



CONFERENCE REPORT

CR 2008-01 February 2008

**Democratization in Africa:
What Progress
Toward Institutionalization?**

THIS PAPER DOES NOT REPRESENT US GOVERNMENT VIEWS

This page is intentionally kept blank.

This paper does not represent US Government views.



Democratization in Africa: What Progress toward Institutionalization?

Ghana Center for Democratic Development, 4-6 October 2007

The President's *Commission on US Intelligence Capabilities on Weapons of Mass Destruction* (so-called 2005 WMD Commission) recommended creation of a new analytic unit under the National Intelligence Council that focuses on long-term, strategic analysis. In keeping with its intended purpose, the work of this new Long-Range Analysis Unit seeks to identify and map out issues and trends that may have gone unnoticed or could be under-appreciated. In striving to serve future security objectives, the unit will alert policymakers to any strategic trends that are evolving in such a way as to potentially threaten US national interests.

The National Intelligence Council sponsors conferences and workshops with nongovernmental experts to gain knowledge and insight and to sharpen debate on critical issues. The views expressed in this report do not represent official US Government positions.

Prepared under the auspices of the National Intelligence Council.

*CR 2008-01
February 2008*

This paper does not represent US Government views.

This paper does not represent US Government views.

The NIC was the originator and principal driver behind a recent conference held in Accra, Ghana, from 4-6 October 2007. The conference—titled Democratization in Africa: What Progress Towards Institutionalization?—was co-sponsored by the US State Department/US Embassy Ghana and the Center for Democratic Development (CDD), a research and democracy promotion organization based on Ghana. The conference was co-chaired by the Director of the CDD, I. Gyimah-Boadi, and Larry Diamond, from the Hoover Institute at Stanford and a NIC Associate.

The purpose of the conference was to review and assess the trajectories of African states toward, or away, from increased institutionalization of democratic processes and practices. The conference was designed so that the review and assessment would be based on interactions among a diverse set of players—including African researchers and practitioners of democracy, ranking US academic experts on political change in Africa, US democracy promotion professionals, and US Government analysts and diplomats. The conference was unprecedented for its combination of diversity of expertise and depth of investigation into the causal factors and constraints affecting democratization and democratic backsliding in Sub Saharan Africa. With about 50 participants and 15 African countries represented, the conference deliberations occurred for two days, at the Kofi Annan International Peacekeeping Training Center, in Accra.

This paper does not represent US Government views.

Contents

	<i>Page</i>
The State of Democracy in Africa, by Larry Diamond	1
Legislative Development in Africa, by Joel D. Barkan	15
Democracy and African Conflicts: Inciting, Mitigating, or Reducing Violence? by Dorina A. Bekoe	29
The APRM: A Regional Approach to Strengthening Democracy and Governance Institutions in Africa, by Kojo Busia	41
Political Parties in Africa: Challenges for Democratic Governance, By Abdalla Hamdok, PhD	51
The Institutionalization of Democracy in Africa, by Jeffrey Herbst	61
Growth Without Prosperity: Democracy, Poverty and Inequality in Africa, by Peter Lewis	67
The Judiciary, Constitutionalism and Human Rights, by Muna Ndulo	81
The Persistence of “Imperial Presidency” in Africa’s Emerging Democracies, by H. Kwasi Prempeh	93
The Role of the International Community in Promoting or Encouraging (or Discouraging) Political Reform and Democratic Strengthening in Africa, by Richard Joseph and Roberta Buffett	111

This paper does not represent US Government views.

This page is intentionally kept blank.

This paper does not represent US Government views.

The State of Democracy in Africa*

By Larry Diamond

The statistics tell a grim story. The 23 poorest countries in the world in terms of human development are all in Africa.^a Of the 48 African countries, only two have managed to escape falling in the bottom third of the UN Development Programme's human development ratings, and both are small island states (Mauritius and Cape Verde). With the HIV/AIDS pandemic ravaging many countries, life expectancy in Africa has plunged to 46 years (compared to the next worst region, South Asia, at 64 years). An estimated half of all Africans lack access to a decent source of drinking water (compared to 28 percent in South Asia). Thirty percent of Africans are undernourished (half again as bad as South Asia). Ten percent of all African infants die before the age of one and 17 percent do not live to see the age of five. In under-five child mortality, no other region does even half as badly as Africa.

The survival figures are not unrelated to another set of data: the quality of governance. Until recently, Africa has been a desert in terms of democracy and the rule of law, and it remains one of the most corrupt and badly governed regions of the world. In the last few years, Argentine economist Daniel Kaufman and his colleagues at the World Bank Institute have developed six measures to assess a country's quality of governance, one of which, voice and accountability (including freedom of expression and citizen participation in selecting the government) is a rough (if partial) surrogate for democracy. The others measure political stability (and the absence of violence), government effectiveness (of public services and public administration), the quality of government regulation (to "permit and promote private sector development"), the rule of law (including the quality of policing and the courts), and control of corruption. Africa does poorly on all of these measures. On average it ranks in the 30th percentile—a little better on the political measures of accountability and stability, but slightly worse on the measures of rule of law, corruption control, regulatory quality, and government effectiveness. On these latter four measures, which I collect together as a gauge of "state quality," Africa's mean percentile ranking, 28th, trails well behind Eastern Europe (59th), Latin America and East Asia (47th), the Middle East (42nd), and even South Asia (36th). (See Figure 1) Based on these World Bank indices, Africa and the former Soviet Union are the most badly governed regions of the world. This may help to explain why Africa ranks dead last, and by a wide margin, in its average Human Development Index Score.

The picture grows worse still if we look at the African countries with populations over 30 million. Save for South Africa, which looks much more like an East European country with an average percentile rank of 64, the data are alarming. Five of Africa's seven biggest countries have worse governance than the continent as a whole, and three of them dismally so. Across all six measures, Nigeria ranks in the 30th percentile. On rule of law and corruption control and political stability/control of violence, only 5 percent of countries score worse. Ethiopia ranks in the 18th percentile, Sudan in the fifth, the Democratic Republic of Congo (the former Zaire) in the third. Kenya and Tanzania do better, at the 26th and 36th percentile respectively, but Kenya still scores below the African average.

* For the remainder of this paper, I will simply refer to sub-Saharan Africa as "Africa."

There is also the tragedy of violent conflict in Africa. About two-thirds of the countries to which the United Nations has sent peacekeeping operations between 1998 and 2007 were in Africa.^b About 70 percent of the roughly 70,000 UN peacekeeping troops deployed as of 2007 were in Africa. Since their independence, 22 of Africa's countries have suffered civil wars—some of them claiming hundreds of thousands of lives, and several of them flaring up repeatedly.^c By the end of 2005, Africa, which has only about a tenth of world population, had about 30 percent of the world's refugees—an estimated 2.5 million people.^d

The Pathology of Personal Rule

Why does Africa remain, half a century after the onset of decolonization, mired in poverty, stagnation, misery, violence, and disruption? A common assumption is a lack of resources. But that cannot explain why some of Africa's richest countries in natural resources—Nigeria, Angola, the Congo—stand among its most dysfunctional developmental failures. It cannot account for the fact that “Africa has received some \$600 billion in foreign aid since 1960, yet most African nations are poorer today than they were then”^e or that two-fifths of all official aid flows in 2004—a total of \$26 billion—went to Africa.^f

Oil and aid function in a similar fashion, since in many African countries, foreign aid accounts for half or more of the total government budget and a significant share of the total national economy—over a quarter in some cases. Both provide external rents that ruling elites can easily capture for themselves and their families and friends. In sufficient quantities, oil and aid revenues both enable economic irrationality and waste. Both fund the state apparatus of repression and patronage that sustains venal, unpopular governments. Both sever the bonds of accountability between rulers and ruled. And both feed the monster of African politics: corrupt, lawless, personal rule.^g

Post-colonial African states have been “neo”-patrimonial because they combine the formal architecture of a modern bureaucratic state—constrained in theory by laws, constitutions, and other impersonal rules and standards—with the informal reality of personalized, unaccountable power and pervasive patron-client ties. These ties radiate down from the biggest “big man”—the autocratic president—to his lieutenants and allies, who in turn serve as patrons to lower-level power brokers, and down to the fragmented mass of ordinary citizens, who are trapped in relations of dependence on and support for their local political patrons.

In such systems, informal norms always trump formal rules and restraints. Thus, “the right to rule... is ascribed to a person rather than to an office.”^h Subordinates pay loyalty to their personal patrons, not to laws and institutions. Powerful presidents (and their subordinates) use state resources as a personal slush fund to maintain political dominance, giving their clients state offices, jobs, licenses, contracts, vehicles, bribes, and other access to illicit rents, while getting unconditional support in return.ⁱ State offices at every level become permits to loot, either for an individual or a somewhat wider network of family, ethnic kin, political clients, and business cronies. Where the resources are greatest—in the oil states—the looting has been colossal. Richard Joseph has called such entrenched corruption “prebendalism,” building on Max Weber's work.^j In prebendal systems, it is expected that state offices will be sought and then “utilized for the personal benefit of office holders” as well as their clients, and clients expect—and demand—their share of the spoils. Corruption, clientelism, and personal rule thus seep into the culture,

making the system more tenacious. In Africa, as contending patron-client networks organize along ethnic or sub-ethnic lines, and the president judges his ethnic kin as the most reliable loyalists in struggles over power. This makes the system unstable, as identity, power, and resource conflicts mix in a volatile brew, prone to explosion.^k

The fundamental purpose of neopatrimonial, prebendal governments is not to produce public goods—roads, bridges, markets, irrigation, education, health care, public sanitation, clean drinking water, effective legal systems—that increase productivity, improve human capital, stimulate investment, and generate development. Rather, it is to produce private goods for those who hold or have access to political power. Contracts are let not on the basis of who can deliver the best service for the lowest price, but rather on who will pay the biggest bribe. Budgets are steered to projects that can readily generate bribes. Government funds disappear into the overseas accounts of office-holders. Government payrolls are swollen with the ranks of phantom workers and soldiers.

