multi-party democracy in their country. They were also opposed to the lack of consultation and manipulation in the constitution-making process that excluded the views of many groups. According to author Lomcebo Dlamini, civil society is currently characterised by a "stunned silence", because the situation in relation to multi-partyism is wholly unclear.

It would seem apparent that a constitutional challenge will have to be brought before the courts to challenge the existing electoral law and system. In my view, the sooner this starts the better. Concurrently, political parties should go ahead and register themselves, and begin organising their constituencies. It is only through such steps, and the legal actions that they may incur, that the situation will be clarified. Holding back will mean allowing the existing electoral system to continue unchallenged. In contrast to the past, there is now a legal basis arising from the new constitution on which to fight such challenges. These processes will also unleash a new political dynamic in the country. At the same time the international community must be ready to assist with the financial resources that will be required for numerous legal actions. Dlamini also says: "Ultimately, it is only mass mobilisation that will bring significant change to Swaziland and respect for her people as citizens of a democratic dispensation." Civil society organisations also need to move to a higher level of maturity in overcoming petty differences and in the formation of networks and alliances who are able to unite in articulating the popular demand for a meaningful democracy.

As the editor of this publication, I wish to thank Hivos, Niza, Osisa and Misa for their financial and logistical support in making this publication possible. I hope it will help to assist my friends and colleagues in civil society organisations across Southern Africa in developing a stronger perspective about their significant role in the democratisation of the SADC region.

Aluta continua

Notes
1 A phrase from William Shakespeare's play Hamlet. The full sentence delivered by the character Marcellus is: "Something is rotten in the State of Denmark."
2 "Cry the Beloved Country" was written by Alan Paton in 1948 – the year in which the National Party (apartheid) government came into power.

REGIONAL OVERVIEW 1

Dr. Henning Melber matriculated in Windhoek, Namibia and studied journalism in Munich (1971/72). He studied Political Science and Sociology at the Freie Universität in West-Berlin, Germany and joined Swapo in 1974. He was subsequently banned from entering Namibia and South Africa until 1989 and 1993 respectively. He holds a Ph.D. in Political Science from Bremen University in Germany as well as a venia legendi (right to teach) in Development Studies. He was a Senior Lecturer in International Politics at the Kassel University in Germany (1982-1992). Dr. Melber is a former Director of The Namibian Economic Policy Research Unit (Nepru) in Windhoek, Namibia (1992-2000) and was until recently the Research Director of the Nordic Africa Institute in Uppsala, Sweden (2000-2006). He is the new Executive Director of the Dag Hammarskjöld Foundation in Sweden.

LIBERATION MOVEMENTS AS GOVERNMENTS: THE UNFINISHED BUSINESS OF DECOLONISATION

BY HENNING MELBER

Raymond Suttner delivered the prestigious Harold Wolpe Memorial Lecture in early November 2005 at academic centres in Johannesburg, Durban and Cape Town. A long-standing activist of the African National Congress (ANC) and political prisoner, then MP and finally South Africa's ambassador to Sweden, Raymond Suttner returned to academia after this diplomatic posting a few years ago. Towards the end of his lecture he admitted: "I have said things in this paper I would not have said 20 years ago or, in some cases, until very recently." (Suttner 2006: 26)

Among these were his (self-)critical reflections on unity and pluralism within the dominant discourse of the hegemonic rule of the former anti-colonial organisation (the ANC) now controlling and representing the state. As he observes, this form of applied "patriotic history", which defiantly refuses to acknowledge any meaningful and legitimate opposition, equates the "national liberation movement" with the nation emerging. It is an exclusive, all-embracing concept. Suttner qualified the dominant narrative as "a language of unity and a language that *tends to represent the unified people as embodied in the liberation movement organisation and then equates them with the people as a whole* … In a sense the liberation movement depicts itself as a proto-state. This notion derives from a framework of ideas in which the seizure of the state was represented as the central issue of the day." (Suttner 2006: 24, original emphasis)

This article seeks to explore some aspects of this narrow translation of a liberation movement – an agency of transformation – into an exclusivist apparatus claiming to represent the interest of *all* people and a total monopoly in advocating the public interest. It therefore deals with some of the questions raised in the introduction to last year's volume (Minnie 2005: 9f.) and tries to explain to some extent the dominant party syndrome under liberation movements, which have been in power since independence.[1]

Sobering post-colonial realities have not met the expectations of those who considered the fight against colonialism as a fight for the implementation of positive values and norms linked to enhanced socio-economic equality, civil and human rights, democracy and other individual freedoms. Instead, the post-colonial reality reflects the contradictions and challenges of the trend of revolutionary optimism.

Some far-sighted scholars and writers on the continent had seen this coming. One of those was Artur Carlos Maurício Pestana. He published the notes he collected in 1971 during his participation in the guerrilla war of the People's Movement for the Liberation of Angola (MPLA) in the *mayombe* (rainforest) of the Cabinda front under his *nom de guerre* as a ground breaking novel. It offers a remarkable degree of sensitivity and insight into the complexity and limits of social transformation subsequent to a situation of armed resistance against foreign occupation under colonial rule. In a revealing dialogue, the commander

of the guerrilla unit, "Fearless", explains to the political commissar, "New World", for whom he ultimately sacrifices his life in battle:

> We don't share the same ideals. ...You are the machine type, one of those who are going to set up the unique, all-powerful Party in Angola. I am the type who could never belong to the machine. ...One day, in Angola, there will no longer be any need for rigid machines, and that is my aim. ...What I want you to understand, is that the revolution we are making is half the revolution I want. But it is the possible. I know my limits and the country's limits. My role is to contribute to this half-revolution ... I am, in your terminology, adventurist. I should like the discipline of war to be established in terms of man and not the political objective. My guerrillas are not a group of men deployed to destroy the enemy, but a gathering of different, individual beings, each with his subjective reasons to struggle and who, moreover, behave as such. ...I am happy when I see a young man decide to build himself a personality, even if politically that signifies individualism. ...I cannot manipulate men, I respect them too much as individuals. For that reason, I cannot belong to a machine. (Pepetela 1996: 197 and 198)

This conversation is more than fiction. It sets the parameters and social constraints for several post-colonial societies in Southern Africa with a history of armed resistance against settler colonialism.

Transformation and conservation of political rule

Governments were formed by the anti-colonial liberation movements, which had been far from non-violent. They took control of the state machinery and reorganised themselves as political parties. Their legitimacy to rule stemmed from their emergence from the decolonisation process as representatives acting on behalf of the majority of the people.[2] Since then, with varying results (and sometimes with the use of further organised violence as illustrated by the case of Matabeleland in Zimbabwe), they have been able to strengthen their political dominance and maintain control over the state.

The social transformation of Southern African societies shaped by a settler colonial brand can at best be characterised as a transition from controlled change to changed control. The result is a new ruling political elite operating from commanding heights, whose foundations are further strengthened by selective narratives and memories related to the wars of liberation. These create new, to some extent invented, traditions to establish an exclusive post-colonial legitimacy under the sole authority of one particular agency of social forces (see Kriger 1995 and Werbner 1998b for Zimbabwe; Melber 2002c and 2005 for Namibia).

The mystification of the liberators plays an essential role in this fabrication. Visible signs of post-colonial 'patriotic history' include the *chimurenga* (liberation struggle) music of Zimbabwe, which has been turned into a perverted form of self-adoration under the Mugabe regime, and the Heroes Acres in the capitals of Harare in Zimbabwe and Windhoek in Namibia. Both were constructed

by a North Korean company and are of striking similarity in their display of unashamedly heroic narrative and symbolism. They suggest a one-dimensional linearity from early to modern anti-colonial resistance and celebrate the leaders of 'the one and only' liberation movement and government. The symbolic language of such enactment is one of male chauvinism and militarism – hardly any different from the *machismo* of the colonial monuments. Other examples of the invention of post-colonial exclusivity are the choice of national holidays that tend to commemorate the achievements and sacrifices of the 'one movement's' struggle as all-embracing national events. The autobiography of Sam Nujoma (2001), Namibia's first head of state and leader of the South West Africa People's Organisation (Swapo) since the party's establishment, is another example of similarly reduced nationalist focus. The autobiography is treated as official history and was turned into a Hollywood film at a cost of N$65-million (US$8.7-million) from the public purse. As "a partial, highly selective account", it "wishes to try to stamp a certain version of the past on the nation's collective memory, to help shape the future" (Saunders 2003: 98). Its reading, as the historian Saunders further suggests, "will bring no comfort to those concerned about the future of democracy in Namibia today" (ibid.).

The situational application of militant rhetoric as a tool for inclusion or exclusion in terms of post-colonial national identity is common practice. It demonstrates that declared notions of national reconciliation and the slogan of 'unity in diversity' are not receiving appropriate acknowledgement in terms of political pluralism. Politically correct identity is instead increasingly being defined by those in power along narrow lines of self-definition and self-understanding. As observed in the case of Zimbabwe:

> whilst power relations had changed, perceptions of power had not changed. The layers of understanding regarding power relations, framed by socialisation and memory, continue[d] to operate. … [Although] actors had changed … the way in which the new actors executed power in relation to opposition had not, [because] their mental framework remained in the colonial setting. Patterns from colonial rule of 'citizens' ruling the 'subjects' [were] repeated and reproduced. (Yap 2001: 312-313; original emphasis)

The goal of the struggle was national liberation defined as political independence in a sovereign state under a government representing the majority of the previously colonised people, who were excluded from full participation in society through the imposition of the apartheid system. The power of definition in the post-colonial system of political governance was exercised mainly by the national liberation movement in interaction with the international system represented by a variety of competing actors under the polarised conditions of superpower rivalry during the 1970s and 1980s. This implies that the struggle was influenced by exile politics and international diplomacy.

The independence processes in Zimbabwe and Namibia resulted first and foremost in an internationally monitored and legitimated transfer of political power. That the political power exercised by and large met the definitions and expectations of a democratic political system was a desired result, but not the main goal. The liberation struggle was understood and primarily

perceived as the right to self-determination of the population on the basis of free and fair general elections. Decolonisation, not democratisation, was therefore the priority.

Both formal independence and a formal democratic system were achieved to some extent in a parallel process at the same time. But it is important to note that these goals are neither identical nor necessarily congruent. One might argue that the principles agreed upon by the parties prior to the elections in the cases of Zimbabwe (1980), Namibia (1989) and South Africa (1994) were a prerequisite for the implementation of a joint resolution of conflict and served as an agreed framework and point of departure for the foundations of the newly established state. They were in all three cases characterised by a notion of plural democracy. Others might counter, however, that the democratic component was designed to maintain a status quo under a controlled change in terms of securing the existing property relations and former privileges by those who benefited from colonial minority rule.

The unfinished business of decolonisation
The post-colonial politics of the ruling parties show an often blatant lack of democratic awareness and forms of neo-patrimonial systems. A case study of Mozambique suggests that despite regular elections, "they have not been accompanied by a steady institutionalisation and 'Mocambicanisation' of democratic values, norms and rules" (Braathen/Orre 2001: 200). A lack of consolidation, if not a trend of erosion of democratic values and norms – despite the existence of institutions and a canon of virtues as enshrined by the Constitution – is also visible in other Southern African countries (see the contributions to Melber 2003a and 2003b).

The unabated exploitation of Angola's oil wealth by a powerful oligarchy within the ruling MPLA, when the country's population remains among the most destitute in the world, despite an end to the civil war, is one of the biggest scandals on the continent. Elections in Angola are also postponed time and again, denying the citizens the right to vote for an alternative, with the ruling party using the delays to manufacture control over the electoral process to guarantee itself victory. In such circumstances constitutionalism and the rule of law are completely absent from the political system in place.

Less obvious forms of disrespect for the notion of good governance are also reasons for concern in other countries of the region. Swapo used its two-thirds majority in Namibia's parliament in 1998 to change the constitution to allow the president a third term in office. While legal and formally correct procedures were used, the concept lacked moral legitimacy. The Namibian head of state holds executive powers to protect the national interest without any consultation with parliament (the elected representatives of the people) or the cabinet. He used these powers when he single-handedly ordered military intervention in the Democratic Republic of the Congo (alongside Zimbabwe and Angola) to rescue Laurent Desiree Kabila from being overthrown by another rebel movement. He should have consulted his parliament and cabinet because the country was going to engage in war, and particularly because these actions deviated from the official SADC position.

The organised media repression by the government in Zimbabwe, which seeks to silence any meaningful independent voices, is another example of an approach that takes place legally in terms of new laws promulgated since 2000. These actions may be legal, but they are not moral. Botswana's President Festus Mogae has the legal power to declare any foreigner residing in the country a prohibited immigrant, as have many other countries. His use of this provision, however, to get rid of Professor Kenneth Good (who was a long-standing faculty member at the University of Botswana), simply for criticising the government, showed disrespect for the moral and ethical values of good governance by abusing this power (cf. Pegg 2005, Taylor 2006).

The twisted discourse on the origins and connections between HIV and Aids as shaped by South Africa's President, Thabo Mbeki, and some members of his cabinet, has resulted in a disastrous loss of life and a situation in which mass action and legal challenges had to be used by the Treatment Action Campaign (TAC) to force new policies on to the state in terms of providing life-saving anti-retroviral treatment for citizens. The state, however, is introducing these very reluctantly.

Tendencies to autocratic rule and towards the subordination of the state under the party, as well as politically motivated social and material favours as a reward system for loyalty or disadvantages as a form of coercion in cases of dissent are common techniques.

The political rulers' penchant for self-enrichment with the help of a rent – or sinecure – capitalism goes hand in hand with the exercise of comprehensive controls to secure the continuance of their rule. Accordingly, the term 'national interest' means solely what *they* say it means. Based on the rulers' perception, individuals and groups are allowed to participate in, or are excluded from, nation-building. The 'national interest' therefore serves the purpose to justify all kinds of authoritarian practice and that the concepts of 'anti-national' or 'unpatriotic' can be defined basically as any group that resists the power of the ruling elite of the day (Harrison 2001: 391). Such selective mechanisms of the exercise and retention of power have little or nothing to do with democratic principles, but have much in common with the commando structures that emerged during the days of the liberation struggle, especially in exile. A South African political activist summarises her experiences as follows:

> Many of my former comrades have become loyal to a party rather than to principles of justice ... Unfortunately it is true that those who have been oppressed make the worst democrats. There are recurring patterns in the behaviour of liberation parties – when they come to power they uphold the most undemocratic practices. (Kadalie 2001)

In view of such frustrating realities, which followed the initial euphoria of attaining sovereignty under international law, there is a growing tendency to critically analyse the processes through which victims (former liberation fighters) become perpetrators (cf. Lamb 2001).

Breaking the taboos in this regard is necessary in a debate that deals increasingly with the content and results of liberation, analyses the concept of solidarity in the past and marks the end of the cultivation of 'heroic narratives'. The much-

celebrated attainment of formal independence is no longer being equated with liberation, and certainly not with the creation of lasting democracy. Instead, there are increasing attempts to investigate the structural legacies, which in most cases set far too narrow limits on realising societal alternatives in the post-colonial countries. There is a growing insight that the armed liberation struggles were not a suitable breeding ground for establishing democratic systems of government following independence. The methods of resistance against totalitarian regimes were organised on strictly hierarchical and authoritarian lines. If not, they would hardly have had any prospect of success. In this sense, the new societies carried within them essential elements of the old system, which they had fought. Aspects of the colonial system reproduced themselves in the struggle for its abolition and subsequently in the concepts of governance that were applied in post-colonial conditions.

The result is that the new system has little transparency. As a new elite in the making, those in power are at best prepared to be accountable only to themselves and care little about the notion of popular democracy (Good 2002). There is a lack of critical awareness and extremely limited willingness to accept divergent opinions, particularly if they are expressed in public. Non-conformist thinking is interpreted as disloyalty, if not equated with treason. This marginalisation or elimination of dissent drastically limits the new system's capacity for reform and innovation. A culture of fear, intimidation and silence inhibits the possibilities of durable renewal at the cost of the public good. In the long term, the rulers are themselves undermining their credibility and legitimacy.

The former liberation fighters have an expiry date (at least biologically). This applies not only to the group themselves, but also to their clientéle among the people, as the example of Zimbabwe shows. Cultivating the myth of the liberators is not enough in the long-term to sustain the orderly conduct of government. The retention by rulers of their former coteries from the days of the liberation struggle as functionaries of state, which is widely evident, is also counter-productive. It is motivated primarily by the wish to reproduce kindred spirits in a cosy and familiar milieu. This has less to do with the concrete political-ideological persuasion of the party-liners than with their similar perceptions of politics, which is based on common personality structures and features of an authoritarian character. In this context, robust democratic outlooks and convictions are hardly virtues to be recommended and not suited to a political career.

Similar problems are visible in other societies around the world that are regarded as democratic states. That power corrupts is by no means an African truism. Giving up power – even in democratically anchored and regulated conditions with a long tradition – is difficult for many once they have enjoyed a taste of it. Nonetheless, it might be more than coincidence that it was precisely in Southern Africa that the 'third term movement' founded by Namibia's President Nujoma arose. True, Zambia's former President Frederick Chiluba and Malawi's former President Bakili Muluzi, two other brash aspirants for a third term, failed in achieving these aims. In the meantime, presidential transitions more than ever seem to be the order of the day, at least in parts of the (Southern) African continent. But even when these transitions take place

rather smoothly, the manning of the political system (since equality for women in governance is still facing a major uphill battle) remains to a large extent under the sole power of definition of those in control of the ruling party (see the case studies on several SADC states in Southall & Melber 2006).

More than 40 years ago, the Martinique born psychiatrist and political revolutionary, Frantz Fanon, who had joined the Algerian liberation struggle, presciently described in his manifesto, *The Wretched of the Earth*, the internal contradictions and limits to emancipation in anti-colonial resistance and organised liberation movements. Writing at a time when the Algerian war of liberation had not even ended, Fanon presaged the abuse of government power after attainment of independence in the wake of establishing a one-party state. In a chapter entitled "The Pitfalls of National Consciousness" he predicted that the state, which both vigorously and by restraint should convey a sense of security, trust and stability, instead foists itself on the people in a spectacular way, harassing and mistreating the citizens and in this way showing that it is in permanent danger (Fanon 2001: 132). He continues by criticising the abuse of power exercised by the party, which

> controls the masses, not in order to make sure that they really participate in the business of governing the nation, but in order to remind them constantly that the government expects from them obedience and discipline. …The political party … instead of welcoming the expression of popular discontentment, instead of taking for its fundamental purpose the free flow of ideas from the people up to the government, forms a screen and forbids such ideas. (Fanon 2001: 146 and 147)

The growing blending of party, government and state among the liberation movements in power indicates a very similar development in the post-apartheid era of Southern Africa.

A constellation based on the use of force to gain liberation from the undemocratic and repressive conditions that prevailed in the colonial societies of Southern Africa was hardly favourable for the durable strengthening of humanitarian values and norms. In the course of abolishing anachronistic and degrading systems of rule, these constellations created new challenges on the difficult path to establishing sound and robust egalitarian structures and institutions, particularly in relation to the promotion of democratic societies. At the end of the day independence without democracy is still far from being liberation.

Nepad, Zimbabwe and beyond

The introduction of "The New Partnership for Africa's Development" (Nepad) emphasises "common vision and a firm and shared conviction" by African leaders "on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world" (Article 1). In order to achieve this objective, the African leaders declare joint responsibility for promoting and protecting democracy and human rights by developing clear standards of accountability, transparency and participative governance (Article 49).

Nepad is the accepted blue print of the African Union (AU) for Africa's future. The shift of emphasis in the AU, from mainly national to increased collective responsibility for the continent, would seem to support the approach. But doubts remain about the degree of genuine commitment to Article 49 when some African leaders continue to use undemocratic ways of maintaining power, and, in too many cases, without censure from their peers on the continent.

The Nepad document notes that "across the continent, democracy is spreading, backed by the African Union, which has shown a new resolve to deal with conflicts and censure deviation from the norm" (Article 45). It goes on to state:

> The New Partnership for Africa's Development has, as one of its foundations, the expansion of democratic frontiers and the deepening of the culture of human rights. A democratic Africa will become one of the pillars of world democracy, human rights and tolerance. (Article 183)

Nepad's strong emphasis on democracy and governance makes it genuinely different from earlier initiatives to promote, propagate and seek external support for African development within a continental perspective. Conflict prevention, democracy and governance are considered to be of primary importance. This perception underpins Nepad's claim to speak for the people of Africa through democratically legitimised representatives. Legitimacy and credibility are keywords and essential contributing factors in the ongoing efforts to turn Nepad into a success story.

However, the solidarity displayed by African leaders towards the manipulations and vote rigging in hijacking the presidential elections in Zimbabwe by the reigning Zimbabwe African National Union Patriotic Front (Zanu PF) in March 2002 – as well as the ignorance displayed before, during and after the parliamentary elections in March 2005, and the refusal to deal with any of the other blatant forms of abuse of power, such as operation *Murambatsvina* (Restore Order), questions the degree of seriousness of African states in applying the notions articulated within the Nepad credo.

The disillusioning experience of the number of African leaders that at least tolerated – and even openly approved – the Zimbabwean government's abuse of political control and power, came as a major blow to expectations that Nepad would represent efforts "to penetrate the shield of sovereignty behind which too many corrupt leaders hid for too long" (Taylor & Nel 2002: 164). In the light of the polarisation between the loyalty offered by most African leaders to 'Comrade Bob' and the interventionist position of those in the Western world through imposing sanctions, Zimbabwe almost turned into an issue of Africa against the rest of the world.[3] This is obvious in the congratulatory message the secretary general of Swapo in Namibia conveyed to the administrative secretary of Zanu PF after Mugabe's re-election:

> on behalf of the leadership and the entire membership … our elation over the resounding victory scored. …Your party's triumph is indeed victory for Southern Africa in particular and the African continent at large. It is victory over neo-colonialism, imperialism and foreign sponsored puppetry. We in Swapo Party knew quite

well that despite imperialist intransigence and all round attempts
by enemies of peace, democracy and the rule of law to influence
the outcome of the elections in favour of neck-chained political
stooges, people of Zimbabwe would not succumb an inch to
external pressure. They spoke with one overwhelming voice to
reject recolonization. Their verdict should, therefore, be respected
unconditionally by both the external perpetrators of division and
their hired local stooges, who have been parading themselves as
democrats. …As we join your great nation in celebrating this well
deserved and indeed well earned victory over the forces of darkness
and uncertainty, we wish to call upon the people of Zimbabwe to
prove to the prophets of doom that they can do without their
unholy blessing, through hard work. In the same vein, we call
for unity of purpose among the African people as the only viable
weapon to ward off outside influence. (Swapo Party 2002)

It is noteworthy that Hifikepunye Pohamba, signing this message in his
function as secretary general, has in the meantime resumed office as Sam
Nujoma's successor as Head of State. While the selective view he expressed
seems unrealistic to the degree of being almost irrational, its qualification would
ignore the inner logic of the attitudes and policies displayed not only by Swapo
cadres, but to an extent also by other political office bearers of other liberation
movements.

For the national liberation movements the seizure of power signals in their
understanding something similar to what the US-American philosopher Francis
Fukuyama (1992) dubbed as "the end of history" (in his case with reference to
the collapse of the Soviet system and the unchallenged hegemony of capitalism).
From this understanding follows that a liberation movement should stay in
power forever after succeeding in its anti-colonial struggle:

The NLMs [national liberation movements], share what can only
be termed a common theology. National liberation is both the
just and historically necessary conclusion of the struggle between
the people and the forces of racism and colonialism. This has two
implications. First, the NLMs – whatever venial sins they may
commit – are the righteous. They not merely represent the masses
but in a sense they are the masses, and as such they cannot really
be wrong. Secondly, according to the theology, their coming to
power represents the end of a process. No further group can
succeed them for that would mean that the masses, the forces of
righteousness, had been overthrown. That, in turn, could only
mean that the forces of racism and colonialism, after sulking
in defeat and biding their time, had regrouped and launched a
counter-attack. (Johnson 2002)

There is another related, general (and moral) conclusion from Zimbabwe's
currently anomalous situation in as much as Mugabe and some of his bedfellows
are a disgrace to the history of the liberation struggle in Southern Africa and the
values it claimed to strive for. Zanu PF insults by its present politics the moral
and ethical claims that motivated the local and international support for armed

struggle in order to realise political self-determination. It is exactly this notion of self-determination, so dearly fought for at the costs of many lives, which is now so utterly disrespected by the new political rulers. They are not prepared to abandon political power and instead act against the will of the people. Through their totalitarian mindset they betray the values of democracy and popular participation they were in the past claiming to represent and which were internationally supported by a solidarity movement. In return for continued despotic rule, at the cost of the ordinary people, they discredit their earlier legitimacy in liberating a country and its people. Victims turn into perpetrators. The rights of all are sacrificed for the privileges of a few. This is hardly progress compared with the situation under settler colonialism for those who continue to suffer. It is evidence of the unfinished business called decolonisation.

Challenges to civil society actors
Admittedly, the political elites in power (with the exception of Zimbabwe) still enjoy legitimacy in their countries. But they often fail to recognise the difference between a formal and a moral legitimacy. The mere fact that one is formally entitled to take decisions and actions on behalf of others without further consultation, does not always justify such decisions or actions from a moral or ethical point of view. True legitimacy also has moral and ethical dimensions, which require respect as part of the lasting anchoring and consolidation of democratic rule: "Legitimacy without morality", as Seepe (2002) titled a critique of the South African government, "subverts democracy."

   As part of the historical legacy, those who were fighting against institutionalised discrimination and oppression under colonial rule tend to resort to similar mechanisms of control once in power themselves. They are tempted to marginalise those who beg to differ or are perceived as different from the accepted norms under the newly imposed discourse of nation building. Commenting on this disturbing phenomenon, a former managing editor of the *Business Day* newspaper in South Africa qualified intolerance as one of post-colonial Africa's most chronic diseases. Malunga (2000: 7-8) contemplates that "It is always going to be difficult for people who were oppressed for almost five centuries not to be paranoid and think that every criticism of them is fanned by the erstwhile oppressors". But notwithstanding this difficulty, he concludes:

> If Africa is to outgrow the quagmire caused by paranoia about criticism, which rears its head with monotonous regularity, it first needs to do a rigorous interrogation of itself before pointing outside. We should throw out the mentality that says, 'If you are not with us, you are against us'. (ibid.)

   In an interview with the *Mail & Guardian* newspaper in South Africa, none less than the charismatic leader and elder statesman, Nelson Mandela, could afford to explicitly support such a permissive and open-minded approach towards enhancing a vibrant civil society:

> We must welcome differences of opinion. They will always be there. One of the most effective weapons in dealing with different opinions is tolerance – the ability to take criticism and not personalise it, even if a prominent individual is specifically

> identified and becomes a target for criticism. Tolerance is one of the best ways to solve major national issues. (Mandela 2001)

The former Vice-Chancellor of the University of Cape Town argued strongly in support of a position that defines loyalty as an identification with values and norms, in her address to a graduating ceremony at the Faculty of Humanities in December 2000.

> Responsible citizenship is not just about the observance of laws, it is about protecting the foundations of democratic society. There must be a culture of robust open and public debate, tolerance of different viewpoints and people with the courage of their convictions to express their views, even if these might not be popular … courage is the most important virtue, the foundation that underlies and gives reality to all other virtues and personal values. Without courage we become conformists. (Ramphele 2000)

This understanding reminds us of the powers of civil courage and civil disobedience as a relevant engine for social change. After all, it could be strongly argued that without non-conformity apartheid might still exist. On the other hand the end of apartheid is *not* "the end of history."

As Raymond Suttner said in his remarkably self-interrogating Harold Wolpe Memorial Lecture:

> it is important, as part of the nation we are building, to acknowledge without qualification that people have the right to organise in a variety of sectors, linked to or in opposition to the government of the day. No political organisation can represent every sectoral interest and it is important that such sectoral organisations exist. No one should be discouraged from becoming involved in such activity or depicted as disloyal for doing so. (Suttner 2006: 25)

While the challenge today is not to overthrow legitimate political systems and structures by illegitimate means, the task at hand is to improve society in favour of more justice, equality and humanity. There is wide scope in any given society of this world for such efforts – including those in Southern Africa.

Notes

1 It is based partly on several other, previously published texts, which further elaborate on certain issues (see i.a. Melber 2001, 2002a, 2002b, 2002c and 2006).

2 In Angola and Mozambique this claim was based on the relative military success in fighting the Portuguese occupation and taking control of the state. In Zimbabwe, Namibia and South Africa legitimacy was much more visibly secured through the results of general elections.

3 Admittedly it might be arguable to what extent the critics applied double standards themselves given the often all too one-sided, hypocritical interpretations of democracy, which too often cast a blind eye on own failures. For the sake of the context here, however, this is of minor interest. After all, those blamed for new versions of colonialism and imperialism are the same as those who are asked to finance essential parts of the Nepad and other good governance related initiatives.

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REGIONAL OVERVIEW 2

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Gender, Democracy and Elections

By Colleen Lowe Morna

Introduction

Democracy, we are told, is "government for the people, by the people". But according to the most basic of demographic yardsticks – women and men – no country in the world can claim to be a democracy. None has achieved gender parity among its elected representatives. At latest count, women constitute 16.8% of parliamentarians globally.[1] Even the Nordic countries, with 40% women in parliament, have not achieved the parity target that would be necessary for parliaments to be a true reflection of society.

Over the years, and especially since the Fourth World Conference on Women in Beijing in 1995, pressure to ensure women's equal participation in all areas of decision-making, but especially in the political arena, has mounted in countries of the Southern African Development Community (SADC). In 1997, largely as a result of lobbying and advocacy by civil society, SADC adopted the Declaration on Gender and Development that set a target of 30% women in decision-making positions by 2005; the only concrete target set in the declaration. Unfortunately, however, it is not underpinned by any implementation mechanisms.

Over the period 2004 to 2005, 10 Southern African countries held elections. In each, NGOs campaigned hard for the increased representation of women, including through engaging with the media and ensuring that coverage of women's absence from decision-making formed part of mainstream debates.[2]

With an average of just over 20% women in parliament, the SADC countries now come second (along with the America's) to the Nordic countries in the global ranking. But, as shown by an audit conducted by civil society organisations in the run up to the 2005 SADC Heads of State Summit, there are huge variations between countries.[3] Only three SADC countries – Mozambique, South Africa and Tanzania – have achieved the 30% target in their national parliaments, with Namibia a close contender. Madagascar, SADC's newest member with only 6.9% women in parliament, is at the bottom of the list, with Swaziland and Botswana not too far behind.

The disparities between countries are even more pronounced at local government level, ranging from 53% in Lesotho, which adopted a legislated quota in the 2005 elections, to 1.2% in Angola, where the democratic process is in some turmoil in the aftermath of years of civil war.

What the successes in some countries have shown, however, is that *with the necessary political will*, rapid change is possible. Those countries that have made such strides have largely done so as a result of voluntary or legislated quotas and these have been especially successful in countries that have a Proportional Representation (PR) system, where the combination of parties each fielding a list of candidates, including a quota system for women, can notch up the changes at breath taking speed.

Furthermore, the fears that such 'social engineering' would result in backlash, tokenism and other disruptions to the democratic process have proved unfounded. Studies included in the Gender Links publication, *Ringing up the*

Changes, Gender in Southern African Politics, show a marked increase in more gender responsive laws, policies and service delivery in circumstances where women are represented in significant numbers and where there is an enabling political environment for women.

Against this backdrop, the 50/50 campaign is gaining ground in the region, with demands not just for gender parity in decision-making but for real change in the lives of women. The NGO audit provided a strong rationale for the SADC Declaration to be elevated to a Protocol (the most binding instrument in SADC, and a move that the SADC Gender Unit had started pressing for even before the audit).

At the 2005 summit, pressure also mounted for the 30% target for women in decision- making to be raised to 50%, in line with the African Union (AU) position. At the summit, heads of state accepted this principle, and agreed to consider the protocol proposal, subject to further consultation. The SADC Gender Unit has formed a task team comprising representatives of government and of the Southern African Gender Protocol Alliance[4] to draft and canvass the Protocol.

This paper explores why gender equality is intrinsic to democracy and why it should be a key consideration in electoral processes and discourse in the region. It maps the progress that has been made to date, why this has been possible, and how such strategies can be replicated elsewhere. The paper concludes with a summary of recommendations for ensuring that the momentum is sustained, especially through the active and meaningful involvement of civil society.

Why should women be equally represented in parliament?

Two sets of arguments are advanced for why gender equality is intrinsic to democracy. One is a simple equity argument. This school of thought, reflected in various Inter-Parliamentary Union (IPU) resolutions and international commitments, holds that women's under-representation in politics is a violation of the democratic principle of fair representation. Cooper and Lybrand maintain that parliaments should be "mirror images" of each country.[5]

The United Nations Charter for Human Rights, the Convention for the Elimination of All Forms of Discrimination Against Women (Cedaw), the Beijing Platform for Action (BPFA) and other international agreements and conventions denounce all discrimination including discrimination based on sex. The IPU maintains: "The concept of democracy will only assume true and dynamic significance when political policies and national legislation are decided upon jointly by men and women with equitable regard for the interests and aptitudes of both halves of the population." [6]

SADC leaders have expressed similar views. Botswana President Festus Mogae argues that: "Equality of access to positions of power and decision-making is a matter of fundamental human rights, and a prerequisite for democracy." [7]

In his foreword to *Into the Future* former South African president Nelson Mandela added: "As leaders of SADC we recognise that freedom cannot truly be achieved unless women attain equality, respect and dignity through their full participation in every aspect of our regional endeavour."

In addition to the equity arguments, there is a growing body of literature on the qualitative difference that women bring to decision-making. The BPFA

argues: "Women's equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account. Achieving the goal of equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning." [8]

Frene Ginwala, former Speaker of the South African National Assembly, noted: "While the debate about the enfranchisement of women and participation of women in decision-making often focuses on issues of justice, equity and human rights, the representation of women and the inclusion of their perspectives and experience into the decision-making process will inevitably lead to solutions that are more viable and satisfy a broader range of society." [9]

This line of argument holds that although women are not homogenous, they do have certain common life experiences and 'interests' that need to be brought into, and enrich political decision-making. Because of these different life experiences, the argument runs, women are likely to shed different perspectives on all mainstream political issues, such as crime, transport, and the economy. According to this perspective, truly responsive decisions can only emerge when all interest groups are able to have their say and help to shape decisions.

Progress to date

Table 1 (overleaf) summarises key indicators for measuring progress in achieving women's increased participation in decision-making. It shows that while there have been pockets of good practice and rapid progress in some instances, which in turn is supported and amplified in various continental and international agreements, overall SADC countries have missed the target they set for themselves.

At the time that heads of state signed the SADC Declaration on Gender and Development (SDGD), women in the region constituted 17.5% of members of national assemblies (lower and single houses) in the region. The average figure of women in parliament has since increased by 2.7% to 20.2% at the time of writing this paper (July 2006). Seychelles, a country that has been a consistently high performer where women in parliament is concerned, ceased to be a member of SADC during this period.

Three countries (South Africa, Mozambique and Tanzania) largely account for the comparatively high regional average. The graph on page 39 illustrates the huge disparities that still exist between countries ranging from 6.9% in the lowest performer, Madagascar, to 36% in Mozambique (a range of about 27%).

However, thanks to the increases in women's representation in countries that had been the worst performers (Swaziland, Malawi and Mauritius) only Madagascar now falls below the 10% mark.

Indeed, many SADC countries can be regarded as 'fast-track' countries in so far as they have made significant gains in just one election cycle. The most dramatic of these is South Africa, where the representation of women increased from 2.7% in the pre-democracy apartheid government to 27% following the country's first democratic elections in 1994: a tenfold increase. By contrast, in

Table 1: SADC Performance indicators for women in decision-making

Commitment	Ang	Bots	DRC	Lesot.	Malawi	Maur	Moz	Nam	SA	Swd	Tanz	Zamb	Zim	Total
REPRESENTATION														
% women lower/ single house	15	11	12	11.7	13.6	17	36	26.9	32.8	10.7	21.65	12.7	16	19.87
% women in upper house			2.5	36.4				11.21	33.3	30				15.7
% women cabinet	5.9	25	16.7	27.8	12.5	10	25	24	43	18.8	14.8	22.73	13.9	19.46
% women deputy ministers	14.58	25		20	37.5		26.67	22.2	45.4		23.5	9.8	5.3	19.8
% women local government	1.2	23.3		53%	8.31	8.73		43.5	40%	18.46	34.2	7	9.54	22.6
% women permanent secretaries				31.6	12.9	38.7	23.5	26.3	13.5	6.67	25.9	18.6	9	20.8
% women judges		25		36.4	18.2	41.7			13.3			24.2	30	18.21
Quota	No	No	No	Yes-LG	No	No	Yes	Yes-LG	Yes	No	Yes	No	No	
Electoral system	PR	FPTP	FPTP	M	FPTP	FPTP	PR	PR	PR; M	FPTP	FPTP	FPTP	FPTP	
PARTICIPATION														
Speakers of parliaments	M	M	M	F	M	M	M	M	F	M	M	M	M	15.38
CABINET														
% women in top leadership	0	0	0	0	0	0	50	33	50	0	0	0	33	13.33
% women in economic spheres	5.9	22.2	13.6	33.3	0		16.7	20	41.7	12.5	10	27.3	20	17.8
% women in security/ state spheres	0	33	0	25	0		33.3	25	33.3	0	11.1	20	0	15.7
% women in social spheres	16.6	50	30	33.3	50		25	25	57.1	66.6	40	25	12.5	33.9

Source: Gender Links

KEY:
PR= Proportional Representation; FPTP= First Past the Post; M= Mixed; LG=Local; government; Bold figures= 30% or more

Scandinavia it has take women 60 years to reach over 35%. This is important as it shows that women in SADC are not willing to wait as long as in the older established democracies.

Table 2 shows the gains and one loss that have been made in sample countries since the signing of the Declaration in 1997. Malawi and Mauritius posited the highest gains (9.5% and 8.8% respectively). One country slid backwards: Angola (the only country that has not had an election during this period) because it

% Women in Parliament in SADC
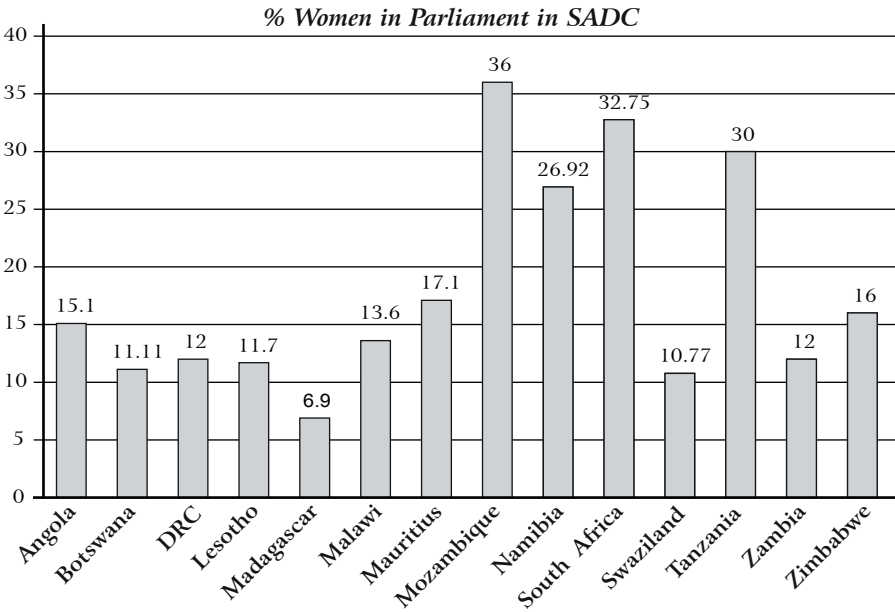
Table 2: Changes in women's representation post the SDGD in 1997

| Country / election | 1997 | | 2005 | | Change |
	No. of Women	%	No. of Women	%	%
Angola	34/220	15.4	33/220	15.0	- 0.4
Botswana (1999; 2004)	4/44	9	7/63	11.1	+ 2.1
Lesotho (2000)	4/80	5	14/120	11.7	+ 6.7
Malawi (1999; 2004)	9/171	5.2	26/191	13.6	+ 8.8
Mauritius (2001)	5/65	7.6	12/70	17.1	+ 9.5
Mozambique (1999; 2004)	71/250	28.4	90/250	36	+ 7.6
Namibia (1999; 2004)	14/72	19.4	21/78	26.9	+ 7.5
South Africa (1999; 2004)	111/400	27.8	131/400	32.8	+ 5.0
Swaziland	2/65	3.1	7/65	10.8	+7.1
Tanzania (2000)	45/275	16.3	63/295	21.4	+ 5.1
Zambia (2001)	16/158	10.1	19/158	12.0	+1.9
Zimbabwe (2000; 2005)	21/150	14	20/150	16%	+1 %

Source: IPU and SADC GU

lost one woman MP. Zimbabwe slipped from 15% to 10% in the 2000 elections, but picked up again to 16% in the 2005 elections. At 11.1% Botswana gained marginally from its 1997 position of 9%, but is down by 7% from 1999, when it had achieved 18% women in parliament.

Table 3: Global and regional ranking of women parliamentarians

Country	% Women in lower or single house	Global rank	SADC Rank
Mozambique	36 %	10	1
South Africa	32.8%	14	2
Tanzania	30%	19	3
Namibia	26.9 %	26	4
Mauritius	17.1 %	60	5
Zimbabwe	16%	63	6
Angola	15.0 %	68	7
Malawi	13.6%	75	8
Zambia	12.7 %	81	9
DRC	12.0%	*	10
Lesotho	11.7 %	86	11
Botswana	11.1 %	89	12
Swaziland	10.8 %	91	13
Madagascar	6.9%	110	14

Source: IPU website August 2006
* *National assembly elections had not yet taken place at the time of writing*

Table 3 shows where SADC countries rank globally and relative to each other. Only Mozambique is in the global top 10 (where Rwanda, with 48.8% women in parliament leads the way). South Africa has dropped to number 14. Globally, SADC countries span all ranks from positions 10 to 110.

As illustrated in Table 1, of the three areas of women in decision-making, local government is the highest at 22.6%. This average, however, masks even more glaring disparities than in the case of parliament, with figures ranging from 1.2% in Angola to 53% in Lesotho. South Africa, Namibia, Tanzania, Mozambique and Lesotho have achieved or surpassed the 30% mark in local government. The ANC in South Africa became the first political party in the region to institute a 50% quota for women in decision-making in the 2006 local election, in which overall women's representation increased from 29% to 40%.

The average representation of women in cabinet in the region has increased from 12% in 1997 to 19.5% in July 2005 (a 7.5% increase), and for deputy ministers from 17.6% to 19.2%. South Africa leads the way in this area of decision-making, both with regard to the numbers (43% in cabinet, and 45.5% deputy ministers) and the diversity of the portfolios assigned. President Thabo Mbeki has openly stated in both recent cabinet reshuffles that he viewed these as an opportunity to increase the representation of women.

Lessons learned

The picture that emerges – big gender gaps in most instances interspersed with flashes of progress – suggest that to the extent that the 30% target *has* been achieved and surpassed in some cases, the targets set by SADC can indeed be achieved!

What are the key factors for doing so? It is fashionable but misguided to respond to women's low representation in political decision-making by offering education and training. These are important but not determining factors. For example, Mauritius, which has one of the highest per capita incomes and education levels in the region, has among the lowest levels of women's political representation while Mozambique, the poorest country in the region, has the highest!

Contextual factors

There is clearly a correlation between countries in the region with a history of recent liberation struggles (e.g. South Africa, Mozambique and Namibia) and levels of women's political representation. Issues of women representation and gender discourse were features of these struggles. As is also true globally, countries that have stronger social democratic leanings (these three and Tanzania, for example) have a higher level of women in political decision-making positions than those with more laissez-faire ideologies.

Electoral systems

Another key factor is the electoral system. By way of background, there are two main types of electoral system:

- In the Proportional Representation (PR) or 'list system' citizens vote for parties that are allocated seats in parliament according to the percentage of vote they receive. Individual candidates are placed in positions according to where they are situated on the list. In an open list system, voters determine where candidates sit on the list. In a closed list system, the party determines where candidates sit on the list, although this is usually based on democratic nomination processes within the party.
- In the constituency or First Past the Post (FPTP) system, citizens vote not just for the party, but also for the candidate who represents the party in a geographically defined constituency. Thus a party can garner a significant percentage of the votes, but still have no representative in parliament, because in this system 'the winner takes all.'

There is overwhelming evidence internationally to suggest that women stand a better chance of being elected under the PR (and especially the closed list PR system) as opposed to the constituency electoral system.[10] The reason for this is that in the former case, candidates focus on the party and its policies, rather than on a particular individual. This works in favour of women – at least in getting their foot in the door- because of the in-built prejudices against women in politics (Lowe Morna, 1996). The chance of women being elected is even higher when the PR system works in concert with a quota.

As illustrated in Table 6, in addition to the two types of electoral system (PR and constituency) there are two main types of quotas (voluntary as well as constitutional and/or legislated quotas). It is also possible to have either of these in a mixed PR and constituency system.

Table 6: Possible combinations of quotas and electoral systems

Type of quota	Constituency based system	PR system	Mixed PR and constituency based system
Voluntary party quota	E.g. Opposition parties in Botswana in the 1999 elections	E.g. ANC in South Africa; Frelimo in Mozambique	E.g. SA local government in 1995- ANC voluntary quota for list seats
Constitutional or legislated quota	E.g. The Tanzanian constitution reserves 20 % of seats for women (distributed on a PR basis).	E.g. Local government elections in Namibia.	E.g. SA local government elections in 2000; act stipulated that parties should strive to ensure parity

The PR system and the voluntary party quotas of the African National Congress (ANC) in South Africa and Frelimo in Mozambique have been responsible for the rapid increase of women in the parliaments of these countries. The high proportion of women in local government in Namibia is explained by the combination of a PR system and a legislated quota for women at local level.