One thing that can arrest the decay and refresh the system is a change in leadership. But a key feature of the neopatrimonial system is the prolonged tenure in power of a single ruler. In 2005, Ugandan President Yoweri Museveni “openly bribed members of parliament, blackmailed and intimidated others to amend the constitution and remove term limits on the presidency so that he can run again, and again, and again.”^l In the run-up to the February 2006 election, he stepped up his harassment of the independent media and those elements of civil society he had not already coopted. Then he jailed the principal opposition presidential candidate, before finally claiming a highly suspect first-round victory through apparent manipulation of the vote count.^m

Museveni’s two decades in power hardly make him Africa’s longest-serving president, however. Omar Bongo of oil-rich Gabon has ruled for nearly four decades. Robert Mugabe’s merciless reign in Zimbabwe has stretched past a quarter-century. In Angola, Cameroon, and Guinea, presidents have also ruled for well over 20 years and in Burkina Faso for nearly that. Sudan’s Hassan al-Bashir has held power for 18 years, and Meles Zenawi in Ethiopia and Yahya Jammeh in Gambia for over a decade. None of them shows any sign of surrendering office. Prolonged personal regimes have held sway over much of post-colonial Africa’s short history. Mobutu Sese Seko ruled Zaire for 32 years. Julius Nyerere in Tanzania, Kenneth Kaunda in Zambia, and Daniel arap Moi in Kenya each held the presidency for about a quarter-century, and Abdou Diouf in Senegal for 20 years (after a similar stretch in power by his predecessor, Leopold Senghor). During each of these protracted reigns in power, their countries declined.

Africa’s (Somewhat) New Political Era

Personalization and concentration of government power remain stubborn realities in Africa. What is different today, however, is that the de facto “life presidency” is no longer the whole story of Africa. Since the “second liberation” of Africa in 1990, many long-serving presidents (including a number of those mentioned above) have been driven from power or defeated at the polls. Most countries have adopted presidential term limits, and a number have successfully resisted efforts by incumbents to lift them. Even where, as in Uganda and Zimbabwe, presidents are hanging on, it is with more societal resistance, political opposition, and moral outrage than was typically mobilized prior to 1990.

One factor containing the personalistic degradation of the state has been democracy itself, and the attendant growth of constitutionalism. Before 1990, there were never more than a few democracies on the continent—and those were mainly confined to very lightly populated countries like the Gambia, Mauritius, and Botswana. By 2007, Freedom House classified fully half the 48 African states as democracies—regimes where citizens can choose their leaders and replace their leaders in reasonably free and fair elections, which in turn require some significant degree of personal and political freedom (see Table 1 and Figure 2). Even if a few of these states are only dubiously democratic—with charges of electoral malfeasance, corruption, and ruling party domination of the state apparatus, civil society, and the press—the general transformation in the political character of the continent is extraordinary. Many of the electoral democracies that emerged after 1990—such as those in Benin, Mali, and South Africa—have persisted for more than a decade. Following two decades of rule under Jerry Rawlings, Ghana has emerged as one of Africa's most liberal and vibrant democracies, reclaiming a position of political leadership on the continent. And the trend continues to be positive: between 2002 and 2006, average levels of freedom improved almost half a point on the Freedom House seven-point combined scale of political rights and civil liberties.

The positive trend is all the more remarkable when one looks at which African countries have become electoral democracies. They include the world's three poorest countries on the human development index (Mali, Niger, and Sierra Leone) and several others in the bottom 20 (such as Burundi, Malawi, Mozambique, and Zambia). They include four countries (Burundi, Liberia, Mozambique, and Sierra Leone) where democratization was part of the efforts to end civil conflicts that left at least thousands (in the case of Burundi, 200,000) dead. In Liberia, democracy came while the post-war country was still dependent on 13,000 UN peacekeeping troops. There is more political contestation and civil pluralism in Africa than at any previous moment in its post-independence history. But democracy remains a faint and fragile flower.

Take, for example, Malawi. On the one hand, it would have been hard to imagine a more unlikely prospect for democratization in the early 1990s. For nearly 30 years, the country was in the grip of a vain, eccentric dictator, Dr. Hastings Kamuzu Banda. Then in 1991, foreign aid donors pushed the 90-year-old Banda to open up politically. Under protracted domestic and international pressure, he held a referendum in 1993 on whether Malawi should have a multiparty system and lost badly. The next year, the country's first multiparty elections brought a new party and a new leader, Bakili Muluzi, to power.

Muluzi's ten years in the presidency were not a great success. In his first five-year term, Muluzi released political prisoners, established basic freedoms, invested in health and education, and won the adoption of a new constitution enshrining multi-party democracy and limiting the president to two terms. However, regional and ethnic differences festered, and Muluzi won reelection only narrowly and over intense opposition protests. In his second term Malawi's freedom ratings deteriorated as Muluzi grew consumed with trying to remain in power.¹¹ But domestic and international pressure again gathered and Muluzi was compelled to abandon his campaign to amend the constitution to allow him a third term. At that point, he tapped an outsider, Bingu wa Mutharika, to contend on his behalf. But when the new president launched an aggressive anti-corruption campaign—investigating the former president and several of his top associates—the ruling party split. President Mutharika was forced to form a new party,

leaving him without majority support in parliament. Muluzi and his party tried (unsuccessfully) to impeach Mutharika, and the country was thrown into political turmoil. And while economic management improved under Mutharika, the country struggled to come to grips with an HIV/AIDS pandemic that had infected an estimated one of every seven adults and lowered life expectancy to just 40 years, while three-quarters of the population struggled to survive on less than two dollars a day.

For all its difficulty and uncertainty, there is a hopeful sign in Malawi's post-transition story. President Muluzi's effort to bend the constitution to his will failed. In contrast to what happened under Banda, the institutions won out over the ambitions of the ruler. And that is no longer a rare story in Africa: the formal constitutional rules on how leaders acquire and leave power are increasingly coming to matter. As Daniel Posner and Daniel Young have shown, since 1990, Africa's politics have grown less violent and more institutionalized.^o Between 1990 and 2005, six presidents, including Museveni in Uganda, succeeded in eviscerating term limits, but these cases were the minority. Powerful rulers such as Jerry Rawlings in Ghana and Daniel Arap Moi in Kenya, and ultimately ten others, were forced by term limits to step down from their presidencies. After more than two decades in power, Rawlings and Moi were tempted to hang on, but yielded to domestic and international pressure. Three African leaders—including President Olusegun Obasanjo in Nigeria—tried hard and failed to extend their presidencies. And even the leaders who scuttled term limits felt compelled to do so by amending the constitution incrementally rather than simply declaring themselves “president for life” (as was not uncommon immediately after independence). Further, in the 1960s, 70s, and 80s, more than two-thirds of African leaders left power violently—usually, as a result of a coup or assassination. During the 1990s, peaceful exits—principally, as a result of electoral defeat or voluntary resignation—became the norm, and between 2000 and 2005, roughly four in five African leaders were replaced this way.

Even more decisive than the rise of democracy has been the end of the one-party state in Africa. Since the 1990s, elections have become increasingly regular and frequent, and almost all African elections have been contested. As has been the case in Nigeria—as well as in Ethiopia, Gambia, Uganda, and most brutally, Zimbabwe, among others—many of these elections have been arbitrarily limited, manipulated, or blatantly rigged. But parties and leaders are beginning to lose elections. Whereas only one African president was defeated at the polls between 1960 and 1990, incumbent presidents lost one out of every seven times they contested between 1990 and 2005.^p Moreover, electoral alternation has significant positive effects on public support for and confidence in democracy.^q And even when elections have not been adequately free and fair, it appears that the repeated holding of competitive elections has produced gradual improvements in civil liberties by enhancing the democratic consciousness of citizens, strengthening civic organizations and mass media, and giving office-holders some incentive to service and maintain their bases of electoral support.^r

Why do African presidents feel more constrained now? Posner and Young advance two intriguing explanations. One is that they feel more international pressure. The median level of foreign aid (as a percentage of the overall economy) in the countries where presidents did not attempt to secure third terms was almost twice as high as in those countries where the presidents did (and often succeeded). The other factor is public opinion. African publics are awakened,

attentive, and active now as they have never been before. Their expectations of government are higher, and their readiness and organizational abilities to challenge abuses of power are greater. The nine African presidents who felt constrained not to seek a third term had narrower electoral mandates than the nine who did, suggesting a greater sensitivity to public opinion.

This points to another positive trend in Africa, with potentially lasting consequences: the growth of civil society.^s As a wide range of associations independent from the ruling party have begun to engage in political dialogue and advocacy, they have served as a great force for political accountability, challenging and at times even preempting a president's flirtation with staying in power. Some of these organizations date back to the colonial and immediate post-independence era—student associations, trade unions, religious bodies, and interest groups based on commercial, professional, and ethnic solidarities—but there is also a new generation of groups working explicitly for democracy and good governance: think tanks, bar associations, human rights organizations, women's and civic education groups, election monitoring networks, and local and national-level development organizations. To a degree far beyond the early years of nationhood, the construction of democracy in Africa is a bottom-up phenomenon. Non-governmental organizations are teaching people their rights and obligations as citizens, giving them the skills and confidence to demand accountability from their rulers, to expose and challenge corruption, to resolve conflicts peacefully, to promote accommodation among ethnic and religious groups, to monitor government budgets and spending, to promote community development, and to recruit and train new political leaders. Civic groups are also working at the national level to monitor elections, government budgets, and parliamentary deliberations; to expose waste, fraud, and abuses of power; and to lobby for legal reforms and institutional innovations to control corruption and improve the quality and transparency of governance. These organizations draw strength not only from the funding and advice they receive from international foundations and donors, but more importantly, from their increasingly dense interactions with one another. Dozens of pro-democracy and good governance organizations in some 30 African countries are linked together in the African Democracy Forum.^t Some African civil society organizations, most notably the Institute for Democracy in South Africa (Idasa), have reached a point of institutional maturity where they are now assisting democratic development elsewhere on the continent.

Public Opinion

Coinciding with the flowering of civil society has been a visible public demand for and appreciation of democracy. Since the data will be reviewed in depth in other papers, a few statistics will register the essential points here. When surveyed by the Afrobarometer in 2005-2006, an average of 62 percent of the public in 18 countries said that “democracy is preferable to any other kind of government.”^u Levels of support for democracy were as high as 75 percent in Ghana, Kenya, and Senegal, and at 65 percent or higher in ten of the countries surveyed. In fact, only a few African countries harbor much preference for any specific form of authoritarian rule, and never does it rise above a fifth of the population. Moreover, this is not just an abstract commitment to democracy in general. Four in every five Africans surveyed believe that “regular, open, and honest elections” are the only way to choose their country's leaders, and two-thirds agree that elected assemblies (not the president) should make the laws in the country, even if the president disagrees with them.^v Only about one in six Africans, on average, expresses a

positive preference for an authoritarian option like military or one-party rule. And a slight majority (52 percent) actively rejects all three authoritarian options offered.