Conversely, the fact that representation of women in the national assembly following the 2004 elections in Namibia sits at 25% (slightly less than in the previous assembly) is accounted for by the lack of either a voluntary or legislated quota at this level. It also raises questions of political commitment. If the South West African People's Organisation (Swapo) can achieve the successes it has at local level, it can clearly do the same at national level, given the necessary political will.

Often the argument is made that there is little room for women to progress rapidly in politics in countries with a constituency-based system. FPTP systems pose a challenge for gender quotas because there is no guarantee that even if women candidates are fielded that they will win. Typically what happens in these systems (the Labour Party in Britain and the Botswana National Front are cases in point) is that a party might decide to field women as one third of its candidates, but in the heat of competitive politics these (often less well known) candidates are shifted to seats where the party is weak and likely to lose.

Two examples from the region demonstrate that there are creative solutions to the application of quotas in FPTP systems that can yield the desired outcomes, if indeed the political will exists to ensure women's increased representation.

In Tanzania women and men are free to contest seats in the constituency elections, where men typically win the overwhelming majority of the seats. In addition, 30% of the total seats in the house of assembly are reserved for women. These are distributed between parties on the basis of the proportion of votes garnered in the elections. For example, if a party got 70% of the votes, it would get 70% of the 30% of seats reserved for women and must fill these

with women candidates chosen from within the party. The combination of 30% "women's only" seats distributed on a PR basis and the gains made in regular First Past the Post elections resulted in women achieving just over the 30% target in the 2005 elections in Tanzania.

Lesotho broke new ground in its 2005 local elections (the first in the country) when it reserved one-third of the seats (all contested on a constituency basis) for women. This means that only women can compete in these constituencies; while in the other two-thirds of the constituencies both women and men are free to compete. The idea is that in each election the 'reserved' seats will rotate so that no seats are permanently regarded as 'women's seats'.

There are precedents for this system of 'reserving' seats for women (for example in local elections in India and Uganda). In the view of the author, the Tanzanian option of women's quota seats in a FPTP system being distributed on a PR basis and all FPTP constituencies being open to women and men is a better system because 'reservation' can be contested on constitutional grounds as indeed happened in Lesotho.

It is noteworthy, however, that the Lesotho High Court upheld the electoral law in this case, on the grounds that the constitution guarantees equality between women and men. This court ruling essentially recognised that although legislated discrimination between women and men in the region has largely been abolished, there are still structural barriers to women achieving *substantive* equality as a result of such factors as custom, culture and religion. It is therefore a landmark ruling that countries in the region with constituency systems would do well to study as it upholds the principle of affirmative action or positive discrimination as a way of ensuring that gender equality is achieved.

The overall lessons for the rest of the region from these recent 'best practices' are clear. To achieve the 30% target, those that have not done so would either have to change their electoral system and combine this with a voluntary or legislated party quota; or they would have to reserve seats in a FPTP system along the lines of the Lesotho model; or distribute reserved seats on a PR basis as in the case of the Tanzanian model.

Alas, in most countries, activists begin their advocacy too late and political leaders look for short cuts at the last minute.

Botswana, home of the SADC secretariat, is a prime example. The country experienced a devastating drop in the representation of women in the 2004 elections thanks to a lack of strategy that led to women being played off against each other in primaries and fielded in precarious seats during the elections. The last ditch effort to increase women's representation through seats reserved for nomination by the president helped to save face, but still leaves Botswana with only 11% women in its parliament – down from 17% in the 1999 elections.

Another interesting case of insufficient strategic shifts and planning is Mauritius, which before its 2005 elections had the lowest representation of women in parliament (5.6%). An evaluation of the electoral system led by South African Constitutional Court Judge Albie Sachs decried the 'democratic deficit' in the otherwise stable and prosperous island because of the low level of women's participation in public life. This advice, however, based on best practice in the region, was cast aside by the ruling party alliance.

Unlike Botswana, however, a spirited advocacy campaign led by NGOs such as the Media Watch Organisation (MWO) in Mauritius resulted in a high proportion of those women who did stand for election winning, raising the proportion of women to 17% (see media and advocacy sections below). The ruling alliance lost the election, and the opposition that took power has appointed many more women in cabinet. This goes to show that even without quotas, progress can be made in countries with a FPTP system. Quotas are, however, probably the only way of ensuring the rapid progress necessary for targets to be met.

The media

As part of its Gender, Elections and Media programme, Gender Links (GL) conducted newsroom training in the 10 SADC countries that held elections in 2004/2005 a few months before each election, and conducted spot monitoring of subsequent coverage. The monitoring showed a substantial increase in both the quantity and quality of coverage on gender and elections in the countries where the training took place.

In South Africa, gender became a key point of analysis and media focus, especially in the announcement of the new cabinet. South Africa already had a relatively high representation of women in parliament (30%) and this increased to 32.8%. This marginal increase led to an interesting debate on whether complacency was setting in, about obstacles to the achievement of gender parity in South Africa and whether political parties other than the ruling African National Congress (ANC) should adopt a quota.

By the time speculation started on who would be appointed as provincial premiers and cabinet ministers, gender had been firmly established as a major consideration in the president's choices. President Thabo Mbeki did not disappoint, increasing the number of women provincial premiers from one to four, out of nine, and raising the proportion of women cabinet ministers from 30% to 42%. This created banner headlines in most media, grabbing far more attention than the usual commentary on who had been dropped from the new cabinet. Subsequent commentary included speculation that in his last term Mbeki is seeking to promote gender equality as an important part of his legacy (along with his Pan-African aspirations).

Monitoring by the Media Monitoring Project of South Africa (MMP) reflected an increase in women sources in the media from 13% in the 1999 elections to 26% in the 2004 elections: a two fold increase, though this would still need to be doubled to give a fair reflection of women in society!

In Namibia, Polytechnic of Namibia (PON) students who had been part of a three year course on mainstreaming gender in the media produced a series of in-depth articles on candidates and issues carried by *The Namibian* newspaper that demonstrated excellent gender balance and awareness.

In Malawi, newspapers and radio stations (e.g. *Capital Radio*) made a special effort to feature women candidates and to comment on women's under representation which went up from 8% to 17%, still below the one-third mark, but a substantial increase for a country with a constituency system and a dominant patriarchal political culture. Monitoring showed a substantial increase in coverage of women candidates and gender issues during the election.

In a political system where personal profiling is key to electoral success, many analysts credited the media with the unprecedented success of women candidates in the Malawi elections.

In Botswana, the media raised an outcry when election results showed a decline in women's representation. This had a definite impact on the choice and announcement of MPs appointed by the president as well as in the appointment of the new cabinet, with him selecting a number of women for appointment.

In Mauritius, when the ruling party boycotted the Gender Links/MWO Women in Politics seminar after facing tough questions during a multi party panel at the Gender, Elections and the Media seminar, the media took up the matter vigorously, criticising the government for failing to deliver on its gender promises. Consistent media coverage of the issue played an important role in the subsequent increase in women's representation in the elections.

Elections are not only about representation of candidates, but also of voters and the electorate. The monitoring showed a distinct improvement in media coverage of the views of citizens – women and men. In South Africa, *The Star* newspaper constituted a "People's Panel" comprising equal numbers of women and men from all walks of life to comment on topical issues as they unfolded. In Namibia, the PON student wire service provided exemplary coverage of citizen views, using focus groups in communities around the country to establish key concerns and electoral issues.

Advocacy
The campaign for women's equal representation in decision-making played a key role in prompting the civil society audit of the SADC Declaration on Gender and Development in 2005, and particularly in motivating SADC governments to shift the target from 30% to 50%. The campaign is again featuring prominently in pushing for the elevation of the Declaration to the status of a binding Protocol on Gender and Development. Following the dissipation of the women's movement after the Beijing conference, these sub-regional campaigns have helped to galvanise different groups into action: to pool limited research resources, plan joint advocacy campaigns, and build strong alliances between civil society and those responsible for gender within governments. The Southern African Gender Protocol Alliance has been described as a model with regard to collaborative action, applied research, targeted advocacy and lobbying and strategic communications.

Moving forward, it is critical however, that governments take ownership of these processes because in the end it is they who formulate and implement policies. It is also important for governments to understand that placing women in decision-making positions is not an end in itself, but a means to a much bigger end: gender equality and entrenching women's rights in all areas of life. For NGOs working in the governance sector, a key challenge is to start looking beyond numbers, by developing indicators for gender sensitive governance. As Dr. Athalia Molokomme, the Attorney General of Botswana and former head of the SADC Gender Unit puts it: "The issue is not jobs for girls, but gender equality for Southern Africa."

Conclusions

Key conclusions that can be drawn from recent experiences are that:

- *Decision-making is still a hostile terrain for women*
  Despite the much more positive environment for women's increased participation in decision-making, there are still major barriers to be overcome. These are deeply rooted in custom, culture, religion and tradition. The structural barriers explain why there is little correlation between women's level of education and their political participation. Personal empowerment does not translate into political empowerment for women because society is not ready to accept women in these roles. Such change can only come about through concerted effort that begins with strong political will and leadership, accompanied by deliberate strategies and special measures.

- *Women's access to political decision-making requires special measures*
  The unequivocal lesson from the region is that no target for women in decision-making will be reached in the absence of special measures. There is no easy recipe for ensuring women's access to political decision-making, but the ingredients are well known. They include electoral systems, quotas, gender aware parties, and democratic environments. The overwhelming evidence from the region is that the Proportional Representation (PR) system, and especially the closed-list PR system applied in South Africa, Mozambique, and Namibia is more favourable for ensuring women's entry into politics.

- *Quotas are a necessary and beneficial short-term measure*
  All SADC countries that have come close to, or are likely to achieve the 30% target, have done so through either voluntary party quotas (in South Africa and Mozambique) or legislated quotas (in local elections in Namibia as well as in Tanzania). Quotas are not a panacea, but they are the best short-term method for ensuring that that the quagmire is breached and progress is made. When accompanied by supportive strategies, quotas have delivered rapid and tangible benefits.

- *Local government needs to be brought centre stage*
  The tendency in some countries for parties to give ground on local government (e.g. Namibia, South Africa and Lesotho) is welcome but carries the concern that the only reason this is happening is that local government is not regarded as important as other spheres of governance. Gender at local government level has, up to now, not formed a significant part of gender and governance discourse, activism or policy measures. It is critical that these now come to the fore.

- *The media has a decisive role to play*
  Several examples from the region testify to the agenda-setting role of the media when it comes to women's increased participation in decision-making. There is scope for considerable improvement in both the quantity and quality of media coverage on 'the democratic deficit' that results from women's under-representation in political decision-making.

Recommendations

As civil society steps up its campaign for the elevation of the SADC Declaration on Gender and Development to a Protocol, some key recommendations with regard to political decision-making include:

- *Targets for representation*
  Setting a target of 50% representation of women in all areas of decision-making by 2020 with an incremental approach adopted by each country depending on their current circumstances: those that have achieved the 30% in any area of governance must now aim to achieve 50% by 2015 or earlier; those that have not achieved the 30% must now aim to achieve this by 2015 or earlier.

- *Measuring the extent of participation*
  Adopt the measures set out in the Beijing Platform for Action for ensuring effective participation and adopt indicators for achieving this (including equal representation of women in top decision-making positions and in all areas of the decision-making structure).

- *Qualitative measures*
  Institute measures and develop indicators for measuring the qualitative difference that gender equality makes to governance (such as those used in *Ringing up the Changes,* that include institutional change, policy and legislative reforms, changes in the attitudes of men and the empowerment of women in such positions).

- *Action plans*
  A mandatory action plan for achieving the above targets and indicators as part of the Protocol.

- *Reporting mechanisms*
  Annual progress reports towards achieving these targets, made to the proposed regional Commission on the Status of Women, an independent body that would adjudicate, offer advice and commission research.

- *Sanctions for non-compliance*
  In accordance with SADC procedures for the observance of protocols.

Notes

[1] IPU website 15 August 2006

[2] Gender Links and the Southern African Media Services Organisation (Samso) conducted newsroom training in all countries preparing for elections with the support of the Netherlands Institute of Southern Africa (Niza). The training included building relationships with women politicians, who also participated in media skills building workshops.

[3] The audit was conducted by a group of six regional NGOs, later joined by other NGOs to constitute the SADC Gender Protocol Alliance. Members are: Nepad, Gender Links, the Gender and Media Southern Africa (Gemsa) Network, the Southern Africa Research and Documentation Centre (SARDC/WIDSA), Safaids, Women in Law Southern Africa (WLISA), Women in Law in Development in Africa (Wildaf), Women's Land and Water Rights in Southern Africa, Women in Politics Support Unit (Wipsu) and the Zimbabwe Women's Resource Centre Network (ZWRCN).

4   The Alliance consists of Gender Links, Gender and Media Southern Africa Network, the Media Institute of Southern Africa (Misa), Safaids; Women in Law and Development in Africa (Wildaf); Women in Law in Southern Africa (WLSA); Women in Politics Support Unit; Women, Land and Water Rights; Zimbabwe Women's Resource Centre (ZWRC).

5   Cooper and Lybrand (1994) "Women and parliaments in Australia and New Zealand", a discussion paper prepared for the Commonwealth Minister's Conference on the Status of Women (unpublished).

6   IPU (1994), "Plan of Action to Correct Imbalances in the Participation of Men and Women in Political Life", IPU.

7   Speaking at the SADC Gender Unit Conference on "Women in Politics and Decision-making" in Gaborone in March 1999.

8   United Nations (1995) "The Beijing Platform for Action", paragraph 181, UN.

9   Karam, A ed (1998): "Women in Parliament: Beyond Numbers", International Idea, p2

10 For more information on the comparative global data on quotas for women in politics see www.idea.int/quota.

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REGIONAL OVERVIEW 3

Tawanda Mutasah received admission to the High Court of Zimbabwe as an attorney in 1995. He is currently Executive Director of the Open Society Initiative for Southern Africa (OSISA), a Johannesburg-based regional frontline human rights foundation. He was previously founding chairperson and convenor of the National Constitutional Assembly (NCA), a Zimbabwean democracy coalition. He has also served as the Head of the Justice and Peace commission of the Zimbabwe Council of Churches, as a founder of the Southern Africa Economic Justice Network and as coordinator of Oxfam Great Britain's Policy and Advocacy portfolio in Southern Africa. He obtained a Masters in Management degree (Economic Policy) from the University of the Witwatersrand in South Africa. Besides a Rule of Law award from the International Bar Association, Mutasah has received numerous academic awards, and writes and speaks in numerous fora on governance, human rights, rule of law and economic justice issues.

BEYOND SOUTHERN AFRICA: ELECTORAL POLITICS AND THE NEW PAN-AFRICANISM

BY TAWANDA MUTASAH

While the African Union Commission was meeting earlier this year[1] to consider the validation of feasibility studies for the setting up of a Democracy and Electoral Assistance Unit, Ethiopia – host to the meeting and to the AU Commission – was still smarting from the national tension and loss of lives ensuing from the country's landmark parliamentary elections a year earlier. Alleging government fraud and manipulation, the opposition Coalition for Unity and Democracy had refused to accept the results of the election. The unfolding results of the May 15 poll in 2005 had initially shown the opposition gaining significant ground, but eventually failing to obtain a majority. As public protests broke out in spite of executive proscription, several civilian lives were lost and there were massive arrests of opposition supporters and journalists. Elsewhere on the African continent, the last year alone has further brought into sharp relief the decisive importance of good governance, and the role that electoral design and practice often play as a proxy for broader democratic life.

To cite but a few examples, the efforts of the Economic Community of West African States (Ecowas) in implementing the 2003 Accra Peace Accords resulted – albeit with some initial set backs – in the historical election of Africa's first female head of state in war-torn Liberia. On a less positive tally, concerns about disenfranchisement from the political process on the part of northern-based New Forces rebels in Cote D'Ivoire have resulted in tensions continuing in the country. In Zimbabwe, a deeply flawed March 2005 parliamentary election and controversial senate election at the end of 2005 only dug Zimbabwe deeper into a multi-dimensional crisis of political illegitimacy, economic implosion, human rights abuses and humanitarian catastrophe.

It is by now commonly accepted that elections are a crucial element in the democratic transition and consolidation of any country. Many African elections continue to fail human rights and democratic tests, and have frequently triggered low intensity conflict or outright war.

The proliferation of African norms and standards

Given the history of the African region particularly, the adjudication of elections has also increasingly assumed a transnational dimension. Within the context of the "new Pan-Africanism", the extra-territorial platform increasingly assumes significance in the definition and protection of human rights, as well as good governance and democracy. It is within this context that the Constitutive Act of the African Union also contemplated and provided the basis for an African Court of Justice and a stronger mechanism for the protection of human rights.

In addition, the African Union and the Southern African Development Community (SADC) have adopted a number of documents that elaborate even further on this new commitment to democratic governance and free and fair elections. The principal documents are:

- The Guidelines for African Union Electoral Observation and Monitoring Missions;
- Declaration on the Principles Governing Democratic Elections in Africa, by the OAU in its transition into the AU, OAU, 8 July 2002;
- The SADC Principles and Guidelines Governing Democratic Elections, August 2004 (the Mauritius Principles);
- The SADC Parliamentary Forum's Norms and Standards for Elections in the SADC region, March 2001; and
- The Principles for Election Management, Monitoring and Observation (Pemmo), formulated by the Electoral Commissions Forum of SADC countries, working together with the Electoral Institute of Southern Africa (Eisa), in 2003.

A draft African Charter on Democracy, Elections and Governance is also currently under discussion within the African Union, and was the subject of much debate in the Banjul sessions of the African Union meetings in June and July 2006.

In December 2001, Ecowas had already adopted a Protocol on Democracy and Good Governance, dealing with a range of issues including free, fair and transparent elections, separation of powers and popular participation in decision-making.

The principal challenges relating to this set of norms and standards are the lack of adequate harmonisation of the different instruments, as well as the lack of effective implementation at the national level.

Another key electoral question on the continent is the issue of electoral systems not geared to producing democratic outcomes, or not proving appropriate for effecting transition out of conflicts.

Is electoral politics an important Pan-African policy question?

Not only does poor electoral practice constitute, as indicated above, one of the most significant threats to political and social life in a nation-state, elections also conversely provide an important opportunity for the improvement of the governance climate in a given country. Elections are, in ideal mode, an opportunity for direct citizen participation in the polity. They are visible events and processes, lending themselves well to popular mobilisation and engagement. Elections provide citizens with the opportunity to choose representatives who can determine important outcomes in citizens' lives, including the frequency and effectiveness with which their refuse is collected, the availability of anti-retrovirals for people living with HIV or AIDS, textbooks for children in school, the pace of provision of housing and mortuaries, and the quality of public consciousness owing to the nature of knowledge and information received by citizens through national media.

What is more, elections – in the way they are designed and conducted – are symptomatic of the political universe within which they are conducted, reflecting as they do on the state of the constitution, the impartiality of policing, the level of enjoyment of media freedoms, as well as rights of assembly, expression, association and organisation. Elections therefore provide a tangible entry into the broader terrain of governance. In this regard, elections are both an important opportunity, but also an imperative site for the development of the Pan-African policy regime.

What is the current state of play?

Although a normative framework on elections is gradually developing at the African continental and sub-regional levels, it is not effectively implemented at national level.

For instance, when SADC heads of state and government in 2004 agreed on the SADC Principles and Guidelines Governing Democratic Elections, it was, no doubt, an important step, to which the August 2005 SADC summit appropriately added an Electoral Advisory Council. Yet, after the Principles took effect, could the elections that were held in the ten or so months thereafter – for instance in Botswana, Namibia, Mauritius, Mozambique and Zimbabwe – be said to have been illuminated by the Principles?[2] How could it be that the 'official' SADC Observer delegation concluded that the March 2005 Zimbabwe elections complied with these new SADC Principles, while at the same time the SADC's Parliamentary Forum was barred from observing the same elections, in case they returned a dissenting verdict – consistent with their position in Zimbabwe's 2002 presidential elections? In their verdicts on Zimbabwe's March 2005 elections, could it indeed have been possible that the parliamentarians and the SADC 'official' observers were singing from the same hymn sheet?

There is not yet a clear supra-national set of norms and standards on elections on the continent. Going back to the example of SADC, the problem is that the principles signed by the heads of state in August 2004 are in fact subordinated to national processes, laws and constitutions, whatever state these may be in. Consider these examples: SADC observation of elections in a member country occurs, under the SADC Guidelines and Principles, "in the event a member state decides to extend an invitation to SADC to observe its elections." The principles include acceptance of election results by political parties when these have been "proclaimed to have been free and fair by the competent *National* Electoral Authorities in accordance with the *law of the land.*" There is no caveat about how those authorities are to be chosen in the first place, nor on what norms and standards ought to constitute the democratic minima of the 'law of the land'. Thus Zimbabwe could assert, as it did, that its March 2005 elections passed the SADC test by dint of their having been held under Zimbabwean laws, including laws hurriedly put together a month before the elections.

Ideally and in contrast to the approach taken so far in Africa, African continental and sub-regional principles should frame a clear and inviolable set of norms to be elevated as the electoral standard for the continent or sub-regions, with the imperative that national constitutions, laws and processes must be aligned to this yardstick.

With such a normative base, auditing national constitutions and legislation for compliance becomes imperative. Such an exercise would, in the context of say Southern Africa, easily show significant shortfalls in Zambia's public security legislation, Zimbabwe's repressive media legislation, and so on. It could also show positive models such as the law enacted in Mozambique in June 2004, regulating the use of state resources during electoral campaigning. If not, the present positivistic approach results in the SADC Principles and Guidelines on Democratic Elections meaning almost anything and everything a member state wants them to.

A related challenge is that continental and regional elections principles are not framed as binding treaty law. In SADC, they are, for instance, not one of the protocols of the regional body, having been relegated to the status of the poor legal cousin – 'principles and guidelines'. In the same vein, the African Charter on Democracy, Elections and Governance currently being negotiated within the AU is just that – a charter of possible norms and standards. Even if all these instruments were being framed at the level of regional treaty law, it is in any event known that the domestication of regional treaty law is also a major challenge in African countries.

Another key political and policy question with regard to approaches to elections within the new Pan-Africanism is the fact that regional and continental norms and standards on elections are not effectively harmonised.

There is a growing set of norms and standards on the continent, and it is not immediately clear to election practitioners which norms and standards should be used under which circumstances. Harmonisation is important, as different standards bring different strengths to bear on the design and practice of elections.

In Southern Africa, for instance, the simultaneous existence of the SADC Principles and Guidelines (also known as the Mauritius Principles) agreed by heads of state, together with the Principles of Election Management Monitoring and Observation (Pemmo) agreed by civil society and the electoral management bodies, as well as the Norms and Standards for Elections in the SADC Region agreed by the region's parliamentarians, has not assisted the process of effective formulation of verdicts and conclusions on electoral processes in the region. It is equally important that a harmonisation process does not result in the trumping by the executive branches of government of the formulations brought to the table by parliamentarians, election management bodies and civil society. Rather, harmonisation should recognise that all the answers do not lie in the executive. In the SADC, of the three sets of principles currently in operation in the region, it is clear that the executive seeks to privilege its own August 2004 SADC Principles and Guidelines and do not acknowledge, or find a role for the SADC PF Norms and Standards, nor for the Pemmo. Both of the above are important because:

- The Pemmo are detailed on election management issues, and would therefore have complemented the Mauritius Principles reasonably well;
- The SADC PF Norms and Standards are detailed and fairly robust on electoral observation issues, and would have complemented the Mauritius Principles in this regard;
- Both Pemmo and the SADC PF Norms and Standards have been developed outside the Executive, and it would have given a useful signal of commitment to democratic checks and balances for the executive to identify a role for them within the framework that they agreed on in Mauritius.

Other key problems include the reality that:
- There is no effective regional or continental platform for elections monitoring and peer review;
- Electoral management bodies are generally not independent at national level, and this affects the setting of norms and standards for independent

electoral management institutions at the continental level;
- There is no regional or continental learning and standard setting platform to support national efforts aimed at electoral reform; and
- Current electoral design and practice is ill-suited to the task of responding to social-demographic challenges such as poor levels of women participation in decision-making, or the impact of HIV and AIDS on representative government and institutions. Regarding women participation in decision-making for instance, a survey in Malawi conducted in February 1995 found that "most male respondents appeared to believe that the concept of a female president was still premature."[3] Such perceptions are likely to exist in most parts of the African continent today.

Elections and democratisation

Elections on the continent, however, are not an end in themselves, and must serve the broader agenda of democratisation. To what extent is the emerging normative framework and electoral practice at the regional and continental levels serving to sustain democratic and electoral development in Africa?

The issues that ought to be emphasised to complement African electoral work include:
- Work on constitutions and constitutionalism, using electoral systems and electoral practice as an entry point;
- Domestication of progressive regional and continental norms and standards, creating the opportunity to work on broader questions of alignment of African standards with domestic legislation;
- Reviews of the state, as tested through elections, of the following areas of rights, and the devising of specific programmes in relation to electoral events and processes:
  - Assembly and Expression
  - Media
  - Citizenship and other 'eligibility laws' for aspiring Electoral Candidates
  - Political Party Financing
  - Abuse of Public Resources
  - Access to Information
  - Policing and the Role of other Security Forces

Another key consideration in the political endurance of electoral institutions and electoral reform is the robustness, and level of national ownership, of the constitutional framework. To this should be added the extent to which the constitution is honoured as the national *grundnorm*, and the sanctity of fundamental freedoms that it, ideally, protects.

A number of key issues should be underlined with respect to the constitutional framework. First, what is its relationship to international norms and standards?

Constitutions, and accompanying constitutional practice, constitute the fundamental base for the legal and policy systems of the countries of the region. At the same time, a number of the region's countries have signed on to all the important international treaties and protocols. The embedding of these into national legal systems, though, tends to be a much more arduous journey.

Constitutions and constitutional practice frame the critical terrain on which elections take place. For instance, interventions will need to take the form of programmes on issues of citizenship and migration as experienced in cases such as Sikunda[4] (supported in Namibia by the National Society for Human Rights) and that of former President Kenneth Kaunda in Zambia. The latter case ushered in an exclusionary principle of citizenship which the Committee working on Electoral Review has fortunately seen fit to reverse.

Equally, specific advocacy interventions are important in relation to protecting the sanctity of constitutional limits on tenure in political office. Examples of practical processes to build on include the proposal a few years ago to amend section 83 of the Malawi Constitution, and the amendment earlier of section 29 of the Namibian Constitution, both concerning presidential terms of office, and how these two were closely similar to the issues that the Oasis Forum had, before December 2001, to grapple with regarding the bid for a third term in office by former President Frederick Chiluba. Similar issues have convulsed the Nigerian body politic in recent months.

As mentioned earlier, electoral design is also critical. An enduring electoral and constitutional system should also incorporate an equitable participation in national affairs between and among different demographic groups, including women, people living with disabilities, and minority groups. It should also go beyond provisioning for the election period alone, but also for effective participation by different social groups in policy making in between elections. Even with regard to the participation of women in decision- making, it is important to ensure that this is not only strengthened for elections, but even beyond elections. This may include policy roles that are assigned to men and women. For instance, a survey by the Institute for Public Policy Research in Namibia found that Namibians tend to think that male MP's are better at dealing with certain policy areas (defence, policing, foreign policy, economic development, agriculture, and land reform), while female MP's are better at dealing with what are seen as 'softer' areas of policy, (children's rights and welfare, health and human rights).

In sum, constitutions and constitutional practice provide an important framework within which elections take place. For constitutions to support sustainable political solutions in the context of electoral processes, they need to be genuinely owned by the citizenry of each nation. They need to help in framing the national interest above partisan proclivities, and in subordinating those who govern to the will of those who are governed. Under the constitution, the legislative framework and institutions governing or regulating critical election-related issues such as election management issues, assembly, social organisation and expression, gender equality, media access and freedom, as well as political party financing, and use of public resources, must be regarded by a nation's publics as generally having integrity.

Commitment to regional and international obligations

Regarding the future of elections on the continent, the sentiment and the rhetoric is right. The practice, however, still leaves a lot to be desired. Implementation is still a major weakness. As the Africa Governance

Monitoring Project (Afrimap), a programme of governance monitoring and advocacy being implemented by the Open Society Initiative for Southern Africa (Osisa) together with other Open Society Institute-affiliated Africa Foundations and several partners across the continent is showing, African state parties are currently simply not meeting their reporting obligations on African treaty obligations, or in relation to other international governance and legal frameworks. Against this background, Article 51 of the Draft African Charter on Democracy, Elections and Governance obliges state parties "to submit every two years, from the date the charter comes into force, a report to the (African Union) Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitment of the charter."[5]

The only way to ensure that such a clause will be respected when the Charter is enacted, is to purposefully strengthen Pan-African commitment to progressive electoral standards setting and practice, and to develop viable institutional arrangements and partnerships to ensure that this is achieved. If not, it will become yet another instance of a reporting obligation that is honoured more in the breach than in practise.

Turning things around: charting the way forward

Norms and standards

There is need not only for robust and enduring national constitutional frameworks, but also for a regional electoral framework that establishes a sustainable strategy for consensus on African elections. Regional electoral principles crafted by the executive must, in application, be read together with norms and standards developed by parliamentarians, election management bodies and civil society entities. In addition, it is critical to increase information sharing and knowledge management on good practice in electoral systems design and management across countries. If it is accepted that sovereignty resides in the people of a nation, and not in an abstract territorial concept nor in the institution of the State, the need to develop norms and standards for democratic constitutionalism and electoral practice, to which the nations of Africa could aspire, becomes self evident.

Advocacy on African institutional arrangements

The new Pan-Africanism has placed democracy and human rights at its core. At the same time, because of the historical memory of subjugation, as well as the reality that contemporary global relations are far from equitable, Africa also seeks to assert its right to self-determination and self-definition of its democratic ethos. One often hears African political leaders, and some civic and intellectual leaders, arguing that Africa cannot be taught democracy by the West, and that Africa needs to develop its own standards and its own mechanisms to monitor democratic development.

It is well and good that there is a commitment to being African. But surely the quintessence of being African should be about saying 'never again' to human rights abuses and democratic arrest. Africa has played an important role in the United Nations and other multilateral systems in the elaboration

of international human rights instruments. Africa has led in the articulation of alternatives to slavery, colonialism, neo-colonial pillage, structural adjustment programmes, the debt burden, Washington consensus dogma, global superpower unilateralism and military adventurism. Surely such a rich rights tradition provides the basis for Africa to expand rather than to diminish the international struggle for democracy and human rights.

In any event, the right to participate in governance, as well as other rights – such as assembly, expression and conscience – associated with the suffrage, are universal human rights. Just as any airline passenger buckled up for their flight would hope that the pilot is not going to say on the intercom that there is an African way of flying a Boeing, African 'citizen passengers' become frightened when they hear their political leaders threatening the specter of an 'African way' of respecting human rights. Human rights are universal.

Granted, the realities of global political economy are such that Western countries do not necessarily consistently have the moral authority to pronounce on human rights and social justice in the world – a situation that is exacerbated currently by the Bush administration's approaches to global relations, human rights, democracy promotion and security issues. We do not join issue with those who uncritically see the West as champion and defender of human rights and democratic norms and standards. We think it is appropriate to not only reject Zimbabwe's Robert Mugabe and other African political leaders' rhetorical abuse of concepts such as 'imperialism' and the 'legacy of colonialism', but also the shallow scholarship that suggests that in a post-modern world, these concepts have ceased to have any meaning. Yes, the global balance of power is still skewed in fundamental ways: the infamous year 2000 Florida experience demonstrated that it is simply wrong to put electoral and democratic processes in mature liberal democracies such as the USA on a sanctimonious pedestal. At the same time, the international response to African democracy and human rights problems is not always altruistic, nor is it necessarily (always) principled.

The point, however, is that Africa must avail for its people the rights articulated in universal norms and standards, international treaties and protocols, and that Africa must even level these upwards, not downwards. The point is that when African political leaders infract on these rights, they fail a simple basic test – accountability to *their own people*. The most potent weapon that Africa has against continued servitude in global politics and economics is the unleashing of the energies and creativity of its people through the protection of their rights and the provision of support for their optimal democratic development. In short, that weapon is to secure the utmost freedom for her people. It is surely either self-defeating, or sadistically cynical, for African leaders to seek equity of opportunity on the global stage, while murdering their own people, maiming them into frightened and unthinking chanters of slogans, or consigning them to a lifetime of support on landmine-victim crutches provided by the United Nations.

It is in this admittedly complex global political context that progressive social minds and organisations in Africa must confront the question of democracy and human rights within the new Pan-Africanism.

Towards an African Electoral Commission?

One cannot over emphasise the importance of bringing together and strengthening the voice of election management bodies and civil society at the continental level, possibly advocating towards an African Electoral Commission that could assume as much prestige and clout as emerging African judicial and parliamentary institutions of the likes of the African Court of Justice and the African Parliament. An African Electoral Commission could provide an opportunity for broader civil society to directly contribute to the democratic project that is envisaged by the AU in the New Partnership for Africa's Development (Nepad).[6]

Ideally, then, within the context of the Ethiopian elections about which we opened this chapter, the controversy that raged within the country as well as the international policy and diplomatic communities about whether the European Union and other external actors had played an appropriate role in their reaction to the abuse of electoral rights in the May 2005 elections, should not have been a relevant topic. The issue, to our mind, ought to have been about Ethiopians holding themselves accountable to African and international norms and standards on democratic elections, human rights, and the rule of law; about the African Union sufficiently rising to the occasion in sanctioning the breach of African and international treaty law on elections and human rights; and about the European Union and other international actors being welcomed in a progressively defined framework as a partner of the African Union, the Ethiopian State and African civil society in defending the standard of human rights and good electoral practice in collaboration with Africans themselves.

A conversation is underway on the continent on the importance of bringing together and strengthening the voice of election management bodies and civil society at the continental level, possibly advocating towards an African Electoral Commission.

Osisa, together with Eisa, the Goree Institute and others, facilitated a meeting on Goree Island in January 2005 that dealt with these very issues. To quote from the report of the meeting:

> It was envisaged that the Electoral Reform Programme would build on the good working relationships fostered between the electoral management bodies within the Electoral Commissions Forum of SADC countries (ECF), the All Africa Electoral Association (AAEA), the SADC Parliamentary Forum (SADC PF) and the Electoral Management Bodies (EMBs) from different sub-regions, as well as other African organisations and institutions that focus on democracy and election-related matters.[7] With the support and co-operation of these initiatives and institutions it was anticipated that a continental body, similar to the Pan-African Parliament, would be established with the prime objective of supporting and providing a framework for the conduct of credible, legitimate, free and fair elections on the African continent. With the support of several international donor agencies[8], the Goree Institute on Goree Island initiated the Electoral Reform Programme by convening a consultation

of African EMBs, political parties, civil society organisations, academics and representatives from the international partner organisations in mid January 2005 to discuss the feasibility of establishing an African Electoral Commission tasked with setting standards and guidelines[9] for the conduct of credible and legitimate electoral processes within the framework of the African Union and the Nepad APRM."

An African Elections Centre: African electoral learning and capacity building

Also needed is a Pan-African specialist resource platform or databank on electoral standards, good practice, information and knowledge. The possibility exists to evolve an Africa Elections Centre that could play this role as a hub of African civil society with specialised capacities in the area of elections.

Out of a number of conversations with civil society and state actors, an Africa Elections Centre (AEC) has emerged, with a commitment and the requisite competence to facilitate a fully-fledged continental process of electoral partnership development. Key actors, most of which the AEC is already in conversation with, and with whom it is elaborating specific relationships in pursuance of this strategy, include the African Union Democracy and Electoral Assistance Unit, the Democracy and Elections Support Trust Fund at the AU, the SADC Electoral Advisory Council, the Ecowas Elections Desk, the prospective Africa Elections Centre, the national election management bodies, the All Africa Electoral Association, the SADC Electoral Commissions Forum, the specialised Electoral Reform task teams where they exist – for instance in Zambia, national civic networks specialising in elections in countries such as the DRC, Angola and Zimbabwe – for instance the Zimbabwe Elections Support Network, the Goree Institute, the Electoral Institute of Southern Africa, the Pepsa project (Misa, Niza, Hivos and Osisa), the International Institute for Democracy and Electoral Assistance, and the media.

Urgent agenda items for such a platform include work to promote a regional or African institutional framework for:
• Elections learning and resource sharing;
• Electoral reform capacity building;
• Standardisation of norm and standards and approaches to elections observation; and
• Inclusion of electoral stakeholders, including electoral management bodies, parliaments and civil society.

An African Electoral Reform Programme, as indicated above, could build on the good working relationships fostered between the electoral management bodies within the Electoral Commissions Forum of SADC countries (ECF), the All Africa Electoral Association (AAEA), the SADC Parliamentary Forum (SADC PF) and the electoral management bodies from different sub-regions, as well as other African organisations and institutions that focus on democracy and election-related matters.[10]

Conclusion

In essence, therefore, the key issues that democracy intellectuals and activists ought to put at the centre of the debate today, in terms of the evolution of the African democratic polity, are the need for:

- Enabling the emergence or, where existing, growing the capacity of a continental platform for Elections Observation and Peer Review, Elections Learning and Electoral Reform;
- The harmonisation of electoral norms and standards on the continent and in the sub-regions;
- Efforts towards domestication of regional elections and democracy treaty law;
- Promoting the development and implementation of models of independence for electoral management bodies;
- Facilitating elections knowledge and information sharing, as well as models of electoral reform; and
- Positioning more effectively new important issues of women participation in decision-making, as well as elections remodeling in an era of HIV and AIDS in elections programming on the continent.

"In the 5th Century B.C.", recalls Sigmund Knag in the envelope-pushing 1998 journal article that suggested lottery and sortition as potentially more democratic formulae for access to political office[11], "the Athenians filled their civic offices either by random operation of the lot (kleros) or by election. Most office holders were selected by lot. Aristotle, among others, viewed sortition as the more democratic procedure and election as the most aristocratic." Today, the African development project seeks new impetus in the new Pan-Africanism's eloquence in democratic rhetoric. Beyond this rhetoric, Africa has a new opportunity and obligation to rescue electoral practice from the cynicism of the Athenians – a chance to make elections a meaningful instrument of democratic public life.

Notes

[1] The AU Commission convened an independent expert's meeting from 2-4 May 2006 on the validation of feasibility studies that the AU had commissioned over the course of the previous year.

[2] See also Tawanda Mutasah. 'SADC needs inviolable electoral norms', *Sunday Independent*, 25 September, 2005

[3] John Lwanda: *Promises, Power, Politics and Poverty: Democratic Transition in Malawi* (1961-1999) p. 207

[4] In sum, the case concerned Mr Sikunda and others' contestation of the Namibian government's claim that, despite contrary historical evidence proving long term settlement and possible citizenship, they were Angolans and were thus excluded from Namibian citizenship. Mr Sikunda argued that such exclusion was more about retribution for his politics than objective adjudication of who is and is not a citizen (see www.nshr.org.na accessed 22 November 2002)

[5] Article 51 of the Draft African Charter on Democracy, Elections and Governance. DRAFT/CHARTER/II/Rev.1

6   The conceptualisation and implementation of the Nepad and AU principles are based on a 'top-down' approach where the political leadership generally determine the agenda for democratic transition, democratic consolidation, governance and ultimately the mechanisms by which these processes are monitored. Little political space is provided within the continental framework for civil society to engage and contribute to these processes.

7   The Ecowas Election Desk will also form part of the discussions.

8   The Konrad Adenauer Foundation (Johannesburg), The Royal Danish Embassy (Pretoria), The Royal Norwegian Embassy' (Pretoria), the Open Society Initiative for Southern Africa (Osisa, Johannesburg) and the Open Society Institute (New York Africa Regional Director's Office).

9   It is anticipated that the standards set by the African Electoral Commission will incorporate various sets of principles agreed to by sub regional and continental bodies and initiatives, such as the SADC Norms and Standards for elections, the Nepad APRM, the AU Democratic Governance principles, international standards such as the OECD Principles and Guidelines, as well as those proposed by civil society institutions.

10 The newly established Ecowas Election Desk and the new SADC Electoral Advisory Council would also form part of such discussions.

11 Sigmund Knag. 'Let's Toss For It: A Surprising Curb On Political Greed', *Independent Review*, Vol 3. No. 2, Autumn 1998.

ANGOLA

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Landmines of Democracy: Civil Society and the Legacy of Authoritarian Rule in Angola

Nuno Vidal

From socialism to pluralism

From the colonial era until the present, Angola has largely been under authoritarian rule. The nationalist war against the Portuguese (1961-1975) promised freedom, but independence in 1975 marked the beginning of a civil war with major foreign involvement right from the start. With few interruptions, the war lasted for almost 27 years. It came to an end in February 2002 when the rebel leader of the National Union for the Total Independence of Angola (Unita), Jonas Savimbi, was killed in action.

From 1975 to 1977, there was a period of relative freedom in Angola. However, in 1977 an aborted coup resulted in a major purge with massive killings all over the country. The People's Movement for the Liberation of Angola (MPLA) established an authoritarian and repressive one-party socialist regime. Among others, a feared apparatus of state security was placed in charge of political repression. Non-state media were closed and the right to association was limited to mass organisations of the MPLA.[1]

The judicial system became 'militarised', juxtaposing civilian and military courts with the ability to impose heavy penalties, including the death penalty (mainly for political and security crimes). The judiciary was politically dependent and operated under the direct influence of the party and ultimately of the president. A culture of fear, intimidation and repression became entrenched.[2]

The priority given to defence and internal security did not allow any room for civil society to emerge and impeded the development of any kind of 'democratic institutions' or any sense of transparency and accountability.[3] Violations of human rights by both sides of the conflict as well as impunity for perpetrators of these crimes were frequent occurrences.[4]

With no freedom of expression or any civil society or legal opposition allowed, inefficiency and corruption thrived. The increasing intensity of the war in the 1980s reinforced the whole system by justifying (sometimes excusing) the decline in public services, justifying repression and authoritarianism, supporting centralisation and concentration of power, disrupting internal production that resulted in increasing economic dependency on oil revenues and by intensifying social fragmentation.[5]

In 1991, Unita and the government entered into a peace agreement – Bicesse – setting the pace for the first multi-party elections in 1992. The constitution was revised in 1991 to consecrate the new democratic state[6] and a new legal framework opened up space for the emergence of opposition political parties and so-called civil society organisations.[7]

The MPLA attempted to influence some of the newly emerging non-governmental organisations (NGOs) and the private media, especially the new private commercial radio stations, which started broadcasting in 1992, and which

were, without exception, controlled by the party in power through their Boards of Directors.[8] It became clear, however, that it was not possible to control every new organisation and that the old days of monopolistic control over politics and society was over. The number of political parties and NGOs increased steadily. A forum was required and established to articulate and coordinate national NGOs – Fonga (*Forum das ONGs Angolanas*/Forum of Angolan NGOs) – and international NGOs, organised by Conga (*Comité das Organizações Não Governamentais em Angola*/ Committee of NGOs in Angola).[9]

Immediately after the 1992 elections, Unita refused to accept the electoral results and the country was again plunged into civil war. Military and political space opened to the opposition, but civil society contracted. However, it did not shut down completely. Since the regime had started to allow some room for public and political discourse after the revised constitution, it was very difficult to return to the starting point.

In 1994 a new peace protocol was signed in Lusaka and again civil society gained in strength and space. There was a boom in the establishment of private newspapers[10] and the state monopoly on radio broadcasting came to an end in 1997 with the re-opening of the Catholic Church's Rádio Ecclésia in Luanda (closed in 1977). A labour union federation emerged in 1996 (CGSILA – Federation of Free and Independent Angolan Labour Unions), ending the monopolistic status of the MPLA's federation (UNTA – National Union of Angolan Workers), allowing representation of other independent labour unions (e.g. teachers, Sinprof – Sindicato dos Professores/Union of Professors and SJA – *Sindicato dos Jornalistas de Angola*/Union of Journalists).

The newly established media began expressing strong criticism of the government by denouncing extreme poverty, lack of water and electricity, disruption of the education, health and judicial systems, thriving corruption, police and army violence against civilians, and other issues.[11]

Unused to such aggressive criticism, the government at times reacted violently by intimidating and arresting journalists. Under suspicious circumstances, offices of newspapers burnt down or were pillaged (e.g. *Agora* and *Comércio & Actualidade* in 1998). Shocking murders of journalists also occurred during these years, including Ricardo de Mello in 1995 (working for *Imparcial Fax* and researching top level state corruption) and António Casimiro in 1996 (a correspondent of state-television in Cabinda).

Grasping the internal and international political significance of civil society, the regime invested in a 'parallel civil society', comprising organisations such as the President's foundation (Fesa – *Fundação Eduardo dos Santos*/Eduardo dos Santos Foundation) created in 1996[12] and the Lwini Social Solidarity Fund of the First Lady, Ana Paula dos Santos. Both organisations work to rehabilitate the political image of the president by selectively delivering services that should be delivered by the State and using social bonus funds from oil and other international companies.

Besides a myriad of small-scale military incidents, the Lusaka Protocol was partially implemented until 1998, when the government decided to suspend the protocol due to Unita's systematic non-compliance with the agreement.

The war that resumed again resulted in another contraction of the political and civil space that had opened during the 1994-1998 period. Political pressure

on the private media was reinforced through state security and judicial activity, which resulted in several arrests and lawsuits against journalists.[13] A multitude of opposition political parties had to face the challenge of internal factions contesting the legitimacy of their respective leaders – the so-called phenomenon of *Renovadas* (renewal movements inside the opposition parties) – which, according to all opposition leaders affected by such phenomena, were instigated and sponsored by the MPLA to foment division and weakness.[14] These factions had a detrimental effect on the opposition in general and strongly affected their political ability and credibility.