Africans' support for democracy does not seem to be born out of a naïve sense that democracy means or will necessarily quickly bring rapid economic progress. When asked to define what democracy means to them, "a majority of Africans interviewed (54 percent) regard it in procedural terms by referring to the protection of civil liberties, participation in decision making, voting in elections, and governance reforms."^w And when asked whether they felt their system of electoral democracy "should be given more time to deal with inherited problems" or instead, if it "cannot produce results soon, we should try another form of government," 56 percent of Africans in 2005-2006 chose to give democracy more time. This represents a significant increase in patience with democracy since 2000.

Michael Bratton notes that while the demand for democracy is proving fairly resilient in Africa, the perceived supply is more questionable. For example, while 81 percent of Africans want free and fair elections that can remove leaders, only 47 percent think they are getting this in their country. Two-thirds of Africans want their president to be subject to the rule of law, but barely a third (36 percent) thinks he is.^x The problem is not that Africans do not value and demand democracy but rather that African parties and politicians are not meeting their citizens' aspirations.

Consequently, some disillusionment is setting in. Between the surveys in 2000 and those in 2005, satisfaction with the way democracy works declined an average of 13 percentage points (from 58 to 45 percent). While satisfaction rose in a few well functioning democracies like Ghana and South Africa, it declined in eight of the 12 countries surveyed both times. Nevertheless, even on the supply side there are cautious grounds for optimism. The perception that one's own country is a democracy has held constant at around 50 percent and 54 percent think it is likely their country will remain a democracy.^y And political performance in supplying democracy can dramatically improve citizen attitudes and perceptions. Analyzing the 2005 data, Bratton found that perceiving the last elections to have been free and fair has become far and away the most powerful in shaping the extent of democracy citizens perceive. Thus, the ruler's performance is no longer enough to satisfy the public and formal institutions are starting to matter more than informal ones.^z

Can Democracy Work in Africa?

The challenges to the viability of democracy in Africa are not much different in nature than in other regions, only more pervasive and extreme. As in many parts of Latin America, the former Soviet Union, and Asia, democracy is being tested to see if it is capable of governing effectively. As elsewhere, no challenge is more profound than controlling corruption; when public resources bleed profusely and officials serve their own ends rather than the public good, governance and development suffer, conflict intensifies, and citizens turn to alternate regimes.

No region has more countries that straddle the divide between democracy and pseudodemocracy than Africa. Independent and effective electoral administration has become institutionalized in some African countries, such as South Africa and Ghana, and a few other democracies, such as Mali, are fairly liberal, but in most of Africa, civil liberties are constrained, opposition rights are

tenuous, and elections are riddled with malpractices, to the point where it is fair to question whether some of these regimes are democratic in any sense. So there is also the challenge of developing democratic governance that allows opponents a fair chance to displace those in power.

In a number of countries, democracy is diminished by one-party dominance. In Botswana and South Africa, this occurs within a context of significant freedom and relatively effective governance. Still, the trends in South Africa have been negative in recent years, leading Freedom House to downgrade the country's freedom score. Boasting one of the world's highest murder rates, rampant violent crime retards investment and public confidence in South Africa, and numerous observers cite signs of "creeping corruption," particularly conflicts of interest, among government and ruling party officials. The lack of opposition to the African National Congress (ANC), the high degree of centralization and discipline within the ANC, and the parliament's lack of meaningful oversight on the executive branch produce a stultified democracy despite one of the world's most liberal constitutions and a strong constitutional court. And because the country's system of proportional representation has divorced members of parliament from geographical districts, virtually no South African knows who represents them in parliament (whereas in the average African country, about half of the public do). As a result, citizen detachment and disaffection have risen.^{aa} South Africans remain strong supporters of democracy and of liberal principles, and more satisfied than the average African with the way democracy works in their country.^{bb} But when surveyed in 2006, only about two in five said elections enable voters to remove leaders they do not want (compared 47 percent of all Africans surveyed).^{cc}

In Mozambique, the ruling party allows less freedom. The legacy of the civil war that ended in 1992 still polarizes the competition between the ruling party, FRELIMO, and its principal challenger, RENAMO, and "independent monitors cited serious flaws in the voting and tabulation" during the 2004 election. The state controls "nearly all broadcast media" (and much of the print media as well).^{dd} Corruption is extensive, and efforts to investigate it can cost journalists their lives.

The political struggle in Africa remains very much a contest between the rule of law and the rule of the person. Yet, most African democracies also suffer to one degree or another from the concentration of power in the office of the president. When Senegal's longtime opposition leader, Abdoulaye Wade, won the presidency in 2000, ending four decades of Socialist Party rule, there were high hopes for a new era of democracy, built on some of the continent's oldest traditions of pluralism and liberal thought. But increasingly, the aging President Wade drew power and resources into his own hands and those of his family. In the years leading up to Wade's reelection in 2007, journalists, political activists, singers, and *marabouts* (Muslim spiritual leaders) who criticized Wade or supported the opposition were subjected to physical intimidation and violence.^{ee} Critics charge the election was marred by vote-buying, multiple voting, and obstruction of opposition voting.

Despite a lackluster economic performance, Wade was able to mobilize support with corruption—coopting religious figures, civil society leaders, local administrators, military officers, and members of with money, loans, diplomatic passports, and other favors. Now, it is

alleged, the octogenarian president is preparing to hand power to his chosen successor—his son. “He has destroyed all the institutions, including political parties. He has taken opposition with him and manipulated the parliament,” a Senegalese democratic activist told me. “People are so poor and Wade controls everything. If you need something, you have to go with him.” The reaction from Europe and the United States (without whose aid Wade’s government could hardly function) has been muted. The activist lamented, “We expected more from the donors,” referring to the defense of principles, not the gift of money.^{ff}

In Central and Eastern Europe, there is a strong sense of inevitability to democracy: the costs of defecting from democracy would be too great to permit a return to authoritarian rule. African states, however, are far from this pragmatic level of democratic gain. The fact that military rule has virtually disappeared from the continent does not mean that new coups are unthinkable, or that once they seize power, new strong-men will not—as the young junior officer Yahya Jammeh did in Gambia—“regularize” their status by exchanging the uniform for traditional dress and forming a domineering party. Thirteen years after the then-29-year-old lieutenant seized power in a military putsch in 1994, Jammeh was reelected in 2006 amid massive fraud, with foreign aid still providing half the government budget. If international donors cannot get tough with a young punk autocrat in a tiny country, can they do so anywhere?

Yet, if the continental picture looks fragile and discouraging, there are significant grounds for hope. Democracy endures—and with some of the highest levels of freedom on the continent—in landlocked and desperately poor Mali. To be sure, the challenges are legendary and may prove fatal: feckless political parties, a feeble judiciary, immense poverty, deepening inequality, spiraling corruption, and a “near-pathological dependence on foreign aid.” But the country is fashioning a viable democratic culture based on pride in its heritage of tolerance; media pluralism is flourishing (with over 140 FM radio stations blanketing the country); Malian NGOs are compensating (albeit perhaps too much) for the state’s limited ability to deliver services; and political decentralization is bringing government closer to the people while broadening the stakes in the democratic game.^{gg} One finds a similarly mixed but upbeat balance sheet for democracy in Ghana. Despite the relentless creep of corruption—with its swelling of the presidential cabinet, conflicts of interest, and generous patronage—Ghana has emerged as one of Africa’s freest and most vibrant democracies, and (aside from South Africa), its best hope for a take-off to development. The judiciary has more independence and capability than in most of the continent, while better levels of education, infrastructure, and governance are beginning to attract foreign investment. Meanwhile, Ghana’s energetic and independent press raises questions and seeks accountability, and civil society organizations monitor the government and build coalitions for reform.

If Ghana and other African countries are to achieve sustainable development, democracy cannot stand still, and freedom alone will not be enough. Democratic institutions will have to work better to control corruption and constrain the exercise of power, so that the chief business of government becomes the delivery of public goods, not private ones.

References

^a Specifically, the index is an average of the standardized scores (from 0 to 100) on life expectancy, the combination of the adult literacy rate and the gross ratio of school enrollments to age-relevant population, and the per capita gross domestic product in purchasing power parity dollars. United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity; Power, Poverty, and the Global Water Crisis* (New York: Palgrave Macmillan, 2006), p. 276, and Table 1, pp. 283-286.

^b <http://www.un.org/Depts/dpko/list/list.pdf>.

^c See the study and data set of James D. Fearon and David Laitin, "Ethnicity, Insurgency, and Civil War," *American Political Science Review* 97 (February 2003): 75-90. Using an inclusive but broadly accepted definition of civil war (at least 1,000 deaths, at least 100 on each side, from internal hostilities in which one side tries violently to change the state or its policies), they count 36 civil wars in 22 Sub-Saharan African countries between 1960 and 2002. I am grateful to Jim Fearon for providing me their updated data.

^d United Nations High Commissioner for Refugees, *2005 Global Refugee Trends*, p. 3, <http://www.unhcr.org/statistics/STATISTICS/4486ceb12.pdf>.

^e Richard Posner, "Should the U.S. Provide Foreign Aid," The Becker-Posner Blog, January 21, 2007, http://www.becker-posner-blog.com/archives/2007/01/should_the_unit.html.

^f Steven Radelet, "A Primer on Foreign Aid," Working Paper 92, Center for Global Development, July 2006, <http://www.cgdev.org/content/publications/detail/8846>, Table 2, p. 21.

^g A number of African civil society activists, journalists, and academics have been making these points about the destructive consequences of unconditional foreign aid. Among the most forceful has been Andrew Mwenda. See the references below.

^h Bratton and van de Walle, *Democratic Experiments in Africa*, p. 62.

ⁱ Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (Cambridge: Cambridge University Press, 1997), pp. 61-68; Robert H. Jackson and Carl G. Rosberg, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (Berkeley, CA: University of California Press, 1982), pp. 38-42.

^j Richard A. Joseph, *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic* (Cambridge: Cambridge University Press, 1987), p. 6; see also pp. 55-68 for elaboration of the concept and its relationship to clientelism.