Despite several attempts by the international community and Angolan social movements for a negotiated peace settlement (e.g. the *Pro Pace Movement*[15]), a firm decision was made by the MPLA that no concessions would be made and that a military solution would be sought. The MPLA achieved this aim when Savimbi was killed in February 2002. The cease fire and the Memorandum of Luena (April 2002) was signed by a victorious MPLA and a defeated Unita without any external or internal participation – an unbalanced relationship of forces that would from then on characterise the Angolan 'democratic multi-party system'.

Peace and pluralism without democracy: the maintenance of a party-state character

After the Luena Peace Memorandum it was generally expected that another rapid opening up of space for civil society and political opposition would take place, as had occurred after the Bicesse (1991-1992) and again during the first stage of implementation of the Lusaka Protocol (1994-1998). However, more than four years after the Peace Memorandum, the presidency and the MPLA still retain tight control over the state apparatus and its resources, while significantly restricting the political and civil space of opposition parties and civil society organisations.

Elected in 1992 for a four-year period, the national assembly has remained in place until now without a renewed mandate. General elections have been expected since 2004 and currently 2007 is still a possible date, depending on how the process of electoral registration evolves.

The MPLA is well advanced in its preparation for elections. A massive campaign has been launched all over the country to recruit new members[16] and the party's base structures are being revitalised and reorganised. Traditional authorities have been politically seduced with gifts and respect offered during official political visits to the provinces and at national conferences on the importance of traditional authorities.[17] Major investments are being made in infrastructure using new and more favourable oil-backed loans such as the one from China.[18] The president and the party are committed to the conclusion of several major public works before elections.[19] This strategy has been described by some sectors of civil society as promoting growth without development and furthermore that it will not reduce the economy's dependence on oil. As argued by a prominent Angolan academic and economist, oil still represents 98% of Angola's foreign exchange export revenues, 75% of tax revenues and 57% of GDP, but only 1% of employment.[20]

The legal framework has been restructured as much as possible prior to elections to suit the political strategy of the party and the interests of those in power (*e.g.* the Land Law, the Law on Territorial Organisation and Urbanism and the Oil Law and, if possible, the Constitution[21]). As occurred prior to the 1992 elections the MPLA assured an overwhelming majority of members in the National Electoral Council (the institution responsible for the organisation, direction and supervision of the entire electoral process). The electoral register has been illicitly regulated through the Council of Ministers, creating new electoral organs such as 'executive commissions' (with members exclusively appointed by the majority party) to take over responsibilities initially attributed to the National Electoral Council and therefore assuring absolute control over the registration process by the MPLA.[22]

Confusion between the state and MPLA structures remains. As an example, some ministers are MPLA central committee members and several provincial governors are MPLA first provincial secretaries. Municipal and communal administrators also hold party and state portfolios and it is sometimes difficult to distinguish between their party and state activities insofar as party events mobilise state logistics and vice-versa. It is very common to watch party members inaugurating public infrastructure financed with public money in ceremonies where state and party symbols are often mixed (the MPLA flag is very similar to the flag of the Republic). Such events are manipulated by the state media in order to convey as much political credit as possible to the party in power.[23]

The party in power controls the state media and constrains the private media. National television and radio broadcasting is a state monopoly.[24] Private weekly newspapers, with circulations in the low thousands, only distribute in Luanda. According to the Angolan journalist, João Paulo N'Ganga, a former chief editor of the newspaper *Folha 8*:

> … the country is still today and basically … Luanda, concentrating the press distribution (state and private) and harbouring *Rádio Ecclésia* [Catholic Church radio; the only relatively independent radio station] … Following the colonial development model, the coast (i.e. Luanda, Benguela and Lubango) has a privileged access to information in relation to the country's interior … The only daily newspaper in the country, *Jornal de Angola* (Journal of Angola), circulates 20 000 copies for a population of 12-13 million people; there are eight private weekly newspapers with 8000–9000 copies each … In practice there is a quasi-state monopoly in terms of production and dissemination of information.[26]

Opposition parties find it difficult to access the state media, experiencing censorship through manipulated reporting and editorial alignment of news that virtually ignores them while giving full coverage to the MPLA. The government has been able to block *Rádio Ecclésia* from broadcasting outside of Luanda and continues to intimidate journalists into practising self-censorship while bribing some and co-opting others into the state media.[25] As also stressed by the previously quoted João Paulo N'Ganga:

As far as freedom of information and expression is concerned there is still a big discrepancy between constitutionally consecrated rights and practice. Beyond

legislation what really exists is a 'licence for expression' and not 'freedom of expression' or press freedom; and we from the private press know that these licences can be suspended at any time and without warning. The media is still in its early stages and the main objective is still the necessity to ensure the right to freedom of expression.

> Our media is controlled and restricted, probably as a result of the previous mono party regime, which stubbornly survives in practice. On the one hand, we have the state media of a propaganda type, manipulated by the party in power, impeding criticism and new ideas, sometimes in disguise, sometimes openly and sometimes even resorting to coercion. On the other hand, we have the private media trying to resist the official discourse of the party-state and its dogma, but usually accused of anti-patriotism. Between the private and the state media there are also some inter-penetration deriving not only from the permanent attempts of infiltration by the party in power, but also from the limited number of journalists in the market. Sometimes this factor is also an obstacle to the emancipation of the private media
> … the country lives off several licences so that a democratic system can exist de jure but not de facto.[26]

A recent example of this difficult operational context for the media was the death threat made by Miguel de Carvalho, Director of the Angolan News Agency (ANGOP), against a journalist.[27] Despite this fact, the President later appointed Miguel de Carvalho to the position of Deputy Minister of Social Communication. More recently, the Minister of the Interior, Roberto Leal Monteiro N'Gongo, threatened *Rádio Ecclésia* with an "indictment for the crime of espionage against the state security."[28]

An audit of the first 100 days of the new press law was recently presented by Cornélio Bento, a member of the Media Institute of Southern Africa in Angola (Misa-Angola). He denounced the occurrence of several violations to press freedom and freedom of expression with the knowledge and acceptance of the state institution that was supposed to defend the rights of journalists – the National Council for Social Communication (*Conselho Nacional da Comunicação Social* – CNCS):

> … this organ does not represent or defend journalists and seems to be manipulated by political power … even the public media violates the journalists' rights, such as Jornal de Angola, accepting articles insulting journalists of the private media, but signed with pseudonyms that conceal the true identity of their authors … the press law per se will not put an end to the dark moments experienced by our journalists … and still has a penal charge that is too heavy for journalists.[29]

Referring to the most recent killings of two journalists in July 2006, the President of the Angolan Union of Journalists (SJA), Avelino Miguel, said he thought the sudden surge of violence was part of a strategy to intimidate the media in the run-up to the next elections, and that press freedom in Angola is still severely limited by the state's near monopoly of the media and by overly strict defamation laws.[30]

The Angolan judicial system is still politically dependant on the president and the MPLA. The president has significant powers of appointment in the judiciary, including the power to appoint Supreme Court judges without confirmation by the national assembly. There are several reports where political pressure from the presidency affected the outcome of cases.[31] Moreover, there is still a dual and confused judicial system – civil and military[32] – that contributes to the maintenance of an authoritarian and feared character of justice in politically sensitive issues. As mentioned by an Angolan human rights activist:

> It is well known that we have a precarious judicial system full of deficiencies, some of which derive from the anachronism of several laws framing the Angolan justice system, namely the Penal Code, the Penal Process Code, the Law on the Unified Justice System and the Law of Preventive Arrest, to mention but a few. In ten years our Ministry of Justice has not been able to reform even one law essential to the cause of justice, and it is also regrettable that the Bar of Angolan Lawyers has contributed so little to this matter. Several Procurators of Justice appointed by the President did not care to change the General Procurator Organic Law (still communist and anti-democratic) and it is also dramatic that the National Assembly did not care to reform the most important juridical tools for a State of Law. Finally we must also regret that neither the Chief of Government nor the successive Prime Ministers cared for the state of justice in this country.
>
> What democracy and State of Law do we want with a judicial system so tremendously debilitated? What independence do judges have with miserable salaries and lack of supporting working conditions? What respect for the human being and his rights do we want to cultivate if our co-citizens are piled into jails and police stations in unacceptable conditions, lacking food, medical assistance and usually victims of violence?[33]

Directly or indirectly, the regime exercises a tight grip over the economy in both the public and the private sector. The previous political dominance over the public sector was extended to the private sector as soon as the transition to a market economy began in the early nineties.[34] Privatisation throughout the nineties favoured the protégées of the regime and today the most profitable and politically crucial private industries function in an oligarchic manner (e.g. banks, insurance, communications and diamonds.)[35]

In order to ensure peace and significant electoral participation in the enclave of Cabinda (producing approximately half of Angola's daily oil production), the government initiated peace negotiations with separatist movements in 2005. In 2004 the Front for the Liberation of the Enclave of Cabinda (*Frente de Libertação do Enclave de Cabinda* – Flec), the Catholic Church, and the Mpalabanda Civic Association (c.f. infra) set up the Cabinda Forum for Dialogue (*Forum Cabindense para o Diálogo* – FCD, headed by Bento Bembe) to enter into dialogue with the government for peace in Cabinda. In exchange for peace, political and economic autonomy, which recognises the cultural specificity of Cabinda, a Memorandum of Understanding for Peace and Development between the government and

the FCD was signed on July 15, 2006, establishing five crucial principles for the transition to peace: amnesty for rebel fighters, the immediate cessation of hostilities, the demilitarisation of the Cabindan forces under the supervision of the FCD, the reduction of the Angolan military presence in Cabinda and the reintegration of the FCD's members into the Angolan military and government. This agreement was complemented by the signing of an ultimate ceasefire agreement on July 19, 2006. [36]

In view of this agreement it seemed that the government had finally solved the problem of Cabinda and that a successful ceasefire would allow oil companies to engage in land-drilling operations. The US State department supported the peace process and encouraged massive electoral participation of Cabindan voters in the next election.[37] However, the legitimacy of the memorandum was contested right from the start. Even before the agreement was signed, the FDC was abandoned by Flec and Mpalabanda was contesting the negotiation terms (e.g. independence was ruled out and the degree of autonomy was not clear given the restraints imposed by the constitution). The leader of Flec, Nzita Tiago, and a prominent Catholic leader in Cabinda, Raul Taty, were among the most vocal opponents of the deal (the Catholic Church, a major force in Cabinda, refused to join the FCD right from the start). Both men made it clear that they would not support the initiative as they rejected Bento Bembe's authority and deplored the lack of inclusivity in the process.

The IMF, the World Bank, the EU and Western democracies in general gradually relaxed their pressure on the Angolan government for more transparency and respect for human rights. This decrease in pressure took place in the face of record high oil prices, increased world competition to secure future oil supplies and the emergence of the new Asian partners of the Angolan government (China, India and possibly South Korea).[38]

The government is attempting to show signs of progress in its anti-corruption and transparency efforts. It has authorised the publication of International Monetary Fund (IMF) and World Bank reports on public websites and has published excerpts of the reports in government-controlled media. It has shown some movement toward ratification of the UN and African Union anti-corruption conventions and towards joining the Extractive Industries Transparency Initiative (EITI). The IMF and the World Bank have noted positive steps by the Angolan government in eliminating off-budget expenditures and the international community recently witnessed and praised an oil concession round for its unprecedented openness and transparency.[39]

Nevertheless, in practice, transparency problems in the management of public accounts remain and were recently noted by Elias Isaac, the Angolan representative of the Open Society Initiative for Southern Africa (Osisa), during a meeting on transparency in Luanda. Specifically referring to the recently revised national budget for 2006 and the way public revenues are being (un)accounted for, he said:

> We have to understand this enormous gap between the first approved budget of US$23-billion and this upward revision for circa US$40-billion. Where are the revenues to cover this gap coming from? How do they enter into the country? How will these expenses be processed?[40]

During the parliamentary discussion on the budget revision, Unita's parliamentary leader, Alcides Sakala, stressed the same:

> There is still a serious deficit in good governance and transparency on recent financial operations. To the present day, the government has systematically refused to explain how the record high oil prices have increased its revenues and how these revenues are being managed.[41]

Political opposition parties: political and institutional fragility

Opposition parties are politically and institutionally fragile and operate in an adversarial environment. Although there are 125 registered political parties in Angola, less than a quarter are operational. The MPLA holds a majority with 129 seats out of 220 in the national assembly, while Unita holds 70 seats and other parties the remainder of the seats. Opposition parties represented in the parliament live essentially on funds from the state budget. They all complain that this is not sufficient[42] and that the funds are paid irregularly (sometimes even suspended) to disrupt their activities. In face of such financial restrictions it is extremely difficult for the opposition parties to expand their activities outside of the provincial capital cities.

The Government of Unity and National Reconciliation (GURN) has included members of several opposition parties since 1997, but several of their leaders accuse the majority party of pre-empting the competencies of every governmental position occupied by their representatives. The opposition feels compelled to stay in the government due to their fear of retaliation in terms of cancellation of state budget funds for opposition parties and in relation to other benefits.[43]

There are still reports of authoritarianism and political intolerance against the opposition (especially in the provinces) such as beatings, threats and arson of their properties in rural areas (e.g. Luwemba in July 2004[44,] Mavinga in March 2005[45] and Chongoroi in April 2006[46]). The MPLA still retains an active para-military militia in the neighbourhoods (Organisation of Civil Defence) funded by the state budget. Still under investigation is the murder of the opposition leader of the PDP-ANA (*Partido Democrático para o Progresso/Aliança Nacional de Angola* – Democratic Party for Progress/National Alliance of Angola), M'Fulupinga Landu Victor, in Luanda, on 2 July 2004, which spread fear among opposition and civil society organisations (CSOs).[47]

Several opposition leaders and CSOs have expressed their disappointment with the international community, especially the International Monetary Fund (IMF), the World Bank and the EU, for dropping the pressure that was being exerted on the government in relation to transparency and human rights issues (*c.f. supra*).[48] They also fear that government signs of progress on anti-corruption and transparency efforts are nothing but pre-electoral cosmetics.[49]

As was the case during the one-party regime, the state is still operating as a mechanism for patronage by funding and supporting its political clientéles. According to opposition leaders and supporters, social, professional and economic progress is greatly affected by an individual's decision to join or not to join the party in power.[50]

Given the above context it is not hard to understand why the national assembly remains a rubber stamp for laws approved by the Council of Ministers presided over by the president.[51] The opposition in general has its scarce energies and resources absorbed by its own internal problems or in legal-bureaucratic disputes with the MPLA (which it loses because of a lack of numbers and votes in parliament). Opposition parties consequently have a serious inability to mobilise the electorate. In several of the less representative parties there is also a micro replication of the same patrimonial logic that dominates the regime (i.e. favouritism, clientelism, confusion between party and personal assets).[52]

Civil society organisations: internal constraints and external dependency

With the Angolan transition to a multi-party system in the early nineties, a significant amount of international aid and development cooperation funds arrived in tandem with international governmental organisations (IGOs), international NGOs, churches and charitable institutions. Transnational projects gathered expatriate activists, local communities and some Angolan mid and high level personnel eager to work outside the regime's constraints. An operative articulation between foreign and national activists fuelled the emerging civil society.

Given the need for reinvestment in armament, the government increased its reliance on international aid. Throughout the nineties, national and international NGOs, together with church organisations became the main providers of humanitarian assistance and several social services such as basic healthcare, nutrition, sanitation and support to internally displaced persons. This role gave them increasing legitimacy to speak out and testify in relation to serious human rights abuses and violations throughout the country.[53]

On occasion these activities made them politically inconvenient to the regime, which reacted strategically in the second half of the nineties by investing in parallel civil society. This strategy continues until today and examples of these organisations include AJAPRZ (Angolan youth returned from Zambia), Children's Future (*Criança Futuro*) and Friends of Rangel.

Also denouncing government investment in civil society, Fernando Pacheco, who presides over the biggest Angolan NGO – Adra (*Acção Angolana para o Desenvolvimento Rural e Ambiente*/Action for Rural and Environmental Development), stresses that:

> The political power in general and the State in particular understand the need to invest in the civil society arena and therefore created some CSOs. The MPLA's Office to Support Citizenship and Civil Society (*Gabinete de Apoio à Cidadania e Sociedade Civil*) is also a recent and important sign in this sense.[54]

Government friendly CSOs basically serve the government and presidential need for a cooperative 'civil society' that can be politically manipulated (e.g. participating in the approval of laws without contesting them and therefore satisfying the international demand for taking into account 'civil society opinion').[55] In return these organisations have easier access to state

structures, official State permits and to the public and private sectors of the economy, while most of the others face several obstacles. In this regard a human rights activist says:

> The activity of civil society has not been easy [since its emergence], especially for those institutions and persons that do not accept manipulation or co-option by the government or the governing party, the MPLA, and they can be easily distinguished from others who call themselves civic organisations, but in fact maintain an obscure (proximate) relationship with the government.[56]

While the government intensified support for its own CSOs, most of the other CSOs experienced increased difficulties in the late nineties and early 2000s, not only because of the constraints created by the regime, but also because of the strong dependence they developed on foreign expertise, technical support and funding, and because several of the most competent Angolan cadres were recruited by international NGOs and IGOs.[57] The following factors further contribute significantly to the weaknesses that currently characterise Angolan CSOs and hamper their development:

a) a deficit in long-term sustained networking capacity, at national, regional and international levels[58];

b) a deficit in their capacity to develop and sustain their own perspectives. Their agendas are primarily determined by donors and foreign partners, rather than by the needs of the communities they work with.

Again, according to Fernando Pacheco from Adra:

> Within a society that has been so deteriorated by war, authoritarian rule – including the colonial past – and foreign pressures (political, economic and of all kinds), without an entrepreneurial class with a significant impact on economy and politics, it would be extremely difficult to imagine a strong civil society … However, there are also external factors contributing to our civil society fragility such as … a few segments of the international dimension – governments, donor agencies and NGOs – imposing their agendas (environment, gender, HIV, transparency, good governance, human rights, democracy, corruption) without taking into consideration our own agendas and above all our own rhythms, which in some cases leads to the blockage of local initiatives …[59]

The weaknesses and fragilities of Angolan CSOs became even more visible when external funding started reducing from 2000 onwards. The donor community became increasingly disgusted by the true role played by several international organisations in terms of taking over the social responsibilities of the Angolan State[60], this while several international reports revealed schemes for the mismanagement of oil revenues and endemic corruption within the Angolan political system.[61] Consequently, humanitarian aid substantially decreased and was even halted in several regions (mainly in the centre-north), which were no longer considered to be in need of such support. This indirectly affected several development projects implemented by national and international NGOs in parallel to humanitarian aid, e.g. in the case of Adra-Malange, the biggest and most reputable Angolan NGO, with a myriad of participatory development

projects with community-based organisations in this province. Oikos-Malange, a long time established Portuguese NGO in the Malange province, also working with a few community-based participatory development projects in that area, was affected in a similar way.[62]

Despite the above mentioned constraints, weaknesses and fragilities, it must be added that some Angolan CSOs have been playing leading roles in significant initiatives in the defence of civil, political and economic rights, and are much more active in this area than the gross majority of political parties in parliament (e.g. in relation to the land law, the HIV and AIDS law, the struggle for the rights of forcibly evicted communities, and better conditions for prisoners).[63]

Discussed below are a few of the most prominent advocacy justice organisations that have been dealing with politically sensitive issues and which face serious obstacles to their work: the *Association of Justice, Peace and Democracy* (AJPD), *Mãos Livres* (Free Hands), *SOS-Habitat* and *Mpalabanda*.[64]

AJPD is the initiative of a few young Catholics concerned with constitutional reform, HIV and AIDS legislation and the improvement of the penal system. So far, their main achievement is to call domestic and international attention to prison conditions, which constitutes a serious threat to the health and lives of prisoners. Usually suspicious of local associations receiving international support, the government blocked the registration of the AJPD and the Ministry of Justice continues to block its registration by not taking action on its application originally filed in 2000. The association appealed to the Supreme Court, but without much success so far, and continues to experience extreme difficulty in its relationships with State institutions. According to one of its representatives:

> The Ministry of Justice and the Procurator General of the Republic publicly tried to defame our association, taking us for a disguised political party. We also had – and still have, although decreasing – difficulties of access to the State institutions.[65]

Mãos Livres was founded by a group of journalists and lawyers and offers legal assistance free of charge. The association is now expanding to the provinces, where it is most needed, but where it is also facing severe obstacles. There is an enormous shortage of lawyers in the whole country, but especially in the provinces (e.g. there is only one lawyer in the whole province of Malange). The provincial administrations and 'mighty' provincial governors are also well known for their authoritarian and arbitrary rule[66]. The association also enjoys a prominent role in cases of forced evictions of communities in Luanda by the government (as a part of an urban renewal project)[67], and has taken a few demolition cases to court.

These demolitions and forced evictions are carried out by the police force using violence and without any compensation to those losing their property. This is still continuing and a new organisation has emerged to stand up for the rights of those evicted – **SOS-Habitat**. Its strategy is based on participatory community methods, dissemination of knowledge of legal mechanisms to protect the rights of the urban poor and by helping them to resist illegal evictions. Direct confrontation with provincial and local authorities on a regular basis has been an obstacle for some donors in terms of funding them (because several of these are unwilling to displease the government due to their business interests

in the oil industry).[68] SOS-Habitat's coordinator, Lu's Araújo, has been arrested a number of times. During a recent public demonstration (camping with several activists in a community of evicted persons) he pointed out that the poor people affected were treated as if they were the garbage of Angola and that several so-called human rights activists were not willing to take any concrete solidarity actions in the field, restricting their contributions to theoretical approaches in conferences inside and outside the country.[69]

After the memorandum of Luena, the conflict in Cabinda remains unsolved. The role of the Catholic Church, followed by Osisa and the Cabinda Civic Association – **Mpalabanda**, was extremely important in 2002/3 in denouncing and curbing serious human rights abuses in Cabinda. These were taking place in the course of major counter-insurgency operations of the Angolan armed forces against FLEC. *Mpalabanda* was officially created and registered in 2003 in terms of the Law of Associations of May 1991 and after two consecutive refusals by the provincial government to allow a meeting to take place. The organisation was finally allowed to hold its first meeting in March 2004. Its monitoring reports became increasingly uncomfortable for the government[70] and since its creation it has been refused permission on several occasions to hold meetings and marches to commemorate Cabinda Day.[71]

Having abandoned the Cabinda Forum for Dialogue (FCD) before the signature of the Memorandum of Understanding with the government (*c.f. supra*), *Mpalabanda*, headed by Agostinho Chicaia, faced threats from government to ban *Mpalabanda*, a threat which it duly carried out on 20 July 2006. In a case instituted by the Angolan government against *Mpalabanda*, the Provincial Court of Cabinda ruled that *Mpalabanda* should be banned under the allegation that it had incited violence and hatred and carried out political activities, rather than operating as a civil society organisation. More recently, on 29 September 2006, the organisation's Press Officer, Raul Danda, was arrested following allegations of crimes against state security, namely that he incited violence through his writings, which were critical of the Memorandum of Understanding.[72] *Mpalabanda* is the only human rights organisation operating in the province of Cabinda and according to Amnesty International "its closure will leave Cabinda, an area rife with egregious violations of human rights, without a human rights organisation to monitor and record violations of human rights."[73]

Prospects for change in view of forthcoming elections: possible guidelines for future action

Several opposition parties and CSOs think that the dynamics generated by the forthcoming electoral process holds potential for at least some socio-political change. This expectation is based on the experience of the periods of peace and relative openness of 1991-1992 and 1994-1998. During these periods, the MPLA had made significant political concessions to the opposition and to a newborn civil society. The regime opened much more political space than it probably intended, and even if this space contracted every time war resumed, it was not possible to diminish it to its original form. Based on these experiences, hopes are focused again on the next electoral process as a new major step for openness and democratisation of the regime.[74]

Although these expectations are reasonable, the experience and lessons learned from the two previous periods of more openness and peace must also take into account that the overall context has changed. In these periods Unita had significant internal leverage with an efficient army controlling parts of the national territory and enjoying some significant foreign support.

From 2002 onwards the whole context has changed in favour of the MPLA:

- It has reinforced state control and governance under the new multi-party framework;
- It has militarily defeated Unita, who lost its international backing, and is now weak and dependant just like the rest of the opposition;
- It has reinforced its grip over CSOs – tightening its control over the state media and imposing effective restrictions on the private media;
- It has strong political control over the 'new market economy';
- It has a good political and economic relationship with the US and the Western countries who are eager to please it; and
- It is well advanced in preparing and managing the forthcoming electoral process.

Many opposition leaders and civil society activists appear to be aware of this new context. To overcome the increasing hegemony of the party and state, they stress the vital need for major and strategic articulation between internal and international CSO's in terms of leverage. There is general disappointment in Angola with international governmental organisations, the donor community and Western democracies for dropping their pressure on the Angolan government for transparency, accountability and human rights – in face of their new international and economic interests in Angola (*c.f. supra*). Some Angolan CSO's perceive international CSO's as having significant global lobbying, networking and advocacy capacity for the mobilisation of international public opinion in order to pressure IGOs, the donor community and their governments into adopting a much firmer stance on democratic values in the Angolan political process. Other Angolan CSOs are much more sceptical about the prospects of external leverage and stress that Angolan (and African) CSOs and political opposition must rely much more on their own populations and internal discontent as the main impetus for socio-political change.[75]

These two positions, however, are in fact complementary and leads to some possible guidelines for future action for national and foreign actors committed to change:

- On the one hand it must be recognised that because the supply of oil is diminishing worldwide, certain regimes, including Angola, are currently able to extract strong concessions from the outside world. This includes the disconcerting realisation that some governments and organisations are more strongly influenced by economic interests than humanitarian concern.[76] In this context, it is strongly recommended that all international CSOs supporting the struggle for human rights and democratisation in Angola step forward and assume a much more active role. This should continue to include support for their Angolan counterparts, but must importantly also include advocacy and lobbying in their own countries and regions to create pressure on Western governments and IGOs in support of an agenda for democratisation and human rights in Angola.

- Angolan CSOs have to pay more attention internally, searching out and connecting with their constituencies. CSOs in general prioritise the agendas and perspectives of their donors and foreign partners, rather than their own perspectives and the aims of the communities they serve. Angolan CSOs must also engage in much more strategic cooperation and networking with each other, so that they can use their limited resources for broader social impact.
- The short-term and project-driven involvement of donors and preferential relationships with a few selected national partners, have fragmented rather than united Angolan CSOs. Donors and international organisations must acknowledge this fact in general and assume a different posture.
- Angolan political parties are distant from the electorate and are having serious difficulties in relating to the people and representing their needs. They hope that the international community will support their claims, but they also need to make serious efforts to connect with communities and to build their constituencies.

According to a well-known Angolan human rights activist:

> Our CSOs have not been able to establish an effective platform to articulate positions in matters of principle, as a minimum common denominator for action, e.g. denouncement of basic violations of human rights disrespecting the Angolan law and international treaties ratified by the Angolan government. We should all meet to start a discussion on a few basic principles for common action. That never happened for several reasons: there are obstacles deriving from the fact that several CSOs maintain more or less close relationships with power interests (political, religious, etc.); there are some rivalries and competition among national CSOs for leadership of network projects and processes and/or foreign funds; there is still a deficit of the culture of social solidarity, which was deeply affected after 1977 (i.e. with the repression that followed the attempted coup, fomenting the fear of involvement in public activities outside of mass party organisations; people were taught to mind their own business).
>
> Besides internal articulation and more effective cooperation between CSOs, there is also the need for networking and lobbying of foreign governments and institutions to pressure the Angolan government to respect human rights. Our civil society needs these combined efforts inside and outside the country, but according to our own agendas and the needs of the communities we work with. There is an urgent need for a deeper participation of the people in these processes, but there is still too much fear and as I said there is not a culture of broad social solidarity of a citizen type. A major propeller for massive political participation of the people would be local elections, but that is planned to occur only after legislative and presidential elections, and no one knows when they will occur. [77]

Whether the forthcoming electoral process will provide potential for change will therefore greatly depend on the commitment to change by national and international players and particularly on effective articulation and interaction between them. This is obviously easier to say than to do; it is a long-term endeavour and there are no magic recipes for constructing strong civil societies overnight with the capacity of sustaining specific electoral processes and strong democracies.

From the analysis provided – discussion, communication, information, participation and networking (national, regional and international) – must be at the centre of this process. But there are serious political and economic obstacles at the national and international level, which will require significant effort to overcome. As emphasised by Lu's de Araújo, a first step in Angola could be a small and focused programme for articulated action – a minimum common denominator between CSOs. Strategies, goals and agendas for action must come from within. Foreign organisations can contribute significantly to this endeavour by providing facilitating mechanisms and coordinated international lobbying.

Insofar as some of the problems hampering the democratisation process in Angola are not exclusive to Angola, and can be found in other countries of the region, the idea of a Southern African Regional Platform/Observatory for Human Rights and Democratisation could also be an effective way of developing and planning the articulation needed for national and international leverage for change.[78]

Emphasis should be given to strategic networking and coordination at national, regional and international levels, facilitating the relationship between the media, CSOs, political parties, governments (Southern African and foreign) and international governmental organisations. Partnerships should include CSOs from the SADC region and beyond, and include international organisations such as the UN and the EU. These institutions would be responsible for monitoring and evaluation, data collection, data sharing, mutual support (denouncing violations of political and civil rights and the lack of democratic procedure and engaging with regional governments over these issues). They should also support and facilitate capacity building of their Angolan partner organisations and facilitate the broad participation of community-based organisations – especially in rural areas.

Notes

[1]   Organisations such as the Labour Union of Angolan Workers (UNTA), Organisation of Angolan Women (OMA – *Organização da Mulher Angolana*) and the MPLA's youth wing (JMPLA – *Juventude do MPLA*); see Vidal, N., 2004, 'The genesis and development of the Angolan political and administrative system from 1975 to the present', in 'Intersections between social sciences', ed. S. Kyle, Institute for African Development of Cornell University, Cornell NY, pp. 1-16.
[2]   Ibid.
[3]   Human Rights Watch 1999, Angola unravels: the rise and fall of the Lusaka peace process, HRW, New York.

[4] Human Rights Watch 1994, Angola: Arms Trade and Violations of the Laws of War since the 1992 Elections, HRW, New York.

[5] Vidal, N., 2003, 'Modern and Post-Modern Patrimonialism' in Community & the State in Lusophone Africa, ed. M. Newitt with P. Chabal & N. MacQueen, King's College London, London, pp.1-14.

[6] Constitutional revisions changing the constitution to a new political and economic framework: Law 12/91, DR, I, 19 (May 6, 1991) and also Law 23/92, DR, I, 38 (September 16, 1992).

[7] Namely the laws of association (Law 14/91), freedom of the press (Law 25/91), labour and strikes (Law 23/91) and independent radio broadcasting (Law 16/92).

[8] Without exception, all the new private radio stations were indirectly controlled by the MPLA; broadcasting licenses were conceded to MPLA members that were supposed to assume a pro-governmental stance in the face of forthcoming elections: LAC – *Luanda Antena Comercial* (Luanda); *Rádio 2000* (Lubango); *Rádio Morena* (Benguela) and *Rádio Comercial* (Cabinda). Unita's *Rádio Voz do Galo Negro* (Voice of the Black Rooster), unauthorised during the civil war was then authorised but again declared illegal as soon as the war resumed in October 1992.

[9] Currently there are over 120 registered NGOs operating in the country, of which approximately 45 are Angolan.

[10] E.g., Folha 8, Actual Fax, Agora, Comércio & Actualidade, O Independente and Angolense, joining Imparcial Fax, which has existed since 1991; see, Vidal, N. 2005, "Country profile Angola", in An Assessment of Human Rights Defender Initiatives in Southern Africa, eds. Motala, A., Vidal, N., Pigou, P. & Govender, V., Netherlands Institute for Southern Africa – Niza, Amsterdam, pp.47-62.

[11] See, Vidal, N. 2006, "Multipartidarismo em Angola", in O processo de transição para o multipartidarismo em Angola, ed. N. Vidal & J. Pinto de Andrade, Firmamento, Luanda & Lisbon, pp.11-57.

[12] For more information about this foundation and the regime's investment in civil society see Messiant, C. 1999, 'La Fondation Eduardo dos Santos (FESA): autour de l'investissement de la société civile par le pouvoir angolais', in Politique Africaine, 73, pp.82-101.

[13] See Amnesty International 1999, Angola, freedom of expression under threat, Index AFR 12/016/1999, November 1 [Online] also Amnesty International 2000, Angola: unfair trial of Rafael Marques, AI: March 31 [Online]. Both available at: http://web.amnesty.org/library/index/ENGAFR120161999.

[14] From private interviews with the author by all the opposition leaders dealing with internal factions.

[15] In the late 90s, a myriad projects and initiatives for peace emerged between Churches and CSOs: the Pro Pace movement; the Angolan Group Reflecting on Peace (GARP); the Programme for Peace Building (PCP); and a number of others. For a detailed analysis of these initiatives, see Comerford, M. 2005, O Rosto Pac'fico de Angola, Author´s edition, Luanda, especially the end of chapter 2 and chapter 4.

[16] The recruitment campaign has been particularly active in the capital city,

central highlands and South-East – Huambo, Bié, Moxico, Cuando-Cubango – traditionally seen as Unita´s stronghold. Party membership is currently around 2-million compared to 998,199 in 1998.

[17] See Jornal de Angola, 2005, December 10, pp.8-9; also the book published by the Ministry of Territorial Administration on the First National Conference on Angolan Traditional Authorities and supported by the President: Ministério da Administração do Território – MAT (2004), 1º Encontro Nacional Sobre a Autoridade Tradicional em Angola, MAT, Luanda.

[18] Chinese loans are estimated at US$4 billion and were made available at lower interest rates and over a longer term than the loans made available by international financial institutions. One must also take into account that Angolan oil revenues for 2005 were around $6.88 billion with prices at record highs. The official characterisation of these loans by the Ministry of Finance is available at [www.minfin.gv.ao/]. See also Miranda, A. 2004, Angola 2003/2004, Waiting for Elections, Michelsen Institute, Norway, p.18; also Global Witness Press Release 2005, September 23, Western banks to give huge new loan to Angola in further blow to transparency.

[19] See Eduardo dos Santos' statements at the Central Committee meeting on 27 January 2006; in Jornal de Angola, 2006, January 28; also reported by the BBC, 2006, January 28. In some cases this strategy might be counter-productive, i.e. several urbanisation plans have resulted in forced and violent evictions of thousands of families, spreading discontent among a significant part of the urban population. The author was able to visit some of the evicted communities (Kilamba Kiaxi and Viana Km25) and interviewed its members in November 2005 and May 2006. The living conditions of these people are inhuman (c.f. infra).

[20] Statements of Alves da Rocha, an economist involved with several international projects working with the Ministry of Planning and Professor at the Angolan Catholic University, produced in Luanda on August 23, 2006, during a seminar on "The Angolan private sector and the challenges of globalization"; see Jornal de Angola, August 24, 2006.

[21] For now the opposition seems to have managed to postpone the approval of a new constitution in the new legislature, but that might not be a victory if the MPLA achieves its aims of obtaining 2/3 of the seats in the new parliament.

[22] The majority party and the president have directly or indirectly appointed 8 out of 11 members of the National Electoral Council, also assuring a majority in the provincial, municipal and communal electoral commissions; Compare electoral law approved by the National Assembly, Law 6/05, DR, I, 95 (August 10, 2005), with Council of Ministers Decree 63/05, DR, I, 111 (September 16, 2005) and Council of Ministers Decree 62/05, DR, I, 107 (September 7, 2005). See also the statements produced by Unita's Secretary for Information, Adalberto da Costa Júnior, in a press conference in Luanda on December 7, 2005, under the title Alert on the legitimacy and dangers of the electoral process.

[23] See forthcoming, Vidal, N., 'The Angolan Regime and the Move to Multiparty Politics', in Chabal, P. & Vidal, N. (eds), Angola: the weight of history, Hurst & Co. & Indiana University Press, London & Bloomington Indiana.

[24] A new press law was approved in February 2006, abolishing the State monopoly over television broadcasting, but based on the example of commercial radio stations in 1992, one should not expect politically independent television channels.

[25] Human Rights Watch Report 2004, Unfinished democracy: media and political freedoms in Angola, HRW, Washington.

[26] João Paulo N'Ganga, former chief editor of the newspaper *Folha 8*, N´Ganga, J. P. 2006, "Meios de comunicação social e a democracia em Angola", in ed. Vidal, N. & Pinto de Andrade, J., O processo de transição para o multipartidarismo em Angola, Firmamento, Luanda & Lisbon, pp. 218-219, p.221.

[27] See alerts issued by Misa (Media Institute of Southern Africa), February 23, 2005, "Director of Government News Agency threatens to shoot journalist".

[28] The minister alleged that Rádio Ecclesia had illegally recorded the statements of a regional police commander of Cazenga, superintendent Domingos Fernandes, on the release of 3.000 detainees and its possible negative impact on criminality. The commander spoke during a municipal administration meeting to which Rádio Ecclesia and several other media were invited and allowed to cover. The minister proffered such absurd threats during an interview to the National Radio on July 22, 2006. On this issue see Angonot'cias, July 24, 2006, "Hipótese de indiciar Eclesia de espionagem contra a segurança do Estado", available online at: [www.angonoticias.com]

[29] Statements of Cornélio Bento to the Voice of America; see Voice of America – Vision Angola, August 16, 2006; available at [http://www.voanews.com/portuguese/]

[30] Cit. in Reporters san Frontières, July 18, 2006, Tuesday. The two journalists are Benicio Wedeinge, the Director of Televisao Publica de Angola in the southern province of Cunene – killed on 16 July 2006 – and Augusto Pedro, the correspondent of Jornal de Angola in the western province of Bengo – killed on 8 July 2006.

[31] One of the most recent and clarifying examples is the Supreme Court decision of July 22, 2005, which ruled that President Dos Santos' period in office from 1992 did not constitute a presidential term, in order to circumvent the constitutional provision that limits presidential terms to three five-year terms. If this period was considered to be a presidential term, his overall period of administration – since the first presidential elections in 1992 – would count as three five-year presidential terms (1992-2007) and would prevent him from running for office again.

[32] See Marques, L. P. M., 2004, Labirinto do sistema judicial angolano, notas para a sua compreensão, Author´s edition, Luanda, especially part II.

[33] Eurico, Jorge, 2006, "A sociedade civil e a democracia participativa em Angola", in O processo de transição para o multipartidarismo em Angola, eds. Vidal, N. & Pinto de Andrade, J., Firmamento, Luanda & Lisbon, pp. 226-227; Jorge Eurico is a member of the Association of Justice, Peace and Democracy (AJPD) and also a journalist; c.f. infra.

[34] On this subject see forthcoming Hodges, Tony, 2007, "The Economic Foundations of the Patrimonial State", in Chabal, P. & Vidal, N. (eds), Angola:

the weight of history, Hurst & Co. & Indiana University Press, London & Bloomington Indiana.

[35] See Vieira Lopes, F. 2006, "Gestão do poder e desevolvimento em Angola", in eds. Vidal, N. & Pinto de Andrade, J., O processo de transição ...op. cit., pp.169-174; Ferreira, M. E., 1995, 'La reconversion économique de la nomenklature pétrolière', in Politique Africaine, 57, pp.11-26; Aguilar, R. 2003, "Angola's private sector : rents, distribution and oligarchy", in African Development Perspectives, eds. Wohlmuth, K., Gutowski, A., Knedlick, T., Meyn, M. & Pitamber, S., Lit Verlag, Germany; Aguilar, R. 2005, Angola: getting off the hook, SIDA & Gothenburg University, Gothenburg, especially pp. 13-18.

[36] On this issue see "Angolan cease fire agreement signed, but questions remain" in Global Insight, July 19, 2006.

[37] See the statement of Dan Mozena (Director, Office of Southern African Affairs) before the House International Relations Sub-committee on Africa, Global Human Rights & International Operations, July 20, 2006, in US State department press release, July 21, 2006, Angola´s long delayed elections.

[38] See Independent Task Force Report to the Council on Foreign Relations, 2005, More than humanitarianism: a strategic US approach towards Africa, Council on Foreign Relations, New York, especially pp. 32-33, 49-50; also Aguilar, R., 2005, Angola: getting off … op. cit., especially pp. 2, 13-18.

[39] See the statement of Dan Mozena (Director, Office of Southern African Affairs) before the House International Relations Sub-committee on Africa, Global Human Rights & International Operations, July 20, 2006, in a US State department press release, July 21, 2006, Angola´s long delayed elections.

[40] Statements of Elias Isaac to Voice of America – Vision Angola, August 17, 2006; available at [http://www.voanews.com/portuguese/]

[41] Statements of Alcides Sakala to Voice of America – Vision Angola, August 15, 2006; available at [http://www.voanews.com/portuguese/]

[42] Political parties represented in the parliament receive US$10 per vote obtained in the 1992 election, which totals at around US$14-million for Unita per year, and sums that vary between US$100,000 and US$900,000 for the rest of the opposition parties – the majority situated within the US$100,000 and US$200,000 range. The MPLA receives circa $21.5-million. For the exact number of votes obtained by each party in the 1992 elections see, Marques, Sofia 1993, Angola: da Guerra à Democracia, Edipress, Luanda, p. 43.

[43] Without much success, Unita's leader, Isaias Samakuva, has been trying to replace some of his government and parliamentary representatives occupying such positions since the days of Unita-Renovada (Renewed Unita; MPLA sponsored; c.f. supra).

[44] A Unita property was burned and members threatened. The author was able to visit the place and talk to Unita's representatives in Luwemba in the Huambo province in September 2004.

[45] Unita's members in Mavinga in the Cuando Cubango province were beaten and threatened.

[46] Unita´s representative in Chongoroi in the Benguela province was murdered.

47 M'Fulupinga presided over the party and was a Professor of mathematics (Faculty of Economics – Agostinho Neto University). Although he was born in Angola during the colonial period, he grew up in former Zaire and then returned to Angola like so many people in the North of the country, usually referred to as *Bakongo retornados* (returnees from the Bakongo). It must also be noted that members of M'Fulupinga's party are particularly persecuted in the North and East of the country and discriminated against outside their provinces of origin (U'ge and Zaire). They often complain about abuses committed by the police such as beatings, extortion, illegal arrests, confiscation of documents, being denied access to the formal labour market, etc. Complaints were presented to the author and sustained by several legal documents in Malange in September 2004.

48 See Independent Task Force Report to the Council on Foreign Relations, 2005, More than humanitarianism: a strategic US approach toward Africa, Council on Foreign Relations, New York, especially pp. 32-33, 49-50; also Aguilar, R., 2005, Angola: getting off …op. cit., especially pp. 2, 13-18.

49 The author was able to participate in the "Angola Petroleum Revenue Management Workshop" that took place in Luanda at the Ministry of Finance (May, 18-19, 2006), attended by government representatives, oil companies, foreign consultants and civil society members. The author was therefore in a position to observe the careful selection of civil society representatives in a complex process conducted by the World Bank and the Ministry of Finance. The concluding statement presented by the World Bank representative was very cautious and diplomatic and included some comments made by civil society representatives, but it was immediately and publicly rejected by the Deputy Minister of Finance who disagreed with the contents and demanded changes to the text before publication. A meeting of civil society representatives a few days later (also attended by the author) was unanimous in considering their presence at the meeting as mainly cosmetic and serving the government's internal and external purpose of claiming that civil society representatives had been present and had been heard.

50 The level of entrenchment of political patronage within the party-state structures can be clearly perceived in an interview with the Angolan Ambassador to Brazil, Alberto Correia Neto, in which he assumes that part of the Angolan State funds are managed outside of the financial system and in which he accepts that bribery (co-option) of political opponents is natural and normal practice; In O Globo November 21, 2005. See also the accusations of Cláudio Silva, member of the National Electoral Commission (proposed by Unita), to the Voice Of America and BBC on the 12th October 2005; also McMillan, J., 2005, The main institution in the country is corruption: creating transparency in Angola, Center on democracy, development and the rule of law – Stanford Institute of International Studies, Stanford.

51 Human Rights Watch Report January 2004, Some transparency, no accountability, the use of oil revenue in Angola and its impact on Human rights, vol. 16, no. 1, especially pp. 76-77; also, Miranda, A., Angola 2003/2004, …op.cit…, especially pp.25-26.

52 See forthcoming, Chabal, P. & Vidal, N. (eds), 2007, Angola: the weight of

history, Hurst & Co. & Indiana University Press, London & Bloomington Indiana.

53 See forthcoming, Vidal, N. 2007, "Social neglect and the Emergence of Civil Society" in Chabal, P. & Vidal, N. (eds), op. cit.

54 Pacheco, F. 2006, "Sociedade civil e a construção da democracia em Angola" in O processo de transição para o multipartidarismo em Angola, eds. Vidal, N. & Pinto de Andrade, J., Firmamento, Luanda & Lisbon, p.215.

55 Messiant, C., 2006, "Transição para o multipartidarismo sem transição para a democracia", in O processo de transição para o multipartidarismo em Angola, eds. Vidal, N. & Pinto de Andrade, J., Firmamento, Luanda & Lisbon, pp. 131-161; also forthcoming, Messiant, C., 2007, 'The Mutation of Hegemonic Domination', in Chabal, P. & Vidal, N. (eds), Angola: the weight of history, Hurst & Co. & Indiana University Press, London & Bloomington Indiana.

56 In Eurico, Jorge, 2006, "A sociedade civil e a democracia participativa em Angola", in O processo de transição para o multipartidarismo em Angola, eds. Vidal, N. & Pinto de Andrade, J., Firmamento, Luanda & Lisbon, p. 224.

57 There are very few exceptions to this general rule; see Vidal, N. 2005, "Country profile Angola", ...op. cit., pp. 47-62.

58 Short-term and project-driven involvement of donors and preferential relationships with certain partners fragmented rather than unified Angolan CSOs.

59 Pacheco, F. 2006, "Sociedade civil e a construção da democracia em Angola" in O processo de transição para o multipartidarismo em Angola, eds. Vidal, N. & Pinto de Andrade, J., Firmamento, Luanda & Lisbon, p.214.