^k These themes are developed at length in Joseph, *Democracy and Prebendal Politics in Nigeria*. Quoted from p. 8.

^l Andrew Mwenda, "Please Stop Helping Us," Paper presented to the Novartis Foundation, August 12, 2006, p. 3.

^m Andrew Mwenda "Personalizing Power in Uganda," *Journal of Democracy* 18 (July 2007): pp. 23-37.

ⁿ Freedom House, *Freedom in the World 2006*, pp. 440-441.

^o Daniel Posner and Daniel Young, "The Institutionalization of Political Power in Africa," *Journal of Democracy* 18 (July 2007).

^p Ibid.

^q Michael Bratton, "The 'Alternation Effect' in Africa," *Journal of Democracy* 15 (October 2004): 147-158.

^r Staffan Lindberg, “The Surprising Significance of African Elections,” *Journal of Democracy* 17 (January 2006): 139-151.

^s The evidence and arguments here are developed at greater length in Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press), chapter 6.

^t <http://www.africandemocracyforum.org/>.

^u Most of the data presented here from the Afrobarometer is available in the publications of the project, at <http://www.afrobarometer.org/publications.html>. See in particular, “The Status of Democracy, 2005-2006: Findings from Afrobarometer Round 3 for 18 Countries,” *Afrobarometer Briefing Paper* no. 40, June 2006.

^v Michael Bratton, “Formal vs. Informal Institutions in Africa,” *Journal of Democracy* 18 (July 2007): 96-110.

^w Michael Bratton, Robert Mattes, and E. Gyimah-Boadi, *Public Opinion, Democracy, and Market Reform in Africa* (Cambridge: Cambridge University Press, 2005), pp. 69-70.

^x Bratton, “Formal vs. Informal,” Figure 2.

^y (ibid).

^z Bratton, *Journal of Democracy*, Table 2.

^{aa} Robert Mattes, “South Africa: Democracy without the People,” *Journal of Democracy* 13 (January 2002): 22-36.

^{bb} Afrobarometer, “Where is Africa Going? Views from Below,” Working Paper No. 60, May 2006, pp. 16-23.

^{cc} Afrobarometer, “Citizens and the State in Africa: New Results From Afrobarometer Round 3,” Working Paper no. 61, May 2006, Tables 1.2 and 2.1.

^{dd} Freedom House, *Freedom in the World 2006*, pp. 491, 493.

^{ee} Rose Skelton, “Senegal's Rap Artists' Despair Over 2007 Elections,” *Voice of America*, 4 August 2006, <http://www.voanews.com/english/archive/2006-08/2006-08-04-voa32.cfm>.

^{ff} Because of the danger of retaliation by the government, I preserve the anonymity of the activist.

^{gg} Robert Pringle, “Democratization in Mali: Putting History to Work,” *Peaceworks* No. 58, U.S. Institute of Peace, October 2006, <http://www.usip.org/pubs/peaceworks/pwks58.html>.

Table 1

Democracy and Freedom by Region, end of 2006

Region	Number of Countries	Number of Democracies (percent of total)*	Number (Percent) of Liberal Democracies FH score < 2.5	Average Freedom Score for Region		
				1974	2002 ***	2006
W. Europe, & Anglophone states	28	28 (100%)	28 (100%)	1.58	1.04	1.02
Latin America & Caribbean	33	31 (94%)	18 (55%)	3.81	2.49	2.28
Eastern Europe and Former Soviet Union	28	18 (63%)	11 (41%)	6.50	3.39	3.16
Asia (E, SE, and S)	25	10 (40%)	4 (16%)	4.84	4.38	4.40
Pacific Island	12	9 (75%)	8 (67%)	2.75	2.00	2.13
Africa (Sub-Saharan)	48	23 (46%)	8 (16.7%)	5.51	4.33	4.24
Middle East- North Africa	19	2 (11%)	1 (5%)	5.15	5.53	5.10
Total	193	121 (63%)	73 (38%)	4.39	3.38	3.26
Arab Countries	16	0	0	5.59	5.81	5.40
Predominantly Muslim Countries	43	7**	0	5.29	5.33	5.01

Freedom House surveys of freedom in the World.

* The current number of democracies as classified by Freedom House, excluding the Central African Republic.

** Counted among this group are Bangladesh, Mali, Niger, Senegal, Indonesia, Turkey, and Albania.

*** Lower score equals more freedom.

Figure 1
World Bank Governance Rankings, 2005

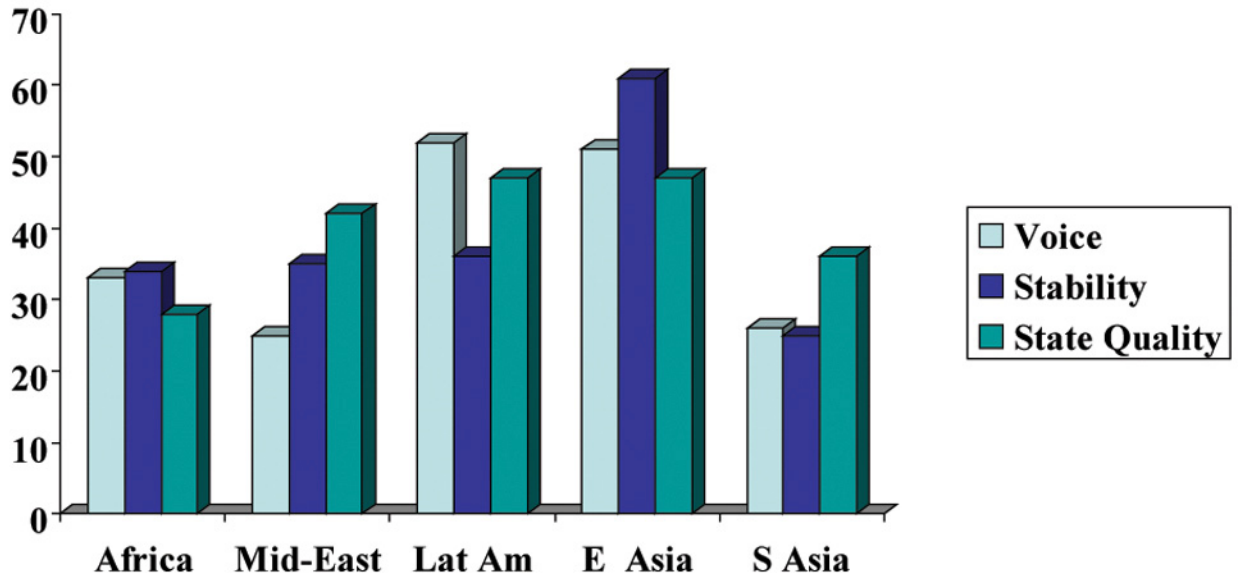


Figure 1.4
Freedom by Region, 1974 and 2006

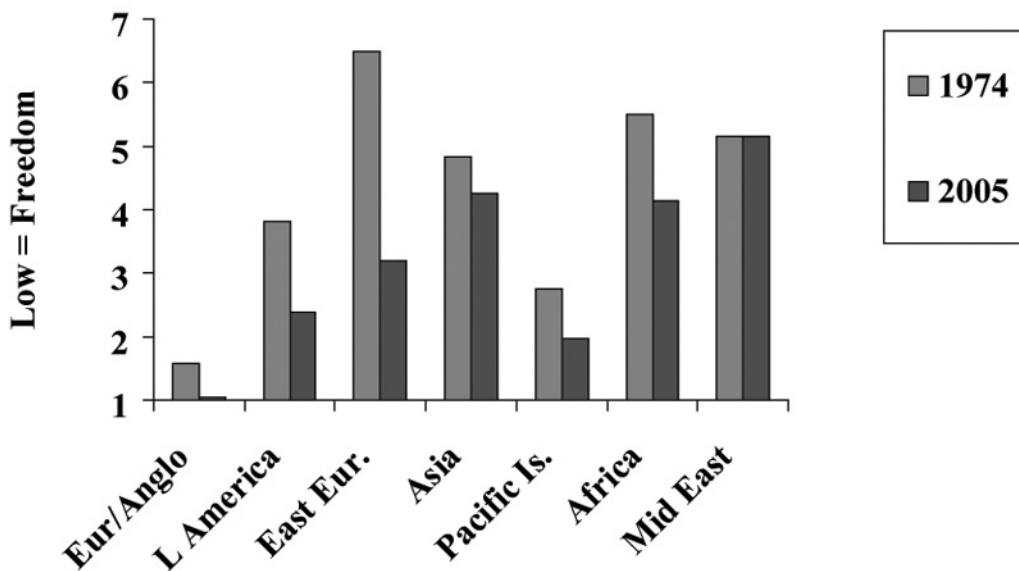
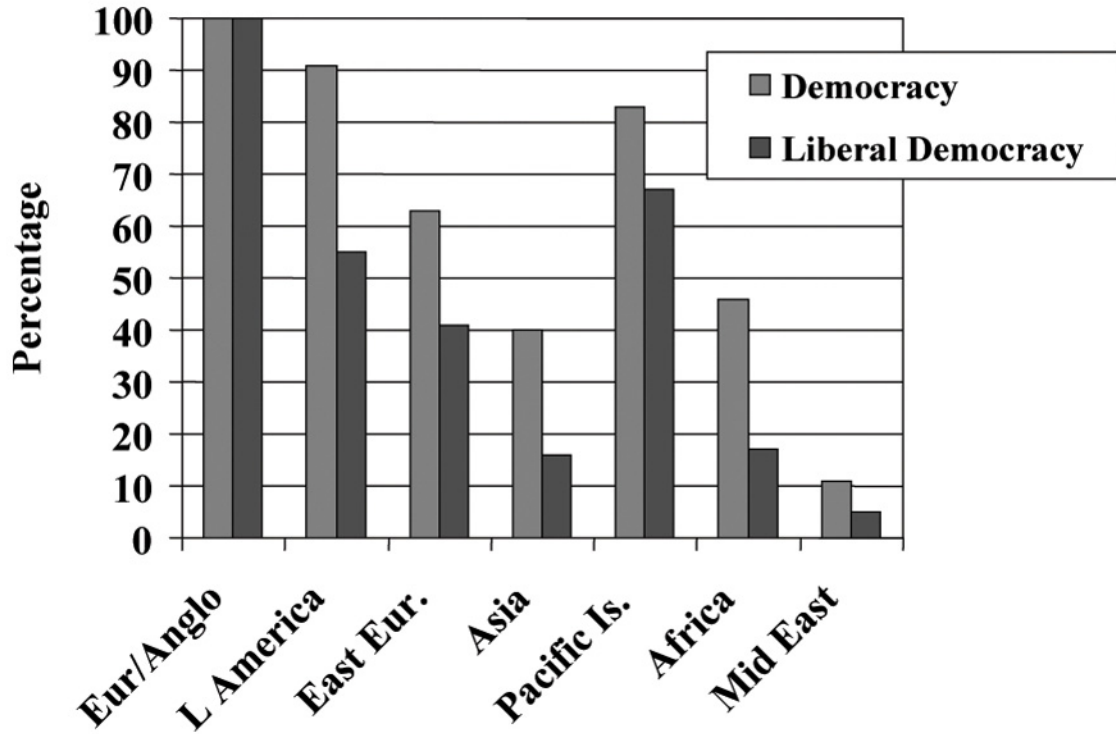


Figure 2. Democracy by Region, 2006



Legislative Development in Africa

By Joel D. Barkan¹

Although Staffan Lindberg argues in his recent book that the repeated holding of “free and fair” elections is the driver of democratization in Africa (Lindberg 2006), most students of democratization still agree with Terry Karl’s prescient assessment made early two decades ago that “elections alone do not a democracy make” (Karl 1989). From this perspective, the deepening of democracy is contingent on the establishment and strengthening of key institutions that assure the accountability of the rulers to the ruled *between* elections. Hence this conference. And hence this session on the development of African legislatures. Whereas all but five African countries have now held two or more multiparty elections, the number that can be classified as “liberal” or even “electoral” democracies remains modest.² “Free and fair” elections are a necessary but insufficient benchmark of democratization, but whether they are “the driver” of the deepening of democracy in other institutional spheres or simply a continuing requisite for democracy is unclear.

This presentation, based on a comparative case study of seven African legislatures,³ begins with the dual premise that elections are *not* the distinguishing driver of legislative development across Africa, and that a robust legislature is a defining institutional component of *all* liberal democracies. That is because of the unique configuration of functions performed by modern legislatures, and because the development of the legislature appears to be independent of the repeated holding of elections including those judged to be “better” i.e., “freer” and “fairer,” over time. Put differently, the legislature emerges or fails to emerge as an institution for representation and accountability as a function of conditions *other than* the regular holding of elections. Thus, as Steven Fish also argues on the basis of his own study of emerging legislatures in Eastern Europe and the former Soviet Union, “stronger legislatures, stronger democracies” (Fish 2006).

Notwithstanding the importance of the development of the legislature for the deepening of democracy, surprisingly little attention has been given to the legislative process in the context of emerging democracies—in Africa and more generally. Almost none of the voluminous literature published on democratization since the beginning of the “Third Wave” concerns itself with the development and impact of legislature on democratization. Indeed, apart from Steven Fish’s

¹ Joel D. Barkan is Professor Emeritus of Political Science at the University of Iowa and Senior Associate at the Center for Strategic and International Studies, Washington. This paper was prepared for a conference on Democratization in Africa: What Progress Toward Institutionalization? sponsored by the Centre for Democracy and Development and the United States Department of State and held in Accra, Ghana, October 4-6, 2007.

² Following Larry Diamond’s six-fold categorization of African countries based on their Freedom House scores for 2005, only eight African countries might be considered as “liberal” democracies (countries accorded a “1” or “2” on both the political rights scale and the civil liberties scale), while an additional 11 fall into the category of “electoral” democracies (countries that achieve a “2” or “3” on both Freedom House scales). By these measures just under 40 percent of all African countries are democracies.

³ Legislatures included in this study are National Assemblies of Benin, Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda. Field work for this study consisted of interviews with a sample of at least 20 members of each of these legislatures plus interviews with key staff members, civil society and selected members of the executive. Research for this paper was conducted at various times between 2002 and 2007 by the author and his colleagues (Ladipo Ademolekun, Nelson Kasfir, Mouftaou Laleye, Peter Lewis, Staffan Lindberg, Fred Matiangi and Youngmei Zhou).

important article cited above, the *Journal of Democracy* has not published a single article on the relationship between the legislature and democratization. Nor has *Democratization*. Conversely, and equally surprising, over 90 percent of the work published on legislatures and legislative behavior has ignored the phenomenon in the context of emerging democracies.⁴ Curiously, these two research communities simply do not communicate with each other.

Our study, excerpts of which are presented here, seeks to overcome these shortcomings in the literature by asking the question of how and why the legislature is emerging into a significant political institution in a number of African countries.⁵

Why Legislatures are Essential for Democracy: Four Core Functions of Modern Legislatures in the Context of Africa

Legislatures in democracies perform four core functions that distinguish the legislature from other political institutions, and highlight why they are an essential institutional component of all democracies. First, legislatures are the institutional mechanism via which societies realize representative governance on a day-to-day basis. Regardless of the type of electoral system through which the members of the legislature gain their seats, the main function of individual legislators and the body to which they belong, is to *represent* the varied and conflicting interests extant in society as a whole. The legislature is the institutional arena where competing interests articulate and seek to advance their respective objectives in the policy-making process. While the president in a democratic presidential system is also expected to “represent the people”, she or he is not expected to articulate the diverse and competing interests of particularistic constituencies on a continuous basis. Rather, presidents are expected to synthesize, balance and aggregate interests, and implement public policy.

Second, legislatures obviously *legislate*—but at two levels. At a minimum, they pass laws, but such activity may merely rubber stamp legislation handed down by the executive. More significantly, legislatures contribute to the making of public policy by crafting legislation in partnership with or independent of the executive, and then pass such legislation into law. It is also important to remember that legislating in this broader sense is a process of *collective action* involving all members of the legislature although those in leadership position obviously play more prominent roles than others. It is nonetheless a process that often requires intense bargaining and compromise between rival claimants for government action (or inaction).

Third, legislatures exercise *oversight* of the executive branch to insure that policies agreed upon at the time they are passed into laws are in fact implemented by the state. Oversight is an essential function for any democratic legislature because it insures both vertical accountability of rulers to the ruled and horizontal accountability of all other agencies of government to the one branch whose primary function is representation. For the same reason, effective oversight requires a measure of transparency about the substance of governmental operations.

⁴ The failure of students of democratization to consider the legislature is more puzzling than the failure of the legislative studies community to consider the relationship of the legislature to democratization. After all, the latter community has been overwhelmingly preoccupied with the American experience from the start, and only recently moved on to a consideration of their institution in the context of other established democracies. For details see Gamm and Huber’s excellent review essay of the literature (Gamm and Huber 2002).

⁵ This study is fully reported in a forthcoming book, *Emerging Legislatures in Emerging African Democracies*, to be completed later this year.

Fourth, legislatures, or more accurately, legislators acting individually, rather than as members of a corporate organization that engages in collective decision-making, perform the function of *constituency service*. In countries where members of the legislature (MPs) are elected from single or multi-member districts, and especially in Africa where most countries are still agrarian societies despite continuous migration to the towns, constituency service takes one of two forms. (1) Regular visits by MPs to their districts to meet constituents and assist some with their individual needs. (2) Involvement in small to medium scale development projects that provide various forms of public goods—roads, water supply systems, schools, health clinics, meeting halls, etc.—to the residents of their district. In countries where MPs are elected by proportional representation constituency service is obviously less important, because members do not represent citizens on the basis of a shared place of residence.⁶

Although the performance of *all* four of these functions define the legislature and distinguish it from other institutions, it is important to appreciate that these functions often exist in tension with each other. There is tension between representation and legislating, because representation requires members to advocate the particular concerns of their respective constituencies while legislating requires bargaining and compromise across these and other interests. Similarly, there is the tension between legislating and constituency service because the first seeks to arrive decisions that serve the entire nation while constituency service is, by definition, addressed to a smaller sub-community of society. Oversight may or may not exist in tension with representation, legislating and constituency service depending whose interests are at stake.

The tensions between the four core functions become even more apparent in respect to how individual legislators (and by extension the entire legislature) allocate their time. MPs elected from single and multimember districts—especially in agrarian societies where political interests are often defined in local geographic terms—are under constant pressure from their constituents to service their districts. Parliamentary elections are largely referendums on incumbents’ performance to meet this expectation. This in turn leads MPs to spend far more time on this function than on legislating or oversight, the two functions that legislators perform on a collective basis. But when members do not perform these functions and focus overwhelmingly on constituency service, the legislature exists in name only—a conglomerate of elected officials from separate constituencies who rarely act as a one.

Changing the Incentive Structures for Members of the Legislature (MPs)

Given these realities, a fundamental challenge to the development of the legislature in emerging African democracies is how to restructure the incentives facing MPs so that they will devote more time and effort to the functions of legislating in the broad sense and to oversight, while insuring that their reputations for constituency service are not compromised. This means changing the way African legislatures do business from the practice established during the period of one-party rule.

⁶ It is therefore noteworthy that in South Africa, a country that employs PR, the ruling party found it necessary to establish a “shadow” system of single-member districts to which it assigns its MPs for the purpose of maintaining contact with the grassroots.

Prior to the reintroduction of multiparty politics in the early 1990s, the legislature had either ceased to exist in countries under military rule, or existed as a rubber stamp of the executive where civilian rule continued. As such, African legislatures legislated only in the narrow sense—they passed proposals handed down by the executive into law, but they did not participate meaningfully in the crafting of these proposals. Nor did they engage in oversight of the executive branch. To the extent that they were elected to represent a diverse set of constituencies as was the case in some countries including Kenya and Tanzania where a system of semi-competitive elections was maintained within the one-party format, members fulfilled the function of representation, albeit weakly.⁷ The result was an asymmetrical allocation of effort to constituency service, the only function of the modern legislature that the regimes of the period permitted MPs to perform.