60 Médecins Sans Frontières Report November 9, 2000, Angola: as aparências de 'normalização' escondem graves cenas de guerra, MSF, Luanda; also Diário de Not'cias (November 12, 2000) and Público (April 27, 2000).

61 Global Witness Report, December 1999, 'A Crude Awakening: the role of the oil and banking industries in Angola's civil war and the plunder of the state assets', GW, London; also Global Witness Report March 2002, All the Presidents' men, GW, London; also Global Witness Report December 1998, A Rough Trade: the role of Companies and Governments in the Angolan Conflict, GW, London. Editions online at [www.globalwitness.org/cgi-bin/search.cgi?m=phrase&np=2&ps=10&q=angola].

62 From private interviews with provincial representatives of these two organisations in 2005 and 2006. On this subject see also forthcoming, Vidal, N. 2007, "Social neglect ... op. cit.

63 See, Vidal, N. 2005, "Country profile Angola"...op. cit. pp.47-62; Jilani, H., February 21, 2005, Promotion and protection of Human Rights, Human Rights Defenders, a report submitted by the special representative of the UN Secretary General on the situation of Human Rights Defenders, Mission to Angola; United Nations, New York; Comerford, M., 2005, O Rosto Pac'fico ...op. cit., especially chp.4; forthcoming, Vidal, N. 2007, "Social neglect ...op. cit.

64 Both Mãos Livres and AJPD were created in 2002, strongly backed by foreign partners – AJPD supported by the Open Society Initiative of Southern Africa (Osisa) and Mãos Livres by the UN Human Rights Department. SOS-Habitat was created in 2002, as a genuine grassroots organisation in the outskirts of

Luanda. Mpalabanda was created in 2003 to oppose human rights violations in Cabinda.

[65] In Eurico, Jorge, 2006, "A sociedade civil e a democracia participativa em Angola", in O processo de transição para o multipartidarismo em Angola, eds. Vidal, N. & Pinto de Andrade, J., Firmamento, Luanda & Lisbon, p.227; see also, AJPD's most recent report, Associação Justiça Paz e Democracia, November 2005, Relatório de Direitos Humanos, um olhar sobre o sistema penal angolano, Agosto de 2000-Outubro de 2004, AJPD, Luanda.

[66] US Department of State, 31 March 2003, Angola. Country Reports on Human Rights Practices - 2002, Bureau of Democracy, Human Rights and Labor, State Department, Washington DC.

[67] Amnesty International 2003, Mass Forced Evictions in Luanda – A Call for a Human Rights-Based Housing Policy, AI, London.

[68] Some of the most recent events occurred in the community of Mulevos in June 2006; the author was able to visit some of the evicted communities (in Kilamba Kiaxi – Cambamba 1 and 2, and Viana – Km25) and interview its members in November 2005 and May 2006. Living conditions of these people are inhuman, without water and sleeping under plastic and all kinds of debris recovered from their demolished homes (c.f.. Supra). See also Amnesty International January 25th 2006, Angola: Forced eviction, use of excessive force, AI reference: AFR 12/001/2006; also Amnesty International December 2, 2005, AFR 12/005/2005. Editions available online at [http://web.amnesty.org].

[69] See statements of Lu's Araújo in Angonoticias, August 18, 2006; available online at [www.angonoticias.com].

[70] See Mpalabanda reports on the human rights situation in Cabinda: 1st report, Mpalabanda Associação C'vica de Cabinda, 2002, Terror em Cabinda, Mpalabanda, Luanda; 2nd report, Mpalabanda Associação C'vica de Cabinda, 2003, Cabinda um ano de dor, Mpalabanda, Luanda; 3rd report, Mpalabanda Associação C'vica de Cabinda 2004, Cabinda o reino da impunidade, Mpalabanda, Luanda; also Amnesty International, December 2002, Arbitrary detention/Fear for safety/Fear of torture/Incommunicado detention, Ref.:AI, 133/2002; available online at: [http://www.amnesty.org/]

[71] This day commemorates the signature of the Simulambuco Treaty on January 22, 1885, whereby the African princes and governors of Cabinda requested to become a Portuguese protectorate and the Portuguese guaranteed the maintenance of the territorial integrity of Cabinda and the respect for the cultural traditions of its people. This treaty is commonly mentioned to support the arguments of all those sustaining the independence of Cabinda in relation to Angola. For a deeper discussion of such arguments see 1977, A Independência de Cabinda, Lisbon, 1977 (name of the author not provided).

[72] Angonoticias, October 10, 2006: Actos de Vandalismo na Igreja Católica em Cabinda, Preocupa Diocese; available online at [http://www.angonoticias.com/full_headlines.php?id=11797].

[73] Amnesty International, August 4, 2006, Angola: Human Rights Organization Banned, Ref AI Index: AFR 12/006/2006; available online at: [http://www.amnesty.org/].

74 See Vidal, N., "Multipartidarismo em Angola", …op. cit., pp.11-57.

75 See the arguments published by Marques, R., July 16, 2005, "Os povos da linha da frente", in Semanário A capital.

76 Independent Task Force Report to the Council on Foreign Relations, 2005, More than humanitarianism…op. cit., especially pp. 32-33, 49-50; also Aguilar, R., 2005, Angola: getting off…op. cit., especially pp. 13-18; Miranda, A., 2004, Angola 2003/2004... op. cit.; also forthcoming, Chabal, P. 2007 'E Pluribus Unum: transitions in Angola', in Chabal, P. & Vidal, N. (eds) Angola: the weight of history, Hurst & Co. & Indiana University Press, London & Bloomington Indiana.; also Chabal, P., 2006, 'Prefácio' in Vidal, N. & Pinto de Andrade, J. (eds), O processo de transição para o multipartidarismo em Angola, Firmamento, Luanda & Lisboa, pp.xvii-xxxviii.

77 Lu's Araújo, coordinator of SOS-Habitat; from a private interview with the author in Lisbon, August 14, 2006.

78 On the idea of a Regional Observatory for Human Rights see Motala, A., Vidal, N., Pigou, P. & Govender, V., 2005, An Assessment of Human Rights Defender initiatives in Southern Africa, Netherlands Institute for Southern Africa – Niza, Amsterdam.

DEMOCRATIC REPUBLIC
OF THE CONGO

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Elections in the Congo: Ending the War and Legitimising Warlords

By Meike J. de Goede

On 30 July 2006 the Congolese went to the ballot box to cast their votes under a multi-party system for the first time in 41 years. The run up to the election was characterised by general unrest and fear, ongoing conflict in some parts of the country, popular discontent and a constant threat of spoilers. The immediate aftermath erupted in fighting between armed groups supporting two of the candidates. The first part of this article provides an analysis of the political context in which the presidential, legislative and provincial elections of July and October 2006 were held and focuses on the significance and role of these elections for the process of building peace in the DRC.

Historical background

Shortly after Laurent-Désiré Kabila overthrew the Mobutu regime (May 1997), his movement broke apart and a new rebellion began in August 1998. Within a short period of time the second Congolese war had become a complex patchwork of armed rebellions and foreign armies roaming around the Congo pursuing national and private interests, while the Congo was sinking into an ever increasing socio-economic and human crisis. During the war the elites of the warring parties maintained a privatised system of power and exploitation based on armed capacity, thereby filling the vacuum of power and security left by the failed state. Three main systems of power and exploitation, labelled elite networks by the UN, existed during the war and are now key players in the political arena: the *Mouvement pour la Libération du Congo* (MLC) led by Vice-President Jean-Pierre Bemba, the *Rassemblement Congolais pour la Démocratie* (RCD-Goma) led by Vice-President Azarias Ruberwa and the *Parti du Peuple pour la Reconstruction et la Démocratie* (PPRD) led by President Joseph Kabila. All three groups – respectively aligned with local and international businessmen and the political and military leaderships of neighbouring countries (most notably Rwanda, Uganda, Angola, Zimbabwe) – massively plundered the riches of the Congo (S/2003/1027). The case of the Congolese war and its elite networks is one of the best examples of people "doing well out of war" (Collier: 2000).

In 2002 a peace agreement was signed between the belligerent leaders who joined together in a transitional government. The core objectives of the transitional period that followed were to enhance peace, security and stability in the country, in order to provide a platform for a process of democratisation, including elections.

The peace of the Congolese warlords

The peace in the DRC is a warlords' peace. As such, attempts are made to end conflict by appeasing the power and profit seeking leaders of the warring parties (warlords) by providing them with incentives such as granting them political power, a stake in the peace process and the termination of war (Adebajo 2002: 622; Tull & Mehler 2004: 376). A warlord is a predatory leader that exercises power through intimidation, violence and exploitation of natural resources and

people, supported by armed force. Although Joseph Kabila, as the President during and after the war, is not a classic warlord, the term warlord applies to him and his inner circle in the same way that it applies to the other *seigneurs du guerre* (men of war). It refers more to a style of leadership and violent predatory politics than to his background. The termination of war was literally bought from the Congolese warring parties. The message of the international community that mediated the peace agreement was straightforward: "stop fighting, join the transitional government and fill your pockets."[1]

Buying peace from predatory warlords has a price. A warlords' peace is a very fragile basis for self-sustaining peace. Appeasing warlords by offering them political power and stakes may be a strategy to end the conflict, but warlords will not automatically become democratisers and developers of the state. Using political power – and its spoils – as a bargaining chip to seduce belligerents into ending a war provides incentives to former and potential belligerents to use military means (either for actually starting a war or merely by threatening it) as a powerful lever to gain or maintain state power – thereby reproducing conflict instead of ending it. A warlords' peace is therefore a very problematic form of power sharing. It rewards violence and places opportunistic, predatory, calculating and armed leaders in a position in which they can manipulate and abuse their position for predation. Rather than having a stake in the new state, they have a personal stake in state power.

Elections as an instrument

Elections are often perceived only as a means of installing a legitimate government and to bring about democracy. However, the role of elections is more diverse (Lyons: 2002). In the Congo, elections are the key instrument in pursuing the objectives of enhancing peace, security and stability: firstly by improving the enabling environment for peace building and democratisation; secondly by launching a process of democratisation; and thirdly by installing a more legitimate government than the current regime of political leaders that won power through the bullet instead of the ballot. Elections would also function as an exit strategy for the international community and the start of international cooperation with the DRC on the level of reconstruction and nation building.

In post-conflict societies, elections should be valued as an instrument rather than as a benchmark for the quality of democracy. In failed states it is not very relevant to measure the success of post-settlement elections by Western standards of democracy. It would be more meaningful to evaluate the process in the light of an attempt to move from war to peace in an uncooperative environment and the establishment of a government with reasonable (local and international) legitimacy. If the primary objective of an election is to bring about the termination of war it must be seen as an attempt to create an enabling environment in which the absence of war functions as a precondition for further democratisation with the help of the international community.

Quick elections for the termination of war and the installation of a legitimate government

In the DRC the choice was made for a model of quick elections (within three years of the peace agreement) after minimal creation and development of

institutions that characterise and support democracy. A long-term process of institutionalisation before elections was unlikely to work. The regime composed of the former warring groups was considered to be illegitimate because it was based on armed capacity and war rather than on the will of the people. From the outset it was also clear that the new political leadership would be unwilling to implement a process of institutionalisation and democratisation. "The Congolese leaders are not interested in the building of a new state."[2] The consequence of democratisation for those in power is that many will lose their profitable positions of power and revenues. "In the DRC, those who need democracy do not know what it is. Those who know what it is do not want it since it brings with it responsibility, accountability and transparency. As such, it undermines the very root of their power, position and profits."[3] It was realised that the peace agreement was not a guarantee or commitment to peace and that the predatory politicians were more interested in self-enrichment than social, political and economic change in their country. Elections therefore needed to be organised within a limited period of time to prevent a relapse into war and to install a more legitimate regime.

At the same time it was also recognised that despite the peace agreement, the presence of several armed groups would pose a serious threat to the political transition and the elections. A process of security sector reform (SSR) was therefore introduced as the main tool to enhance peace, security and stability. In order to reduce the number of armed people and to unite them into one army, former combatants were to be disarmed, demobilised and reintegrated (DDR) into civilian life or reinserted into the new national army. In the mean time the UN mission (Monuc) was brought in for immediate peacekeeping duties in the post-war phase. A minimum degree of SSR and DDR were therefore a precondition for the elections to increase its potential for success and to manage spoilers by reducing their capacity for war.

Elections in the post-conflict context: weak institutions, militarised and predatory politics

Since the enabling environment for these elections are less than conducive, it might be too much to expect that these elections will result in a process of democratisation. There was a strong argument for postponing the elections until conditions were more favourable by first focusing on the building of democratic institutions, the demobilisation of various armies and the consolidation of a new national army, to increase the likelihood of a positive outcome of the elections and prospects for democratisation. These may have reduced the chances of a return to violent conflict. On the other hand, because the aim of these elections are the termination of war, postponing the elections until conditions are more conducive for democratisation, may mean that the opportunity to terminate the war could be missed. It was therefore uncertain whether a longer period of preparing for the election would have enhanced the chances of success, rather than the chance of failure and renewed warfare (Lyons 2002: 219).

Holding elections in post-conflict states are risky – elections have triggered new conflicts. The best example is Angola (1992), where after losing the elections the National Union for the Total Independence of Angola (Unita) went straight back to war. The Congo faces the same threat and the response to the results of

the first round of the presidential elections indeed showed that some candidates responded violently. The threat of violence triggered by elections is caused firstly by the fact that – typical for failed states – the Congo is weak in socio-economic and political institutions that are able to manage societal, political and economic tensions and conflicts as a result of elections (Paris 2001: 775).

Secondly, the spoils of political power, which can be lost through these elections, introduce very high stakes for those that currently enjoy positions of power. By including the warlords in the transitional government, the political economy of the armed Congolese elite networks was incorporated into state governance. The political economy of the warlords' peace in the Congo is characterised by a privatised, self-enforcing system in which military power has been used as the means for acquiring political power.

They were brought into government by virtue of their military strength. Political power, in turn, is the means to exploitation and self-enrichment, and these financial gains in turn maintain the armed capacity of these elites. The rationale for peace is disturbingly similar to the way in which the elite networks operated during the war. If they lose their positions in government as an outcome of these elections, the real threat exists that some of them may opt to return to war.

Studies show that after the war and the inclusion of the warlords in the transitional government, natural resource exploitation in the DRC remained as privatised as ever (Johnson and Tegera 2005; Fatal Transactions 2006; Lutundula Commission 2005). This applies to all formerly warring factions. While during the war the struggle for the wealth of natural resources was fought on the ground through winning military control over mining areas, and secondly through control over relevant institutions to sell contracts and concessions, the latter institutional aspect has become more and more important during the transitional period. The military-political movements in the transitional government are trying to acquire and maintain possession of profitable positions in governmental institutions that provide access to the grey area between politics and business. Since the installation of the transitional governance structures, political and military players have been using their newly found legitimacy to strengthen their own economic activities and the consequence is that "diamonds remain bloody" (Johnson and Tegera 2005: 5-11; quote on p. 9).

Thirdly, as a post-conflict state, the DRC has a militarised rather than a democratic political culture and in this context the responses to tensions and unfavourable election results are likely to be violent (De Goede: 2006, 33-35). Political competition through elections in a militarised political context is unlikely to enhance democracy, because the elections are subject to violence, actual and threatened, increasing the legacy of fear and intimidation. Under such conditions voters are unable to make free choices based on the capacity and vision of the electoral candidates. They rather opt for the candidate that most credibly promises to protect that voter's community against attack or the (militarily) most powerful candidate, thereby attempting to please him in order to prevent a renewed conflict (Lyons 2005: 61).

This context explains why leaders with an unbelievably bad human rights record are often massively elected in post-war elections, and why such elections have been declared as free and fair by international observer missions. In Liberia's

1997 elections voters chose between voting for a warlord that had the power to make the result stick, or a civilian, thereby running the risk that the defeated warlord would restart the war (Economist: 1997, 40). In post-conflict elections in which warlords pursue state power, voting for peace may mean voting for a warlord. In the Congo, however, no former rebel leader or movement has so directly threatened a return to war as Charles Taylor did in Liberia in 1997. Nevertheless, the same mechanism influences voting behaviour in the DRC. In the words of a PPRD spokesman, 'in this country people are not used to losing – *pas sportivement*[4]. An often made assessment for the second round of presidential elections in the Congo was thus not so much who would be the best winner, but who would be the least-worst loser. By way of illustration, fighting erupted between the presidential guard of Joseph Kabila (GSSP) and Jean Pierre Bemba's bodyguards in response to the results of the first round of presidential elections. The knowledge that all former warring parties maintain armed capacity and can potentially cause trouble, turns armed capacity into a strong bargaining chip for those seeking access to political power.

In short, the political context in which these elections are taking place is dominated by predatory politicians pursuing political survival in order to maintain profitable positions of power. This situation enables shameless exploitation, self-enrichment and theft from the Congolese state as well as from international donors. These elites have come to power through military means and for their political survival they continued to rely on military means, through private armies who are extremely loyal to them (e.g. Bemba's body guards and Kabila's presidential guards) and through maintaining ties of loyalty with the troops of the *Forces Armées de la République Démocratique du Congo* (FARDC). Institutions are weak, and the actors in the public sphere, such as civil society, media and political parties, lack the necessary capacity to sufficiently open up and use the public sphere as a means to encounter the politics of power of the political elite.

The significance of the post-war elections in the Congo
The militarised and predatory socio-political context in which the elections took place limits the opportunity of using elections as a tool to launch a democratisation process. The challenge of making the war-to-peace process work was to implement several elements of the agenda at the same time, in a balanced, integrative and mutually re-enforcing way. This includes the installation of governance structures that would lead to a new political order, the formation of a national, restructured and integrated army and holding elections as a step towards a new democratic order. The integration of these three approaches did not succeed. In fact, the three elements constrained each other and frequently produced the opposite of the desired result. The newly installed governance structures became a platform of conflict which fed the dilemma of political survival and stimulated the process of politicising the armed forces in the run up to the elections (De Goede: 2006, 45). Sufficient achievements in the DDR and SSR processes were initially posited as a pre-condition for elections, but this sequence could not be upheld because the DDR and SSR processes were too problematic and the international community was unwilling to postpone the elections until a sufficient degree of security sector reform had been achieved.

It should be acknowledged that a transitional process is not static, but rather a process in motion. Objectives, strategies and priorities may and can change during the transitional process in response to a changing context of failures and successes, and in the face of hard realities on the ground.

In these terms, what occurred with regards to the transitional model of the Congo, is that while at the outset the objective was to hold credible elections as the founding elections for a process of democratisation, which would establish new and legitimate leadership, it is now generally accepted that these elections will not be a starting point for qualitative democratisation, and nor will the elections establish a legitimate government. Rather, the elections may end up legitimising those that have managed to 'shoot themselves into political power' – reaffirming that weapons are a means to acquiring power.

The focus has shifted from having free and credible elections, to maintaining post-ballot security, by negotiating for pre-electoral agreements for post-ballot power sharing, the instalment of a new government of national unity (GNU) and the acceptance of the election result by all parties. Consequently, the notion of elections as an exit strategy for the international community has diminished as well. The strategy used in the Congo, to invite predatory warlords into a government in order to end the war, allowed them to exploit their positions of power. Initially, predatory behaviour by the warlords was accepted as the price of peace. The hope that slowly but surely things would improve and that corruption and predation could be reduced seems not to have been realised so far. This strategy has merely reinforced the logic of the warlords and their criminalised politics. It has accentuated the significance of military capacity and the acceptance of predation. Elections will not be an end to the crisis, political instability and conflict in the DRC.

At the time of writing (October 2006), the Congo is preparing for the second round of presidential elections. The new president will lead a difficult process of democratisation and reconstruction of the country. Unfortunately, expectations of delivery in this regard are not very high in respect of either Bemba or Kabila . No matter which of the two wins, the elections in the DRC will legitimise a warlord. For the stability of the country, the best we can hope for is that the least-worst loser wins. This is indeed a very limited result of the transition and electoral process. Nevertheless, peace and stability is the primary pre-condition for a democratisation process. If the post-election phase remains stable and potential spoilers stay quiet, elections will at least have achieved an end to the war. After this it will be up to the Congolese, with the support of the international community, to demand accountability, transparency and participation in changing the system of predatory, criminalised and violent politics into a democracy.

Notes

1   Statement by a Monuc representative, interview in Kinshasa, April 2006
2   Statement by a former ambassador in Kinshasa, interview in Johannesburg, March 2006
3   Statement by Col. B. Barnwell, Conseiller Militaire EUSEC, interview in Kinshasa, May 2006
4   Statement by a PPRD representative, interview in Kinshasa, May 2006

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The Role of Congolese Civil Society in the Electoral Context

by Baudouin Hamuli Kabarhuza

Introduction

The Democratic Republic of the Congo has been involved in a democratisation process since the early 1990s. Unfortunately progress has not been easy. The Mobutu regime successfully managed to slow down change by means of ingenious subterfuges. Over the past 15 years and despite bloody wars, civil society, the media, political parties and the Congolese people continued the struggle and would not surrender their quest for democracy.

The Ceasefire Agreement signed in Lusaka in 1999 not only brought a halt to the hostilities but enshrined the principle of inclusive participation during a transitional period that would culminate in democratic elections. On 30 July 2006, the entire country participated in the Congo's first free and fair democratic elections of the last four decades.

These elections – not yet concluded at the time of writing – constitute a crucial step in the democratisation process, as they will allow the Democratic Republic of the Congo (DRC) to put a stop to the unending issue of "legitimacy of power". For the first time in its history, the DRC will have institutions and leaders chosen by its people, despite the fact that the population has not yet fully embraced the present electoral process.

Aware of this situation, the Congolese civil society initiated national projects dealing with civic and electoral awareness and training and education to try and ensure the greatest possible public participation. This was achieved through the People's Referendum on 18 and 19 December 2005, which demonstrated the Congolese people's determination to take part in the elections by ensuring that they obtained a voter registration card. As a result, 25,021,703 Congolese citizens received their voter registration cards and were placed on the voters' roll. Previously the number of voters had been estimated at just over 20-million. The Congolese also expressed their opinion about the draft constitution during the People's Referendum. Despite a few organisational problems, 12,461,000 citizens (84.31%) voted in favour of the constitution and only 15.69% of the voters opposed it. However, this first test of the readiness of the Congolese people to express themselves by means of a vote, also highlighted the lack of political maturity in the country resulting from the quasi lack of debate between the political leaders and the people.

The population is currently preparing to vote in the second round of the presidential election that will decide which of the two candidates still in contention, President Joseph Kabila and Vice-President Jean-Pierre Bemba, will win. In this round of voting, to take place on 29 October 2006 according to the electoral timetable published by the Independent Electoral Commission (IEC), the population will also elect their provincial assemblies.

The distressing outbreaks of violence that took place in Kinshasa from 20-22 August 2006, following the first round of the presidential election (and election of members of the national assembly), which resulted in human casualties and

the destruction of public and private assets, can only be seen as a stark reminder of the importance of constructive dialogue and of the principles of tolerance and general acceptance of election results.

Fortunately, the DRC has the support of many international groups including the Mission of the United Nations (Monuc), the European Mission with its specific role of ensuring safe elections (EUFOR), the *Comité International d'Accompagnement de la Transition* (CIAT) and the International Commission of the Elders. In such an embracing international context, it is hoped that both sides will respect the rules. Furthermore, all civil society organisations (CSOs) are working really hard to increase their actions and their peace and electoral awareness campaigns.

The role of civil society prior to the elections

Civil society played a remarkable role during the Sovereign National Conference (CNS) of 1991-1993. As a result of its forceful lobbying for political reform, the president of the CNS as well as the prime minister of the country – an opposition leader to the dictator, Mobutu – rose from within its ranks. Alas, the grip of the dictatorial regime did not allow the desired changes to take place. The CNS was dissolved and the transitional government was never allowed to govern, which considerably retarded the birth of democracy in the country.

During the time of the CNS, civil society organised the "March of the Christians" in Kinshasa in February 1992. The objective was to ensure that the CNS would be allowed to resume work following its suspension by the Mobutu regime. In spite of the loss of lives, the event was instrumental in the reopening of the Conference – a forum that carried the hopes of a long-suffering and impoverished nation. It was a great victory for civil society and still serves as an inspiration to the various social movements in the country. Civil society was convinced that a constitutional state could be achieved through the daily but collective effort of all the people. Various techniques were employed: marches, widespread actions, total work stoppages (the concept of *villes mortes*), public meetings, awareness meetings in suburbs and in general showing a visible and public political stance in favour of democracy.

Civil society has always denounced human rights violations in spite of the ill treatment meted out against their supporters: threats, arrests, assassinations and legal proceedings. In fact, civil society seems to have gained strength and has managed to consolidate its efforts, creating provincial as well as national networks such as the National Network of Human Rights Organisations in the DRC (Renadhoc). Civil society supporters have even campaigned for the establishment of a National Human Rights Commission.

When war was declared against the Mobutu regime in 1996/7, and later against the AFDL regime of Laurent Désiré Kabila in 1998-2001, civil society did not keep quiet. They established a Peace Programme that provided guidelines for the lobbying efforts that followed and which are still applied today. Two basic principles were asserted: the strong condemnation of all attempts to seize power by force and the need to organise free, democratic and fair elections. By the time the Inter-Congolese Dialogue took place, civil society had already insisted on being included in the political negotiations.

The warring parties could not – and should not – be left to their own devices without the voice of the people being heard!

Through the National Campaign for Sustainable Peace, civil society organised national surveys on the outcomes of war and its networks of associations were responsible for lobbying, at national level, to push for an end to the war through negotiations. In 2001, at the Inter-Congolese Dialogue (ICD) at Sun City in South Africa, civil society had a very well prepared agenda and was able to put forward concrete and coherent proposals for the creation of a new political and social order in the DRC and for the establishment of an inclusive transitional government.

After the Inter-Congolese Dialogue quite a few members of civil society were included in the transitional institutions, at both parliamentary and government level. In fact, all the institutions supporting democracy were chaired by well-known and respected members of civil society: namely the High Authority of the Media, chaired by Modeste Mutinga, a journalist by profession; the Independent Electoral Commission chaired by Father Malumalu; the Ethics and Corruption Control Commission headed by Mr. Mbadu, a businessman by profession; the Truth and Reconciliation Commission, led by Pastor Kuye wa Dondo and the National Human Rights Observatory, chaired by Mpinga Tshibasu, the President of the Bar Association.

During the Inter-Congolese Dialogue, which took place in South Africa, civil society stakeholders worked very hard to heighten awareness among the Congolese people on issues such as peace and tolerance and to prepare them for elections, by means of seminars and civic education activities at grassroots level. It is also fitting to mention that civil society had set up mechanisms to enable people to follow the progress of the Inter-Congolese Dialogue. These consisted of a Transition Monitoring Committee as well as observatories in the provinces.

Various groups belonging to Congolese civil society continued to speak out against bad governance and against the plundering of the country's natural resources. They entered into coalitions with other like-minded international organisations working for transparency at the international level, such as Fatal Transactions, *Partenariat Afrique-Canada* and the Kimberley Process. They also worked closely with groups such as the United Nations Group of Experts against the illegal use of the DRC's resources, with British Members of Parliament fighting Genocide and Human Rights violations in the Great Lakes Region and the Belgium Senators fighting against the illegal use of the DRC's resources.

Looking to the future, within the framework of the International Conference on Peace, Democracy and Development in the Great Lakes Region, Congolese civil society has presented a mission statement for the establishment of regional policy that takes account of the demands of the Congolese people, and have started working with their counterparts in Rwanda and Burundi in this regard. In concert with delegates from other countries of the Great Lakes Region they have proposed joint projects and recommendations for the Protocols that should constitute the basis of the Stability, Security and Development Pact to be adopted and signed by the Regional Heads of State and Government during the 2nd Regional Summit to be held in Nairobi, Kenya, during December 2006.

The various movements and organisations in civil society have worked unceasingly to promote the social and economic rights of the Congolese people. Firstly, in conjunction with the government, they were party to the drafting of the Poverty Reduction Strategic Plan (PRSP). Development associations have taken over from government in many areas of the country and started implementing projects in the health, agriculture and education sectors. Wishing to speak with one voice, they set up sectoral groups of associations at provincial and national level, such as the Regional Council of Development NGOs and the National Council of Development NGOs. Other networks, like the National Committee for Women in Development, chose to focus on the emancipation of women or addressing the problems of street-children and handicapped people. All these movements and organisations are presently involved in organising a Congolese Social Forum.

The unions are also busy recruiting and organising their members (workers, farmers, craftsmen), and professional associations of doctors, pharmacists and lawyers are gearing themselves up to defend and promote the interests of their members.

Civil society's weaknesses in the pre-election period
Despite its many efforts, civil society remains limited in its actions, which often take the shape of isolated interventions without sustained impact. The following reasons are repeatedly cited for this state of affairs: institutional weakness, lack of capacity and experience, financial constraints and red tape. It should also be noted that NGOs and other CSOs are more operational in rural than in urban areas.

Another source of problems has been the attitude of some CSO leaders who, having quickly acquired fame, decided to enter the political arena, even if it meant creating an alliance with political groups who did not share the same vision or interests. Such opportunism has frequently tarnished the credibility of civil society and contributed in slowing down the development of a strong national social movement. Civil society's objectives must always remain clearly focused on ensuring an efficient transition and voicing the demands of the Congolese people.

There is no doubt that as the mouthpiece of the interests and aspirations of the people, civil society has sometimes been found lacking. At the same time, many CSOs, especially those working in the field of development, are run by people who care deeply for the Congolese people and their needs.

The role of civil society during the electoral process
Despite their lack of resources and the difficulties they faced in trying to access legal texts dealing with elections, CSO's contributed greatly to civic and electoral education during the registration of voters in the run up to the constitutional referendum and beyond.

Their activities covered the entire country as they tried to create awareness among the general population about the electoral process. They prepared and organised workshops, conferences and debates, forums where people could express themselves, civic education mobile units and radio broadcasts. The organisations responsible for the coordination of the PEPSA Programme in

the DRC – the National Centre for the Support of Development and Popular Participation (Cenadep), the Congolese National Press Union (UNPC), Journaliste en Danger (Jed) and the National League for Free and Fair Elections (Linelit) – organised publicity caravans and travelled to the provinces of Sud-Kivu, Nord-Kivu, Maniema, Province Orientale, Bas-Congo and Kinshasa.

A framework for dialogue on electoral observation was established by a number of organisations (including religious denominations) that resulted in the national coordination of observation efforts in relation to the referendum and the electoral process. Although the coverage of polling stations during the referendum was rather poor, the situation was totally different during the presidential and national assembly elections with international observers mostly from Europe and Africa working side by side with local observers. Civil society was also present during the compilation of the electoral results in the many counting centres scattered across the country.

During the electoral process, civil society never stopped sounding the alarm when faced with difficulties experienced by voters at grassroots, provincial or national level, sometimes as an isolated voice and at other times through the collective efforts of all parties involved.

The role of civil society in the foreseeable future
After the elections, the DRC will have legitimately elected leaders as well as an elected parliament. By virtue of their election, these leaders and MP's might start believing that they are sole masters of the destiny of their people. Will they really be able to deliver on their somewhat unrealistic electoral promises?

Civil society will again have to play an active role in presenting the aspirations of the people to the leaders. It will have to reorganise and strengthen itself through inclusive and consensual networks and associations. The need for observatories to monitor good governance at all levels of government is essential, because the time has come to halt the misappropriation of public funds. Civil society will continuously have to alert the public to overspending and bring pressure to bear on leaders. For that to happen, vital links will have to be created between civil society and the media. Civil society could even be called on to mobilise and involve the population in the name of 'good governance'. People will constantly have to be made aware of their constitutional rights and obligations in order to strengthen citizen commitment to the values of democratisation.

Decentralisation is a key aspect that requires the mobilisation of all players in civil society. The DRC was governed for many years by a system that stripped the provinces of their powers to make decisions and take initiative. The new constitution began with the process of decentralisation of state prerogatives and granted a degree of autonomy to provinces and local entities. The main challenge will be to ensure the active participation of the population in the country's reconstruction programme. This is a very important area in which civil society should become involved. The decentralisation process will have to be translated into concrete actions, demanding the direct and active participation of the population. Civil society will therefore not only have a role to play as far as monitoring frameworks are concerned, but will have to start with basics like design, implementation and follow-up of specific sectoral programmes.

Two important themes that will require constant focus are Transparency in the Extractive Industries and Natural Resources Sustainable Management. The Inter-Congolese Dialogue had exposed Mafia-like practices and secret and one-sided contracts. In a detailed and exhaustive report, the Lutundula Parliamentary Commission revealed how the country's resources had been plundered. Yet, during the transition period, the recommendations of such commissions, although approved by government, were never translated into concrete actions. Civil society will have to ensure that, after the elections, appropriate measures are taken at local and national level and that any new mining and commercial forestry contracts follow the appropriate legal procedures in order to benefit the population. In this particular case, the main challenge is the fight against poverty and corruption.

On the legal side, the challenges are tremendous. The fight against impunity and the promotion of human rights are but two of the essential areas where a lot of work is still needed, although a wealth of experience has been accumulated through years of fighting against injustice. Still, it would be dangerous to sit back in the belief that an elected government would respect the rights of voters. We only need to look at some of the African countries around us to realise how wrong such a perception would be. Furthermore, the DRC presents a rather particular situation in so far as the armed forces and the police have often been accused of massive violations of human rights. It is a well-known fact that nothing came out of the efforts to set up a national army. Salaries in the armed forces are low and nobody knows if the 'Third Republic' will have enough resources to address this situation. Militias and other armed groups from Uganda and Rwanda contribute to the feelings of insecurity in the Eastern Provinces and on the borders of the country. Consequently, people in uniform represent a great danger to the democratisation and reconstruction process. Therefore, civil society must carry on with its advocacy for Peace and Security in the country as well as in the Great Lakes Region.

Some of the many issues that civil society will have to tackle after the elections include public health, agriculture, the importation of foodstuffs, external debt, the Cotonou Agreements, protection of the environmental, Nepad, the International Conference on the Great Lakes Region, education, social and economic rights, human rights, integration of the military, gender, vulnerable groups such as children and HIV and AIDS.

Capacity building in civil society
If the Congolese civil society is to play an active role during the post-election period, it is important to focus on the issue of capacity building (human, financial and material resources). It follows naturally that development will depend on the capacity of civil society to make a fundamental contribution in terms of sustaining open dialogue and public debate in a democratic environment. Transparency and good governance are key concepts, which must be monitored and widely promoted by civil society. The need for capacity building becomes even greater when recognising that civil society will also have to propose and implement concrete actions in advancing social and economic justice.

General Recommendations

If civil society is to become more effective during the Third Republic, they need to take note of the following recommendations:

- Avoid politicisation and politicking;
- Improve communication with the public as far as actions, advocacy and resources are concerned;
- Ensure capacity building in the field of advocacy and lobbying in relation to all levels of government with regard to the delivery of quality programmes aimed at improving the quality of life of the Congolese people;
- Widen the network of solidarity with the media and other groups working towards positive change;
- Lobby parliamentarians and local authorities and strengthen democratic interactions in order to prevent people from being marginalised and to ensure they are actively involved in reconstruction efforts;
- Take part in all regional and international cooperation forums and lobby persistently for the needs and rights of the Congolese people;
- Mobilise the population against the plundering of natural resources and impunity;
- Take an active part in discussions on regional peace and stability;
- Support the structuring of social movements among the grassroots population to increase their negotiating power and to achieve a truly inclusive democracy; and
- Support the educational initiatives dealing with civic responsibility, peace, human rights and good governance.

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The Role of the Media in the 2006 Elections in the Democratic Republic of the Congo

by Donat M'Baya Tshimanga

Introduction

Free and fair elections are synonymous with transparency and elections cannot be held without the contribution of the media, especially in a vast country with a population of 60-million, where basic infrastructure has been destroyed and 70% of the population live in rural areas. The majority of people who reside in these areas cannot read and write.

Faced with such a huge challenge, one cannot ignore the role of the media, especially if the aim is to have successful elections, and in the case of the Democratic Republic of the Congo (DRC), the first free and fair elections of the last four decades. The various functions of the media in relation to the 2006 election in the DRC can be divided into four phases, along with a summary of guidelines that apply to the Congolese situation.

During the pre-election period the media must:
- Mobilise and educate the population on the importance of elections in a democratic context to create enthusiasm for the upcoming elections (so as to increase participation),
- Explain the legislative texts on which the elections are based and the registration and voting procedures (including completion of the ballot form) and provide information to assist voters in choosing the best candidate;
- Present to the candidates and political parties at all levels of government the main problems experienced by the people so that they can try to address them (human rights, the role of women, education, health, job creation for the youth, remuneration of civil servants, issues of development and infrastructure).

During the electoral campaign the media must:
- Introduce the various candidates as well as their programmes (their party affiliation and position, information about their past achievements and failures, their programmes of action should they be elected);
- Follow and report on the various electoral campaigns;
- Encourage the candidates to share their opinions on the problems facing the people through interviews and debates;
- Analyse the appropriateness of their programmes (are the candidates simply courting popularity?).

On Election Day the media must:
- Monitor the progress of the election;
- Expose any irregularity or fraud;
- Give an indication of the expected final outcome, based on provisional results from polling stations.

After the elections the media must:
- Report the official results as announced by the authority concerned (Independent Electoral Commission);
- Analyse the results to verify their accuracy;
- Follow up the Supreme Court of Justice to check on electoral disputes, legal processes and outcomes;
- Report the final verdicts of the Supreme Court of Justice;
- Keep the people well informed so that they will readily accept the election results and reinforce the fact that the candidates who have been elected must work for the benefit of all, including those who did not vote in their favour;
- Monitor and report on the setting up of new institutions (authorities) stemming from the elections; and
- Monitor and keep a critical eye on the work of those who have been elected to ensure that they keep the promises they made during the electoral campaign.

With these guidelines in mind, how did the Congolese media fare in the recent electoral process and how well are they managing in their coverage of the elections? To answer these questions we first need to look at the daily challenges facing the media.

Challenges facing the Congolese media during the elections

Unlike many other countries of the African continent, the DRC is known for its active media where diversification is part of the game, a diversification encouraged, since 1996, by the promulgation of Law N° 96/002 on 22 June 1996. The law reasserts, in many of its clauses, the freedom of enterprise in the communication and information sector. Article 14 of the law declares, for example, that the "setting up and management of the means of communication required by press agencies, broadcasting agencies and press distribution services as well as print works and the book trade are free. These activities take place in a totally independent manner, in accordance with the law".[1] On the subject of audiovisual communication, the same law states in Article 51 that "audiovisual communication is free. Any physical or legal entity has the right to produce, broadcast or receive audiovisual material as stipulated in the preceding article, and to take part in any audiovisual production in accordance with law and order and with full respect of the rights of others and accepted standards of good behaviour".[2] Regarding publicly-owned media, Article 53 of the same law states that "public audiovisual communication is pluralistic. It cannot be the monopoly of one opinion or one group of individuals."[3]

As a result of this law (and its earlier formulations), the DRC has experienced an exponential increase in the number of private newspapers, radio and television stations over the last ten years, in addition to the publicly-owned station, *Radiotélévision Nationale Congolaise* (RTNC), owned by the Congolese Broadcasting Corporation. Amongst the privately-owned channels, one can differentiate between two main groups: commercial radio and television stations and community radio and television stations, including those founded by various religious organisations.

The RTNC, however, which rose from the ashes of the *Office Zaïrois de Radiodiffusion et de Télévision* (OZRT) in the Mobutu era, has not managed to escape political control. This is in total violation of Article 53, which establishes the right to pluralism. During the Mobutu regime, publicly-owned media meant state-owned media, which in truth meant that the media was controlled by the ruling party. The RTNC was therefore initially controlled by the *Mouvement populaire de la Révolution* (MPR) – the Mobutu party, and today it is controlled by the *Parti du Peuple pour la Reconstruction et la Démocratie* (PPRD) – the party of President Joseph Kabila. Many observers believe that if the national media had been truly publicly-owned instead of state-owned, the mushrooming of vast numbers of politically-owned private media would not have taken place, because political parties would have been granted a voice on the public broadcaster. The RTNC has the advantage of covering the entire country through provincial centres, which have a limited degree of autonomy in the choice of local programs.

The commercial radio and television stations are by intention profit-making organisations. They were established either by political leaders or members of their families, or by journalists or businessmen, often with financial or political backing by various political groups or leaders. This naturally means that they lose their independence somewhere along the line.

The community radio stations and their associations were created at grassroots level in areas lacking in basic infrastructure. Community radios are often the only vehicle for bringing information to people in a country where the rate of illiteracy is one of the highest on the continent. It is often said that "Radio is King" in the DRC. There are at least 100 community radio stations that operate more or less successfully, most of them based in the eastern provinces of the country.

The opportunity of using media was not lost on the various religious denominations flourishing in the country. Following the lead of traditional churches (the Roman Catholic Church and the Church of England), groups belonging to the charismatic movement also started to establish their own radio and television stations and in many instances their pastors have become TV-evangelists. In the beginning they focused mostly on religious affairs, but quickly started offering news without the support of qualified journalists and relying on volunteers from local communities.

In view of the multi-faceted crisis in the DRC, prayer seems to be the only comfort left to men and women who worry about the meaning of life, but do not receive answers from their political leadership. This in part explains the proliferation of various denominations supported by radio and television channels. However, questionable connections have been created between the pastors and political leaders, especially with the onset of elections. Churches produce potential voters and neither pastors nor political leaders are blind to this fact. The former guarantees the votes of their flock whereas the latter offer gifts, in kind or in coin. Pastors are quite candid about their political support for various candidate or political parties and they do not hesitate to involve their media in the politicisation of their ministries.

Since the involvement of the United Nations in the political normalisation of the DRC, mainly through Monuc[4], a different kind of radio station has been established, *Radio Okapi*, named after a small mammal found in the DRC.

A joint project of the UN and the *Foundation Suisse Hirondelle*, *Radio Okapi*, which defines itself as a peace radio station, covers the entire country and operates through a network of provincial stations, Congolese journalists and foreign experts scattered across the DRC. A truly professional radio station, *Radio Okapi*, with its balanced broadcasting, has played an important role in contributing to the creation of an environment of peace, public awareness and electoral mobilisation. It has established partnerships with local radio stations in the most remote areas of the country, to the great joy of thousands of isolated Congolese farmers.

Since the 1990s, and in parallel with the mushrooming of radio and television stations, the DRC has also seen a blossoming of newspapers (around ten dailies and numerous other newspapers which do not last long and appear on an irregular basis). Although known for its strength, the Press also suffers under the economic crisis engulfing the DRC. Circulation peaked in the 1990s with 20,000 copies a day in some instances, but has fallen as low as an optimistic 1,500 copies a day. The Press, written entirely French, is favoured by the elite who mainly reside in towns, especially in the Congolese capital, Kinshasa. However, with the cost of newspaper production having risen to slightly above US$1 per unit, even the elite can hardly afford them.

The dynamism for which the Congolese media is well known cannot hide the huge challenges currently facing them, particularly during the electoral process where the pressure to perform is strongly felt. The problems and difficulties they face in the electoral context can be summarised as follows:

- Financial problems which result in low distribution and restricted coverage;
- Terrible working conditions and very low salaries of journalists;
- Corruption among journalists (a phenomenon known as "coupage"[5]);
- Direct or indirect political interference in the media;
- Extreme politicisation of privately-owned media;
- Seizure and political control of publicly-owned media by a political party (PPRD);
- Lack of training; and
- Infrastructure problems (e.g. power shortages resulting in the use of generators by some radio stations, thereby increasing their operating costs).

In spite of these problems, the Congolese media tried, to the best of their abilities, to play the role expected of them during the elections. At times it worked beautifully, but during others, the going got rough and there were a few hiccups.

How did the Congolese media fulfil its role during elections?
Between August 20 and 22, 2006, the guards of the interim President, Mr. Joseph Kabila, and those of his challenger in the second round, Mr. Jean-Pierre Bemba, confronted one another with heavy artillery in the business centre of the Congolese capital, Kinshasa. The official reports published by the Ministry of the Interior announced 23 deaths, mainly those of police officers. What has become known as the "Kinshasa War" took place a few minutes before

the reading, by the Independent Electoral Commission, of the first results of the first round of the presidential elections. The results of the polling day (30 July 2006) were announced – amidst the rattle of machine guns – by Father Apollinaire Malu Malu, who had to be driven to the RTNC Headquarters in tanks supplied by Monuc.

A few serious blunders
From 27 July 2006, the media houses controlled by the two main challengers, Bemba and Kabila, tried to compete against each other by increasingly showing more violent pictures and unashamedly using bloody pictures of policemen stoned to death by unruly mobs or pictures of slaughtered civilians during the two wars of 1996 and 1998. The idea first emanated from the publicly-owned but ruling party-controlled RTNC who chose such visuals to introduce its news bulletins. It was soon joined by other television stations belonging to Kabila. In turn *Canal Congo Télévision* (CCTV) and *Canal Kin Télévision* (CKTV), owned by Bemba, dug deep into their archives and broadcast gruesome pictures depicting people killed by bombs of the government forces during the war against the rebels.

This squabble was punctuated with programmes on these and other stations during which 'harbingers' of a new kind would let out their frustration and rage, inciting their respective supporters to violence. The tension thus created reached even greater heights with the erroneous announcement, by one group after the other, of the victory of its respective candidate, based on initial results only. Faced with such reprehensible blunders, people started to voice their opinions and accused the media of being directly responsible for the bloody confrontations of 20-22 August in Kinshasa. To this day, the results of the investigation led by Monuc have never been made public.

The mistakes made by some of the stations headquartered in the Congolese capital and other new stations under the control of politicians in various provinces of the DRC, however, cannot entirely overshadow the remarkable work carried out by the majority of the media against the unbelievable odds described above. The media should be thanked for their titanic efforts to ensure free and fair elections in the DRC.