MPs were both excluded from the decision-making process and encouraged to engage in constituency service through a combination of very low salaries and a reliance on patronage by the regimes of the period. The scenario was nearly identical in most African countries. More than one third of all MPs were appointed to an ever expanding number of positions as ministers or assistant ministers in what became bloated executives of between two and three dozen departments of cabinet rank. Others were appointed to the boards of parastatal agencies. Becoming an MP was thus viewed as an avenue to patronage jobs, especially the prospect of being appointed a minister, rather than as a member of an institution engaged in policy-making for the nation. Those so appointed were well compensated. Equally important, they gained access to an array of state resources that could be steered to their constituencies back home. But because their appointment and thus their ability to service their constituencies were contingent on their loyalty to the regime and its leader, they rarely challenged the system to shift more responsibility to the legislature of which they were still nominally members.

By contrast, those who remained on the backbench were barely able to meet their basic financial obligations including regular travel back to their constituencies. They were often dependent on cash handouts by the regime to maintain their local political base and have any hope of winning reelection.⁸ Backbenchers also aspired to executive appointments. Either way, there was no reward for expanding backbench involvement in either legislating in the broad sense or oversight.

The reintroduction of multiparty politics at the beginning of the 1990s changed the rules of the game in two respects. First, the legalization and legitimization of the opposition meant that there now existed a cadre of MPs whose interests and power were a direct function of expanding the role of the legislature. Since members of the opposition do not shape public policy from within government, their only opportunity was from enhancing the capacity of the legislature to legislate in the broad sense, and to engage in effective oversight of the executive branch. The building of legislative capacity, however, was contingent on changes in the formal rules that

⁷ In these elections, two or more candidates of the ruling party competed for office much as they do for party primary elections or non-partisan elections in the United States. Such elections never resulted in the alternation of government, but did result in a high turnover of MPs. (Barkan 1984)

⁸ In a typical parliamentary election in Africa, between 60 and 75 percent of incumbents fail to win reelection. Not surprisingly, the turnover rate for assistant ministers and ministers is much lower. Between 50 and 65 percent of assistant ministers win reelection while the percentage for ministers runs as high as 75 percent.

structure legislative-executive relations, and the provision of adequate resources to both the legislature as an institution and to its individual members. Indeed, without additional resources, MPs would be unable to take advantage of any changes in the rules. Not surprisingly, the prospect of such changes and the provision of more resources to the legislature was resisted by leaders of the ruling party including most ministers and the president. Second, backbenchers now had reason to support change for the same reason that members of the opposition did—they were poorly compensated and had little or no power vis-à-vis the executive. Yet by entering into informal coalitions with the opposition they could expand both their terms of service and their power.

The result in some countries, most notably in Kenya, but also in Uganda and to a much lesser extent in Ghana and South Africa, has been the emergence within the legislature of a “*coalition for change*”—informal groupings of MPs who want to alter the formal balance of power between the executive and the legislature and to increase the flow of resources to the institution and its members to facilitate their performance of all four core functions. Both changes are critical if MPs are to devote more time to crafting legislation and to oversight.

Changing the formal rules that specify the nature of executive-legislative relations requires either a constitutional amendment, the passage of specific legislation, or some combination of the two. These include but are not limited to the following: (1) Whether the legislature is defined as a separate and independent branch of government by the constitution. (2) Whether the executive can dissolve the legislature and call for new elections, or whether the members of legislature are elected for a fixed term. (3) Whether the legislature can pass legislation without the assent of the president, and whether it can override a presidential veto. (4) Whether the legislature can require senior members of the executive branch to testify before the legislature about executive action, and whether the legislature can require official documents from the executive branch. (5) Whether the legislature can set its own budget including salaries for members and professional staff. (6) Whether the legislature recruits and maintains its own parliamentary service or is dependent on the provision of staff from the public service. (7) Whether the legislature can amend the national budget or is restricted to merely approving or rejecting the budget, and whether there is a process via which the legislature can negotiate the preparation of the final budget with the Ministry of Finance. (8) Whether members of the legislature are elected from single or multimember districts, proportional representation (PR) or some combination of the two. (9) Whether there is a constituency development fund (CDF) to facilitate the provision of basic services on a constituency by constituency basis.

The cumulative effect of these nine sets of formal procedures is to tip power towards or away from the legislature vis-à-vis the executive. Of these, the fifth and seventh are arguably the most important in terms of blocking the emergence of an omnipotent executive. Where the legislature has a free hand in setting its own budget, it is obviously in a position to raise salaries for both its members and staff as well as make other expenditures required to support an effective legislature. And where the legislature can amend the national budget, it becomes a full partner in the governing process.

To be effective and perform all four of its core functions, legislatures require resources and historically, African legislatures have been purposely starved of cash. Thus, in addition to the

formal rules governing the scope of legislative action, legislatures require adequate funding. This has become a highly controversial area of reform, because at the very time some African legislatures are emerging as institutions “that matter” in the policy making process and vis-à-vis the executive branch, MPs in some countries, most notably Kenya, Uganda and South Africa have raised their salaries and other perks (e.g., health insurance, pensions, travel allowances to and from their constituencies). In Kenya, where members salaries now exceed \$60,000 annually (the highest in Africa), the criticism in the press has been severe. Public opinion polls in that country indicate that the public’s perception of the National Assembly is low and that over half of its members are likely to be defeated in elections later this year. Yet the Kenya National Assembly has implemented a broad series of constitutional and internal reforms since 1999, including the strengthening of its committee system, the revision of the Standing Orders, and most recently, the establishment of a parliamentary budget office.⁹ In the process it has arguably become one of the most effective legislatures on the continent.

Additional resources are also required for the recruitment and retention of appropriate professional staff. The staff at most African legislatures, with the notable exception of South Africa National Assembly, are inadequate to support a modern legislature. The number of professional staff, i.e., those with administrative, parliamentary and/or policy experience is small—often no more than one to two dozen individuals—compared to the large number of secretaries, messengers, drivers, sweepers and other support staff who often number in the hundreds. Indeed, the staff at most African legislatures resembles most African bureaucracies prior to civil service reform—bloated and often staffed by individuals who obtained their posts as patronage.

Restructuring the staff of the legislature, however, requires both money and a push for reform. First, the members of the legislature must decide that such restructuring is essential if they and their institution are to fully perform all four functions of the legislature. Second, they must take control of existing staff, often by creating a separate parliamentary service as exists in South Africa and Kenya, and by delinking the parliamentary service from the public service. Knowledgeable professionals must be recruited, especially as support staff for the evolving system of departmental and oversight committees, the heart of the modern legislature. Competent managerial staff must be recruited at the level of the chief clerk and senior deputy clerks to guide this expansion. Finally, to the extent that resources permit, competent staff must be assigned to individual MPs—at the legislature itself and back in their constituencies where members are in some countries beginning to establish local offices.

In addition to the restructuring, expansion and professionalization of legislative staff, most African legislatures—again with the notable exceptions of Kenya, Uganda and South Africa—are woefully short of physical infrastructure. For example, in Ghana the National Assembly does not have sufficient meeting rooms where the committees of the legislature can meet regularly. Most African legislatures cannot provide offices for its members other than for the few who occupy leadership positions. Constituency offices are almost non-existent yet are important if MPs are to maintain sustained direct or indirect contact with those they represent.

⁹ Formally known as The Office for Fiscal Analysis and Management.

The transformation of the legislature also requires that some attention be given to the issue of campaign finance. Because MPs in the African context are under intense pressure for constituency service, and because their reelection depends on such, legislators are on a never ending search for funds to support visits back to their home areas and assistance to their local communities in the form of public goods. This not only consumes much time at the expense of time that might be spent on legislating and oversight, it also makes MPs susceptible to blandishments of patronage from the executive which in turn limit the degrees of freedom MPs have to perform their other legislative roles. It is therefore not surprising that legislators in some countries have begun to devise new mechanisms for both financing constituency service and for reducing their dependence on patrons and other supporters who have in the past provided them with cash to fulfill their constituency obligations.

Most significant among these is the establishment of constituency development funds or CDFs. CDFs were established in Kenya in 2003 where it has proved immensely popular amongst both the public and MPs, and Tanzania in 2007. A variation of this funding mechanism has also been established in Ghana.¹⁰ In brief, CDFs are direct transfers of budgeted funds by the central government to constituencies for the purpose of financing local development. A constituency committee, often chaired by the member of parliament, is established to allocate the funds transferred to various projects within the constituency according to guidelines published by the central government. CDFs in Kenya are now mandated to allocate 2.5 percent of the annual national budget. In 2006-2007, this disbursement amounted to 42 million Kenya shillings (or \$656,000) per constituency enough to construct classrooms, health clinics, water systems and other infrastructure desired by rural communities. Not surprisingly, the MPs want more.

All this requires a rapid expansion of the legislature's budget, an expansion invariably resisted by the executive for the obvious reason that the building of such capacity comes at the expense of executive power. Not surprisingly, only South Africa provides adequate staff and physical infrastructure for its MPs. This is partly a reflection of the country's relative wealth and government resources, and partly a continuation of the level of support provided MPs during the apartheid era. But it also a reflection of the country's leadership to provide adequate finance to an institution regarded critical for democracy.¹¹ Without a significant increase in finance, the building of modern legislatures, in Africa will be difficult. Fortunately, a small number of countries are demonstrating that increased financial support is fiscally feasible—and brings results. Yet as will be discussed below, financing alone does *not* a legislature make.

Why “Coalitions for Change” Emerge in Some African Countries but Not in All

The size, composition and power of the “coalitions for change” that have formed in many African legislatures varies greatly from one country to the next, but the following characteristics stand out. First, in terms of “committed activists,” the number of MPs involved in these coalitions remains small—no more than 30 to 50 MPs in the legislatures considered for this paper, sometimes as few as 20. Given that the size of these legislatures ranges from a low of 222

¹⁰ In Ghana, 5 percent of the Regional Development Fund is set aside for reallocation to each parliamentary constituency within the region in question. Most MPs regard this as woefully inadequate.

¹¹ Despite Thabo Mbeki's reputation as a “centralizer” who has arguably diminished the role of the South African National Assembly, during his term in office, his government has lavishly funded the legislature and regularly sings its praises as “one of the cornerstones of our democracy.”

in Kenya to 400 in South Africa, this means that no more than a fifth to a quarter of all members, and often far less, join such coalitions.¹² Notwithstanding their numbers, their impact can be profound. Second, as noted above, the demand for change is articulated most forcefully by members of the opposition in alliance with a portion of backbenchers of the ruling party. Third, and perhaps most important, these coalitions include both “reformers” and “opportunists.” That is to say, they are led by MPs who seek certain changes and reforms to enhance the institutional capacity of the legislature so it can perform its core functions and advance the process of democratization generally, but are joined by other members whose main motivation is personal gain.

The issue of MPs’ salaries nicely illustrates this distinction. Reformers want higher salaries for MPs and staff because they recognize that it is an important first step in professionalizing the legislature. Higher salaries make MPs less susceptible to blandishments of patronage by the executive while enabling MPs to carry out their work, both constituency service and legislating. Higher salaries also attract better qualified candidates to seek legislative careers that they hope will lead to the strengthening of the institution. By contrast, opportunists are interested in higher salaries for their own sake and the prospects this brings of dealing more effectively with expectations of their constituents. They are not particularly interested in strengthening the legislature as an institution, but they do not oppose this goal either. Thus, they join reformers for their own ends, but often provide the crucial number of votes required to make the changes reformers seek. Whereas reformers are never more than an activist minority within the legislature, opportunists often include most members of the opposition and a significant number of ruling party backbenchers. Reformers would never achieve their objectives without the presence and support of opportunists.

What conditions or variables determine the size and power of these “coalitions for change” and what conditions determine the size of its core component of “reformers?” The answer is hard to specify quantitatively from evidence obtained through a comparative case study on which this paper is based. However, four groups of variables are clearly important:

Composition of the Members of the Legislature

African legislatures have historically been composed of individuals whose levels of income, occupation, and especially education, are invariably “higher” than those for the rest of the population. This is not surprising because MPs are members of their society’s elite. Moreover, these demographic characteristics do not seem to distinguish “reformers” from “opportunists” or reformers from opponents of reform. Instead, what distinguishes this group of MPs from their peers is their *attitude and values*—a combination of their genuine commitment to the goal of democratization, their familiarity with and sensitivity to global norms, both political and economic, and their general “savvy.” Put differently, these MPs are *outward looking* rather than inward looking in that they analyze their society and its institutions from a comparative and global perspective. Not surprisingly, they are computer literate and users of the internet, skills almost non-existent among MPs of the previous political generation that sustained the clientelist

¹² The National Assembly of Benin, which is included in our study, has only 87 members. Regrettably, no identifiable group of reformers nor “coalition for change” has emerged in that body with the result that it is has been excluded from these estimates of the proportion of MPs who press for reform. We also found no such coalition in Senegal.

platform of the one-party state. Many are also entrepreneurs in the private sector. They place a greater emphasis on performance than on loyalty cemented by patronage. They constitute a “new political generation” of African legislators—not necessarily “younger” in terms of chronological age although many are. Rather they constitute a new political generation in terms of their *outlook and approach*.¹³

Notwithstanding these characteristics they face the historic challenge of incumbent MPs across Africa—the fact that half or more are likely to be defeated when seeking reelection and the fact that reelection depends on their ability to provide constituency service rather than their ability to legislate or engage in oversight of the executive. It is therefore a group marked by high turnover. Yet this turnover and the need to replenish the group means that the core group of reformers has become smaller over time.

Finally, the number of reformers varies greatly from one legislature to another, and seems to reflect the relative strength of civil society in the country concerned. Put simply, the more urbanized and developed the society the greater the size of civil society and the more likely that the legislature will be populated by reformers seeking to expand the powers of the institution to which they belong. This may explain why the Kenya National Assembly has given rise to a viable and continuing coalition for change while the legislatures in Uganda, Benin and Ghana have not. It may also explain why civil society in Kenya has slowly established the practice of lobbying the legislature by approaching relevant committees to a greater extent than what this researcher has observed in the other countries included in our study.

Parity between Government and Opposition

The emergence of a coalition of reform is more likely where the number of seats controlled by the ruling and opposition parties approach parity. The reason should be obvious. When the ruling party and opposition hold a nearly equal number of seats, a majority coalition can be formed by the opposition in alliance with a small to modest number of backbenchers from the ruling party. This is especially true where party identity and discipline are weak. Thus in Kenya during the Eighth Parliament (1997-2002) and in Ghana during the Third Parliament (2001-2004), reformers were able to organize themselves effectively and commence the process of reform whereas this was not possible before parity. Conversely, where the ruling party commands an overwhelming majority, as in South Africa and Senegal, the prospects for expanding the powers of the legislature are limited.

Roles and Persona of the Presiding Officer and the Chief Administrative Officer

During the period of one-party rule, the roles of the presiding officer (the Speaker) and the chief administrative officer (the Clerk) conformed to the patronage based systems of the era. Leaders of these regimes handpicked loyalists for these positions. Their mandate was to keep the legislature compliant and contain any mavericks seeking enhance its powers, informal or *de jure*. Rather than being genuinely elected by their colleagues, these speakers were imposed. Rather than seeking to expand the array of services provided to MPs, clerks and their staffs were kept on a short leash and provided with few resources.

¹³ The perspective and motivations of this group are not hard to explain. Most view the world including politics and the economy through a new lens for the simple reason that they want to make money.

After the return to multiparty politics in the early 1990s, the executive often expected that the speaker and clerk would continue to run the legislature as before. This created a measure of friction in some legislatures including the National Assemblies in Kenya and Tanzania where reformers sought to expand the capacity of the legislature, but were repeatedly frustrated by the presiding officer. In Tanzania the speaker retained his position for three terms before eventually retiring after the 2005 elections. In Kenya, the incumbent speaker has also retained his position through his future is unclear. In both cases, the speaker sought to transform his role (and thus retain his job) from a watchdog for the executive opposed to change to the spokesperson for reform, albeit on his, i.e. the government's timetable.

In the South African National Assembly, the role of the first speaker in the post-apartheid era was different yet similar insofar as she was expected to serve the executive first and not the MPs.¹⁴ On one level she was faced with the challenge of organizing and presiding over a new legislature of 400 members of whom less than 20 percent had ever served in the house before. In this role she was highly supportive of members, particularly younger and less educated members of the ruling ANC. She also had the delicate task of assuming authority over a highly competent yet holdover staff from the apartheid era and managed this aspect of the transition well. Yet she was also expected to insure that members of the ANC towed the party line with the result that many including several committee chairs (all of whom were members of the ANC) chafed under her control.

The Type of Electoral System Used to Elect MPs

Unlike the rules specifying the relationship between the executive and the legislature, the rules specifying how votes are translated into seats determines support for “coalition for change”, especially amongst backbenchers of the ruling party. Where proportional representation (PR) based on party nominated lists of candidates is employed, as in South Africa and Namibia, the likelihood of backbenchers joining a reform movement to challenge the executive is much less than where MPs are elected from single or small multi-member districts. Party discipline within the legislature is generally much stronger in legislatures elected via PR than from single member districts as the leadership can threaten MPs who challenge the executive with removal or demotion on the party list for the next election. Moreover in South Africa, where the ruling ANC periodically “redeploys” its members to different positions in government, renegade members have been removed from the National Assembly in the middle of their terms.¹⁵ The impact of PR also suggests that contrary to conventional wisdom, cohesive and highly

¹⁴ She was also an ANC loyalist who aspired a cabinet post.

¹⁵ In 2000 the ANC chair of the Standing Committee on Public Accounts was removed from the chairship and ultimately forced to resign after his committee became too aggressive in investigating alleged corruption in the granting of procurement contracts by the Ministry of Defence.

disciplined political parties are not necessarily “good” for the development of the legislature, and whether it performs its core functions effectively.¹⁶

Measuring the Performance and Efficacy of Legislatures

Measuring the performance and efficacy of legislatures and their development is a challenging task and space does not permit more than a cursory discussion here. Yet it is essential to develop at least some rudimentary measures of legislative performance lest there be no way to measure the development of individual legislatures over time or to compare and explain why some have developed and others not. Put succinctly, we need some robust measures of the dependent variable.

At least five different types of measures of legislative power or performance have been developed or are in the process of development. The first is a relatively straight forward assessment of the formal powers of the legislature to measure its independence from the executive branch. This is the approach taken by Steven Fish and Michael Kroenig in their construction of the Parliamentary Powers Index of PPI (Fish 2006). They identify 32 such measures and then, based on the responses to their survey by a panel of at least five experts per country, they compute the percentage of items that were scored “yes” for each country by the panels. Thus, the more items scored “yes” or present by the panel the stronger the legislature.

Although the PPI is also explains variations in Freedom House scores, and demonstrates a clear relationship between the level of legislative power and the level of democracy, the index does not directly consider the extent to which the legislatures considered perform any of the four core functions of the legislature. Such a series of functional assessments, however, could be constructed via the same panel approach used by Fish and Kroenig. This would reveal more about actual legislative performance than the PPI because of the tensions and tradeoffs arising from the performance of the four functions. For example, one would expect that any given legislature might score high on the index for one or two functions, but not on others.

Yet another approach and one also preferred by this writer would be an assessment of the quality of key components and actors in the legislative process. For example, a number of measures can and are being developed to assess the capacity and practice by the committee system. This area of inquiry was surprisingly ignored or avoided by Fish, yet most observers agree that the development of the committee system is the key to whether a legislature is both powerful and performs the functions of legislating in the broad sense and oversight. Other components of the

¹⁶ As noted by Nelson Kasfir, the conventional wisdom about the desirability of cohesive and strong parties is also tested in Uganda. Prior to the parliamentary elections of February 2006 when Uganda operated under the “Movement” system and all MPs were members of the National Resistance Movement, the lines between government and opposition were highly fluid. During this period a coalition for change emerged in the National Assembly that adopted several significant reforms including a significant rise in MP compensation and the passage of legislation which provided for the scheduled involvement by the Assembly in the budgetary process. The committee system was also strengthened, especially the Public Accounts Committee, the principal mechanism via which the National Assembly scrutinizes executive performance. Although they were not enthusiastic about these developments, President Museveni and his government went along with this expansion of legislative power. However, following the adoption of “Multipartyism” in 2005, several MPs who had been prominent in the coalition for change that lobbied for these reforms morphed into the opposition thus drawing Museveni's ire and his determination to bring the legislature to heel.

legislative process such as the involvement by the legislature in the budgetary process could also be assessed.

A fourth approach, one often addressed by students of the American congress is to measure the extent and manner to which the legislature legislates by assessing the frequency and content of bills passed. While this approach attempts to directly measure the productivity of the legislature it becomes mired in a host of methodological questions including, but not limited to, the question of how to “weight” individual pieces of legislation. Not all bills that pass into law are in fact individual pieces of legislation but omnibus laws that need to be disaggregated to be properly measured. Many of the disaggregated measures, however, are not of equal significance. How does one assess the relative significance or ultimate impact of individual pieces of legislation? The approach is fraught with difficulties yet the crafting and passage of legislation is a defining function of the legislature.