According to Freddy Mulongo, president of Arco[6]:

> The prize goes to the Community Radios and Associations who started with their own training long before the others, then focused on partnerships and synergy-building in order to overcome their inadequacies and ensure the best coverage possible for the first part of the elections which have just been held in the DRC.

Synergies between media for more efficient services
Community Radio stations and associations, that aim to be as close as possible to their audiences, displayed ingenuity through the creation of partnerships. This enabled them in overcoming their inadequacies and fulfilling their role during the elections. According to Modeste Shabani, the Director of *Sauti ya Mkayi* (The Farmer's Voice) radio station, based in Kasongo in the Province of Maniema:

> In Maniema, out of 21 stations, seven are community radios and associations. We started by organising a dialogue with the

candidates or their representatives. During these meetings we discussed the Code of Conduct during the election process as well as other guidelines provided by the High Authority of the Media (Ham), in order to create public awareness about the responsibilities of journalists and politicians respectively. During the electoral campaign, community radios acted with the utmost professionalism in Kasongo and Kalima. In Kindu (the capital of the Province) unfortunately there were some blunders and incitations to violence, which led to confrontations between the supporters of various candidates to the post of national deputies, who were themselves the owners of some of the media. However, the professional behaviour of one of the community radios in Kindu, namely *Radiotélévision communautaire Maniema Liberté* (RTLM), can only be praised.

Shabani says the positive role played by *Sauti ya Mkaji* in the areas of education and awareness-building and in the coverage of the elections, was the result of the synergy created within the framework of Rateco[7], beautifully managed by *Radio Maendeleo*, based in Bukavu, in the Province of Sud-Kivu. The synergy was created by an exchange of programmes through the Rateco network aimed at popularising and creating public awareness about the elections, as well as coverage of the Election Day by a joint editorial staff, drawn from the network. Despite all these advantages, Shabani himself admits that there were some drawbacks: "The synergy we created was not as effective for all the radios as they did not all have the same technical capabilities."

Rateco, which received the support of international NGOs like Niza[8], the IPP[9] and the World Com Foundation, trained various members of the network in the establishment of 'listeners' clubs', a qualitative feedback system from communities to community radios to assist them with dissemination of information that is relevant to local communities. Among other things, the stations in the network also received generators, transmitter-receivers, bicycles and dictaphones. As stated by Domitille Duplat, responsible for the IPP programmes:

> Through PARI, a support programme for independent radios, the IPP wants to offer a strong contribution to the flow of information, via Internet, by offering technical and journalistic support as well as equipment to one radio station, which then becomes the focal point for all the others, in Lubumbashi, Kisangani, Bukavu and Mbuji-Mayi.

In the words of one of the journalists from the *RCK Radio Station*, the focal point in Lubumbashi in the province of Katanga:

> The IPP initiative is praise-worthy and has brought about positive results, although opinion is still divided ... Some directors of radio stations allowed their personal feelings to overcome their good judgment and refused to make use of the services offered when the IPP did not choose them as focal points, which makes you wonder at times at the futility of it all.

Shabani goes further in his assessment of the success encountered by *Sauti ya Mkaji*. In his view, its success is also due to the network of partners set up by

Radio Okapi. "With the help of that network, radio stations like mine were able to obtain some studio equipment, a 500W transmitter-receiver and even some training." *Radio Okapi* has become a model of professionalism that the media can emulate as the country emerges from years of armed conflict. Programmes such as "Dialogue between Congolese People" have greatly contributed to connecting people throughout the whole country. By making use of the four main languages spoken in the DRC, *Radio Okapi* has built bridges between people at all levels of society.

The other enriching experience in the media's ability to fulfil its role during the elections in the DRC has been that of *Radio Maendeleo*. *Radio Maendeleo*, aptly presented by Kizito Mushizi, a true professional, is at the helm of almost 100 listeners' clubs, all partners of Maendeleo, distributed on a geographical basis in the province of Sud-Kivu.

Radio Maendeleo, a social phenomenon in Bukavu, was at the forefront of coordinating media synergies in relation to coverage of the constitutional referendum and the Election Day on 30 July. During these events journalists from various stations of the group were sent to the districts of Kabare, Walungu and Idjwi in Bukavu to ensure media coverage of the electoral process. Their reports were sent to a central point and processed by a joint editorial staff based at *Radio Maendeleo*.

With the support of NIZA, the IPP and Monuc, around 20 journalists from various radio stations in the province of Sud-Kivu were also deployed in all the districts of this province. Their goal was to relay reliable and real time information on the election process to all the stations in this area. *Radio Maendeleo* again functioned as the focal point where the joint editorial staff of eight journalists were based. According to Kizito Mushizi:

> For four days, our audience was able not only to follow the election process, but to experience the atmosphere prevailing in the whole of Sud-Kivu. This was a milestone in the history of radio stations of Sud-Kivu which proved that, with the right support, they could work together for the benefit of all.

One of the principals of a secondary school in Bukavu exclaimed with delight: "We did not have to wait for Radio France Internationale to follow the electoral process in Sud-Kivu."

In Kisangani, the capital of the Eastern Province, six community radio stations and associations created the same kind of synergy for the coverage of the presidential and national assembly elections. Over the course of five days, they produced 36 news bulletins in three languages – 12 in Lingala, 12 in Swahili and 12 in French. In this instance *Radio Communautaire Mwangaza* (RCM) functioned as the focal point. Twenty-five journalists were involved in this project. Their correspondents in the various communities and districts reported live from the polling stations they were covering.

Synergies between media and civil society

Over and above the synergies created between the media, which proved highly successful during the electoral period, another type of synergy emerged between the media and civil society. Within the framework of Pepsa/DRC and as a result

of two preparatory workshops, three media organisations (UNPC[10], Jed[11] and Rateco) and two in civil society (Cenadep[12] and Linelit[13]) conceptualised an ambitious programme in which mobile units were to travel all over the DRC to provide civic and electoral education in a massive effort to peacefully mobilise the public in support of the elections. They would work in conjunction with the local media and local organisations in each area. At each stop they would organise platforms to hold discussion and debates and to facilitate dialogue between the population and social players. Another aspect of their work would be to provide information on the legal and regulatory texts in the context of the forthcoming elections as well as to promote peaceful coexistence in areas of latent conflict.

Due to budgetary and time constraints, only three mobile units could be deployed (the original target was 13): one in Kinshasa, one in Bas-Congo and one for Nord-Kivu, Sud-Kivu and Maniema. Although the unit in Kinshasa was rather basic due to a lack of funds, the unit in Bas-Congo was well organised. Its final destination was the town of Matadi, the capital of the Province of Bas-Congo, after first travelling through Moanda and Kasangulu. Thirteen villages and districts were eventually covered by this unit whose funds came from the Netherlands, via their Embassy in Kinshasa.

The units which were to cover the eastern part of the country were merged into one, which travelled in and out out the many villages and districts of Nord-Kivu and Sud-Kivu and the Province of Maniema.

The role of the High Authority of the Media and its code of conduct
After signing the Peace Agreement in Pretoria, South Africa, the parties involved in the Inter-Congolese Dialogue established a media regulatory authority, the High Authority of Media, better known by its acronym Ham. Some of the objectives of the authority, presided over by one of the greatest names in the Congolese media sector, Mr. Modeste Mutinga, was to facilitate access to the media by all groups, especially during the electoral campaign, and to ensure the impartiality of publicly-owned media.

As stipulated in its founding law, Ham promulgated a Code of Conduct governing the behaviour of politicians and their relations with the media. This code was signed by all political parties, though not always implemented by some politicians, who quickly bore the brunt of Ham's sanctions.

Regarding the impartiality of publicly-owned media, Ham was unable to win this demand as the RTNC is still in the hands of the ruling political party, the PPRD of President Joseph Kabila. The Minister of Information and Media Affairs behaves as if he is the owner of the RTNC. In its efforts to transform the RTNC into a truly publicly-owned entity, Ham has more than once been involved in public confrontations with the Minister, but these have not succeeded in bringing about the editorial independence and impartiality of the public broadcaster.

While the Ham was fighting for access to the media by all groups and parties, to try to ensure balanced coverage during the electoral process, Ham was only able to rely on the will and the determination of its president when, in fact, more financial and political resources would have been welcome. Intended

projects such as "One Party, One Project", which aimed to give the population relevant information about the various political parties and their programmes long before the election, had to be cast aside before the implementation phase, due to the opposition of the Minister of Information and Media Affairs. Another praise-worthy project undertaken by Ham was to try and obtain finances from the government and foreign partners for the media which, in turn, would freely grant air space and time to all the candidates. This project also failed through a lack of funds.

Despite these setbacks, Ham managed to establish a political debate in which candidates from different parties could come and air their views despite attempts by some media to sabotage the whole process and the refusal of some candidates to face their opponents. Ham even succeeded in organising an 'Election Night'. Unfortunately, Ham being the media regulatory authority with the power to impose sanctions for breaches of freedom of expression, has created the somewhat contradictory impression of being a repressive body rather than a body that promotes press freedom. However, its lack of financial resources resulted in serious constraints as described above. Instead it had to concentrate on upholding the code of conduct, which, by its nature involves sanctions against erring parties, including the media.

Faced with the rise of an often xenophobic discourse and incitations to violence and other disparaging behaviour by some of the media, Ham set up within its own structure a Monitoring and Ethics Commission, consisting of representatives of the profession, though the Observatory of Congolese Media (Omec) – a self-regulating body – and the Congolese Department of Justice. This watchdog body was mandated to react promptly to any discourse filled with hate speech that could destablilise the fragile electoral process. This body has imposed embargoes on some political players and suspended a few media houses. These measures are being criticised and have not gone down very well in some quarters. People have started questioning whether the basic principles of fairness are being ignored and whether some sanctions are excessive in relation to the offences committed. Furthermore, in view of its decision to impose sanctions outside of the framework of the law and judicial procedure in relation to issues such as "harmful libel or slander", "accusations without proof", "insults towards institutions or authorities", "apology of 'Congolité' (sic)" and other insult law provisions, Ham could well be in the course of suppressing useful critical debate on societal issues that deserve to be aired and studied, especially during elections.

In the light of the overview provided in this article and in order to improve the role of the media during the next electoral contest, the following recommendations are offered:

Recommendations for future elections

To the government of the Democratic Republic of Congo
- Transform the State Broadcasting Corporation into a publicly-owned entity through the reform of the relevant legal and regulatory texts governing the existing RTNC. (Jed in cooperation with Niza is already considering a project in this regard);

- Reform the legal framework for the freedom of the media through a review of the present Law N° 96/002 of 22 June, 1996;
- Implement the indirect subsidies to the media as stipulated by the Press Act (preferential customs tariffs for media consumables and equipment, telephone, electricity,etc.);
- Resolve the dualism between the High Authority of the Media and the Ministry of Information and Media Affairs, especially concerning the publicly-owned media.

To the Congolese media
- Continue with the creation of synergies between the media and civil society;
- Improve professionalism in spite of the editorial orientations of various media;
- Put an end to the shameful practice of 'coupage' (bribery of journalists);
- Improve the wages and working conditions of journalists;
- Revitalise the self-regulatory body to oversee a professional code of ethics;
- Work on capacity-building and training of journalists, especially those working in community radios stations and associations.

To the bilateral and multilateral partners of the DRC
- Exert pressure on the newly elected Congolese authorities to ensure they embark on necessary reforms in the media sector, especially with regard to publicly-owned radio and television;
- Secure financial resources needed for equipment, through networks and other synergies, especially for community radio stations and associations;
- Continue to support *Radio Okapi*, even after the departure of Monuc, to achieve sustainable development.

To the international non-governmental organisations
- Continue to support programmes of reform in relation to the legal framework of the freedom of the media;
- Continue with programmes of support to the media, through training and the supply of equipment and by creating synergies and networks;
- Support the initiatives of *Radio Maendeleo* in various provinces of the DRC since they will be responsible for the establishment and management of the synergies above.

Notes
1 Law N° 96/002 of 22nd June 1996 establishes a detailed framework for licensing the print and broadcast media and other matters.
2 Ibid.
3 Ibid.
4 The United Nations Organisation Mission in the Democratic Republic of Congo numbers 17,000 soldiers in the DRC and is one of the most important peace-keeping missions of its kind in the world.
5 This is the word used by Congolese journalists to describe a bribe offered to a journalist in order to publish – or refrain from publishing – a piece of

information.

6   Association of Community Radios of the Democratic Republic of Congo
7   Network of Community Radio and Television stations of the East Congo.
8   Netherlands Institute for Southern Africa based in Amsterdam (Netherlands)
9   Institut Panos Paris, based in Paris, with a bureau in Kinshasa
10 Congolese National Press Union
11   Journaliste en Danger
12 National Centre for the Support of Development and Popular Participation
13 The National League for Free and Fair Elections

MALAWI

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UNSTEADY CARRIERS: THE POTENTIAL AND LIMITS OF CIVIL SOCIETY ENGAGEMENT IN PRE-ELECTION ACTIVITIES IN MALAWI, 1992-2004

BONIFACE DULANI

Introduction

The wave of anti-statist, anti-authoritarian political developments across sub-Saharan Africa in the early 1990s was accompanied by a renewed interest in the role of civil society in the democratic political process (Bratton, 1994; Buijtenhuis and Rijnierse, 1993). Emerging from an era of tight political controls, the liberalisation that accompanied the changes from authoritarian to democratic politics allowed civil society organisations to become more involved in various aspects of public life.

In the context of Malawi there is evidence that the political liberalisation of the early 1990s has enabled the growth of civil society, both in terms of numbers and in the scope of their activities. From 1992, when internal pressure for political reforms began to mount, Malawian civil society, including non-governmental organisations (NGOs) and the influential faith community, have played a central role in the democratisation process, to the extent that they are increasingly being perceived as essential stakeholders in the course of consolidating democracy (Immink and Chigona, 2005; Kadzamira and Kunje, 2002; Chirwa, 2000; Dzimbiri, 1999; Minnis, 1998).

This paper surveys the role of Malawian civil society in the democratic process generally and in pre-election activities in particular between the years 1992 to 2004. Adopting a primarily historical and descriptive approach, I seek to demonstrate that civil society organisations have played, and continue to play a valuable role in the democratisation process, especially on the basis of their contributions to elections. Although it is acknowledged that civil society alone cannot take all the credit for the significant strides taken in the first ten years of Malawi's nascent democracy (1994-2004), I argue that their contributions have helped to take this democracy forward.

However, I also argue that there is still scope for improvement, particularly in the area of elections, where the bulk of civil society engagement with the democratic process has largely been skewed in favour of elections, and specifically in relation to Election Day activities. This has had the effect of side lining other equally critical components of the democratic process, giving the impression that democracy is mainly an elections issue. The net effect of this emphasis on elections is that in between elections, civil society actors become politically invisible, leaving the stage to political parties and other interested players to pursue their agendas with minimal checks. This has frequently resulted in politically motivated violence, which in turn has paralysed government on a number of occasions.

In the final analysis, this paper argues that civil society needs to review its democratic role, including in the arena of elections, as a way of maximising their impact and justifying their existence. More importantly, there is also a need for a

reassessment by civil society actors themselves on their roles and contributions to the democratisation process, including a review of their competencies and capacities, in order to continue their role as key players.

A brief overview of the concept of civil society

Much as the concept of civil society is often taken for granted, its true and popular definition remains both elusive and problematic. With many people defining the concept differently, the concept lacks a common identity and character (cf, Swiling, 1992, Minnis, 1998). So different have been the characterisation and conceptualisation of civil society that many use the term as synonymous with NGOs. However, there is also an alternative literature that expands the concept of civil society beyond NGOs to include other players such as faith based organisations, the media and community based organisations (van der Heijden et al., 2005).

Although concepts of what constitutes civil society differ, there is agreement that the realm of civil society encompasses a vast web of private and public associations which are guaranteed the right to organise mobilise, and if they desire, to influence political decisions free of the state's control. The realm of civil society, therefore, is the arena of social engagement that exists "above the individual yet below the state ... that part of society that connects individual citizens with the public realm and the state …" (Heyden, 1996:92, 100). In other words, what distinguishes civil society from the wider public and the state is that it represents organised segments of society that interact with, but at the same time, are distinct from the state (Chazan, 1992, Buijtenhuis and Rijnierse, 1993).

It is largely due to this independence from the state that civil society is perceived to be an important stakeholder in the democratisation process. This is due to the fact that civil society provides an independent check on government and other major political players. Diamond (1999), for example, has posited that the greater the number, size, autonomy, resourcefulness, variety and democratic orientation of popular organisations in civil society, the greater will be the prospects for some kind of movement from rigid authoritarianism, and for subsequent movement towards semi-democracy and ultimately, democracy (Buijtenhuis and Rijnierse,1994:71)

The growth and expansion of civil society in post-authoritarian Malawi

The emergence of civil society in Africa is to a large extent a reflection of public disillusionment with the one-party state. While the single-party regimes either oppressed or co-opted civil society organisations as part of their strategies "to prevent any form of autonomous organisation within civil society" (Bayart, 1986:110), poor economic performance and declining living standards in subsequent years led to loss of public confidence in the one-party state. This loss of public confidence extended to an increasing assertion of civil society independence as well as demands for a greater involvement in the political arena.

It was against this background that the Malawi Catholic Bishops openly came out in 1992 to criticise the relevance and legitimacy of the one-party state,

vis-à-vis its development performance. In their historic pastoral letter read out in all churches in March 1992, the Malawi Catholic Primates, among several issues, stated that the one-party system of government had "failed the majority of the population with regard to development expectations, living standards and development" (ECM, 1992). This view is supported by empirical evidence, which shows that Malawi's per capita Gross National Product (GNP), between the years 1965 and 1989, grew by an average of only 1% per annum (Bratton et al., 1996).

The lead taken by the Catholic Bishops provided the opening, hitherto closed, for other stakeholders, especially civil society players and political parties, to emerge and challenge the authority of the one-party regime and to advocate for the introduction of democratic politics. From 1992 onwards, Malawi began to see the emergence of a plethora of civil society actors, ranging from NGOs and trade unions to pressure and interest groups. This included the Public Affairs Committee (PAC), which was established in 1992, to act as the representative body of all groups advocating for political change. The PAC was later joined by new politically oriented NGOs, such as the Civil Liberties Committee (Cilic), Malawi Carer, the Malawi Legal Resources Centre, the Centre for Human Rights and Rehabilitation (CHRR) and the Malawi Human Rights Consultative Committee (HRCC), to mention but a few. Other leading players in the process also included faith-based bodies, trade unions, a new and vibrant independent media, university students and academics (van Donge, 1995, O'Malley, 1999, Minnis, 1998, Chirwa, 2000). The vibrancy of the period in providing a conducive environment for the growth and expansion of civil society is perhaps best illustrated by the fact that in 1992 alone, the number of trade unions in Malawi went up from 2 to 17, while the number of daily newspapers went up from 1 to more than 20 (Dzimbiri, 1999).

All these groups campaigned for the rejection of the one-party system of government in the national referendum of June 1993. The final outcome of the referendum was victory for those, including civil society, advocating for multi-party democracy (Dzimbiri, 1998, 1999). Although the introduction of democracy in Malawi after 1993 cannot be solely attributed to civil society organisations, nor indeed can it be attributed to the contributions of domestic players only, it still remains true that the various civil society groups played a critical role in convincing the majority of Malawians to vote in favour of democracy in the June 1993 referendum. It is because of this contribution that civil society has been accepted as a legitimate player in the unfolding democratic processes since then.

The legal environment in the post one-party era created a conducive environment in which civil society and especially the media could expand and flourish (Chirwa, 2000; Dulani et al. 2004; van der Heijden et al., 2005). Empirical studies have consistently demonstrated that the freedom of association inherent in democratic politics provides an enabling legal environment for the growth and development of civil society organisations, compared to dictatorial regimes (cf, Dzimbiri, 1999). The new constitution that was adopted in Malawi in 1994 guarantees freedom of association in section 32(1), while section 36 guarantees media freedom and the fullest possible access to public information.

The growth of civil society across Africa can also be traced to the need to manage and safeguard the democratic process. Given the resistance of the one-party regimes to embrace change, coupled by the inability of its institutions to manage the new political realities, the job of spearheading the management of the electoral process quickly fell to the emerging civil society. Among others, they had to fulfill the function of providing crash courses on civic education in relation to democracy, voting procedures, issues relevant to campaigning and other matters. To date, they are also regularly consulted and are involved in a variety of democratic activities, as well as being recruited in a variety of democratic bodies and institutions. Indeed, such is the recognition of the role of civil society in the democratisation process, that the government established the Democracy Programme (DCP) to channel resources to civil society groups undertaking various democracy consolidation activities, such as civic education on democracy and human rights (Dulani et al., 2004).

Malawi civil society engagement in the electoral process
As we have already observed, the Malawi civil society was very instrumental in advocating for political change in the early 1990s. Apart from leading calls for political reform, these bodies undertook extensive civic education campaigns and prepared extensive materials and media campaigns to sensitise the public about the virtues of democracy and the voting process.[1] This role was crucial since the one-party regime was fighting a rearguard campaign to advocate for the retention of the single-party state. By engaging both the state and society in dialogue for the country's political future, civil society organisations acted as avenues and forums for the citizens' articulation of political demands (cf, Chirwa, 2000; Ross, 2004).

Among the key areas of civil society engagement in the democratic process in Malawi has been their contributions to the electoral process. Since the historic referendum of 1993, Malawi has held three general elections: the first in 1994, the second in 1999 and the most recent in 2004. The country also went to the polls in 2000 to elect local government councillors.

Civil society's engagement in the elections is in keeping with the recognition that elections are a key mechanism through which the public can influence the political process and keep public office bearers in regular and periodic check. Specifically, the elections provide opportunities for the electorate to make retrospective (post facto) assessment of democratic governments and opposition parties. Elections therefore provide a link between democratic politics and the public interest by ensuring that politicians, who claim to represent and speak for the public, are ultimately judged by the same public (Schumpeter, 1942).

The prominence of elections and election-related activities in the overall agenda of civil society organisations in Malawi therefore reflects the centrality of elections in the democratic process. In a country that is still nurturing its young democracy, against a background of a government that lacks adequate resources to effectively run elections on its own, civil society organisations have assumed the role of democratic partners to government and other electoral stakeholders, including the Malawi Electoral Commission (MEC). They also offer an alternative channel for donors to influence the entrenchment of democracy

and democratic values in a manner that compliments government efforts while bypassing the complexities and inefficiencies of government bureaucracy.

It is against this background that the elections have provided opportunities for civil society bodies to work together towards the shared goal of contributing to the consolidation and nurturing of Malawi's young democracy at the electoral level. For example, in the run up to the 1994 elections, civil society bodies came together to operate under the umbrella of the Public Affairs Committee (PAC), to give a common civil society voice in the run up to the first elections in 1994. Civil society organisations also formed a loose umbrella body in 1998, called the Church NGO Consortium, with the brief of coordinating civil society activities during the second multi-party elections of 1999. Another new body was formed in 2003, called the Malawi Electoral Support Network (MESN). This new body brought together civil society organisations that were accredited by the Malawi Electoral Election (MEC) to take part in election-related activities in the build up to the 2004 general elections.

In the next section, we look specifically at the roles that civil society has played in elections, focusing specifically on pre-election activities. The choice of the pre-elections phase is deliberate and stems from recognition that pre-election activities, that is those election-related activities that take place prior to the Election Day itself, often have a fundamental effect on the behaviour and choices of voters on Election Day, as well as responses to election outcomes. Our choice of focus on pre-election activities should therefore not be taken to mean that we are downgrading the importance and value of the other electoral stages.

Civil society engagement in voter registration
One of the key democratic political rights is the right to influence the selection of government through the process of voting. However, to exercise the right to vote there is a need for eligible individuals to register as voters. Without this, democracy would be hollow and meaningless. While political parties often have ulterior motives in their efforts to promote electoral registration, resulting in systematic side lining of those perceived to be political opponents, civil society bears a big responsibility in providing unbiased information that can minimise potential disenfranchisement.

Figure 1: Election registration figures, 1993-2004
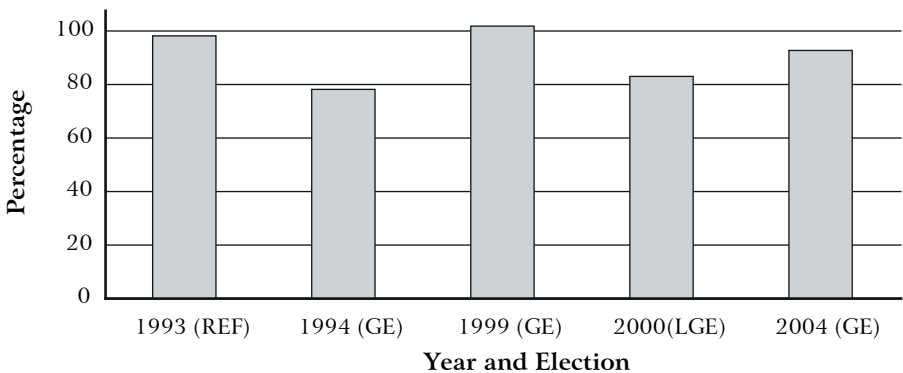
Source: MEC, various Election Reports (www.nso.malawi.net)

The success of the registration campaigns can be measured by looking at registration figures against the number of those in the population eligible to vote. Figure 1 on the previous page provides details of registration figures in the various elections that have taken place between 1993 to date.

The figures suggest that the efforts by the various stakeholders, including civil society, to motivate Malawians to register as voters, have generally been very successful. By facilitating higher registration, which can translate into higher electoral participation, the stakeholders involved in this exercise, including civil society, contribute to widening the scope of political participation, but also potentially increasing the popular legitimacy of any elected government. However, the excess registration in the 1999 elections (102%), suggests that the registration exercise is still beset with a number of challenges, including the possibility of underage or non-existent voters.

Apart from the success in mobilising the wider public to register for voting, civil society in Malawi can also be credited for playing an oversight role of the activities of the Electoral Commission during the registration process. While the registration exercise in the run up to the 1993 referendum and the 1994 elections passed off without any major hitches, civil society had to step in to ensure that the voter registration figures in the 1999 and 2004 elections gained widespread credibility and acceptance. In the run up to both the 1999 and 2004 elections, the registration exercise was marred by irregularities and a general lack of preparedness on the part of the Electoral Commission (cf, Patel, 2000, Kadzamira, 2000, Dulani, 2005). This resulted in a number of people being turned back without registration, while many more were unable to verify their details on the voter's roll.[2] In these cases, civil society played a critical role in seeking to ensure that no Malawian was denied the opportunity to vote because their details were missing from the voters roll. The media, for example, carried stories of cases where individuals were unable to register or to verify their details on the register. Armed with such information, civil society, through the Church and NGO Consortium and the Malawi Electoral Support Network successfully lobbied for an extension of the registration period in the 1999 and 2004 elections respectively.

Civic education
The importance of civic education in a country, where, for 30 years the populace had not participated in any democratic general elections, cannot be over emphasised. The Malawian public needed, and continues to need to be enlightened about democracy, elections, their rights and their responsibilities.

Civic education is one area where civil society organisations have concentrated the bulk of their democratic efforts. Such has been the high levels of contributions from civil society that very often the Electoral Commission relies almost entirely on the contributions of civil society and the media, both public and independent, to provide civic education campaigns. For example, in the run up to the 1993 referendum and the 1994 general elections, the PAC acted as a civil society umbrella body and coordinated the civic education process under the PAC Referendum Monitoring (PAC-REM) and the PAC General Elections Monitoring (PAC-GEM) programmes respectively. The Church and

NGO Consortium and MESN also played similar roles in the 1999 and 2004 elections. The impact of the various civic education campaigns on democracy in general and elections in particular, can be gauged in various ways. Firstly, the campaigns have to motivate the public to register and to turn up and vote, and secondly, any successes should contribute to minimising the number of null and void votes.

Civil education campaigns and voter turn out at elections

As with voter registration, the evidence of the impact of the civic education campaigns in motivating people to vote suggests very positive impact in this area, as Figure 2 on voter turn out below shows:

Figure 2: Voter turn out in elections, 1993-2004
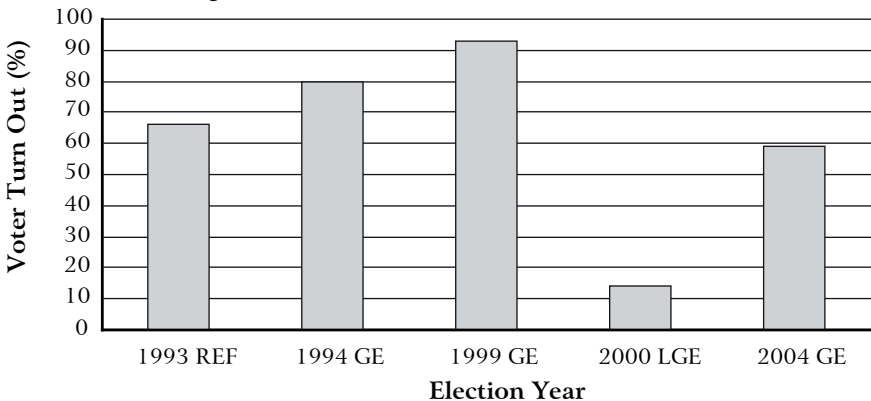
Source: MEC, various Election Reports

With the exception of the 2000 local government elections, there is a generally high level of public enthusiasm for democracy and this is reflected in the high levels of participation in elections. High voter turn out ultimately has the effect of giving any elected government a solid base of legitimacy, as well as indicating a more participatory political environment.

The public enthusiasm for democracy identified here has also been captured in other studies. For example, an Afrobarometer Study based at Michigan State University, records that up to 64% of Malawians support democracy over any other political system and that 66% reject the re-introduction of one-party rule (cf, Bratton et al., 2004:30).

The high voter turn out in the general elections is, of course, overshadowed by the low turn out in the local government elections of 2000. While civil society in Malawi continues to be at the forefront in advocating for decentralisation of government powers, the low turn out in the 2000 local government elections suggests that advocacy for local government has not convinced the wider public to appreciate the values and benefits of local government to the democratic process. Needless to say, this not only undermined the legitimacy of the local government representatives that were elected in the 2000 elections, but also has the potential to severely undermine this important aspect of democratic

politics. Low levels of support for local government have the potential for tilting the balance of power towards central government, and further away from the general populace.

Civic education campaigns and validity of votes

In terms of the numbers of null and void votes, Table 1 below provides a summary of null and void votes in the various elections since 1993:

Table 1: Number of null and void votes in Malawi elections, 1993-2004

1993 referendum	1994 general elections	1999 general elections	2000 local gov. elections	2004 general elections
2.3%	2.3%	2.0%	4.0%	2.6%

Source: MEC, various reports

For a country where the adult illiteracy rate is estimated at 42% (Unesco, 2003), the low levels of null and void votes, with an overall mean of 2.64%, suggest that the civic education campaigns are having a tremendous impact on the wider public.

Nomination of candidates

It has been argued that democracy cannot be possible without democrats (Kumar, 1999). A major part of the process of nurturing and consolidating democracy therefore requires civil society to monitor the exercise of party candidate nomination to ensure that this is in keeping with democratic principles.

However, civil society in Malawi has had a very limited impact in influencing the selection of election candidates. This is perhaps not surprising, as the selection of candidates is mainly done through party primary elections for parliamentary candidates and at conventions for presidential candidates. These platforms are often restricted to party members and present a dilemma for civil society activists in terms of how to become involved while maintaining their political neutrality. The absence of civil society influence on the candidate nomination process has resulted in the patronage system dominating the candidate selection process (Khembo, 2005).

This failure by civil society to engage in the selection of candidates has allowed political party leaders to manipulate the process in favour of certain favoured individuals. For example, in both the 1999 and 2004 elections, the UDF leadership was accused of imposing a number of parliamentary candidates against the wishes of the party membership at the local level (Khembo, 2005). In some cases, primary election results were cancelled when the favourite candidates of the party leadership were on the verge of losing or had already lost in the primary elections. This manipulation also extended to the selection of presidential candidates, where the outgoing UDF president, Bakili Muluzi, personally hand picked Bingu wa Mutharika to succeed him against the wishes of some in the UDF hierarchy (Dulani, 2005).

It is worth pointing out, though, that despite their limited influence in the selection of candidates, there have been attempts by civil society to assist opposition parties in planning for the elections in a manner that would enhance

their chances of success. Although this has created a lot of controversy and accusations that civil society is becoming partisan, it is perhaps not surprising that they have adopted this stance. As we have already pointed out, having played a key role as catalysts of the democratic order, it has become necessary for civil society to nurture Malawi's democracy to ensure that the country does not regress to the one-party authoritarian era. In the run up to the 1994 elections, civil society actively campaigned for unity among the opposition political parties as a way of maximising their chances of victory against the Malawi Congress Party (MCP) machinery. For example, the PAC actively lobbied the new political parties to unite behind one presidential candidate. This campaign succeeded in getting five parties to rally behind the United Democratic Front (UDF) candidate and eventual winner, Bakili Muluzi (cf, Dzimbiri, 1998).

When it became obvious during the 2004 elections that President Bakili Muluzi was keen on promoting a candidate that he had personally hand picked to succeed him, the faith-based civil society organisations led a campaign to bring together the opposition parties to agree on a single presidential candidate to fight the UDF. In the end, seven parties[3] came together under the banner of the Mgwirizano Coalition and agreed to field a single candidate, Gwanda Chakuamba. However, unlike in 1994, Chakuamba finished third in the presidential contest, but was later co-opted into government as Minister of Agricultural and Irrigation Development.

The cases of Muluzi and Chakuamba in 1994 and 2004 suggest that there are opportunities to be gained by civil society in Malawi to engage in the electoral process in a manner that would allow it to influence the policy process after the elections, particularly if their choice of presidential candidates wins or is brought into government. This is, however, not easy. It has the potential to significantly undermine the very essence of civil society, namely its distinctiveness from the state. It could also potentially undermine public confidence in civil society, especially if the candidate supported by civil society diverges from the expectations of the people. This was perhaps reflected in the performance of the Muluzi government between 1994 and 2004, which was marked by accusations of corruption and general economic mismanagement, despite the endorsement of civil society in the 1994 elections.

Gender mainstreaming
In addition to the campaigns for democratisation of the candidate selection process, civil society has also been active in advocacy and lobbying campaigns for an increase in the number of women in politics generally and as candidates in elections. NGOs such as the National Women's Lobby, the Women's Voice, the Society for the Advancement of Women, the Gender Coordination Network, the Civil Liberties Committee, the Pan African Civic Education Network and MESN have programmes promoting the participation of women candidates in elections. Despite such efforts, the numbers of women political players remain far below the SADC recommendation of a minimum of 30% women representation in decision-making bodies. Table 2 (overleaf) provides a summary of the number of women candidates and successful women legislators in the three general elections of 1994, 1999 and 2000.

Table 2: Women participation in Malawi politics, 1994-2004

	1994		1999		2004	
	Male	Female	Male	Female	Male	Female
Number of candidates	na	na	na	na	1107	154
Number of winning candidates	167	10	174	18	161	26

Although figures of the gender composition of contestants in the 1994 and 1999 elections are not available, the evidence from the 2004 elections suggests that campaigns by civil society to increase the number of women in politics need to be strengthened. The political environment is not supportive of women candidates, as they made up only 12% of the total number of candidates in the 2004 parliamentary elections. However, despite this low number of female participation, the success rate among women, at 18% of the total number of candidates, is higher than that of male candidates, which stands at 15%. This suggests that the low number of elected female representatives is not necessarily a result of the public's reluctance to vote for female legislators, but rather due to the low number of female candidates. Civil society therefore needs to drive the point home to political parties that they stand a better chance of success if they field female candidates.

Monitoring the campaign process

Electoral fairness is affected by, among other things, the voters' access to reliable and balanced information, the range of choices they are offered and the circumstances under which campaigning are carried out. Among the key areas requiring attention during the campaigning period is the conduct and behaviour of contestants. This includes emphasis on issues such as social responsibility, respect for the rule of law, respecting the right of voters to make well-informed choices and the campaigning rights of other political contestants.

Campaigning beyond the electoral period

One of the areas of civil society engagement in this phase of the electoral process requires monitoring of the activities and conduct of the various stakeholders to ensure that they are in keeping with Malawi's electoral laws, particularly the need for a level playing field to ensure the fairness of the elections. However, this appears to be another area where civil society engagement has been limited in scope as well as overall impact. For example, although the Presidential and Parliamentary Elections Act specifies that the official campaigning period only begins two months prior to a general election, in reality, the campaign starts long before this period (Dulani, 2005). From the 1994 to the 2004 elections, there is a sense that the country is continuously on a campaigning path.

The status quo, where campaigning starts long before the official elections period, requires that civil society should look beyond the official campaigning period to monitor the activities of the contestants. By restricting its activities

to the official campaigning period, the Malawian civil society players are missing out on the opportunity to engage fully with political players, leaving them free to undertake activities and practices that run contrary to the values and principles of democracy, such as tolerance and coexistence. As a result, the Malawian political landscape has, on a number of occasions, been marked with government paralysis and gridlock. For example, in 2005 and 2006, the national Assembly was sharply divided owing to disagreements between the ruling and opposition parties. In both years, the government budget could only be approved after the intervention of donors. The interests of ordinary Malawians were thus placed secondary to the ambitions of political parties.

Another outcome of political contestation has been cases of politically motivated violence, perpetrated largely by the youth wings of the various political parties. In all these cases, civil society has played only a minimal role in so far as the incidents fall outside the official campaigning period, despite the fact that the net effect of such violence is carried over to Election Day. If civil society engages in the process too late, most of the damage will already have been done and the credibility and legitimacy of the elections might already be in doubt, even if the parties conduct themselves well during the official campaigning period.

Levelling the playing field: access to state media

The biased nature of public (state) media coverage is one example of the unbalanced nature of the campaigning platform where civil society engagement has not borne much fruit. With perhaps the exception of the 1994 elections, media coverage of elections has been heavily skewed in favour of the ruling party. In the 2004 elections, for example, the Media Monitoring Unit of the Electoral Commission found that the only national public radio, the Malawi Broadcasting Corporation (MBC), allocated up to 97.5% of its coverage to the ruling UDF, while opposition parties shared the remaining 2.5% of campaigning airtime. Even in these instances, most of the coverage was negative towards the parties concerned (Neale, 2005).

The failure by the Electoral Commission to level the playing field, both in terms of campaigning resources and access to the media, translates into a failure on the part of civil society to engage the process to ensure a fair outcome of the elections. This state of affairs had significant implications with regards to the fairness of the results of the last two general elections. Although the opposition parties were allowed to contest, their chances of winning were significantly reduced in comparison to the ruling party, thereby undervaluing the democratic credibility of the entire process (Dulani, 2005). The consolidation of democracy, as underpinned by free and fair elections, therefore requires that civil society actors take a leading role in not only pointing out the bias exhibited by the public media, but also by campaigning intensively in favour of liberalising the public airwaves in a manner that would provide opportunities for critical views to be heard. Then, and only then, will Malawians be afforded the opportunity to vote on the basis of complete and balanced access to information, and make their votes truly count.

Administration of pre-election activities
Monitoring by civil society organisations of the administration and management of pre-election activities are one of the major hallmarks of the democratic process. The democratic credibility and value of elections require that the electoral management body should be competent and politically neutral.

In Malawi, however, the neutrality of the electoral commission has been adulterated by the fact that its composition is drawn from the political parties represented in parliament, who also happen to be among the major interested parties in the elections. It is against this background that civil society has an important role to play as neutral referees and arbiters in the management of elections. This includes assessing the preparedness of the electoral authorities, with particular focus on the capacity and competence of the electoral body's officials to manage the elections as well as the status of logistical preparedness for elections.

The Malawian experience thus far shows that civil society actors do not actively and adequately engage the Malawi Electoral Commission in a manner that would ensure the smooth running of elections. It has to be borne in mind that managing elections requires proper planning long before the Election Day itself. Because civil society has tended to pay more attention to Election Day activities, they have routinely failed to engage the Electoral Commission in more meaningful discussions that could have led to the avoidance of some of the teething challenges that have marked Malawi's elections. Instead, the civil society actors have resorted to fire fighting when it is too late to make any meaningful changes. This has translated into chaotic elections and rejection of the results of the 1999 and the 2004 elections by the losing contestants (Kadzamira, 2000; Dulani, 2005). This again underscores the necessity for civil society to go beyond a focus on the official election calendar period in terms of engaging with various players, such as the MEC. If potential problems are identified early and addressed in time, the likelihood of smoother and problem-free elections would be enhanced.

To play such a role requires a reciprocal appreciation of the contributions of civil society on the part of stakeholders such as the Electoral Commission. Sadly, this has not always been the case. For example, a November 2003 National Consultative Meeting, organised by the Malawi Electoral Support Network (MESN), to deliberate on the issues of electoral management and administration, the role of civil society in the electoral process, and on the proposed amendments to the electoral laws, had minimal success. The resolutions of the conference, which included recommendations to the MEC to plan for the holding of presidential, parliamentary and local government elections at the same time, and the urgent need to remove inconsistencies in the Elections Act, were ignored by the relevant authorities, particularly by the MEC (Immink and Chigona, 2005). This suggests a rethink of the strategies adopted by civil society, where they could benefit from a wider and more concerted advocacy and lobbying. These should include interaction with various forums to garner wider public support, as well as with government and parliament to ensure a higher likelihood of success.

Lessons and challenges for civil society

Despite the wide acclaim that civil society in Malawi has received for their role in the democratic process generally and in elections in particular, there have been a number of challenges that have undermined the optimisation of their contributions.

This mixed performance has been due to a number of factors that include capacity and resource constraints, as well as a general lack of proper planning and sound coordination. For example, in assessing the role of civil society players in the 1999 elections, Chirwa (2000:114-116) attributes its limited impact on the overall electoral process to the fact that "the personnel were inadequately trained and activities were inefficiently coordinated, monitored and implemented". Any future endeavours therefore require civil society to address these shortfalls, including training its staff in developing a better understanding of democracy and, more importantly, in acquiring the necessary networking and campaigning skills to lobby and engage other stakeholders in a manner that can deliver more positive results.

Linking more strongly with the rural poor

A genuine democratic transition requires the mobilisation of civil society and wide public recognition of its role and value. However, in a society such as Malawi, high levels of poverty and illiteracy pose significant challenges in self-mobilisation and organisation. As a result, the civil society arena is dominated not by the majority of the poor, but rather by a highly educated and sophisticated middle class that may not have a full appreciation of the challenges that the poor and illiterate experience. This is also worsened by the fact that most civil society organisations are located in urban areas, while the need for their services is greater in the rural and remoter areas of the country. This state of affairs poses the dilemma that civil society leadership and civil society organisations might be perceived to be equally as remote as the institutions of state and the political parties that they claim to be different from. There is a need for civil society to devise ways in which they can accommodate, and be more closely identified with the rural population, than is currently the case.

Lack of planning and strategic co-operation in CSOs

While some of the above observations externalise the locus of blame away from civil society, it is also true that there are a number of areas where civil society in Malawi has let itself down.

By being mostly event-driven instead of being pro-active, too many CSOs in this sector are characterised by undefined and constantly changing agendas. This results in civil society being unsystematic in their activities to engage the state and society in a sustained process. This state of affairs has often translated into critical weaknesses in various areas, particularly in overall organisation, planning and strategising, and lobbying and advocacy (cf, Immink and Chigona, 2005, English, 2005).

A major challenge that is undermining the realisation of the full potential of civil society is the lack of common standards and the uncoordinated nature of the activities of civil society. Although networks such as MESN, HRCC and others seek to promote common approaches to issues, there is a general

tendency among Malawian civil society players to work in isolation and often, in competition with each other instead of working together as partners. This results in uncoordinated approaches to pre-election events and has the potential of confusing, rather than helping the intended recipients of their efforts.

To overcome this particular challenge, civil society needs to redefine its role and begin to take the initiative and drive the policy agenda. In particular, civil society organisations need to devise long term strategic plans that will serve as blueprints of their activities in all areas, including elections. This calls for strategic cooperation and networking among civil society organisations, if they wish to have broader and stronger impact. Coordination and networking would allow them to mutually plan how to expand their outreach into rural areas and to connect with poor communities, as well as how to divide the necessary tasks among themselves in order to be more effective.

Falling prey to divide and rule strategies

The fractious nature of civil society in Malawi also undermines them in a number of ways. This has allowed government and political actors to infiltrate civil society by co-opting a number of individuals, especially when they have been outspoken on poor governance in the country. Government very often resorts to calling civil society leaders to state house for informal and closed-door discussions, particularly when there has been a major controversy regarding government decisions. When such leaders come out of state house with different views from the ones they previously espoused, civil society loses some of the public trust and confidence cultivated since the early 1990s.

Much as there is a lot to be gained by engaging with government and policy makers, civil society needs to be very careful in the process to safeguard its independence from the state. At the same time, civil society players also need to be more transparent in their activities, especially when they engage with government. They also need to be vigilant and guard against being incorporated into government, with the potential risk of losing their identity and legitimacy.

From the foregoing, it is obvious that the main successes of civil society have been in those areas where the bulk of their interventions have been targeted, especially in civic education. While this has assisted in giving thorough attention to this particular area, it is important that the other aspects of the election and broader issues of democratisation be given enough attention to prevent giving the impression that these are less important. It is therefore imperative for civil society to increase the scope and coverage of their activities for more sustained impact. This underscores the need for continuity of action as part of the overall democratisation process. If civil society remains dormant during the inter-elections period, political parties will dominate the process, which could have the effect of undermining and side-lining the relevance of civil society.

Conclusion

Civil society in Malawi has played an influential role in pre-election activities that have made an important contribution to the overall electoral and democratic process. Their contributions often stand out and their involvement in the elections does not stem from any partisan interests, but purely from the spirit of national duty.

However, the concerns and weaknesses that have marred the elections that have been held since 1994 suggests that there is still more work to be done by all stakeholders, including civil society. This requires addressing the various challenges that have been identified in this and other papers.

These include:

- Shifting focus away from general to local government elections. This includes adapting the civic education campaigns to suit local government elections and devising ways and means of boosting popular participation in local government elections;
- Continuously engaging political parties to ensure democratic principles and values are upheld in the selection of election candidates;
- Lobbying political parties to provide more opportunities for female candidates as well as encouraging the public to vote for female candidates;
- Adopting a holistic view of democracy that goes beyond elections and beyond the official electoral calendar;
- Lobbying for liberalising the public media to allow critical views, including allowing equitable access to opposition parties;
- Engaging in conflict resolution efforts and encouraging consensual politics and greater political tolerance;
- Reviewing strategies to engage with democratic stakeholders in a manner that would promote greater civil society influence;
- Addressing capacity shortfalls and challenges to adequately engage in the democratic process;
- Adopting a more proactive stance on democracy and electoral issues;
- Exploring opportunities for strategic cooperation and networking among civil society actors to increase their reach and impact; and
- The need to be open and transparent in their activities, especially when engaging with government.

Notes

1. For example, the PAC's *Gwira Mpini Kwacha [*Get Ready for Work, it is Morning*]* was published in the vernacular to ensure wide accessibility and focus on issues of human rights, voting processes and generally sensitising the public about democracy.
2. See *Tamvani*, January 31-February 1, 2004, 'Bungwe la EC Likukondera UDF-CHRR' and 'Voters fail to register in Mzimba Centres', *Nation*, 9 Jan., 2004. See also 'Voter Registration Extended', *Daily Times*, Jan. 20, 2004.
3. These included the Republican Party (RP); People's Progressive Movement (PPM); Movement for Genuine Democracy (Mgode); Malawi Democratic Party (MDP); People's Transformation Party (Petra); National Unity Party (NUP); and the Malawi Forum for Unity and Development (Mafunde)

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MOZAMBIQUE

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Multi-Party Elections in Mozambique: A Legacy of Continuous Mistrust

by Gil Lauriciano and Ericino de Salema

Introduction

In the midst of celebrations of 14 years of peace, Mozambique is preparing for an elections marathon starting in 2007 with the first ever provincial elections, followed by the third local government elections in 2008 and the fourth legislative and presidential elections in 2009. The country embraced multi-party politics in 1990, not only in response to the changing geopolitical context, but also to pave the way for a peaceful settlement with the rebels of Renamo who had been fighting the Frelimo government for more than a decade. However, before any of the expected provincial, municipal and general elections can take place, the Assembly of the Republic (parliament) must finalise and approve the new Electoral Bill and conduct a new voter registration drive.

Both the approval of the new electoral law as well as the holding of a new voter registration drive are at the centre of differences between the two main parties in the Mozambican political arena: the ruling Front for the Liberation of Mozambique (Frelimo) and the Mozambican National Resistance (Renamo) – the only opposition party with representation in the National Assembly.

Two main issues are retarding the approval of the proposed new electoral law, which has been opened for public debate. First is a disagreement over the composition of the National Electoral Commission (NEC) and, secondly, the five per cent threshold – the minimum number of votes required for a political party to win a seat in parliament. Frelimo seems willing to accommodate a demand from civil society organisations that the NEC should be composed mainly of members drawn from civil society instead of the current bi-partisan structure. Renamo is sceptical, arguing that there is no independent civil society in Mozambique. On the issue of lowering the five per cent threshold (which can result in more political parties being elected to parliament), both parties seem reluctant, but the ruling party says it is open to discussion while Renamo suspects that this may be Frelimo strategy to further disperse its support.

For local observers and the general public, the mutual mistrust between the benches that typifies virtually all debates – with the exception of increases in benefits for MP's – is something that has become part of the Mozambican political landscape. But is it the case that such mistrust is confined to the four walls of the majestic building housing the Assembly of the Republic? One cannot answer this question without risking a controversy. It is, however, relevant to assess the degree to which this parliamentary microcosm applies to the larger national political macrocosm. The mistrust could extend beyond a simple party-political observation and affect the quality of citizenship in the country.

In a recent study for the UK Government Department of International Development (DFID), Vaux, Mavela, Pereia and Stuttle[1] suggest that the most relevant characteristics of Mozambique today are centralised power based on political clientelism, exclusion of the political opposition, regional asymmetries, corruption and alienation of voters. This reading is certainly not neutral, nor

is the alternative that we now stand before a new dynamic, with which the opposition cannot keep pace. Most opposition parties were founded during the transitional period in the run up to the first ever multi-party elections and depended on funds provided by the United Nations mission in Mozambique. Since the end of the UN mission, most opposition parties have been complaining of a lack of funds to carry out their political activities and have seen a number of their members deserting to the ruling party.

In addition, the new Frelimo leader and Head of State, Armando Guebuza, contrary to his predecessor, Joaquim Chissano, has reverted to more populist politics, including revitalising the party's grassroots structures, showing little mercy to the opposition. The opposition contest this view arguing that Frelimo is benefiting from its hold on the state and that many people are forced into its camp as a way of keeping their jobs and access to other resources. What these two readings translate into is the realisation that something is afoot in Mozambique's fragile democracy.

The ultimate question, as stated above, lies in the mistrust between the two main political parties of Mozambique, Frelimo and Renamo. The impasse in the review of the Electoral Bill at parliamentary level bears this out, with the majority party (Frelimo) proposing a proportional representation model for the NEC and its structures, whereas Renamo insists that only equal status (half Renamo and half Frelimo) can – at the present moment – ensure that elections are independent, free and fair.

Democracy in Mozambique: historical context

In 1990, 15 years after gaining independence from Portuguese colonial rule, Mozambique produced its first democratic Constitution of the Republic, which provides, among others, for multi-party politics and the freedoms of the press, expression, association and movement, as legally enshrined rights. From an historical perspective, the 1990 constitution represented a radical change in political life since it became part of a modern state under Portuguese rule. Like other European colonies, Mozambique was administered by large companies of the Crown, principally the *Companhia de Moçambique* (the Company of Mozambique), the *Companhia de Niassa* (the Company of Niassa) and the *Companhia de Zambézia* (the Company of Zambezia), which profited from the forced export of labour to the mines and plantations of neighbouring South Africa and Rhodesia. The end of colonialism in June 1975, as a result of a 10-year armed struggle, saw the proclamation of Mozambique as a socialist state ruled by a Marxist-Leninist Frelimo.

At the time of adoption of the new 1990 liberal constitution, the country was still in the throes of the next 16-year armed struggle, which pitted the Frelimo forces loyal to the government against the troops of Renamo. In the meantime, Frelimo had also transformed itself into a political party in 1977. With the signing of the General Peace Accord in Rome in 1992, the country witnessed the advent of conditions for a multi-party environment. As time went by, a number of new parties were created, providing more choice for the people. Two years later, the first presidential and legislative elections in the history of Mozambique were held, won by Frelimo and its presidential candidate, Joaquim Chissano.

The first multi-party election in the country took place in a climate described at the time as 'not entirely calm'. There was considerable tension between the two former belligerents, Frelimo and Renamo, and sporadic incidents of violence took place before and during the elections. The basic issue raised by Renamo was that the National Electoral Commission (NEC) was not independent, and thus had favoured Frelimo. Polemics aside, the fact is that the first elections were held in a context deemed acceptable by observers, local and international alike. Since then, Mozambique has held two more general elections (1999 and 2004), likewise won by Frelimo and its presidential candidates (Joaquim Chissano and Armando Guebuza).

In 1998 and 2003, local elections were held in 33 municipal cities and towns, giving effect to a constitutional directive providing for government decentralisation. In 1998, these were boycotted by Renamo, because of the mistrust it held and still holds of the institutions that govern electoral processes, namely the NEC and its administrative arm, the Technical Secretariat for Electoral Administration (STAE). In the 2003 elections, Renamo remained distrustful, but participated in the process, winning the presidency in five of the 33 local authorities, with the remainder going to Frelimo.

Freedom and rights in Mozambique

With the advent of the 1990 Constitution, almost everything changed in Mozambique. The exercise of citizenship in the political arena, through the rights and freedoms of the press, expression, association and movement, became a reality for the first time when the constitution was adopted. (These rights and freedoms were not affected by the constitutional amendments made in 2004).

Today, Mozambique is not a democratic country in name only. As a case in point, through the right of freedom of association, a number of civil society organisations (CSOs) have been created, some of them deserving recognition for doing their utmost to guard against abuses of power on the part of those who hold public office. Some of these also exercise actual influence in terms of policy development and formulation.

However, although the country is often showcased among those emerging from long and brutal civil wars, many observers share some of the concerns voiced by Vaux, Mavela, Pereia and Shuttle in their strategic assessment of the present political situation in Mozambique. The state is still vulnerable to internal and external shocks: crises arise from poor responses to natural disasters; electoral processes still hold potential for triggering violence and the economy is negatively affected by sudden increases in the price of fuel.[2]

Organised crime, corruption, rising unemployment and levels of poverty, aggravated by the appalling inefficiency of the judicial system, have made it impossible thus far to translate the text of human rights and freedoms into actual practice. Law and order agents investigating crimes routinely employ torture as a normal method of working. All prisons are overcrowded and many inmates are detained for years without charge, while others are kept locked up in their cells even after completing their sentences, because of lack of information and the failure of systems.

Renamo's refusal to disarm its so-called 'presidential guard' (consisting of hundreds of armed men housed in former bases in central Mozambique) is also a highly disturbing feature in the consolidation of the peace and reconciliation process. Under the General Peace Agreement signed in Rome, these men should have either have been demobilised or incorporated into the new defence and security forces.

It is a further matter of concern that popular participation in the elections is systematically declining, as demonstrated by official figures. In the first general elections, in 1994 – perhaps given the novelty effect – the rate of voter abstention was pegged at 13%. In the municipal elections of 1998 the drop out rate was 85%. In the 1999 general elections it was recorded at 30.4% and at 75.8% in the municipal elections of 2003. In the last general elections in 2004, the trend held, with voter abstention at 63.58%.

Mozambique's democratic process has not escaped from the overall context of the country's external dependency on foreign aid. Since the introduction of multi-party politics, the elections are also dependent on external funding. This means that the preparatory process, including relevant contributions by CSOs, is also dependent on the availability of external funding. For instance, even the setting of election dates is based on factors connected to the delivery of external funding. In addition to other institutional weaknesses, this has caused elections to be rescheduled to take place during the rainy season, with serious knock-on effects for the reconfirmation of previously registered voters. Because of funding problems, logistical arrangements are also often left to the very last minute, often resulting in the inability to process all prospective voters, particularly in remote areas, and thereby denying their rights.

A fragile but increasingly active civil society

Democracy in Mozambique today, means much more than the holding of periodic and competitive elections. It is important that, quantitatively and qualitatively, a plethora of spaces for the manifestation of political pluralism should exist in a society, and in particular to hold to account those who occupy positions of public office. Chief among these are the media and civil society organisations.

The nature and role of civil society and the media in Mozambique, however, reflect much of the historical context from which Mozambican society has evolved. Elias Cossa, president of the National Union of Journalists (SNJ), one of the most influential within the Mozambican Confederation of Trade Unions, argues that regardless of political will, civil society always exists from an organisational point of view. Mozambique's civil society, however, is still very fragile and has not yet succeeded in making an impact on national social and political life. Cossa says that during colonial rule and the impact of 'assimilation policies', indigenous civil society organisations were not allowed to develop and the few which dared to do so were violently suppressed. "That has had a great impact on the work of CSOs in Mozambique. For instance, they are unable to influence the agenda, on both political and economic issues, such as poverty reduction, the HIV and AIDS pandemic, debt relief and the much needed reforms of the judicial system." Nevertheless, as can be seen from examples cited below, there are CSOs who are attempting to engage the state in policy formulation.

Another observation that is generally made about the country's CSOs is the legacy of 15 years of single-party politics. Many CSOs are still struggling to adapt to the new economic and political environment and in most cases operate as appendices of transnational civil organisations on which they depend for funding. Marcelo Mosse, director of the Centre for Public Integrity (CPI), one of the country's leading organisations in the monitoring of governance, argues that civil society participation in the most compelling aspects of national life, such as social, political and economic issues, is still very weak, mainly due to two important aspects: lack of knowledge of the main law and policy documents guiding these areas, and lack of openness on the side of government. In order to address the legacy of secrecy and self-censorship in public institutions, the Mozambican chapter of the Media Institute of Southern Africa (Misa-Mozambique), is leading a process of public debate on the right to information and has submitted a draft Bill on the Right to Information to parliament. This is one example of increasing activism on the part of civil society in Mozambique.

Salomão Moyana, until recently the Chairperson of Misa-Mozambique and Editor-in-Chief of the weekly *Zambeze* newspaper, observes that notwithstanding the fact that the horizontal aspect of the Mozambican democracy is a process in progress, the country has enjoyed relative freedom of the press. The press has pioneered exposés of corruption and abuses of power as well as civic education. Dozens of radio and a number of television stations have proliferated and have been allowed to operate freely. There are more than 10 daily newspapers (two of them printed and the remainder electronic), seven tabloid weeklies, five free-to-air television stations (one of them public), a national public radio broadcaster (that broadcasts in almost all the local languages), and other radio broadcasters, including community radio stations, transmitting on FM frequencies.

Reverend Dinis Matsolo of the Christian Council of Mozambique (CCM) points out that the country's present Poverty Reduction Strategy demonstrates the ability of organised civil society to influence public policies. "For example we (CSOs) grouped ourselves in what we call a 'Poverty Observatory' and succeeded in making our voices heard and many points that had been neglected in the strategy were included, such as the establishment of clear monitoring and evaluation indicators of what the Government does and ought to do." According to Rev. Matsolo, a pilot project involving the CCM and CSOs on Citizen Participation in Governance, aimed at influencing the decision-making process at grassroots level, is also underway in four municipalities. It is hoped that after this experimental phase the project will be replicated in all municipalities. This is another example in which a network of CSOs is playing a more pro-active role in policy development.

Guilherme Mbilana, a member of the Electoral Observatory, an umbrella of CSOs that monitor electoral processes in Mozambique, is of the opinion that the political climate in the country is positive, partly because of civil society engagement, especially in promoting dialogue as a way of solving problems. The 'Electoral Observatory', an affiliate of the Electoral Institute of Southern Africa (Eisa), includes national churches renowned for their role in the promotion of dialogue and reconciliation in the country. During the last general elections, the Electoral Observatory played an important role in monitoring and timeously exposing irregularities in the process.

Civil society debates on the proposed electoral bill

CSOs have also been active in the debate over the composition of the NEC and about the cost implications of the triple election marathon for the country's weak and internationally dependent economy. According to Luís de Brito, the former EISA Country Director in Mozambique, "Nobody is raising the question of costs, but to me this looks like a very important point. To organise elections in 2007 will mean that we will hold elections every year for three consecutive years, which besides being very taxing [on the state], can also be demanding on the voters. For me, it would be ideal if the regional elections could be postponed to 2009, and be held together with the general elections". He is of the opinion that the NEC should be made up solely of independent individuals drawn from civil society. "It is not right to put independence at stake. The equal status defended by Renamo can block progress, whereas the present system of proportional representation keeps alive the mistrust that exist today". Ultimately, the consensual and most frequently voiced opinion among CSOs is that members of the NEC should be selected from individuals and civil society organisations of good standing and without links or obligations to party-political interests.

Most of the debates taking place in Mozambican politics give substance to the proposition that the basic issue of mistrust between the two major parties is a major stumbling block. They both want to be players and referees at the same time. "There can be a good Electoral Act, but with a low level of trust, there will continue to be problems," says João Cândido Graciano Pereira, a lecturer at the leading national university, University Eduardo Mondlane (UEM).

Citing the controversy over the proposed new electoral and voter registration law, Mbilana of the Electoral Observatory says the concerns are also related to the lack of time to get everything in place for the upcoming provincial, municipal and general elections. "For us, what is at stake at the moment is the quality of the elections because of the lack of time." According to Mbilana, STAE is in a straitjacket because of the lack of time. STAE has publicly declared that it needs 90 days to conduct a voter registration drive from scratch, which cannot begin unless Parliament approves the new Electoral Law.

To some degree, civil society in Mozambique, like the democracy of which it is part, is still in its infancy. The relative measure of mistrust in which they are viewed by the state and the opposition, is not an absolute impediment and need not have the effect of completely undermining their efforts to grow their role in shaping the country's social and political landscape.

Conclusion

Although Mozambique is presently showcased as a country that succeeded in settling a 16-year long civil war through peaceful means, and which has since experienced significant political stability and extraordinary economic recovery, there are many weaknesses that need to be addressed if the country is to continue in the right direction. Mistrust between political parties and between the parties and a significant segment of the public, represent the most important obstacle to a constructive and participatory democratic process. This can result in long delays in the formulation of laws and policies that facilitate the democratic

process in the interests of the people, mainly because the political players are unable to reach consensus beyond their ideological differences.

The country's dynamics present a disturbing interaction of "greed" and "grievance" that shows no signs of resolving itself.[3] The gap between the rich and poor is rising sharply and millions of youngsters cannot dream of employment after leaving school. This state of affairs may yet impact negatively on the quality of people's participation in the democratic process. The role of the international community continues to be of extreme importance not only in providing the necessary financial resources, but also in terms of building the capacity of civil society, state institutions and political parties.

Notes

[1] Vaux T., Mavela A., Pereira J. & Stuttle J. 2006, 'Strategic Conflict Assessment Mozambique' , DFID Mozambique.
[2] Ibid.
[3] Ibid.

SOUTH AFRICA

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South Africa's Third Local Government Elections and the Institutionalisation of 'Low-Intensity' Neo-Liberal Democracy

By Dale T. McKinley

Introduction

South Africa's third local government elections – held on 1st March 2006 – were, according to most local/international media, politicians and electoral analysts, a hugely successful affair that confirmed the maturation of South Africa's fledgling democracy. In the words of South African President Thabo Mbeki: "We must celebrate the reality that the principal actors in our electoral process … contributed severally and collectively to the further consolidation of democracy in our country. We must celebrate the fact that once more, we have held free, fair and largely peaceful elections, whose results reflect the will of the people."[1]

On the surface of things (i.e., at the macro-institutional level) such a conclusion appears eminently reasonable. After all, or so the conventional logic punted by most politicians, electoral observers and political analysts goes, unlike in so many other Sub-Saharan African and 'third world' countries where the institutional mechanisms and socio-political conditions for multi-party electoral competition in free and fair democratic elections are either weak and/or virtually non-existent, South Africa has all the right '(pre)conditions' in place: a constitution guaranteeing the right of freedom of association, assembly, movement and expression as well as the separation of powers between the judiciary, legislative and executive arms of the state; specific laws that codify the electoral system and a 'code of conduct' for political parties contesting elections at both national and local levels; an 'Independent Electoral Commission' (IEC) to manage all elections; and an extensive and vibrant 'civil society' to provide societal 'checks and balances' vis-à-vis the state and those elected into positions of power.

Not surprisingly then, the dominant perspective is that such (pre)conditions, alongside their effective application have, in past elections as well as in relation to the recently-concluded local government elections, served to ensure that they were both free and fair and reflective of the democratic will of the people of South Africa – notwithstanding some debate around the need to tweak the electoral system as a means to enhance representative accountability, and a few practical hiccups here and there.

However, before we conclude that all is well and lend unquestioned credence to President Mbeki's celebratory remarks, there are several crucial questions that need to be asked (and answered): What is the relationship between the socio-economic conditions of the vast majority of South Africans vis-à-vis the character and content of the institutional (democratic) framework and accompanying policy formulation, as well as the practice of electoral politics in the country? Why is there an increasing use of the institutional and coercive capacity of the state against those socio-political forces who are critical of the

'democracy' that has been delivered and who effectively operate outside the ambit of institutionalised, electoral politics – and does such state activity constitute a threat to democracy itself? Why did a large majority of citizens choose not to participate in the elections and what does this say about the 'mandate' of the ruling African National Congress (ANC) and the kind of democracy 'delivered' to South Africa? Does the outcome of the recent elections constitute a ringing endorsement of popular democratic will?

This paper seeks to address these, and other, pertinent questions as a means to show that all is not what it might appear to be in relation to democracy and elections in South Africa. The core thesis here, is that South Africa's elections – and with specific reference to the latest local government elections – provide ample evidence that the country has entered a terrain of low intensity and commodified democracy that is embedded within a neo-liberal political economy. It is a terrain that is constituted, in electoral terms, by a 'silent majority' that has already opted out of electoral politics a mere 12 years after South Africa's first-ever democratic elections. It is a terrain in which the mere existence and functioning of institutional, electoral (pre)conditions as well as representative democratic institutions and processes, while providing the framework for 'free and fair' elections, increasingly mask the decline of meaningful popular democratic participation/control. And, it is a terrain that has rapidly come to mirror the western 'liberal bourgeois' model in which elections and electoral politics have become the playground of those with access to state power, capital and patronage.

Reason 1: Embracing neo-liberalism and worsening socio-economic conditions for the majority

Despite the more general social, political and economic advances that have been made in South Africa since the formal end of apartheid in 1994, there is no denying the fact that the fruits of such advances are only being enjoyed fully by a small minority. The gap between the few 'haves' (represented by established, mostly white, corporate elites as well as a mostly black, bureaucratic state elite and fast expanding black middle class) and the many 'have nots' (represented by an overwhelmingly black majority of workers and poor) is widening rapidly.

To locate and understand this reality means locating and understanding its foundation. Despite the adoption of the redistributionist Reconstruction & Development Programme (RDP) as its electoral manifesto for the 1994 elections, the first two years of South Africa's new democracy witnessed the ANC's gradual, even if at times contested, political and ideological acceptance of the broad framework of a globally dominant, neo-liberal political and economic orthodoxy. In order to sell this shift to its constituency of workers/poor, the ANC cleverly sought to equate its acceptance of liberal bourgeois democracy, alongside neo-liberal economics, as the will of 'the people'. This twinning made it appear that neo-liberalism was a necessary and natural economic order emanating from the equally necessary and natural political order of liberal bourgeois democracy. Under such a scenario, democracy and development could then become synonymous with the 'growth' of a capitalist, neo-liberal 'free market'.

Crucially, this rightward ideological shift was paralleled by the systematic dismemberment, or incorporation into the organisational framework of the ANC itself, of most independent and allied community organisations (whether 'civics', women's organisations and/or youth groupings) in South Africa. By the mid-1990s the vast majority of those community organisations that had been so central to the radical democratisation of the anti-apartheid struggle and popular, participatory politics, had been swallowed by the ANC and, to a lesser extent by it's alliance partners.

The 'deal' was then institutionally codified with the formal unveiling of the overtly neo-liberal Growth, Employment and Redistribution (GEAR) macroeconomic strategy in mid-1996. In order to propagate the idea that GEAR would ultimately benefit everyone (especially the workers/poor), the idea was proffered that a combination of economic affirmative action (through land distribution to a new class of black commercial farmers and state assistance to emerging black industrial/manufacturing entrepreneurs) and new black economic empowerment initiatives through 'partnerships' with corporate capital, would best 'deliver' the desired outcomes of economic redistribution, social equity, job creation and, of course, 'economic growth'. The ANC government argued that these (supposedly) 'redistribution-through-growth' measures – in reality nothing more than classic 'trickle-down' economics dressed up in racial garb – would engender, in the longer-term, the kind of 'investor confidence' and solid monetary and fiscal platform needed to address mass unemployment and poverty.[2] In turn, this socio-economic foundation would ensure the health of political democracy, evinced through reformed public (state) institutions and a new non-racial representative electoral model.

And yet, every major piece of research conducted over the last several years, both by the state and independently, exposes the neo-liberal 'democratic' growth myth for what it is.

A 2003 research survey by the Community Agency for Social Enquiry on behalf of the South African Bishops Conference (which included interviews with over 6000 people in 60 poor communities) found the following:[3]

- 55% of unemployed and 32% of employed said they were unable to afford food
- 54% of jobless and 43% of employed could not afford basic services
- 46% could not afford rent or bond payments
- 68% earn less than R500 (US$67)per month whether working, self-employed or unemployed
- 86% are looking for work
- 1 in 8 among self-employed said they earned enough to live on.

Research conducted by the Development Bank of South Africa in 2005 revealed that the number of South Africans in poverty (with the national poverty line for 2002 being benchmarked at a miserable R354(US$48) per adult per month) in all population groups increased dramatically, from 17 million in 1996 to 21 million in 2003. During the same period, average household income rose by 7,6%.[4] Confirming this trend, the 2006 'South Africa Survey', revealed that the proportion of people living on less than US$1 a day – a somewhat arbitrary but nonetheless useful measure of absolute poverty, globally – had more than

doubled since 1994.[5] Put together, these figures confirm that there exists an increasingly unequal income distribution in a country, which is already ranked amongst the most unequal societies in the world. Indeed, the state's own earlier figures (2002) show that the poorest half of all South Africans earn just 9,7% of national income (down from 11,4% in 1995), while the richest 20% take 65% of all income.[6]

According to the state-initiated Taylor Commission Report (2002), 55% of South Africans live in poverty and 60% of the poor receive no social security transfers and/or grants.[7] Making matters even worse, an independent study focusing on South Africa's main urban areas in 2004 (the 'Cities Report') revealed there was a 180% increase between 1996-2001 in the number of urban households with no measurable income at all.[8] A much more recent report by the University of South Africa (2006) put South Africa's unemployment rate at "between 30 and 40 percent, depending on which definition of 'unemployed' is used" and concluded that "the economy is not creating jobs – to a large extent it's jobless economic growth."[9] The 2005 United Nations Development Fund's Human Development Index (using measurements of life expectancy, educational attainment and adjusted real income) placed South Africa 120th out of 177 countries measured. By comparison, the occupied Palestinian territories ranked 102nd.[10]

Underlying this mass poverty and inequality is the widespread lack of quality basic services, especially in rural parts of the country. A study undertaken by the United Nations Development Programme (2003), found that the number of households considered deprived of access to 'good' basic services increased from 5.68 million to 7.24 million between the 1996 and 2001 censuses. Relative to the size of household population in 1996 and 2001 respectively, the percentage of the population deprived of such basic services increased from 63% to 65% of the overall population.[11] In South Africa's main urban centres, the 'Cities Report' revealed that the increase in the amount of shack dwellings is almost equal to the total number of houses built between 1996-2001, that the number of households without electricity and water (whether unconnected or disconnected) virtually matches the number of those who receive these services and that two-thirds of urban adults have not completed basic secondary schooling.[12] Recently released figures from the Human Sciences Research Council show that while 2,3-million households lacked water in 1994, that figure rose to 2,6-million ten years later; additionally, the 1,6-million households living in shacks in 1996 had increased to over 2 million by 2004.[13]

It is, by any measurement or post-1994 timeframe, a sad state of affairs given the considerable human, natural and capital resources in a country like South Africa. But it is explainable given the political/ideological understanding of, and practical approach to, development and democracy that has been accepted and institutionalised by South Africa's political and economic elites. Rather than seeing development as a metaphorical 'house' whose ability and habitability requires, first and foremost, the laying of a foundation of basic needs/services for the majority who live in it, they have chosen to focus on supporting and strengthening the upper 'floors' in the (vain) belief that doing so will not only make the house look more presentable but will somehow work its way down

to the foundation. This constitutes nothing less than a reverse, neo-liberal developmental logic and practical approach.

The pursuit of this kind of developmental plan not only demands that the accumulative 'needs' of those in possession of political and economic power (the first economy) be the fount of growth and prosperity 'for all', but also that the enduring socio-economic conditions of the workers/poor themselves be identified as the main impediment to such accumulation and thus to development itself (as opposed to the other way round). This is hardly a ringing endorsement for a meaningful democracy which surely requires that the 'empowerment' of the 'people' is grounded in meeting their basic needs, so that they can participate actively in framing and building the developmental 'house'.

Reason 2: The response to emergent grassroots struggles

Since the late 1990s, and as a direct result of the worsening socio-economic situation of a majority of South Africans, umbilically linked as this has been with the role of the state in the delivery of basic services, a collection of community organisations and social movements have arisen to address and challenge conditions of generalised poverty and the state of service delivery.

The immediate response of the ANC-controlled state to the emergence and activities of these new organisations/movements was to embark on a political propaganda campaign that sought to portray these movements and their members as 'criminals' and 'anarchists'. When this seemed to have little effect on their activities and growth, the state's repressive apparatus was brought into action as part of a co-ordinated 'law and order' crackdown. This culminated in physical assaults on, and arrests and imprisonment of, hundreds of community members and movement activists across the country who had mobilised against the state's embrace of neo-liberal policies before, during and after the United Nations World Summit on Sustainable Development (WSSD) in late 2002.[14] It was also during this period that South Africa's second local government elections were held (2001). Even though the ruling ANC won these elections quite comfortably, the fact that less than 50% of registered voters participated[15], was a clear indication of the rising dissatisfaction amongst the majority with both the socio-economic redistribution/service delivery track record of the ruling party and the state of governance and accountability at the level of local government.

Despite the state's heavy-handed response, new grassroots organisations and struggles have continued to emerge – alongside renewed trade union struggles against the privatisation of state enterprises and accompanying service delivery. Instead of listening to these communities and engaging the subsequent struggles constructively, the ruling party chose to accuse those who were actively critiquing and opposing its neo-liberal policies and the democratic content of its governance as being "ultra left … waging a counter-revolutionary struggle against the ANC and our democratic government", and of siding with the "bourgeoisie and its supporters."[16]

Indeed, the government's approach over the last several years to poor communities exercising their constitutionally guaranteed rights to freedom of expression, has been described by the Congress of South African Trade Unions

(Cosatu) as "paranoid … Instead of listening and talking to the people who are demanding basic services and legitimate rights, and addressing their concerns, the government seems to want to criminalise them. Instead of criminalising the poorest section of our population, the government must seek to understand the genuine frustration of people who live in inhumane conditions, in slum settlements, where unemployment is massive and poverty universal."[17] Such 'paranoia' has been confirmed by research undertaken by the Freedom of Expression Institute (FXI) in relation to the government's application of the Regulation of Gatherings Act (No. 205 of 1993), an apartheid-era piece of legislation that continues to frame issues of freedom of expression in the public realm. In a 2005 press statement, the FXI noted:

> Research undertaken for the FXI [points] to violations of the Regulation of Gatherings Act by the Johannesburg Metropolitan Police Department, which has all but 'banned' certain social movements from marching. In addition, numerous legal protests have been broken up by the police, including two held by the FXI itself. These incidents suggest an emerging trend spreading in South Africa where community activists critical of the current status quo are being denied their constitutional rights to freedom of expression and assembly. A related emerging trend is that police officers appear to be ignorant of the Gatherings Act or, more worryingly, abuse the Act to prevent people from protesting and marching in public.[18]

Given that poor communities in South Africa have no regular or formal access to the media, that most locally elected representatives have consistently shown themselves to be more interested in either lining their own pockets or pleasing higher political powers and that government structures have all but been closed-off to meaningful negotiations, it has been public street demonstrations and community actions that have provided the main means for expression of political and socio-economic grievances. In the fullest sense then, the South African state's willingness to consciously crack-down on the only means of expression available to poor communities, and thus to circumscribe the exercising of the right to freedom of expression, has had a chilling effect on the associated/parallel rights to freedom of assembly and association.

Across our sub-continent (and elsewhere) the script has been all too familiar – manufacture an 'enemy', construct its self-fulfilling destructive character and purpose and then launch a sustained assault against it under the guise of rationality, law and order/national security, the nation's political heritage/ identity and the preservation of democracy – all in the name of the 'people'. Not surprisingly, such responses do nothing to address, fundamentally, the legitimate socio-economic grievances of the poor and their clearly growing disillusionment (in South Africa) in the efficacy of institutionalised representative 'democracy' and electoral participation. Rather, it has simply served to reinforce and widen South Africa's emergent political and class fault lines.

In the year leading up to the recent local government elections there were, according to the Office of the Minister of Safety and Security, (at least) two local councillors killed and the homes of many others torched in 881 'delivery'

protests – an average of more than two a day.[19] This represents a substantial increase, not decrease, of grassroots oppositional response to the effects of the state's neo-liberal policies and the failure of local government to act as an efficient 'deliverer' of basic services and provider of effective democratic representation of poor communities. By the national government's own admission, local government in many parts of the country is on the brink of institutional and financial collapse, thus forcing it to announce not long before the recent elections, the implementation of "drastic rescue plans", which include: Project Consolidate – to bolster the capacity of the worst-run local councils; and, the passing of legislation such as the Municipal Finance Management Act, "to force improvements in local government administration."[20]

When a new movement in Durban – Abahlali base Mjondolo (the Shack Dwellers Movement) – arose in 2005 and proceeded to embark on an active campaign to boycott the local government elections, (arguing that to participate would constitute an endorsement of the state's eviction policies and failure to deliver on its promises of housing and land redistribution), police and security forces physically invaded the stronghold of the shack dwellers, beating and arresting scores of people, and then proceeded to ban a planned march on the eThekweni (Durban) Metro Council. In the face of such a co-ordinated and vicious crackdown on dissent, the chairperson of the shack dwellers wrote to the eThekwini Municipal Manager: "While we ourselves strive only to act lawfully, we wish to warn you that it will be on your hands when the patience of the masses of poor people spills over because you have illegally closed channels for popular protest guaranteed to us by the constitution."[21] The Freedom of Expression Institute followed with a media release that proclaimed: "The violation of basic constitutional rights in this instance is appalling and is a serious threat to our democracy and to the elections due to take place …"[22] In the event, the shack dwellers contested the ban in the High Court and won a legal ruling allowing them to proceed with their campaign and march.

In three other poor communities (Khutsong, Moutse and Matatiele), each located in different cross-border municipalities across the country, disagreements between community residents and the state around the issue of their unilateral incorporation into new municipalities in neighbouring provinces sparked intense political and physical battles in the lead-up to the elections. In Khutsong, violent clashes between residents and police/security officials alongside the targeting of local ANC councillors by the residents resulted in the community becoming a virtual 'no-go' area for the ruling party, with residents vowing to, "never allow the ANC to campaign in this area."[23] Over R20 million (US$2,7mill) damage was caused as a result of the burning of municipal offices, libraries, houses and councillors' properties.[24] In Moutse, 11 members of the ruling party's de facto alliance partner, the South African Communist Party, with the backing of a sizeable portion of the community, decided to stand in the elections as independents, with a Moutse pensioner proclaiming: "We voted for the ANC and now it doesn't even bother to inform us when it makes important decisions that directly affect our lives. I thought this was a democracy."[25]

Not surprisingly, the defensive and almost auto-repressive pattern of state responses to legitimate socio-economic grievances and exercises in freedom

of assembly/expression, combined with a generalised approach of unilateral decision-making around key issues affecting poor communities, has had a negative impact on the institutional and political 'faith' of many poor people in representative politics and participation in elections. Neo Motaung, an ANC Youth League activist in Harrismith, is a classic example. "He says he won't be telling other people not to vote, but he won't encourage them to do so 'for something that I can see is killing the people'."[26]

The complementary fact that millions of South Africans have registered to vote does not, in any way, then mean that the present representational mechanisms of institutional democracy are the be all and end all of the democratic aspirations of the majority of South Africans. What it does mean though is that those millions continue to look, either passively or actively, to institutional representation precisely because there are, presently, few (in depth and breadth) alternative avenues for democratic expression. In many poor urban and rural communities in South Africa, it is through the activities of community organisations, social movements and often spontaneous 'uprisings' that an increasing number of people are experiencing and practicing meaningful participatory democracy. Indeed, it is no coincidence that the growing impact and popularity of daily 'bread and butter' issues and struggles are directly linked to the adverse effects of the state's neo-liberal policies on the poor majority that are most acutely experienced through the 'offices' of the various institutional mechanisms of representative democracy.

Reason 3: Democracy by the numbers?
Since the holding of South Africa's first democratic (national) elections in April 1994, a genuinely historic event that marked the formal end of apartheid, there has been a steady decline in the number of South Africans voting in subsequent elections. Numerous electoral analysts, political commentators and politicians have tried to present this as an inevitable and almost welcome development in the maturation of South Africa's democracy (with reference to similar patterns in 'developed' countries and rising levels of satisfaction amongst the electorate with the quality of 'governance'). However, the reality is that this decline has very little to do with the maturation of democracy and everything to do with the combined effects – on the majority of South Africans – of neo-liberal policies, the increasingly arrogant exercise of state power and the lack of any viable national political/electoral opposition representing the interests and hopes of workers and the poor, to the dominant liberation movement-cum-modern bourgeois political party – the ANC.[27]

The continued lack of such a political/electoral alternative for the workers and poor can, to a large extent, be explained by the fact that the two organisations that have historically represented this constituency – i.e. the Congress of South African Trade Unions and the South African Communist Party – have remained in a close political and electoral alliance with the ANC since 1994. Thus, despite the activities of a range of new social movements and community organisations in opposition to the effects of the ANC-controlled government's policies, this alliance has served to effectively block the formation of any viable political/electoral alternative to the left of the ruling ANC. As the figures show

though, the majority of workers and poor (who have precious few material and organisational resources at their disposal) have, rather than continue to cast their vote for the ANC-led alliance, simply opted out of the voting process.

The 1994 elections were accompanied by an understandable euphoria amongst the vast majority of South Africans. For the first time all South Africans were able to cast their vote, so it was not surprising that the election witnessed a massive turnout – a total of 19,5 million votes were cast, a number that by all counts represented substantially more people than all those who had managed to register.[28] The first local government elections in 1995 saw a reduced, yet still fairly sizeable voter turnout (almost 60% of registered voters) in relation to voting numbers for local government elections globally. In the second national elections in 1999, the voting numbers from the 1994 election had declined to just over 16 million (out of an approximate 18,5 million registered voters). The following year (2000), saw about 48% of all registered voters turn out to vote in the second local government elections.[29] The extent of the declining voter participation becomes more obvious when placed in the context of the finding in the 2001 census that there were 27,5 million South Africans eligible to vote.

In the third round of national elections in 2004, the trend continued: only 56 percent (15,8 million) of all eligible voters (27,5 million) cast their ballots[30]; just under 7 million people eligible to vote, did not even bother to register; of those registered to vote (20,6 million), over 5 million chose not to exercise their vote.[31] And while the percentage of votes cast for the ruling ANC party actually increased from previous elections (receiving almost 70% this time around), it is instructive to note that when set against the number of eligible voters, the 'overwhelming victory' of the ANC amounted to just 38% of the voting population.[32]

As for South Africa's recently-held, third local government elections, the situation has not improved despite the increased number of protest activities in poor communities that preceded the elections, the participation of a plethora of new political parties (mostly at the local/provincial level) and the 650-plus independent candidates that ran for election across the country.[33] This goes against the oft-repeated logic that such 'civic' and political activity translates into increased voter participation during elections, by those engaged in such activities. Indeed, the fact that in the midst of the most intensive socio-economic and political protest activity since 1994, the number of independent candidates standing at the local government level for the 2006 elections was less than in the 2000 elections, gives a clear indication that many poor/working class communities in South Africa no longer view voting in elections as their primary means of 'civic' expression nor of representative legitimacy.

Despite the modest increase in the number of registered voters from the 2004 elections – approximately 500,000, for a total of 21,5 million – the turnout remained at the same level of 48% (of all registered voters) as the previous local government elections. As a percentage of eligible voters (using the 2001 census figure of 27,5 million), the turnout amounts to just over 38% of all eligible voters. When it comes to the ANC (which received 66,34% of all votes cast), the number of votes for the ruling party amounted to 6,9 million

votes, which translates into 32,5% of all registered voters and 25,4% of all eligible voters.

Most other political parties with a national support base lost further electoral ground to the ANC, with only the Democratic Alliance, which received 14,77% of the vote, breaking the 10% barrier. The Inkatha Freedom Party (IFP) received 8,05%, with the vast majority of its support coming from its rural KwaZulu heartland. The newly formed Independent Democrats garnered 2,02%, but like the IFP, most of its support was restricted to one province – in this case, the Western Cape. The rest of the chasing pack hardly even registered on the electoral barometer, with the United Democratic Movement receiving 1,27%, the African Christian Democratic Party 1,24%, the Pan Africanist Congress 1,17%, and the Freedom Front 0.96%. Independent candidates managed 1% of all votes cast, leaving all the other minor parties to divide-up the remaining 3,18%.[34]

Regardless of the accumulated empirical evidence of declining citizen participation in elections and the more generalised popular alienation from institutionalised representative politics over the better part of a decade, the mainstream media alongside most analysts/commentators and politicians, have persisted in proclaiming that democracy in South Africa has never been better.

This represents more of a wishful and/or propagandistic perspective that refuses to recognise that the (pre) conditions for meaningful and popular participation in any electoral process are embedded in changing the structural relations of power (whether grounded in social, economic, political, gender or knowledge relations) for the benefit of the majority. Besides explaining the continuing (and indeed, intensifying) electoral abstentionism amongst a populace that only gained the right to vote 12 years ago, it also explains why for instance, more than 20% of non-voters interviewed in the largely impoverished King Sabata Dalindyebo Municipality (in the Eastern Cape Province) cited a lack of understanding of the electoral process as their reason for non-participation.[35]

There certainly are other constitutive elements that have contributed to non-participation. For example, floor-crossing legislation that has "enabled party representatives to change allegiance, thus binding their voters to the policies of parties for which they did not vote"; and the extent to which (given the ANC's continued political dominance in most parts of the country) "those who do not support the ANC regard themselves as excluded from the democratic polity ... [and thus] express their discontent with the system, not by voting for opposition parties, but by targeting the system itself, and effectively, dropping out."[36] Additionally, "because of the high levels of [socio-economic] inequality and unequal access to key public forums … opinions are easily shutout because those holding such opinions are too poor to influence party leaders or access institutions such as the media or Parliament."[37] However, the cumulative core of the problem of increasing non-participation lies in the crisis that is low-intensity neo-liberal democracy and which now characterises the South African polity. It is a crisis not only of the practice of participatory democracy but also of long-term institutional/structural democratic legitimacy.

Conclusion

In the context of South Africa's recently held local government elections, the cumulative impact of the disabling institutional and developmental framework and practice (for the poor) that this paper has addressed, has been two-fold: to widen the fault-lines of poverty, inequality, accessible/affordable basic service provision and enjoyment of the full panoply of human and constitutional rights; and to substantively diminish the entire concept and experience of citizenship and thus also of democracy.

The developmental legacy of post-1994 South Africa is characterised by a false twinning of a democratic form to the needs of the neo-liberal 'market'. This has resulted in a creeping intolerance – fuelled predominately by those in positions of political and economic power and policed by the coercive capacity of the state – of legitimate political/social dissent, which is the lifeblood of any genuine democracy. It has also produced a hidden, but very real, 'crisis of democracy' wherein institutionalised practices and forms of representative democracy such as elections – while largely welcomed by South Africans as a legitimate form of democratic expression – make little practical difference in the lives of the majority since the key societal (developmental) decisions are taken by those that participate in, and manage, that 'market'.

Such realities make it imperative for social movements, community organisations and their allies in broader civil society to intensify their political and socio-cultural activism. They must do so as a means not only to open-up institutional and societal spaces for more participatory forms of democratic expression that can lead to meaningful public debate on developmental alternatives, but also as a constant check, from below, against the arrogance of institutionalised political and economic power. While formal participation in elections (particularly at the local level), through the agency of political parties and/or independent candidatures, will remain a necessary avenue for South Africans to ensure institutional representation for a multiplicity of voices and interests, it does not, and cannot, represent the 'will of the people'. Democracy demands more.

Notes

[1] Thabo Mbeki (2006), 'Letter from the President: The People Have Spoken – Victory to the ANC!', *ANC Today*, Vol. 6, No. 8 (3-9 March)

[2] See Dale T. McKinley (1997), 'Sounding the Retreat: The Left and the Macro-Economic Battle in South Africa', *LINKS* , No.8 (July-October): 120-123.

[3] 'No Rest for the Jobless' (2003), *Sowetan* (23 January)

[4] Jameson Maluleke (2005), 'Shocking rise in SA poverty', *Citizen* (20 April).

[5] http://www.int.iol.co.za/index.php?art_id=qw114416064258B211&set_id=1&click_id=13&sf=. The information comes from the annual (2006) 'South Africa Survey' compiled by the Institute for a Democratic South Africa

[6] Stats South Africa (2002) – http://www.statssa.gov.za

[7] Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (2002)

[8] Stephan Hofstatter (2004), 'Shock findings in report on SA Cities', *ThisDay*

(27 May). Information taken from, Report of the South African Cities Network (2004)

9   United Nations Integrated Regional Information News (2006), 'Jobless economic growth set to continue, survey finds' (31 January) – electronic news item. Information taken from, University of South Africa, 'Projection of Future Economic and Sociopolitical Trends in South Africa up to 2025'

10 SAPA (2005), 'South Africa plumbs the depths of UN index ' (7 September) – electronic news item.

11 United Nations Development Programme (2003), 'South Africa Human Development Report'

12 Hofstatter (2004) as cited from, 'Report of the South African Cities Network'

13 Penny Sukhraj (2006), 'Belief in government promises is a key to local elections', *The Star* (9 January)

14 For an extended critical analysis of the WSSD and the role of the state's attempts to repress opposition to it, see, Patrick Bond (2002). 'The World Summit on Sustainable Development: Critiques From the Left', Paper presented to the University of Pretoria Department of Sociology, 18th July. Also see the excellent collection of essays in Simon Kimani (Ed.) (2003), *The Right To Dissent* (Johannesburg: Freedom of Expression Institute).

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16 African National Congress (2002). 'Contribution to the NEC/NWC response to the Cronin interviews on the issue of neo-liberalism', Internal ANC paper by the Political Education Unit (September).

17 'Government wants to criminalise protesters, says Cosatu', *Mail & Guardian Online* (1 June 2005) – http://www.mg.co.za/articlePage.aspx?articleId=242134&area=/breaking_news/breaking_news__national/

18 Freedom of Expression Institute (2005), 'FXI disturbed by growing number of state violations of the right to protest' – Press Release (15 November).

19 Sukhraj (2006); Also, Vicki Robinson, Monako Dibetle & Marianne Merten (2006), 'The ANC monolith starts to crack', Mail & Guardian (24 February – 2 March).

20 Robinson et al.

21 Letter from the Chairperson of *Abahlahli base Mjondolo*, Sbu Zikode, to Dr. Mike Sutcliffe (Durban City Manager) on 20 February 2006.

22 Freedom of Expression Institute (2006), 'Apartheid tactics used by eThekwini Municipality' – Press Release (27 February).

23 Rapule Tabane (2006), 'Reaping the Whirlwind', *Mail & Guardian* (17-23 February).

24 Ibid.

25 Monako Dibetle (2006), 'We Don't hate the ANC', *Mail & Guardian* (17-23 February).

26 Carol Paton (2006), 'Local Elections: Battle to be Heard", *Financial Mail* (17 February) – http://free.financialmail.co.za/06/0217/currents/acurrent.htm

27 The continued lack of such an alternative for the workers and poor can, to a large extent, be explained by the fact that the two organisations that have

historically represented this constituency – i.e. the Congress of South African Trade Union and the South African Communist Party – have remained in a close political and electoral alliance with the ANC since 1994. Thus, despite the activities of a range of new social movements and community organisations in opposition to the effects of the ANC-controlled government's policies, this political/electoral alliance has served to effectively block the formation of any such viable political/electoral alternative. As the figures show though, the majority of workers and poor (who have precious few material and organisational resources at their disposal) have, rather than continue to cast their vote for the ANC, simply opted out of the voting process.

[28] Election Special (2004), 'How the Election Numbers Crunched', *Sunday Times* (18th April). It should be noted that in the 1994 elections, permanent residents were allowed to vote for the first and only time since, and the official registration figures did not adequately capture many people who remained classified as 'citizens' of the former homelands and yet were allowed to vote.

[29] Ibid; Also – David Shapshak (2004), 'South Africa's entire voice won't be heard', *This Day* (14th April)

[30] Christelle Terreblanche (2004), 'Voter numbers down as 'alienation' takes hold', *Sunday Independent* (18th April)

[31] Edwin Naidu (2004), 'Ten million South Africans give ANC a resounding victory in free and fair poll', *Sunday Independent* (18th April); Also, see Election Special (2004)

[32] 'Final Results' (2004), *Sunday Independent* (18th April)

[33] Vicki Robinson and Rapule Tabane (2006) 'It's the ANC or no Vote at all', *Mail & Guardian* (3-9 March).

[34] Independent Electoral Commission (2006). All the main figures are taken from data compiled by the IEC for the 2006 Local Government Elections. See the IEC's elections website at – http://www.elections.org.za

[35] Xolani Xundu, Paddy Harper, Brendan Boyle and Moipone Malefane (2006), 'Voters desert ANC over delivery: Ruling party's majority likely to be reduced in six major urban areas', *Sunday Times* (19 February).

[36] Centre for Policy Studies (2004), Editorial Comment in *Election Synopsis*, Vol. 1, No.1. – http://www.cps.org.za

[37] William Mervin Gumede (2005), 'Democracy and the importance of criticism, dissent and public dialogue' – The Wolpe Lecture given at the University of KwaZulu Natal – Centre for Civil Society (28 April). The full text of the speech can be found at – http://www.ukzn.ac.za/ccs

SWAZILAND

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'Interesting times' in the Kingdom of Swaziland: The Advent of the New Constitution and the Challenge of Change

by Lomcebo Dlamini

These are 'interesting times' in the Kingdom of Swaziland. The country is poised at a point in history where anything is possible. At no other time has there been such anticipation about the advent of change in virtually every sphere of the country's existence. This suspense is largely due to the adoption of a new national Constitution on 26 July 2005 and its coming into effect on 8 February 2006. Expectations are being fuelled by strong debate on the implications of the constitution for the country's institutions of governance, recognition and respect of human rights, the welfare of the Swazi people and on many other issues that collectively constitute the practice of democracy in a country.

The present uncertainty in this regard has its roots in the process by which the constitution was formulated as well as in speculation about the meaning of various substantive provisions in the constitution in terms of bringing about real change to the prevailing status quo. It is anticipated that the greatest imminent test of the sincerity of the constitution and some of its provisions will be the upcoming Parliamentary election in 2008 in which a diverse response is anticipated from civil society and existing political formations in the country. Key questions in regard to the latter are firstly whether parties will participate in the elections, and secondly, if they do, in what manner, and thirdly, to what end.

Socio-economic factors: deepening the paradigms of exclusion

Fuelling the prevailing tension is that while these initiatives to address issues of governance evolve, the country and its people are simultaneously facing multiple socio-economic challenges that are adversely affecting their daily lives. Over the past few years, the economy of the country has experienced a steady decline in growth. Volatile climatic changes have caused successive droughts which have had an extremely adverse effect on the agricultural sector.[1] Consequently, a sizeable proportion of the populace has not been able to engage in their usual subsistence farming activities and many of them have had to rely on food aid from the World Food Programme (WFP) and other donors.[2]

In addition, changing global trade regimes and dynamics, particularly in manufacturing and sugar pricing,[3] have decreased the competitiveness of Swaziland's export products. The impact of these developments includes the scaling down of operations and closure of several manufacturing firms with the inevitable result of large-scale retrenchments. On the whole, the unemployment rate has steadily increased as various sectors try to manage the downturn of the economy by implementing extensive restructuring measures.

Further contributing to Swaziland's economic woes is the impact of HIV and AIDS[4] whose multiple effects continue to impact negatively on every aspect of

citizens' lives. Not only is the productive stratum of Swazi society being eroded as people succumb to terminal illness; household resources are also inevitably being diverted from basic necessities to medical treatment, care and funeral expenses. One of the most visible consequences of the impact of the pandemic is the burgeoning population of orphaned and vulnerable children, presently estimated at 130,000 but projected to increase to 198,000 by 2010.[5]

Inequitable distribution of the country's resources has exacerbated the situation. According to the Ministry of Economic Planning and Development, 10% of the population controls about 43% of the country's wealth. While Swaziland is classified as a middle-income country, this status is not reflected by the evident abject poverty that defines the lives of many Swazi people. At present, 69% of Swazi people are living well below the poverty level.[6] Another challenge – corruption – has been identified as having increased over the years and hence unlawfully diverting public resources from national programmes and projects to the private pockets of a few.[7]

Other social issues of concern include the continued lower status of women, who, though comprising about 52% of the population, are not proportionately and visibly represented in the economic and political spheres of the country. On the contrary, women's visibility is mainly due to the extremely high levels of violence to which they are subjected with the seeming impunity of those responsible. Other groups that face similar challenges of exclusion from social and national development processes are the elderly, people with disabilities and the youth. The latter group are of particular concern as they comprise over 50% of the country's population and are usually hailed as the future of the nation, yet do not participate effectively in national processes, including, elections.

Elections and political parties: is Swaziland ready or not?
The electoral system in Swaziland has undergone various changes since the period preceding independence. One vital element, however, remained consistent throughout these changes: the participation of political parties in elections was unpalatable to both the colonialists as well as the Swazi authorities who assumed governance in 1968. As the 2008 elections beckon, and despite the constitution, the question of political parties is still surrounded by profound unease and shrouded in a cloak of uncertainty as the legality of their participation in political processes as organised groups remains uncertain.

The formation and operation of political parties in Swaziland dates back to 1929 when the Swaziland Progressive Party led by J.J. Nquku was formed. Since then numerous parties were established, including the Swaziland United Front (SUF), the Swaziland National Front (Swanafro), the Imbokodvo National Movement (INM)[8] and the Ngwane National Liberatory Congress (NNLC). In terms of the contest for power and opposition to the status quo, the most notable in the recent past have been the NNLC as well as the People's United Democratic Movement (Pudemo) and its youth wing, the Swaziland Youth Congress (Swayoco), both formed in the 1980s at the height of political strife in the country.

Historical rejection of political parties as a vehicle for political representation

Despite the existence of political parties over the years, they have always been hampered in their operation because of the suspicion with which they were perceived by those that governed the country. Pre-independence proposals for self-governance did not accommodate political parties due to the assertion that Swazi people were not ready for them and particularly that they were a cause of conflict amongst an otherwise unified people.

A failed constitutional conference in London in 1963 attempted to resolve the impasse that existed between the European Advisory Council (EAC) and the Swazi National Council (SNC) by proposing a 50/50 power-sharing arrangement and the imperative of providing a platform for representation of those Swazis who did not wish to be represented by the SNC.[9] The later "Sandy's"[10] constitution provided for a 24-member Legislative Council (Legco) in which 8 seats would be reserved for the EAC, 8 for the SNC and 8 contested on a national voters' roll. When this constitution was overturned by the pre-independence Legco, the subsequent constitution they drafted retained the recognition of political contest along party lines. However, the existence of political parties was never fully approved even though the SNC (the traditional authorities) themselves had formed the INM to contest both the 1967 and 1972 elections. The ultimate affront to their power base came in 1972 when the NNLC won 3 seats in parliament and became an official opposition to the INM. This result swiftly led to a series of events aimed at inhibiting the opposition, culminating in the late King Sobhuza II's repeal of the independence constitution and banning of political parties and activities. When parliamentary representation was reinstated through the Establishment of Parliament Order of 1978, political parties remained banned.

Amongst the significant provisions of the 1978 Order was that parliament was re-introduced through the electoral process and which also introduced the *tinkhundla* system[11]. According to the Order, the country was divided into forty constituencies from which a representative was to be elected. The forty winning candidates formed an Electoral College which then elected representatives to parliament. Several problems existed within the formulation of this system in the 1978 Order in that, while elections were open to all Swazis along the lines of universal adult suffrage, the elections were not conducted according to the secret ballot – voters would pass by tables at which candidates were seated and counted, with the winning candidate being those with the highest number of votes. Another issue was that the persons for whom the electorate voted did not become their representatives in parliament, but were members of the Electoral College. The 1992 Establishment of Parliament Order, which is the current legislation governing elections,[12] retained the first-past-the-post system and introduced the secret ballot as well as primary and secondary elections. In primary elections, chiefdoms elect their representatives who then compete with candidates from other chiefdoms within the same *inkhundla* (constituency) in the secondary elections. The winning candidate in the secondary elections becomes the parliamentary representative for that *inkhundla*. It is important

to appreciate that candidates contest elections based on individual merit and not according to party or any other organisational representation.

Subsequent consultative commissions on governance have all purported to attest to the inappropriateness of political parties for Swaziland. The 1992 report of the Tinkhundla Review Commission states: "Most of those who made representations to the Commission as well as to the Prince Masitsela Committee were of the view that Swaziland was not ready for political parties, and that political parties were divisive."[13] The report of the 1996 Constitutional Review Commission (CRC) headed by Prince Managliso Dlamini states: "An overwhelming majority of the nation recommends that political parties remain banned. They do not want political parties in the Kingdom. There is an insignificant minority which recommends that political parties must be unbanned. The recommendation is that political parties must remain banned in the Kingdom. The existing laws regarding this position must be enforced."[14]

The unanswered question: does the new constitution legalise political parties?

The key question currently plaguing political developments in the country, in view of the historical political experience in which political parties were expressly banned and involvement in political activity heavily sanctioned, is whether political parties are now legal in Swaziland. In a 'normal' situation, a reading of sections 24 and 25 of the constitution, which permit freedom of expression, association and assembly respectively, would answer this question as political parties would fall within the ambit of the provisions. However, the situation in Swaziland is such that the automatic unbanning and legalisation of political parties is not necessarily a logical inference from these constitutional provisions. To date various traditional authorities and Government officials continue to allude to the undesirability of political parties in the Kingdom and the populace's lack of readiness for them.

Attempts to draw any meaningful conclusion to the issue have been diplomatically evaded by government, which has conveniently preferred to pass on the responsibility of providing clarity on the matter to the courts, which, government says will bring finality to the matter by interpretation of the constitution. The Attorney General of Swaziland, Majahenkhaba Dlamini,[15] has frequently been drawn to comment on the position of political parties within the new dispensation. In an interview with Voice of America, Dlamini stated: "Political parties are not disallowed because that is the position as far as the written word of the constitution is concerned, in the sense that the constitution does not in any of its provisions address the situation of political parties…The position generally speaking is that the Swazi people are not yet ready for political parties." In his view the reintroduction of political parties is a policy issue on which government must expressly pronounce itself: "If the Government decides as a matter of policy that they want to move in a particular direction, in fact it would be helpful to all of us…until there is a clear policy in terms of where the government wants to go, there won't be much to add in terms of the issue of political parties."[16]

Yet the same malaise that has caused government to deftly sidestep the issue (likely fear of reprisal from the "powers that be" – the traditional authorities)

is one that also exists within the judiciary. The courts are still recovering from the severe bruising sustained over years of interference with the judiciary and intimidation of judicial officers.[17] Despite the constitutional provisions providing for the independence of the judiciary, it cannot be expected that the culture of deference to the wishes of the Monarchy and traditional authorities will disappear overnight, particularly as the bench is populated by the very same people who have felt the wrath of making judgements which were unpalatable to these authorities. Hence the courts are unlikely to provide a definitive solution to this question themselves and may also seek to avoid addressing the issue through technicalities and otherwise. The new constitution does not make any drastic changes to the conduct of elections, except with respect to a minimum 30% quota for women in parliament, the potential for an increased number of parliamentarians, and the establishment of an Elections and Boundaries Commission that will be responsible for overseeing the electoral process. Further, Section 79 provides that: "The system of government for Swaziland is a democratic, participatory, *tinkhundla*-based system which emphasises devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office." The retaining of this system of governance by which representation is not along party lines, dilutes, if not vitiates the impact that political parties can hope to make in the political arena.

It has been said that the *raison d'être* of political parties is to contest for political power and that to prevent them from engaging in this political competition is to essentially nullify their existence. It would therefore be anomalous to allow parties to exist while simultaneously ensuring that they cannot operate effectively. According to the Electoral Institute of Southern Africa: "No matter how democracy is perceived and defined in Swaziland, one fact remains, that a democratic system requires intermediary groups – political parties – between the state and society as well as institutional mechanisms for the articulation and advocacy of diverse views and policy preferences. The challenge for Swaziland is to determine whether individuals elected through the *tinkhundla* system without aggregated constituency interest represent an appropriate and efficient mechanism for mediating between the state and people."[18] This question gains increasing relevance and urgency in the run-up to the 2008 elections. In this regard, Vincent Ncongwane of the Swaziland Federation of Labour (SFL) states, "We cannot accept the fiction of being told that political parties are free to operate … To allow the myth that individual merit is the only path to parliament, in a multi-party era, is to deny the existence of political parties."[19] Ncongwane's comments are supported by the report of the Commonwealth Observer Mission to the 2003 election which essentially stated that the question of a "free and fair" election was artificial in the context where there is no real choice to be exercised by the electorate.

Over the past eight months since the commencement of the constitution, political formations have responded to the situation in different ways. Former Minister of Health and Member of Parliament, Mfomfo Nkambule was reported in the local media as having formed a political party. His subsequent dismissal from office was seen by many as punishment for this action. Several people, who had been reported to have joined the party, publicly disassociated themselves

from it and those who remained, have sought to water down the nature of the formation referring to it as a "discussion forum". In sharp contrast, a formation called *Sibahle Sinje/Sive Siyinqaba* (We are beautiful/We are united), which has always identified itself as a "cultural organisation", despite generally held opinion that it is a political party disguising its true nature and masking its political agenda, was reported to have decided to re-launch itself as a political party in preparation for the 2008 election.

With respect to the other parties, Pudemo and Swayoco have stuck to their long-held position of non-participation and will likely not participate in the upcoming election. Pudemo has preferred to challenge the constitution in court on the issue. The NNLC, on the other hand, fielded candidates in the 2003 elections and being the more moderate party will likely participate in 2008, but seek to make a greater impact than in 2003. It is also possible that in the period preceding the elections, new political formations or other groupings may seek to field candidates. At the same time there may be a degree of disillusionment amongst potential candidates because of the existing uncertainty. It is highly unlikely that the system of governance will be altered to allow political contest along political party lines. In fact the Attorney General has suggested that this would require a constitutional amendment, but is doubtful of such an action in the near future: "I'm not too sure that an amendment would be immediately forthcoming anyway unless there is a sudden change of thinking."[20]

Despite the above, it is interesting to note that there is acknowledgement that Swazis need more education on political issues. The Tinkhundla Review Commission stated in its report that: "It is true that the pros and cons of political parties have not been openly and fairly canvassed in Swaziland. This issue could be tested, at a convenient date, by a national referendum or any acceptable method. In its recommendations, the Commission stated: "The nation's opinion on multi-partyism and political parties' unbanning should be tested in the near future."[21] Statements such as these could hold prospects for the opening up of national debate and making progress on the issue of political parties. Of importance was the note by the Commission that Swazis were unlikely to gain knowledge about political parties and what they have to offer if they remain banned.

It is clear that the issue of political parties needs to be addressed urgently if Swaziland is to avoid additional conflict. However, the official attitude shows scant regard for the many international human rights instruments and commitments that Swaziland has signed and ratified, particularly those on civil and political rights, the most recent being the SADC Principles and Guidelines on Democratic Elections. This attitude also lends weight to the assertion by pro-democracy groups that the constitution was merely a window-dressing exercise aimed at appeasing increasing international pressure rather than being sincerely meant to bring about positive change. Nonetheless, it is expected that there may some legal reform to bring existing electoral legislation in line with the constitution. It is perhaps at this stage that the mode of participation by political parties will be clarified. Yet, if the following comment by former member of the CRC, Nkonzo Hlatshwayo, holds true, it may be some time before the position in respect of political parties become clear: "Swazi constitutional developments

are very much like a journey taken by the slowest of all animals, and which has the capacity to convince its beholders that it is different from the animal they might have seen a few minutes before – the chameleon to be precise. It is ever changing, but never really changing."[22]

The role of civil society: challenges of adapting to new rules of engagement

Progressive civil society elements have reached intermittent levels of highs and troughs in terms of activism and engagement with the 'system'. Historically, due to the banning of political parties, the classification of political activity as unlawful and the severe sanctions attendant on participating in such activity, there has been reluctance by the citizenry to openly express their political views and aspirations.

One of the avenues that has assisted in articulating the views of the populace is the work of trade unions that have taken advantage over the years of internationally recognised workers' rights and protections adopted by the International Labour Organisation (ILO), of which Swaziland is a member, and existing solidarity with similar organisations internationally and in the region.[23] Through the guarantees of freedom of association and the right to strike, labour organisations have been able to place certain political demands before Government and to hold public demonstrations as a way of voicing their discontent on a variety of issues. At times these unions have been accused by government of going beyond the parameters of what are recognised protections for workers and seeking to pursue political agendas. This criticism has been answered with the justification that workers are citizens employed within a particular socio-political, legal and cultural context and must necessarily be concerned with any threats in that context to their well-being and that of citizens at large. Hence trade unions have been able to engage in a variety of activities and to achieve significant milestones in pro-democracy initiatives.

Most visible amongst these have been protest actions. in 1997, for example, a strike by the Swaziland Federation of Trade Unions (SFTU), in which it presented a set of 27 demands to the government – which included the demand for a written constitution - brought the country to a standstill. Several border blockades that have been organised with the support of their counterparts in South Africa have also taken place. These actions have been highly effective and thus contributed immensely to bringing regional and international attention to pro-democracy issues and the pro-democracy movement in Swaziland. However, the most recent blockade in early 2006 threatened to cause division within the ranks of the labour movement when the SFTU's Secretary General, Jan Sithole, publicly disassociated the union from the blockade and asked SFTU members not to participate. This resulted in confusion about who was responsible for the blockade and elicited a scathing attack by the King on those who participated in it and the perceived interference of the Congress of South African Trade Union (Cosatu) in the country's national affairs. Even though subsequent statements from Sithole sought to clarify the position, which he stated was due to lack of consultation and approval for the blockade, a degree of damage was caused by the conflicting reports on the blockade. The negative impact of this incident is

just one of the symptoms that reveal the present unhealthy condition of civil society in the country.

Other civil society organisations operating in the country include NGOs with a variety of mandates and whose activities vary from service provision at community level to policy engagement at national level. A challenge over the past few years has been the integration of human rights into the programming of the various organisations that have not seen human rights as a critical part of their work. Due to the stigma associated with human rights and, ironically, the fear of sanction and possible human rights abuses, some organisations have preferred to remain within the ambit of 'soft' issues and not to incorporate human rights in their work.

However, despite the inherent risk and fear that attend this type of work, recent years have seen civil society attempting to collaborate to create a mass appreciation of the meaning and implication of recognising and respecting human rights. The Swaziland Coalition of Concerned Civic Organisations (SCCCO)[24] is a network which was initially brought together to deal with the issues raised by the constitution-making process, but has expanded its area of concern to include issues of promoting good governance, fiscal responsibility and socio-economic justice.

The National Constitutional Assembly (NCA) is another collective of civil society organisations, but unlike the SCCCO, the NCA includes Pudemo and the NNLC[25] amongst its members. The NCA's mandate is specifically to deal with the issues of the constitution. The NCA has brought several challenges before court on the constitution-making process as well as on the draft constitution. The organisation also sought to produce an alternative constitution that would encompass the views of a plurality of Swazi people. However, this alternative constitution has not yet been produced.

Despite the gains that have been made by civil society at various intervals, civil society seems to be in disarray, particularly with respect to the current way forward in addressing the still-existing challenges and particularly within the context of a 'new' constitutional dispensation. While there is general consensus amongst the pro-democracy groups about the nature of the problems that confront the country, there is less agreement on the strategies that should be undertaken in dealing with them. This lack of agreement stems from a variety of factors, perhaps the most evident being the diverse nature of civil society organisations and the sometimes conflicting interests and constituencies that each represents.

The present condition of civil society stands in sharp contrast to the vibrancy that characterised their activism during the constitution-making process. This activism was fuelled by the exclusionary nature of the process as well as dissatisfaction with the constitutional draft that was produced. While various members of civil society took different positions, activism on the issues of constitutionalism, human rights and good governance abounded. Civic education was conducted by a number of organisations[26] on the draft constitution and its implications in an attempt to rally citizens into making meaningful submissions to Prince David's Constitutional Drafting Committee (CDC). Analyses were made by several organisations on the draft constitution and the degree to which it would meet recognised standards of democracy

and human rights protection and promotion. A number of challenges to the validity of the constitution-making process and the draft constitution itself were brought before the High Court.[27] In addition, many members of civic groups broke with the previous position of boycotting the institutions of state and actively sought audiences with the CDC and made submissions before it, even at community level. The NCA began a process of drafting an alternative broad-based and people-centred constitution. The SFTU harnessed its regional and international support to place the spotlight on government's indiscretions, and international NGOs such as Amnesty International and the International Bar Association (IBA) conducted fact-finding missions to the country. Their reports recommended a more inclusive democratic system respectful of human rights and fundamental freedoms.

The Council of Churches demonstrated on the injustices of the draft constitution and delivered a petition to the prime minister in this regard. There were even attempts made to identify and meet more sympathetic government officials to persuade them to relay civil society concerns to government. The SCCCO periodically issued statements about ongoing developments in relation to the draft constitution, alternating between condemning the activities of the "Office of the King" and appealing to it to intervene to address citizens' discontent with the process. These organisations became the voices of a significant proportion of the populace, expressly articulating what many Swazis feared and still fear to say publicly.

Political parties took different stances. Though some members of Pudemo attended community meetings called by the CDC and made submissions on the draft constitution, it seems that from the outset, Pudemo took a position that rejected any form of involvement in the process, opting instead to challenge these issues in court and to defend themselves against court challenges brought against them. Members of the NNLC participated in making submissions at community meetings and at the royal cattle byre (where the King consults with the people), and did not pose significant opposition when the draft was hastily debated and pushed through parliament.

Yet after this frenzy of activity by civil society, the adoption of the constitution seems to have temporarily disabled the pivot that drove civil society activism. While some may argue that this bustle of activity was sporadic in nature and not really well focused and clearly targeted, there was at least a lot of activity, a sharp contrast to the prevailing situation in which civil society seems to be inert. Several challenges now face civil society in terms of re-energising its responses to the situation in the country.

The role of the media

The media and its purpose as a vehicle of expression, dissemination of information and a platform for debate and direction on national issues, has also been affected by the socio-economic, legal, cultural and political climate in the country. While, in all fairness, the past few years have seen the media becoming quite vocal in terms of exposing issues of bad governance, corruption, and fiscal irresponsibility, there is still a tendency to 'tread carefully' with regard to the issues it addresses and the manner in which it does so.

Cultural traditions that promote a culture of silence and non-questioning of authority have led to certain stories not seeing the light of day or to journalists exercising self-censorship on pertinent national issues. The media has also been the recipient of an onslaught of criticism from the entire spectrum of the national leadership including the King, Ndlovukazi (the Queen Mother), the prime minister, cabinet ministers, parliamentarians and traditional leaders. They have all questioned the media's right to press freedom, asserting that the media in Swaziland is too free and responsible for damaging the image of the country internationally. In their view the media is disrespectful and abusing its freedom by exposing issues that should not be discussed.

There are multiple instances where the media and media practitioners have been subjected to intimidation to a point where it is obvious that even the limited independent media is exercising severe self-censorship to an extent where it cannot be distinguished from the state-controlled media. This harassment of the media has been conducted under various guises, including protecting the country's image, national security, 'respecting' other's rights to privacy and 'responsible' reporting.

An inhibiting factor regarding the media's operations has been the policy and legal framework that governs media operations in the country. Presently there exists over 32 pieces of legislation that negatively affect and constrain the media. The new constitution, however, recognises freedom of expression and the press. The recent adoption by cabinet of a Media and Information Policy that recognises the difficulties of the legal environment and proposes appropriate legal reform, may hold potential for this situation to be corrected. Within the policy's guidelines, several key issues for attention are identified, including the necessity to apply the "Bill of Rights… as a guideline for guaranteeing the freedoms to hold, impart, and share ideas…; review of legislation which impinges on… media freedoms, and free speech with a view to update and/or introduce supportive mechanisms and identify gaps in skills weaknesses and financing mechanisms that address the needs of mass media development." The policy also recognises the importance of the right of access to information, which is a significant departure from earlier government positions.

That said, the media sector itself faces challenges, particularly in issues of professionalism and self-regulation. There have also been claims, even emanating from within the media, that some journalists accept bribes or payments to report in certain ways about certain people in positions of authority, thus casting doubt on their independence and credibility. Extensive capacity-building of media practitioners and a review of their wages and conditions of service are essential if the media is to be relevant, effective and free from undue influence in these changing times. Some initiatives to address these challenges already exist, including ongoing attempts to build consensus in the media fraternity to establish an appropriate self-regulatory mechanism. A proposed media complaints commission was rejected by journalists on the basis that its establishment did not involve a sufficiently consultative process. The Swazi chapter of the Media Institute of Southern Africa (Misa-Swaziland) has recently entered into a partnership with the Institute for the Advancement of Journalists (IAJ) in South Africa, in which training is to be offered to local media

practitioners. However, these initiatives are either not finalised or too recent to have yielded recognisable impact on the media's operations. Nonetheless, there still exists ample opportunity for the media to improve substantially in time for impartial, investigative and in-depth reporting and analysis of all the issues that will necessarily confront the Swazi public in making important political choices in 2008.

The role of women in decision-making

Despite women in Swaziland comprising the majority of the populace, their presence in decision-making in the public sector, the private sector and in civil society organisations is not proportionate to this figure. Arguments that are usually made justifying this state of affairs include the assertion that women themselves are unwilling to take up such positions even when specifically nominated, and that while women form a majority of the electorate, they themselves prefer to vote for men.

These views essentially place the responsibility for women's disempowerment on women themselves and fail to appreciate the broader socio-cultural context as well as legal impediments that have created an environment in which the place of women has been confined to the private sphere. For instance, during the 2003 elections, members of the public reported hearing an announcement on the radio by the Chief Electoral Officer that women in mourning[28] would not be able to vote. While this was denied by the Elections Office, an announcement was made that such women, while eligible to vote, would not be eligible to stand as candidates for election. Clearly, this could have had the effect of inhibiting participation by a significant number of women in the 2003 election.

Several provisions in the constitution speak to proposed changes in the status of women and the recognition of their equality in all spheres of life. Section 20 recognises the equality of women in 'political, economic, social and cultural life and in every other respect.' Section 28[29] on women's rights reiterates this position.

Specifically with respect to parliament, the constitution provides that half of the King's 10 appointees to the house of assembly shall be women and further that in the senate, half of the ten senators elected by the house shall be women, as shall eight of the King's twenty appointees to the senate. In addition, a mechanism is stipulated in section 95(3) for the nomination and election of four additional women members from each of the four administrative regions of the country, to achieve the SADC minimum quota of 30% women in parliament, should the elections not yield this result. While the situation is not ideal, it should give ample 'ammunition' for advocates of women's rights to promote women's greater participation in decision-making.

Recommendations for effective civil society engagement in Swaziland

The necessity of civic education on issues of good governance, democracy, human rights and constitutionalism cannot be overemphasised for a populace, such as that of Swaziland, where there has been active discouragement by the authorities for citizens to express political views, and in which the present

system has thrived on the general lack of awareness and fear of such issues. Civic education would lead to a greater understanding of the importance of these issues and of citizens' responsibilities in participating towards their promotion.

One of the reasons for civil society's present 'stunned silence' in the light of present developments is their lack of preparedness for the challenges of the 'new' dispensation and inadequate foresight and pro-active planning for engagement. Civil society needs to raise its activism to the level of strategic interventions. In this regard, there is need to recognise the signs of the changing times and hence design strategies that respond to the changing nature of the 'struggle'. It is therefore critical for civil society to consistently monitor ongoing developments nationally, but also regionally and internationally, and to analyse the potential impact of these, so as to respond appropriately.

There is a need for greater innovation and creativity within civil society. To date there has been an over-reliance on boycotting and traditional methods of advocacy with minimal result and 'imposed' processes have continued regardless. New strategies of engagement would, of course, have to be cautious in not endorsing these illegitimate processes. However, at the very least civil society needs to invest in understanding in greater depth the nature of the system and recognise that a multiplicity of levels of engagement are possible without compromising itself.

Both qualitative and quantitative growth is required in civil society. There needs to be a maturity that does not assume that a difference of opinion on an issue necessarily means the 'selling out' of a particular group, neither that different strategies by different organisations are necessarily mutually exclusive. Civil society needs to acknowledge that points of divergence should not necessarily affect its unity on core issues.

There is also a need for civil society to 'clean its own house'. Recent years have seen accusations of lack of accountability and transparency being leveled against highly reputable organisations and leaders, which negatively affect their operations, the confidence of their constituencies and the public at large. This is often a case of the proverbial pot calling the kettle black. Without credibility at this level, civil society will continue to be regarded with suspicion and will not be able to attract the mass support necessary to create change. Civil society needs to sustain its activities in various ways, but primarily by ensuring that leaders are groomed at the various levels within their organisations. A challenge within civil society has been to 'personalise' the 'struggle' and this has negatively affected organisations in which only one person or a small group of people appear to be in the forefront, with the result that members of organisations dissociate themselves from such organisations. It is only when the people collectively 'own' these initiatives and are empowered to express themselves that changes will occur. Ultimately, it is only mass mobilisation that will bring significant change to Swaziland and respect for her people as citizens of a democratic dispensation.

Finally, to achieve the above, Swaziland's civil society is in need of massive capacity-building efforts. The strengthening of capacity in institutional growth, lobbying, advocacy, communication and negotiation are imperative if civil society is going to play its vital role in Swaziland. The process of achieving this

should already have begun if 2008 is to be the historical election that is being predicted. Without a significant change in the landscape of the country over the next two years, the environment will not qualify as constituting the necessary pre-conditions for free and fair elections.

Notes

[1] Traditionally this sector has been the largest employer of Swazi people.

[2] In fact, it has been reported that the WFP will be providing such aid to an estimated 200 000 people between July and December 2006.

[3] These sectors have been the source of a large proportion of the country's revenue which are set to decline due to imminent changes in the terms of trade under various preferential trade agreements such as AGOA and the ACP-EC Agreement.

[4] The country is reported to have the world's highest adult HIV and AIDS prevalence rate at 42.6%.

[5] Unicef, National Plan of Action for Orphans and Vulnerable Children 2006-2010, 2006

[6] Estimated at E 128.00 Emalangeni (about US$ 20.00) per month.

[7] In delivering the 2005/ 2006 budget, the Minister of Finance lamented that government was losing an estimated 40 million Emalangeni per month through corruption.

[8] The INM was formed by the traditionalists – the Swazi National Council (SNC) – in order to contest the 1967 election held under the "Sandy's Constitution" and was headed by the King.

[9] The EAC-SNC proposals entailed the recognition of the SNC as the exclusive and legitimate representatives of the Swazi people.

[10] Named after Lord Sandy who headed the drafting of the proposed constitutional framework for Swaziland.

[11] An inkhundla (plural, *tinkhundla*) is an area comprising several – about 4 to 5 – chiefdoms which, at election time serves as a constituency area for the election of a parliamentary representative. It is common cause that King Sobhuza II introduced the *tinkhundla* system as an experiment and intimated that it could and should be adapted over time depending on whether it served the needs of the Swazi people.

[12] Together with the Elections Order of 1992 and the Voter Registration Order of 1992.

[13] Government of Swaziland, Report of the Tinkhundla Review Commission, 1992.

[14] Government of Swaziland, Constitutional Review Commission Report, 2002.

[15] He was also the Secretary of the Constitutional Drafting Committee (CDC).

[16] Swaziland@Newsletter 34, 15th May 2006

[17] In 2002, Swaziland went through a "rule of law" crisis in which Government stated that it would not obey court decisions. This led to the en masse resignation of the full bench of the then Court of Appeal and the widespread loss of confidence in the justice system, particularly as in previous cases,

judicial officers had been intimidated and threatened while hearing certain matters involving government and the King.

18 Eisa, Election Update Swaziland, 2003.

19 Swaziland@Newsletter 30, 6th March 2006.

20 Swaziland@Newsletter 34, 15th May 2006.

21 Government of Swaziland, Report of the *Tinkhundla* Review Commission, 1992.

22 Hlatshwayo, N., in "Swaziland's Constitutional Framework," a paper presented at a conference co-hosted by the Council of Swaziland Churches and the Southern African Conflict Prevention Network (SACPN) on the theme of "Bridging the Political Divide," 21st -23rd June, 2002. Hlatshwayo was one of the CRC members who resigned because of the limitations placed on the Commission in terms of its modus operandi on representation in collecting submissions about a new constitutional order.

23 Such as the Congress of South African Trade Unions (Cosatu) in South Africa.

24 whose membership includes NGOs, churches, business, non-governmental organisations, workers' organisations, teachers' organisations, and the Law Society of Swaziland.

25 The NCA's other members are the Swaziland Federation of Trade Unions (SFTU) and the Swaziland Federation of Labour (SFL).

26 Including the Coordinating Assembly of Non-governmental Organizations (Cango), Women and Law in Southern Africa (WLSA), and the Coalition.

27 Lawyers for Human Rights (Swaziland) took the matter all the way to the African Commission and obtained a judgment condemning the government's actions.

28 Due to the cultural understandings associated with widowhood, there is a certain level of stigma associated with this status and such women, who have traditionally worn black attire during the mourning period have previously not been permitted entry into certain public places – at least while wearing the black mourning gowns – although this may change as a consequence of the constitution.

29 This section is entitled "Rights and Freedoms of Women" and provides, "(1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities; (2) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement; (3) A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed."

ZAMBIA

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Zambian Elections 2006: The State of Democratisation and the Struggle for Constitutional and Legal Reforms

by Lucy Muyoyeta

[*This article was commissioned and written before Zambia's tripartite elections on 28 September 2006*]

Introduction

On Wednesday 26 July 2006, President Levy Mwanawasa announced 28 September 2006 as the date for Zambia's Presidential, Parliamentary and Local government elections.

The announcement of these tripartite elections was held against the backdrop of a legal challenge. The Law Association of Zambia (LAZ) has petitioned against the Electoral Act of May 2006 which has given the president the express right to set the election date. Prior to this year's elections past Republican presidents had set the date of elections. However, this has been challenged as being custom that is not provided for by law. The new Electoral Act was passed subsequent to this debate and, seen in this respect, reflects an attempt by the executive to give the presidential setting of the elections date legal backing. LAZ in its petition contends the new Electoral Act is in violation of the Republican Constitution which gives the right of setting the elections date to the elections management body; the Electoral Commission of Zambia (ECZ).

The last Tripartite Elections were held in 2001. The Foundation for Democratic Processes (Fodep), Zambia's most well established NGO focusing on elections and electoral systems and processes, concluded that these elections were not efficiently and successfully conducted and failed to facilitate and guarantee the free expression of the will of the people regarding electing leaders and a government of their own choice. This is a view that was shared by other local and international monitors and observers. The results of the presidential elections and a record 33 parliamentary results were challenged in the courts of law. Subsequently, a number of parliamentary results were annulled. Although the outcome of the presidential elections was upheld, the Supreme Court in its judgment pointed to a number of constitutional, electoral and other issues and reforms that were necessary to ensure free and fair elections.

To what extent therefore have changes taken place since then to ensure that undue policy and practical restrictions have been removed so that elections can be declared free and fair.

Constitutional and electoral reforms and debates

Zambia's political scene in the last few years has been characterised by heated debate and actions over constitutional and electoral reforms. At the centre of these debates has been the argument that Zambia has failed to produce a comprehensive, people driven and durable constitution for the forty years since its independence in 1964. The 1964 constitution was a compromise to allow for the granting of Zambia's independence from its colonial master,

Britain. This constitution enjoyed very little participation by both citizens and leaders in its formulation.

Since then there have been four attempts to reform the constitution. Successive presidents and their executives have driven all four Constitutional Development processes with very little involvement of the general populace. These attempts at reviewing the constitution have ended up reflecting only the largely narrow partisan interests of the ruling elite. For example, the 1996 constitutional reforms led to controversial provisions such as a presidential parentage clause and removed the requirement that a presidential candidate must garner 50% plus one to be declared winner. Both these clauses were brought in against the wishes of the majority.

The Presidential parentage clause brought in the requirement that for someone to qualify for the post of president they must be third generation Zambian, i.e. not only their parents but their grandparents must all be Zambians. This was clearly aimed at former President Kenneth Kaunda[1] who was then making what looked like at successful return to politics. The 50% plus one requirement was removed to aid a then increasingly unpopular President Chiluba who was seeking an unconstitutional third term.

However the last attempt at constitutional reform, which started in 2003 with the appointment of the Mung'omba Constitutional Review Commission, is still on-going. In December 2005 the Commission submitted a draft constitution which is seen as broadly representing the views of the majority of the people. Government, though, has gone on record to oppose some of the key recommendations in the draft constitution.

Apart from general dissatisfaction with the current constitution (amended in 1996) some specific provisions relating to elections have been identified as problematic as well.

The current constitution allows for a President to be elected by simple majority, i.e. by less than 50% plus one of the voters. As a result, the reality of a minority president hit Zambia after the 2001 elections. President Mwanawasa of the Movement for Multi-Party Democracy (MMD) won the presidency with 29% of the vote and defeated his nearest rival, the late Anderson Mazoka of the United Party for National Development, by a mere 2%. Zambia was for the coming years to feel the effects arising from the insecurity of a minority President and electoral dispute. A long drawn out legal challenge ensued and a lot of time was spent by the president trying to consolidate his own position. After the 2001 elections, the combined opposition in parliament had a majority in parliament, but several opposition members were enticed to the ruling party through offers of ministerial positions until the MMD once again attained the majority that enabled them to carry the day in parliament whenever they wished to. Parliament lost its ability to provide any check on the executive.

A matter of concern has been the excessive presidential powers, which include all encompassing powers of creating, hiring and firing of a wide range of portfolios including cabinet ministers, permanent secretaries, ambassadors, defence and security forces chiefs and district commissioners to name a few. The president may also appoint up to eight members of parliament. It is this power which has been used and abused to weaken parliament. The draft constitution of

December 2005 has provided that cabinet ministers should be appointed from outside parliament, in order to enhance the independence of the legislature from the executive. In the recently dissolved parliament of 158 members, 62 were either cabinet ministers or deputy cabinet ministers and were unlikely to oppose any executive decision.

The lack of a fast track mechanism to deal with electoral disputes has been a source of concern. To illustrate, soon after the 2001 elections six presidential candidates applied for judicial review of the election by the Supreme Court. They were seeking verification and recount in four provinces and an order that the returning officer refrains from declaring a winner until verification and recounting had been done. The application was not successful and the political parties went on to petition the presidential elections results. This matter was only concluded in September 2004, by which time it was to all intent and purposes an academic exercise. In an extreme case, one petition pertaining to parliamentary results from the 2001 elections was only concluded early this year (2006).

The current constitution provides that the Chief Justice shall be returning officer for the presidential elections. This has been viewed by many as a source of potential conflict of interest. This is because in the event of a petition against the elections, the Chief Justice also presides over these proceedings.

The Zambian constitution does not explicitly provide for gender equality. Although, it does provide against discrimination on the basis of sex, this provision is significantly weakened by a follow up provision that allows exceptions on the basis of customary law, with respect to persons who are not citizens of Zambia, amongst others. In terms of ensuring women's representation in political decision making, an area in which Zambia has performed badly, both the constitution and electoral laws are seriously lacking.

However, the draft constitution has provided for a mixed member/proportional representation electoral system for parliamentary and local government elections that guarantee election of a given number of women. It recommends a parliament of 200 people of which 35 would be women elected on a proportional representation basis. It does not provide details for the local government level, and only recommends the principle.

These are some of the concerns that the Zambian people have stated repeatedly in submissions to the various constitutional review commissions (CRC's) and many other forums. Unless the above and other constitutional matters are addressed, the electoral process is likely to remain highly contentious.

There are several laws that govern Zambia's electoral process. These include:
- The Constitution, Chapter 1 of the Laws of Zambia
- The Electoral Act of May 2006
- The Electoral Commission Act no.24 of 1996
- The Local Government Elections Act Chapter 282 of the Laws of Zambia
- The Local Government Elections (amendment) Act, 1992
- The Electoral (General) Regulations, Statutory Instrument No 108 of 1991
- The Electoral (Conduct) Regulations, Statutory Instrument no 179 of 1996

- The Electoral Act No. 12 of 2006 and the Electoral Code of Conduct Regulations 2006

There are also other pieces of legislation that impact on the electoral process and these include:

- The Public Order Act , Chapter 113 of the Laws of Zambia
- The Zambia National Broadcasting Corporation (ZNBC) ZNBC Amendment Act No. 20 of 2002
- The Independent Broadcasting Act (IBA) No. 17 of 2002
- The Anti-Corruption Commission Act No. 42 of 2001
- Prohibition and Prevention of Money Laundering Act No 14 of 2001
- The Parliamentary and Ministerial Code of Conduct Act, Chapter 16 of the Laws of Zambia
- The Referendum Act Chapter 14 of the Laws of Zambia

Zambia is therefore not short of laws governing or impacting on elections. Yet despite this plethora of laws, it has been recognised that the legal framework is inadequate. To begin to address these inadequacies, a process of reform was embarked upon. In 2003, the Minister of Justice appointed a 25 member Electoral Reform Technical Committee (ERTC) headed by Lawyer Mwangala Zaloumis.

The ERTC, amongst other methods of information gathering, conducted public hearings and submitted an interim report which was made available for public comment in September 2004. The approximately 800 page report was tabled in August 2005.

It was clear from the report of the ERTC that the major electoral reforms that needed to take place were constitutional in nature. Subsidiary legislation would then have be drafted to comply with the constitutional provisions. The ERTC also made recommendations on a number of measures that could be implemented through administrative measures. These included: media laws and press coverage, corruption in the electoral process, delimitation regulations for NGO monitors and observers, gender and the electoral process, electoral code of conduct, reforming of the ECZ, review of voter registration procedures, date and time of elections, duration of elections and the provisions for persons with disabilities and special needs.

The main outcome of this exercise was to be the Electoral Act of 2006. This Act repeals and replaces the Electoral Act of 1991. The Act is the principal law on elections in Zambia. It makes provision for presidential and parliamentary elections, empowers the Electoral Commission of Zambia to make regulations providing for the registration of voters and for the manner of conducting elections. It also provides for offences and penalties in respect of elections and for the hearing and determination of election petitions. The Act, in addition to the above, provides for the appointment of conflict management committees and officers.

The Act concerns itself primarily with the administrative aspects of presidential and parliamentary elections. But even then it does not deal comprehensively with all recommendations made by the ERTC of the measures that could be implemented through administrative mechanisms. But the late passing of the Act also means that many issues are being rushed and this may affect the quality of the elections.

Whilst all laws regulating or impacting on elections are important, it is, however, worth highlighting a few of these, about which there are serious concerns.

The Public Order Act, chapter 113 of the Laws of Zambia
The current Public Order Act came into force in 1955. The Public Order Act regulates the issuing of permits for public assemblies and processions. It is essentially meant to protect and safeguard the freedoms of assembly and expression whilst maintaining law and order. At the time of its passing, constitutional freedoms and rights were not considered paramount and laws were passed – this one in particular – to oppress the nationalists who were agitating for the country's independence.

The Public Order Act has continued to be applied. In 1996, however, following a Supreme Court ruling, an amendment was affected to this law. The amendment did not go far enough to ensure that the law fully conforms to the tenets of modern day Zambia's democratic aspirations.

The controversial law requires that any group of persons wishing to hold a public meeting give notice 7 days prior to the meeting date. The law empowers a police officer of the rank of superintendent to decline (without giving reasons) the granting of a permit to any applicant.

The Law not only affects politicians, but any group that wishes to exercise its freedoms to assembly and expression through the staging of demonstrations, rallies and processions. Those with dissenting views from government have fallen victim to this law many times. The Public Order Act in its current form goes against the constitutionally provided for values and preservation of the freedoms of association, assembly and expression. There is therefore a need to change it radically.

The Zambia National Broadcasting Corporation (ZNBC) Amendment Act No. 20 of 2002 and the Independent Broadcasting Act (IBA) No. 17 of 2002
The two Acts relate to the regulation of the country's public broadcaster and to ensure independent regulation of the airwaves. The two pieces of legislation are considered to be models for effective legislation in this field. The ZNBC Amendment Act is intended to transform the ZNBC into a true public service broadcaster. Thus far it has operated more on the lines of a propaganda machine for the ruling party.

The IBA Act provides for the establishment of an independent regulator. The current situation is that government functionaries through the Ministry of Information and Broadcasting regulate broadcasting in the country. It has been difficult therefore to guarantee independence of broadcasting. Privately owned radio stations providing for dissenting views from government have frequently been threatened with closure.

Following the passing of the above-mentioned Acts, a process was set in place to effect implementation of the Acts. In accordance with the Acts, two ad hoc committees to select new boards for the two institutions were set up in 2003. The Acts provided that the ad hoc committees be made up of people nominated by the following: The Law Association of Zambia, non-governmental organisations active in human rights, religious organisations and a nomination from the Ministry

of Information and Broadcasting Services. By the end of 2003, the committees completed the selection process and submitted the proposed names of board members for the two institutions to the Minister of Information and Broadcasting Services for presentation to parliament. The Acts provide for ratification of these names by parliament.

However, the then Minister of Information and Broadcasting Services, Mutale Nalumango, refused to take all the names to parliament insisting she had a right of veto over which names are taken to parliament or not. Several media bodies in the country, the Zambian chapter of the Media Institute of Southern Africa (Misa-Zambia), the Press Association of Zambia, the Zambia Media Women's Association (Zamwa), the Society for Senior Journalists, the Zambian Union of Journalists and the Press Freedom Committee of *The Post* newspaper sought judicial intervention in this matter.

In his judgment of December 2005, High Court Judge Gregory Phiri described the Minister's refusal as "bad at law, irrational and therefore null and void. Specifically, the law creates the IBA and an independent board of directors for ZNBC, a key public media organisation in Zambia, free from interference and not subject to the direction of any other person or authority." Judge Phiri also ruled against the state's application for a Stay against the names being taken to Parliament until the main matter, which relates to the Minster's powers, had been dealt with.

The state appealed to the Supreme Court. On 29 March 2006 Supreme Court Judge Christopher Mushabati granted the Stay. He was of the view that since the main case was to be heard on 19 September 2006, the media associations would not lose much until that case was determined. Judge Mushabati indicated that in view of the importance of the case and its public policy interest, it should be determined by the full bench of the Supreme Court. "It is my considered view that a stay in this matter will not prejudice the successful parties, who, I have no doubt, initiated these proceedings for the protection of not only their members' interest but even for other interested parties or the society at large because the public policy matters do not affect a few selected people but an entire society or nation."

However, it is the view of most observers of the Zambian political situation that government applied delaying tactics to stall implementation of these key reforms to ensure they continue enjoying a favoured position in the public media and control of the airwaves during the 2006 elections.

It is also observed that the Penal Code still includes provisions that seriously impede press freedom.

Attitudes and programmes of stakeholders

Legislation plays an important role in the conduct of elections, but the attitudes of stakeholders also play an important part. A number of key stakeholders are analysed in this regard.

Electoral Commission of Zambia (ECZ)

The laws do not guarantee full independence and autonomy of the ECZ. In particular concerns are raised about the composition of and the mode of appointing commissioners. The lack of financial autonomy is also cited as a problem.

During the 2001 elections the commission came under particular attack for the poor administration of the electoral process. In the run up to this election,

the ECZ has performed very well on most accounts. Under the direction of new Chairperson Judge Irene Mambilima, the ECZ has been more transparent, consultative and more efficient. They have diligently and consistently involved other stakeholders, especially political parties and civil society organisations, in the various processes. This has helped build confidence in the process.

Judge Mambilima has also shown greater independence than her predecessors. But the problem is that this independence is not institutionalised through legal protection. Therefore, even she on a number of occasions has seemingly bowed to executive pressure. A case in point was during the voter registration period, when the ECZ announced it would extend the registration period in order to capture more voters. This exercise was, however, discontinued after President Mwanawasa raised objections to it.

A key role of the commission and a cornerstone of the elections is the registration of voters. In the past, this exercise has been plagued with problems. In 2001 for instance, only 2 604 761 people were registered out of a total of 5-million eligible voters. In an attempt to deal with this problem, government in 2001 passed Statutory Instrument Number 55, which provides for continuous registration of voters. Despite the passing of this enabling legislation, continuous registration was never implemented because of inadequate funding by government to the ECZ.

Registration for the 2006 elections was therefore done the traditional way. An initial registration period of 21 days was announced and was extended twice. The major problem that faced this exercise was the issuance of National Registration Cards (NRC). The NRC is a citizenship identification card, and is a prerequisite for registering as a voter. The inefficient issuance of NRCs was once again to be amongst the greatest obstacles to the registration of voters. At the close of the registration exercise on 31 December 2005, there were still long queues of people struggling to get their NRCs. Complaints have been raised to the effect that the president's strongholds appear to have disproportionately succeeded in registering more voters than in other areas.

On the whole, the exercise was fairly successful. By the end, almost 4-million people had been captured in the register. However the relative success of the registration exercise may be somewhat marred by the less successful verification exercise. Preliminary voters' rolls were compiled and a fourteen-day period was provided for voters to check that their details had been correctly entered. Overall the verification exercise registered only about a 40% turn out.

The Electoral Act of 2006 provides for the ECZ to provide voter education for the election. However, a serious concern must be noted that the voter education was only launched on 27 July 2006. This was rather late given the vastness of the country, and the fact that new systems of voting and new electoral laws had been introduced.

Political Parties

Zambia has almost 40 registered political parties, with only six of these having seats in the national assembly. The political scenario is generally characterised by fragmentation. The major concern is the lack of any real basis for the existence of all these political parties, it is difficult to distinguish them on the basis of ideology or philosophical difference.

The parties are also characterised by lack of intra-party democracy, hooliganism, lack of focus on real issues and great inter-party intolerance. The campaign period often leads to conflict, which in many cases degenerates into violence. Thus far, there has been no reported conflict. With the announcement of the election date and the start of the election campaign in earnest, conflict could still ensue.

Bribery and vote-buying is also characteristic of political parties in Zambia. During elections, people are given material gifts, beer and money. The ruling party enjoys some advantage in terms of using government resources such as vehicles. In its ruling over the 2001 presidential election petition, the Supreme Court found that the ruling MMD had used public resources to purchase 150 vehicles that it used for its campaigns and that they should be returned to the state. However, the ruling party defiantly carried on using these vehicles. It was only a few days ago that the president was reported to have asked his party, the MMD, not to use those vehicles in order to avoid controversy in this years elections. The President also urged candidates adopted to run for parliament not to give bribes and not to engage in electoral vices. However, this is rather too little too late. The MMD announced its list of adopted candidates for parliament about a month before parliament was dissolved. There have been complaints about those cabinet ministers and deputy ministers who have been adopted who are taking advantage and using their official vehicles on their campaign trails.

Currently, the opposition is disorganised. Alliances that were forged are crumbling and none have announced their candidates for parliament and local government. In some cases, even the presidential candidate has not been selected.

The Electoral Act of May 2006 comprehensively stipulates corrupt, illegal practices and election offences and the penalties that apply. Given the prevalence of these, it remains to be seen how effectively enforcement will be carried out.

The media
The media landscape has changed significantly since the demise of the one-party state over a decade ago. From a media totally dominated by state control, the country now has a vibrant independent media including many commercial and community radio stations, a private television station, one major daily newspaper and several weekly newspapers. This is in addition to two state-controlled daily newspapers, television and radio.

With elections looming, the media has a very important task of covering all political parties in a fair and objective manner and giving information to help people make informed choices.

How well has the media done in this regard? Thus far, not very well. Little is being done especially by the public media as the main duty bearer to ensure that enough information is disseminated about what the different parties have to offer in terms of policies and programmes. The little that is happening in this regard is mostly sponsored programmes by civil society organisations such as Misa-Zambia and the National Women's Lobby and largely on the private run television and radio stations, some with very limited reach. Closer to

the election, largely through the sponsorship of the Electoral Commission of Zambia (ECZ), a few more debating programmes on political party policies and programmes were broadcast.

The one notable improvement in this regard is that there is more coverage of opposition parties on ZNBC television and radio news compared to previous elections, but the majority of coverage still focuses on the president and the ruling party. However, the ban on live shows on television imposed by the Minister of Information and Broadcasting Services in 2005 remains in effect and this detracts from the richness of the debates as programmes may be subjected to prior censorship.

The Electoral Act of May 2006 also prescribes certain behaviours on the part of the media. It provides against publication of any false statement of fact in relation to the illness, death, or withdrawal from elections, personal character or conduct of a candidate in that election.

Law enforcement agencies

The key law enforcement agencies with regard to election management are the police and the Anti-Corruption Commission (AAC). The Inspector-General of Police has come forth strongly to emphasise that police will act professionally in dealing with electoral matters. However, this may be difficult in the absence of legal backing and with laws such as the Public Order Act.

The Inspector-General of Police is an appointee of the president. This limits their independence. The immediate past Inspector-General was humiliatingly dismissed at a press conference by the president. The president did not hide the fact that he dismissed him for not following instructions over arresting a political opponent.

The new Electoral Act removes the ambiguity that existed over arresting and prosecution for electoral malpractices. It is hoped therefore that both the Police and the AAC will act more decisively in these cases.

Civil society

Civil society has played very important roles in fighting for the deepening of Zambia's democracy in various ways. Often described as among the strongest in the Southern African region, civil society has scored a number of achievements in terms of advocacy and democratic reform. Civil society, in particular the trade unions, were at the forefront of the removal of the one-party state in the late 1990's and more recently in the removal of former President Chiluba's immunity that allowed for him to face corruption charges.

The Oasis Forum (OF) is a loose alliance comprising five organisations, namely the Non-Governmental Organisation Co-ordinating Council for Gender and Development (NGOCC), the Council of Churches in Zambia (CCZ), the Evangelical Fellowship of Zambia (EFZ), the Law Association of Zambia (LAZ) and the Zambia Episcopal Conference (ZEC). It was formed on February 21, 2001 at a citizens' public meeting convened to mount a spirited campaign to oppose attempts to extend the rule of the then President, Dr. Fredrick Chiluba, contrary to the provisions of the constitution. The five organisations led the citizens through a successful campaign to defeat the third term bid.

Following the defeat of the bid, the Oasis Forum was reconstituted to focus

on the need for a comprehensive reform of the Republican Constitution in an effort to promote a culture of constitutionalism and constitutional development. Supported by other civil society organisations including, amongst others, the trade unions and students, the Oasis Forum has put up a spirited struggle for the reform of Zambia's constitution.

Fodep has led the struggle for electoral reforms, whilst the Southern African Centre for the Constructive Resolution of Disputes (Saccord) has put up a spirited fight for the reform of the Public Order Act. Women for Change has fought to ensure that rural women's voices are heard whilst the National Women's Lobby has led the campaign for more women in decision-making. Misa-Zambia and other media bodies have led the advocacy for media reforms.

Civil society organisations are currently preparing for this years' election. They are undertaking a number of activities which include civic and voter education and preparations for monitoring and observing elections. However, most organisations indicated a general lack of resources to carry out their activities this year. It is feared that as such their programmes may not be as effective this year.

A major reason why civil society in Zambia has been relatively successful has been due to effective networking among an experienced cadre of activists and due to professionals who have stayed long enough with organisations to enable them to gain experience and a measure of institutional stability.

Civil society does, however, face challenges, paramount amongst which is the overwhelming dependency on donors for funding of programmes. Apart from a few strong and well established organisations, such as the trade unions, women's organisations, church organisations and some of the above mentioned civil society, many organisations in Zambia still struggle with insufficient human, material and other resources.

Women's participation in decision-making bodies

Women's participation in decision-making bodies in general is low but more so in political decision-making. Women's representation in the last parliament stood at 12%. There were only 19 women in a parliament of 158. At the level of local government, women's representation only stood at 19%. Clearly Zambia is far from reaching the SADC target of 30 % women in decision-making positions.

The critical question is whether this election will make a difference? It would appear not. The ruling MMD only adopted 24 women (16%) out of 150 for parliamentary candidates. This number could go down as there is no guarantee of all 24 winning. The 24 were chosen out of 70 women who aspired to these positions.

Verbally, the opposition parties who are yet to adopt their candidates have promised to do better than the ruling party, but it remains to be seen. The patriarchal nature of the obstacles to women's participation is varied, sophisticated and difficult to surmount. For instance in the 2001 elections, over 200 women contested the 150 parliamentary seats, yet only 19 were elected.

This scenario is likely to repeat itself; there is great interest amongst both men and women to contest these seats and unfortunately not always for the right reasons, therefore competition is stiff. In a country with few jobs and

much poverty, politics is increasingly seen as a way to guarantee personal livelihood rather than as a means to provide public service. For example, an average of 14 people sought to contest one parliamentary seat on the ruling MMD ticket alone.

Recommended actions and strategies

In light of the foregoing the following recommendation are made:

- Review of the Constitution so that it removes, changes and introduces provisions that enhance democracy including:
  - Removal of the discriminatory parentage clause;
  - Restoring the clause requiring a winning presidential candidate to obtain 50% plus one of the vote;
  - Allowing for the law pertaining to the petitioning of presidential election results to facilitate judicial review of grievances, before swearing–in of the president elect;
  - Providing for the Inspector-General of Police to enjoy security of tenure in order to insulate the police from political manipulation;
  - Providing for a proportional representation system that entrenches women's participation; and
  - Providing for government funding of political parties as is the practice in most SADC countries.
- The Public Order Act should be reformed to conform to the tenets of democracy.
- The ECZ must be re-organised to ensure independence in all respects, including financial independence.
- In accordance with the law, the ECZ must be adequately resourced to carry out continuous voter registration exercises.
- The Department of National Registration needs to be strengthened to cope with the backlog of applications for NRCs and linked into the ECZ's continuous registration processes.
- Government must effect implementation of the ZNBC amendment and IBA Acts of 2002.

Notes

[1] Although born in Zambia his parents were missionaries who migrated from the then Nyasaland (now Malawi) to the then Northern Rhodesia (now Zambia).

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ZIMBABWE

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Non-party Political Actors and Pre-electoral Conditions in Zimbabwe, 2000-2006

By Tapiwa Zimudzi

Introduction

Zimbabwe has since 2000 gone through four national elections, namely the June 2000 parliamentary elections, the March 2002 presidential elections, the March 2005 parliamentary elections and the November 2005 senate elections. It is scheduled to hold presidential elections in 2008. A common thread running through these elections has been the consistent use by the ruling Zimbabwe African National Union Patriotic Front (Zanu PF) party of both legal and illegal methods of manipulating the pre-electoral environment and polling processes in order to ensure electoral victory.

The wide-ranging strategies used by Zanu PF to illegitimately win elections include the following: use of electoral laws heavily skewed in its favour, use of repressive legislation to undermine and suppress the democratic institutions and rights necessary for the Zimbabwean opposition and electorate to enjoy a free and fair electoral environment, systematic intimidation and coercion of opposition party candidates, officials and supporters as well as outright rigging of the ballot (Feltoe, 2002). Not only have all new electoral measures such as the creation of the Zimbabwe Electoral Commission and adherence to the SADC Principles and Guidelines Governing Democratic Elections been implemented in a way that does not prejudice Zanu PF, but each successive election has also witnessed the consolidation and extension of Zanu PF's tactics for illegitimately winning elections.

This article provides a general overview of some of the major Zimbabwean non party-political actors' engagement with the state over these undemocratic preconditions for national elections held in Zimbabwe since 2000. Pre-electoral conditions are understood here as those electoral conditions in place long before rather than immediately preceding the polling process. The article highlights some of the limitations of the strategies adopted by non-party political actors in engaging the state over pre-electoral conditions and broader issues of democratisation and governance that have helped to shape Zimbabwe's post-colonial electoral environment. It also suggests ways in which these non party-political actors can more effectively engage the state in order to break the current political stasis in Zimbabwe and create conditions conducive to the holding of free and fair elections.

The armed forces

The armed forces comprise the army, air force, militia and paramilitary units, war veterans, Central Intelligence Organisation (CIO) and the police and prison services. Their contribution to the current undemocratic pre-electoral environment in Zimbabwe should be viewed within the context of their engagement with state authoritarianism in post-colonial Zimbabwe, especially over the past 6

years. Though there has always been a close relationship between the army and the ruling Zanu PF party dating back to the time of the liberation struggle, the army was initially perceived as being fairly professional and not entangled in party politics and electoral issues. However, from the late 1990s onwards, it was increasingly used by the state as an effective instrument with which to contain and suppress the intense pressures for democratic change exerted on it by opposition political parties and civil society. This development resulted in the systematic politicisation of the army which in turn has resulted in the militarisation of state institutions and functions, including the bodies responsible for organising and overseeing elections (Raftopoulos and Alexander, 2006).

The state's politicisation of the armed forces has seen the removal from these forces of actual or suspected sympathisers with the opposition Movement for Democratic Change (MDC). Serving or retired members of the armed forces have benefited from various forms of state patronage, among them appointment to head key state institutions and organisations, which in the past have been led by civilians who are now regarded as an increasingly unreliable and powerless political constituency by Zanu PF. Retired and serving armed forces personnel have been appointed to positions in which they have been responsible for administering all the important stages of the election process, among them the delimitation of electoral constituencies, voter registration and education, vote monitoring and announcement of election results. The militarisation of the electoral process has also seen the armed forces openly and actively participating in election campaigns in support of Zanu PF and also declaring that they will not accept any electoral outcome that will result in the loss of political power by Zanu PF. Numerous press and human rights reports have documented the pre and post-electoral political violence perpetrated by the armed forces against opposition officials and supporters.

The major consequence of these developments has been the creation of a pre and post-electoral environment in which opposition officials, candidates, supporters and others, believed to be fighting against the status quo, enjoy little or no protection from law enforcement agencies. The partisanship exhibited by the Zimbabwe Republic Police, especially in the run up to elections, has discouraged victims of political violence perpetrated by Zanu PF supporters from reporting these instances to the police. Instead of having their complaints investigated, opposition complainants have been subjected to harassment and arrest by the police. It has also become much easier for Zanu PF to subvert or reject the will of the electorate, not only through its absolute and unchecked control of the electoral process, but also through its ability to use military force or the threat of force to prevent or overturn any election result unfavourable to it.

The judiciary
Conditions for free and fair elections cannot exist where the independence of the judiciary (which is meant to counterbalance the influence of the legislature and the executive) either does not exist or is in doubt. Over the past 6 years, the ruling Zanu PF has used systematic intimidation to force the (former) Chief Justice Anthony Gubbay and many other High Court judges into immediate resignation or early retirement. In each case the judges were replaced by others

known or believed to be sympathetic to Zanu PF. The state has also repeatedly defied court orders it believes to be unfavourable to it and has persistently intimidated and sought to undermine the credibility of legal organisations such as the Law Society of Zimbabwe and the Zimbabwe Lawyers for Human Rights, which have been highly critical of its systematic destruction of the independence of the judiciary.

The assaults on the independence of the judiciary have progressively and greatly undermined its ability to expeditiously and professionally deal with legal challenges to election procedures and results brought before the courts by the opposition. After the 2000 parliamentary elections the MDC filed petitions in the High Court challenging the elections results in 38 constituencies. Electoral victories by Zanu PF candidates in several of the constituencies were declared invalid by the High Court. The Zanu PF MP's concerned, however, appealed the decisions to a Supreme Court that had been reconstituted by the state and was now dominated by Zanu PF sympathisers. By failing to hear these appeals by the time the next parliamentary elections were held in March 2005, the Supreme Court allowed Zanu PF MP's whose election had been declared legally invalid to sit in parliament for its whole 5 year term. It also took the High Court more than 3 years to hear the legal challenge of MDC leader and candidate, Morgan Tsvangirai, to Robert Mugabe's re-election in the presidential elections of 2002, which most observers believe were deeply flawed and fraudulent.

The judicial approaches adopted by some High Court judges in assessing the impact of pre-election violence on electoral outcomes has also undermined the entire concept of free and fair elections. For instance, High Court Judge, Justice Makarau, presided over an election petition case in which she ruled that pre-election violence could not constitute grounds upon which to nullify an election result, no matter how severe and extensive the violence might have been and even if it influenced the result of the election. Yet voting, even peaceful voting, that is preceded by violence and intimidation is not compatible with free and fair elections (Zhou, 2002).

Despite occasional brave rulings in favour of government opponents, the judiciary's independence has been severely eroded. This, combined with the state's emasculation of the power of the legislature has created an undemocratic electoral environment in which the ruling Zanu PF is simultaneously an electoral contestant, administrator, observer, monitor and court of appeal in election disputes.

The media

State repression of the media in the past 6 years can be viewed as part of a deliberate strategy by the state and Zanu PF to stage-manage to their advantage the dissemination of information on the general political and economic crisis in Zimbabwe and specifically on the electoral environment before and after elections, which have been largely characterised by extensive state sponsored political violence and electoral irregularities. The state has used draconian media legislation, such as the Access to Information and Protection of Privacy Act (AIPPA) to arrest and prosecute dozens of journalists from the independent media

and to shut down four privately-owned newspapers, among them the *Daily News*. Before its closure in 2003, the *Daily News* had broken the state's monopoly of the daily newspaper market and had also provided a credible alternative to the crude pro-Zanu PF propaganda churned out by the state electronic and print media. The *Daily News* also provided extensive and consistent coverage of the state instigated political violence and electoral irregularities that were the hallmark of the 2000 parliamentary elections and the 2002 presidential elections.

In the period preceding and following the 2000 parliamentary elections and the 2002 presidential elections, the state encouraged or tolerated attacks by Zanu PF supporters on *Daily News* journalists, vendors and readers. Thousands of copies of the newspaper were seized and burnt by Zanu PF supporters who also obstructed or barred its circulation in some mostly rural parts of the country. Two separate bombings in which the state was heavily implicated, and for which no one has ever been arrested, also damaged the newspaper's head office and destroyed its printing press. The state's assault on the independent press has continued with the CIO's takeover of the *Financial Gazette* and the *Daily Mirror,* leaving only two independent newspapers in existence in the country, namely the *Zimbabwe Independent* and the *Standard*.

The state has retained sole monopoly of the airwaves through the Broadcasting Services Act (2001), which it has used to deny operating licences to independent broadcasters. It has also broadened its campaign to silence independent media voices by jamming the broadcasts of diaspora radio stations transmitting into Zimbabwe. The emergence of these stations, which focus on professionally reporting events in Zimbabwe, is largely a consequence of Zimbabwe's repressive media environment. They include *SW Radio Africa*, the *Studio 7* programme of Voice of America and *Radio Voice of the People (VOP)*. Three journalists and seven board members of *Radio VOP* are currently defending themselves in court against charges that they are broadcasting without a licence. The Interception of Communications Bill recently tabled by the state in parliament seeks to legalise state interception and surveillance of private e-mail and telephonic communications. It may also be used to curtail internet-based political activism by restricting access to diaspora-based daily Zimbabwe news websites such as *ZimOnline* and *NewZimbabwe.com.*

These developments have worked against the establishment of the preconditions for free and fair elections by severely eroding the Zimbabwean electorate's right to freedom of information, particularly the right to be able to make informed political choices based on coverage of important electoral issues from a variety of non-state perspectives. The electronic and print media is now dominated by the voice of the state media which has become a mere propaganda wing of the ruling Zanu PF party. The state media's biased and unprofessional coverage of elections is well documented in the reports of the Media Monitoring Project of Zimbabwe (MMPZ) on media coverage of the 2000 and 2002 elections, and its continuous weekly electronic reports on the media, also during all the subsequent elections. Though the independent media's coverage of elections has also had its shortcomings, it has generally succeeded in being objective and professional while operating in an extremely hostile and repressive media environment (MMPZ, 2000 & 2002).

The church

Though the Church comprises diverse Christian organisations, the major organisations whose interaction with state authoritarianism has been continuously under the public spotlight include the Zimbabwe Council of Churches (ZCC), the Evangelical Fellowship of Zimbabwe (EFZ), the Zimbabwe Catholic Bishop's Conference (ZCBC) and the recently formed Christian Alliance (CA). The church's perspectives on the electoral environment in Zimbabwe over the past six years needs to be seen within the context of its complex and ambiguous responses to state authoritarianism during this period.

Divisions have been a continual characteristic of church responses to state authoritarianism. Sections of the institutional church and individual clergymen have openly challenged the legitimacy of the authoritarian state while others have defended it. For instance, at the individual level, Archbishop Pius Ncube of the Roman Catholic Church has consistently spoken out against government repression and economic mismanagement while Bishop Nolbert Kunonga of the Anglican Church has openly expressed his support for President Mugabe and Zanu PF. This has resulted in the division of the church into a pro and anti-Mugabe faction, the former represented by older generation church leaders from the ZCC, EFZ and ZCBC such as Bishop Trevor Manhanga and the latter by younger generation church leaders such as Bishop Levi Kadenge, the convenor of the CA. Both factions are now reported to be formulating parallel, but different roadmaps for the resolution of the Zimbabwe crisis. The roadmap of the pro-Mugabe group assigns a key role to Mugabe in the resolution of the Zimbabwe crisis while that of the CA views him as part of the problem and therefore unable to contribute to a solution to the country's crisis.

Criticism of church divisions and its silence and inaction in the face of flagrant state violations of human rights has been persistent over the past 6 years and has focused on its failure to 'preach the gospel of confrontation' required to compel the state to give in to demands for democratic change, not only in the area of elections, but in the broad governance and economic management of the country. Though many church organisations issued numerous press statements and pastoral letters condemning the widespread political violence that preceded and followed the 2000 parliamentary elections and the 2002 presidential elections, they failed as institutions to apply any meaningful pressure on the state to transform this hostile electoral environment and to solve the political and economic problems that had contributed to it (Raftopoulos and Alexander, 2006).

After the violent and fraudulent 2002 presidential elections, the church assumed the role of mediator in projected talks between Zanu PF and the MDC aimed at forming a government of national unity. No serious talks between the two parties ever started and the church was viewed as having allowed itself to be co-opted into a deliberate Zanu PF scheme to ward off the possibility of mass protests against its disputed election victory by pretending to seek rapprochement with the MDC.

In 2006, the Church's bold response to the government's notorious Operation *Murambatsvina* (Restore Order), which left an estimated 700,000 people

homeless, enabled it to begin recovering from its reputation of being an inactive and collaborationist church. The Church strongly condemned the government action and was very visible in providing humanitarian assistance to the victims of the operation.

The launch of the Christian Alliance (CA) in February 2006 has seen the Church emerging as a potentially strong unifying and rallying point for diverse forces fighting for democratic change in Zimbabwe. In August 2006, the CA organised and hosted the Save Zimbabwe Convention which was attended by all political parties and key stakeholders in civil society. The convention gave the CA the mandate to unify civil society in order to bring about democratic change in Zimbabwe.

Jonah Gokova, the co-ordinator of the CA, which comprises 200 Christian organisations from around Zimbabwe, highlighted what distinguishes the CA's responses to state authoritarianism from those of the older generation of Christian organisations such as the ZCC and the ZCBC. The CA believes in prophetic action through visibly and actively expressing solidarity with suffering Zimbabweans by engaging the state in a way that will compel it to address the problems of bad governance and economic mismanagement that are the root causes of the current crisis in Zimbabwe. While the CA does not discount that there may be situations where mediation by the church is needed, it does not see itself as a mediator and will not pretend to be a neutral arbiter between the major forces ranged against each other in the Zimbabwean crisis. It instead believes in not shying away from confronting the government over the serious problems facing the country.

Within the above context, the CA believes the church has a key role to play in contributing to the creation of a democratic electoral environment in which people's rights, dignity and choices are respected. The CA believes that the major reason why the older generation of church organisations did not succeed in pressuring the state to stop instigating and condoning widespread electoral violence is that it protested against acts of violence without seeking to change the environment that allowed this violence to occur. The CA is focused on bringing an end to the systematic violence that has characterised Zimbabwe's post-colonial electoral landscape by seeking a change in this environment, although it does not intend to contest political power.

The women's movement

The women's movement, comprising numerous different women's organisations, has over the past 6 years emerged as an important part of Zimbabwean civil society's struggle for democratic change. The emergence between 1995 and 2000 of constitutional reform as a central issue in Zimbabwean politics contributed to the establishment in 1999 of the Women's Coalition on the Constitution. The Coalition, comprising 66 female activists from 30 different women's and human rights organisations, sought to unite women in demanding gender-specific constitutional reforms aimed at ending legal, political and economic discrimination against women. As the gender-specific demands of women were situated within broader demands for democratic change in Zimbabwe, partnerships were developed

between the Coalition and other civil society groups such as the NCA. The Coalition contributed significantly to the defeat in the 2000 referendum of a draft government constitution that sought to further entrench authoritarian rule (Raftopoulos and Alexander, 2006).

After the constitutional referendum, the Coalition used its organisational effectiveness and ability to unite women across political and class divides to campaign for the election of female candidates in the June 2000 parliamentary elections. The systematic political violence that pervaded the pre and post-election landscape of the June 2000 parliamentary elections and the March 2002 presidential elections did not spare women. As gender-based political violence escalated, the Coalition and their partner women's organisations launched initiatives aimed at exposing perpetrators of this violence and publicising its effects on women across the political divide.

Concerned by the media's portrayal of victims of political violence as predominantly male, the Federation of African Media Women in Zimbabwe (Famwz) in April 2002 organised a meeting for female media practitioners and activists from women's organisations to highlight the effects of political violence on women. Conference participants such as the Zimbabwe women's Resource Centre and Network and the Girl Child Network highlighted how many women and girls had been raped, harassed and tortured at Zanu PF political bases or camps in the period preceding and following the 2000 parliamentary elections and the March 2002 presidential elections. The systematic sexual abuse of women had started in the bases established by the 'war-veterans' who invaded the farms in 2000 and had continued in the National Youth Training Camps established by Zanu PF in many parts of the country in the run up to the 2002 presidential election. The sexual violence was directed not only at wives and daughters of perceived opposition sympathisers, but also targeted female National Youth Service trainees who were gang raped by their male colleagues.

The Amani Trust, a civil society organisation which assisted victims of political violence also did much to publicise the effects of election–related violence on women, especially how many women with links to opposition MDC activists or supporters were forced to assume the role of breadwinners after their male partners had been killed, disabled or forced to flee from their homes by state sponsored political violence.

Though there was a marked decline in physical political violence in the period preceding and following the March 2005 parliamentary elections, compared with earlier elections, the issue of political violence against women as well as the broader political and economic impact of the Zimbabwe crisis on women has continued to be kept in the public domain by women's organisations such as Women of Zimbabwe Arise (Woza). Formed in 2003 and co-ordinated by Jenni Williams, Woza has since its formation staged numerous street protests to highlight and demand an end to the adverse impact that state economic and political policies have had on women's livelihoods, rights and freedoms. It has also recently established a male wing of its organisation known as Men of Zimbabwe Arise (Moza).

The labour movement
The labour movement, comprising numerous trade unions, mostly affiliated to the Zimbabwe Congress of Trade Unions (ZCTU), emerged as a formidable force for democratic political change in the second half of the 1990s, a period during which the authoritarian state faced intense pressures from civil society to democratise. The ZCTU's conviction that the country's economic decline and the resultant hardships workers faced were fundamentally rooted in state misgovernance, saw it play a key role in the formation of the opposition MDC in 1999. The top leadership and grassroots support base for the MDC came from the ZCTU.

The formation of a formidable opposition party, with deep roots in the labour movement, which almost won the June 2000 parliamentary elections, led the state to unleash a continuing assault on the ZCTU's leadership and structures, which were perceived as the backbone of the MDC's electoral strength. In this context, it is not surprising that political violence in elections held from 2000 onwards has targeted the ZCTU as much as it has the MDC. The ZCTU has, like the MDC, condemned the unevenness and violent nature of the electoral playing field in Zimbabwe.

The state has used a number of strategies to blunt the effectiveness of the ZCTU's initiatives on issues relating to the electoral environment and the adverse impact of state repression and economic mismanagement on workers. State security agents have infiltrated ZCTU affiliate unions and influenced them to work for the ouster of the current ZCTU executive. The state has also sought to create a pretext for the takeover of the ZCTU by initiating a state-controlled investigation into alleged corruption in the ZCTU. The 'investigators' report released in July/August 2006 predictably claimed to have uncovered widespread corruption in the labour body and called on the Minister of Public Service, Labour and Social Welfare to urgently intervene in the administration of the ZCTU. In response the state quickly hinted that it would consider appointing an administrator to take over the running of the ZCTU.

The major result of these developments has been to significantly weaken the voice and capacity of the labour movement to push for changes, not only in the electoral environment, but also in how the state is governed and economically managed. Although it has survived collapse so far, the ZCTU is now so focused on state-orchestrated disagreements and dissension that its capacity to organise mass protests over state-imposed economic hardships and political repression has been severely undermined. The mass street demonstrations called by the ZCTU on 13 September 2006, to protest against extremely poor workers' salaries and lack of access to anti-retroviral drugs used to treat AIDS, attracted almost no participation from workers. While the ZCTU leaders, mostly notably the President Lovemore Matombo, the Deputy President Lucia Matibenga and the Secretary General Wellington Chibebe displayed considerable courage in personally leading the street demonstrations, they were quickly arrested and subsequently subjected to severe beatings in police custody.

Critical analysis of current strategies for change
The failure of the ZCTU-led mass street protests of 13 September 2006 has renewed the long-standing debate on why the strategies used by the pro-democracy movement in Zimbabwe have so far proved to be ineffective in bringing about democratic change, a crucial component of which will be the establishment of a free and fair electoral environment. The reasons for this failure are complex and multi-faceted. Political analysts, opposition and civil society activists have come up with explanations for this failure that have highlighted different areas of weakness in the strategies used by the pro-democracy movement. Some of the major areas of weakness relate to the types of popular protest that should be used to engage the state, the divisions within the opposition and civil society, problems of intra-organisational democracy and the predominantly urban-centric nature of most civic organisations. Different solutions have also been proposed to overcome these weaknesses and these solutions essentially dissolve into two broad approaches that are not mutually exclusive: those that favour confrontation with the state through non-violent street protests and those that favour engaging the state through legal institutions such as the courts and parliament. The most conspicuous exponents of the former approach include Woza and the NCA while the latter approach has been espoused by the MDC faction led by Arthur Mutambara and Welshman Ncube.

The limitations of the protest strategies used by Zimbabwe pro-democracy forces have recently been highlighted by University of Zimbabwe Political Science lecturer, Eldred Masunungure. Masunungure (2006) has attributed the ineffectualness of Zimbabwe's pro-democracy forces to their adherence to forms of militant popular protest, such as centralised mass street demonstrations, that are doomed to failure because they negate the fact that Zimbabweans do not have a deeply entrenched tradition of militant resistance to authority. According to Masungure, the political culture of Zimbabwe is one in which a risk-taking governing elite – still very capable of deploying the coercive instruments of the state – rules over a predominantly risk-averse population.

Aversion to risk is a product of colonial and post-colonial authoritarianism and is not based on fear, but on a rational calculation of the costs and benefits of confronting an authoritarian state that wields overwhelming coercive power. He argues that the risk taken by Zimbabweans in waging the armed struggle was a temporary 'transitory aberration'. This reality in Masunungure's view, requires the opposition and civic organisations in Zimbabwe to make a sea change in their strategy for engaging the state. They should move way from centralised mass street protests and instead adopt decentralised passive forms of resistance aimed at eroding the state and making it dysfunctional rather than confronting it head on.

Some of civil society's own perspectives on this issue differ markedly from the views expressed by Masunungure. The NCA's Lovemore Madhuku has consistently stated that because the Zanu PF government has refused to negotiate with pro-democracy forces and has also proved to be impervious to passive forms of resistance, only confrontational strategies such as street protests will force it to give into demands for democratic change. Jenni Williams, the co-ordinator of Woza, has frequently stated that street protests are the most effective way

of highlighting to both the government and the international community, the discontent of ordinary Zimbabwean women with the political and economic situation in the country. Williams has expressed disappointment that despite losing three elections condemned as violent and fraudulent by the international community, the MDC has procrastinated in calling for mass action and has spent more time fighting Zanu PF in the courts than on the streets. Archbishop Pius Ncube of the Roman Catholic Church has also stated that mass action can be an effective instrument for democratic change, but it is the absence of visionary and inspirational leaders from the opposition and civil society that has discouraged Zimbabweans from coming out into the streets in their millions to confront the state.

It is also clear that certain sections of civil society have engaged in a continuous critical review of the ability of the pro-democracy movement to engage in effective mass protests. The Crisis in Zimbabwe Coalition (2003), drawing on the weaknesses highlighted in earlier mass protests staged by pro-democracy forces in Zimbabwe, has formulated four factors which it argues civil society organisations must take note of if they are to stage successful mass demonstrations.

Firstly, civil society organisations need to clearly identify the objectives of intended mass actions and communicate these clearly and unambiguously to the public. For instance, it must be clear whether an intended mass action is aimed at pressuring the government into negotiating with pro-democracy forces or into resigning from office. Secondly, in order to avoid calling for mass action when Zimbabweans are not ready for it, careful consideration should be given to the timing of any mass action that pro-democracy forces intend to stage. Thirdly, notwithstanding civil society's concerns about having their mass protests undermined by the Zimbabwe state's security agencies, the specific form and content that any intended mass action will take should be clearly identified and communicated to the participants well in advance of the mass action so that participants know what is expected of them. It should be clear to participants whether the mass action will involve staying away from work only or will also entail street demonstrations. Finally strategic co-ordination among civil society organisations participating in any mass action should be enhanced in order to prevent situations in which other participant civil society organisations have to learn about the dates and specific programme of the mass action thorough the few remaining independent press channels in Zimbabwe.

There have also been calls for civil society organisations to broaden the appeal of mass action by mobilising people around bread and butter issues and other immediate local grievances, rather than issues of democratic reforms which may not be appealing to ordinary Zimbabweans who are facing unprecedented economic hardships. Woza has already taken the lead in doing this by staging non-violent street protests over a variety of specific grievances which include power cuts and school fee increases. At the same time care must be taken to avoid completely detaching local or specific grievances from broader issues of governance and democratisation because it is clear that these specific problems are linked to misgovernance and that the vast majority of Zimbabweans want democratic change.

Civil society organisations also acknowledge the need to foster greater unity among themselves in order to be more effective in fighting for democratic change in Zimbabwe. The atomisation of the pro-democracy movement in Zimbabwe has partly been reflected by the fact that Woza, the NCA, the Combined Harare Residents Association, the ZCTU and the MDC have often initiated individual street protests without supporting each other. The ZCTU is accused of having failed to involve other pro-democracy organisations in its demonstrations of 13 September 2006. Similarly Jenni Williams of Woza has criticised the Tsvangirai-led MDC faction for failing to involve Woza and other pro-democracy civil society organisations in the preparations for its planned mass action. Jonah Gokova, the co-coordinator of the CA has pointed out that the CA has taken a major step to counter the fragmentation of the pro-democracy movement through the establishment of a steering committee comprising 34 civil society organisations, opposition parties and church groups. The establishment of this collective decision-making structure should, as Gokova stated, make it possible for the pro-democracy movement to adopt a more direct and united approach to force the government of President Mugabe to give in to pressures for democratic change. Gokova has, however, pointed out that the CA is not interested in fostering and projecting a false monolithic unity among pro-democracy forces, but seeks instead to create 'unity in diversity'.

Equally important in fostering unity and effectiveness in the Zimbabwean pro-democracy movement is the creation of strategic alliances and advocacy networks at the national, regional and international levels. Misa-Zimbabwe, MMPZ, the Zimbabwe Union of Journalists and the Zimbabwe Lawyers for Human Rights have all engaged in national, regional and international advocacy in partnership with other pro-democracy civil society organisations. They have highlighted the extensive state violations of human rights in Zimbabwe by frequently testifying before the African Union's African Commission for Human and People's Rights.

Future challenges/strategies for creating an environment for free and fair elections in Zimbabwe

There is widespread consensus among pro-democracy organisations that in order to establish the preconditions necessary for free and fair elections in Zimbabwe, there is a need for the following measures to be implemented:

Institutional challenges: constitutional reform, transformation of the armed forces and judicial independence

As has been consistently argued by the NCA, Zimbabwe's current uneven and generally violent electoral environment is a product of not only flawed electoral laws, but of an authoritarian constitution which the state has used to subvert and destroy the democratic institutions required to foster the preconditions required for free and fair elections. The establishment of an environment in which free and fair elections can take place therefore requires a new democratic constitution that will see the removal of draconian and repressive legislation such as POSA and AIPPA, which have not only restricted opposition forces, but have also made it impossible for the media to play a meaningful and effective role in covering elections and other wider issues. Abel Chikomo, the MMPZ co-ordinator, states that new democratic media laws should guarantee the safety

of both media practitioners and consumers of news as it is not possible to have free and fair elections in an environment in which they live in fear and are intimidated by the state and or political parties. Equal access to the public media by all contesting parties should be guaranteed by democratic electoral laws which should clearly spell out the role of the media in elections and also provide clear guidelines on what constitutes fair, accurate and professional media coverage of such elections.

There is also widespread agreement that no free and fair elections can take place without instituting certain changes in the armed forces and the judiciary. In order to ensure that the armed forces do not continue to be used to foster an undemocratic pre-electoral environment and to subvert the electoral process, it is crucial that they be transformed into a professional apolitical force that does not participate in party politics and the administration and monitoring of electoral processes. The armed forces should also be unequivocally committed to loyally serving any government or president constitutionally elected by Zimbabweans.

Restoring the independence of the judiciary is a fundamental prerequisite for the creation and maintenance of an environment conducive to the holding of free and fair elections. Election petition cases should be dealt with expeditiously by the judiciary and judgements in such cases issued within a fixed period of time that does not allow those whose election is subsequently found to be legally invalid to continue in office until the next national election.

A 'breakthrough to the village'

Efforts to establish and maintain preconditions for free and fair elections should take account of the needs of the rural electorate which for decades has been prevented by the authoritarian state from accessing the same information and exercising the same rights that the urban electorate has been able to enjoy. The MMPZ and Misa-Zimbabwe have for several years taken the lead in doing this by extending their programmes to rural areas. Abel Chikomo, MMPZ's co-ordinator notes that their work in rural communities has enabled them to establish that rural people have moved "miles" away from the popular perceptions that urban people have of them as inherent and ignorant Zanu PF supporters who lack an informed understanding of the real issues at stake in elections. Economic and other hardships have caused even those rural communities in long-standing Zanu PF strongholds to more openly entertain non-Zanu PF viewpoints on the causes and possible solutions to the Zimbabwe crisis. Woza has also shown its intention to seriously extend its activities to rural areas by establishing within its administrative structures the new posts of rural Outreach Co-ordinators. However, as Abel Chikomo, has pointed out, the current rural outreach programmes being implemented by Zimbabwe's civil society organisations are insufficient to meet the needs of rural communities and what is required is 'a major breakthrough to the village.'

Model democratic practise within civil society organisations and opposition parties

Raftopoulos (2006) has highlighted how easy it is for the undemocratic culture of Zanu PF to be replicated in non-state organisations committed to fighting for democratic change. Among the developments that have highlighted the need

for pro-democracy organisations to avoid undermining their moral authority to push for a democratic electoral environment are the controversial amendment of the NCA constitution to give its chairman Lovemore Madhuku a third term in office, intra-party violence, allegations of vote buying, rigging and manipulation of primary and other intra-party elections in the MDC. John Makumbe, a Political Science Lecturer at the University of Zimbabwe and a former Chairman of the Zimbabwe Chapter of Transparency International, believes that electoral corruption in the form of vote buying may represent a more serious long term threat to free and fair elections than political violence. This is because the Zimbabwean electorate has not been very active in exposing and reporting cases of vote buying, especially within the parties they support. The electorate can therefore also contribute to the establishment and maintenance of a democratic electoral environment by refusing to facilitate electoral corruption.

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OUTSIDE THE BALLOT BOX: PRECONDITIONS FOR ELECTIONS IN SOUTHERN AFRICA 2005/6

Edited by Jeanette Minnie

Thirteen authors from nine African and two European countries discuss the state of democratisation in Southern Africa in this second edition of *Outside the Ballot Box*.

They focus on controversial subjects like strategies for change in Zimbabwe, the growth of poverty and shack dweller protest in South Africa and the disposition of liberation movements as governments. Others engage with the role, strengths and weaknesses of civil society as agents of democratic progress, and the broader or lesser extent of political and civil space in various countries.

Elections held over the last year and pending in the near future are critically dissected, including the current situation in Swaziland where the passage of a deliberately vague constitution does not pronounce on the legality of political parties. In the Democratic Republic of the Congo, a writer warns that it remains to be seen whether the historical 2006 elections and the uneasy peace between the 'warlords in government' is likely to last or translate into development of the country. Another emphasises that in Africa the rules for elections need to be the same, they need to be understood and observers need to sing from the same hymn sheet. The lack of pan-African consensus and consolidation of election principles, norms and standards is an increasingly serious barrier to good practice and reputation in and of the continent.

An area of good news described in this edition is the positively developing state of play on women in governance, an issue which is making progress in this corner of the world, although huge disparities still need to be addressed. This book is being distributed non-commercially to civil society organisations, governments and political parties in the belief that it will contribute to reflection and strategies on how to strengthen democratisation in and across the countries that constitute the Southern African Development Community (SADC).

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