Finally, there are variations of the reputational approach—assessments by either experts or citizens about how well they believe the legislature is performing its job(s). Such measures, however, are subjective assessments that may tell us more about those giving their opinions than the performance of the legislature itself.

Implications for Democracy Promotion

Notwithstanding the paucity of literature on the evolution of legislatures in emerging democracies, the importance of the legislature has not been lost on a number of international aid agencies and NGOs seeking to promote democratization worldwide. USAID, DFID, UNDP, the World Bank, the Commonwealth Parliamentary Association, NDI, the Westminster Foundation, and AWEPA have all entered the business of strengthening legislatures. The impact of these efforts and their success at assisting emerging legislatures become independent institutions that perform their core functions, however, varies greatly. That said, a few observations are in order. First, many of the programs mounted to strengthen emerging legislatures since the early 1990s, perhaps as much as 80 percent, are confined to short-term training programs on specific topics. These include orientation courses on the role of MPs, the budgetary process, the purpose of oversight, etc. Most are programs of one to four weeks duration, and their long term impact is questionable. It must also be recognized that context matters greatly in any effort to strengthen legislative institutions. However, short courses based on “best practice” are usually “one size fits all” presentations that do not take context into account.

One possible exception to these generalizations are the periodic international and regional conferences organized by the Commonwealth Parliamentary Association (CPA), the World Bank and the Parliamentary Network of the World Bank (PNOB). These forums appear to be useful, because they bring together parliamentarians and/or staff from different legislatures who seem to learn more from each other by comparing their own experience and practice than they do from short courses mounted by outside experts. Little data, however, has been collected on the efficacy of any of these programs, nor have any systematic evaluations been made. Common sense suggests that such an exercise is long overdue.

An important alternative to the short course approach are the resident missions established to assist emerging legislatures in a select number of countries lasting a minimum of two to three

years. USAID currently supports five such missions in Africa at a cost of between roughly \$1.0 and \$1.5 million per year. These programs are mounted via contractors such as the State University of New York (SUNY) and have achieved considerable success in some countries albeit not all. They are more successful than short courses for several obvious reasons. First, they recognize that institutional development takes time and thus a sustained effort, something no short course can offer. Indeed, the best of these programs have been ones that have been renewed so that the provision of assistance was sustained over a period of six or more years.

Second, these programs take a holistic approach recognizing that the establishment and/or strengthening of the legislature involves the development of an entire system and its component parts and functions. Rather than provide a “technical fix” to a specific aspect of legislative performance such as understanding the budgetary process, these programs attempt to transform the legislative system as a whole. As such, the best of these programs also recognize the inherently political nature of the exercise, what interventions can and cannot be initiated, key actors who must be dealt with, bottlenecks that must be circumvented or overcome, etc., and adjust their mix of interventions accordingly. Third, such programs require considerable skill and experience on the part of the donor and implementer, especially the ability to establish a relationship of trust with the client legislature. Fourth, and most important, their prospect for success is directly a function of the existence of a viable “coalition for change” within the legislature with which they can partner. Indeed, without viable partners these programs rarely achieve their potential.

Where they do achieve their potential, as does the present USAID/DFID program to strengthen the Kenya National Assembly, the results can be impressive. In this particular example, the donor has worked with two parliaments for a period of seven years, and will probably continue for another three before phasing out. It is also a program whose official mission is to implement a strategic plan drawn up by the leadership of the National Assembly in consultation with the donor. And it is a program for which a Kenyan with extensive personal contacts within the National Assembly now serves as the donor’s chief of party. Most of its day-to-day operations consist of tailored responses to specific requests for assistance by the Assembly leaders, chairs of key committees, and senior staff. The program is an illustration of what “ownership” and “partnership” actually look like on the ground, but these intangibles did not evolve easily or overnight. It is also a program in which the intangible commodity of “trust” between provider and client is a key reason for its success. For all these reasons, the SUNY program provides many lessons of best practice in the field of legislative assistance including what *not* to attempt, timing of interventions, etc. It is thus very difficult to replicate such a program in one country after another because the requisites in each are unique. And while this program has been evaluated on at least one occasion, the evaluation has not been compared or synthesized with others for similar projects. Indeed, the comparative knowledge by the donor community regarding what forms of assistance are effective and which are not remains embarrassingly limited.

Better Knowledge Better Legislatures?

Whether a deeper and more systematic comparative knowledge of emerging legislatures including those in Africa, would lead to a more effective strengthening of these bodies, and in turn to an accelerated process of democratization is unclear. Indeed, it would be presumptuous

to assume that these dots are or can be connected in a linear manner. That said our present knowledge is limited to “thick description” of a relatively small number of cases. Our ability to code and systematically compare cases is limited. And our identification and discussion of key variables affecting the process of legislative development on the continent has thrown up more variables than cases, the classic result from a comparative case study.

One first step to overcoming these shortcomings is the African Legislatures Project or ALP for which this author is a co-PI.¹⁷ Based at the University of Cape Town this research effort will collect data on nearly 400 variables about the national legislatures in 18 African countries. ALP is being initially supported by DFID and is expecting additional support from at least one other major donor. Our goal is to more clearly identify the drivers of legislative development across the continent and the significance of the legislature for the deepening of democratization.

Conclusion

The legislature is emerging as a “player” in some African countries but not in others. It has begun to initiate and modify legislation to a degree never seen during the era of neo-patrimonial rule or during the early years following the return of multiparty politics. It checks the executive branch. It sometimes exerts meaningful oversight over the executive. And—in Kenya, Malawi, Nigeria and Zambia (but not in Uganda)—it has blocked presidents from changing the constitution to repeal the limit on presidential terms. The legislature is also becoming the object of lobbying by civil society and increasingly the business community in some countries. In short the legislature is beginning “to matter.” That said, the degree to which these generalizations play out across the African continent vary greatly. We are only beginning to understand and explain these variations, yet if the legislature is a defining institution of liberal democracy then clearly more attention needs to be paid to its development.

References

- Barkan, Joel D. et. al. (2004) “Emerging Legislatures: Institutions of Horizontal Accountability” in Brian David Levy and Sahr Kpundeh (eds.), *Governance and Public Sector Management in Africa* (Washington: World Bank Institute, 2004), pp. 211-56.
- _____. ed. (1984), *Politics and Public Policy in Kenya and Tanzania*, 2nd edition. New York: Praeger Publishers.
- Fish, M. Steven. 2006. “Stronger Legislatures: Stronger Democracies,” *Journal of Democracy*, 17,1 (January, 2006), pp. 5-20.
- _____. and Mathew Koenig (2007) *The Legislative Powers Survey and the Parliamentary Powers Index*, forthcoming.
- Gamm, Gerald and John Huber. 2002. “Legislatures Political Institutions: Beyond the Contemporary Congress” in Ira Katznelson and Helen V. Milner (eds.), *Political Science: The State of the Discipline*. Washington: American Political Science Association and New York: Norton, pp. 313-41.
- Karl, Terry. 1989. “Imposing Consent, Electoralism and Democratization in El Salvador,” University of California, San Diego.
- Lindberg, Staffan I. 2006. *Democracy and Elections in Africa*. Baltimore: Johns Hopkins University Press.

¹⁷ The other two co-principal investigators are Robert Mattes, Director of the Centre for Social Science Research at the University of Cape Town and Shaheen Mozaffar of Bridgewater state University in Massachusetts.

Democracy and African Conflicts: Inciting, Mitigating, or Reducing Violence?

By Dorina A. Bekoe

Democracy and African Conflicts: Inciting, Mitigating, or Reducing Violence?

The good news is that conflict worldwide and in Africa is on the decline. Between 2000 and 2006, the number of countries with active conflicts in Africa declined from 14 to nine. More worrying, however, is that of the 19 countries that experienced active conflicts from 2000–2005, 13 of those countries were at least, nominally, democracies at some point during the conflict.¹⁸ Eight countries experienced civil conflict after the adoption of multiparty elections.¹⁹ This seems to contradict the objectives of democracy. As Africa began to adopt more democratic norms many thought that this would bring an end to the violent overthrows of government and insurgency movements that had defined so many countries. Throughout the 1990s, a majority of African states organized multiparty elections, experienced a flourishing of civil society organizations, and permitted a freer media. Yet, despite the opening of the political space, a number of African democracies have had to contend with political instability, and in some cases civil war. Under what conditions can democratization lead to political violence? Under what conditions does democratization and its mechanisms hold the seeds for peace? Can newly democratizing countries escape political violence?

In the long run, stable democracies are less violent, but arriving at that point of stability is difficult. Thus, there are two phases to democracy. Through the case studies of Nigeria, Mozambique, and Burkina Faso, this paper examines the triggers of political violence in newly democratizing countries, the methods used to address tension, and how the elements of democracy can successfully reduce tension and hopefully prevent violence. The analysis of the cases centers heavily on elections because they tend to be a focal point of attention and tension in new democracies.

Conflict in Democracies

The democratic peace theory that states that democracies are less likely to go to war with each other extends to internal conflict as well: Democracy is typically viewed as a means for reducing political violence.²⁰ Proponents of democratization argue that political violence would be less likely under democratic regimes because they would be considered more legitimate, would be more accountable to constituents, would allow a more pluralistic society, and would tolerate a diversity of viewpoints.²¹ Although there is evidence to support these assumptions, the 1990s

¹⁸ The data on conflicts in Africa was obtained from the yearly summaries of conflict data collected by the PRIO/Uppsala Conflict Data Program (see References). From 2000-2006 the following countries experienced or are experiencing active conflicts: Algeria, Angola, Burundi, Central African Republic, Chad, Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Ethiopia, Guinea, Liberia, Nigeria, Rwanda, Sierra Leone, Senegal, Somalia, Sudan, Uganda. During times of active conflict, the principle of multiparty elections had been adopted in: Algeria, Central African Republic, Chad, Ethiopia, Guinea, Cote d'Ivoire, Nigeria, Republic of Congo, Rwanda, Senegal, Sudan, Uganda, and Burundi.

¹⁹ These countries include Central African Republic, Chad, Ethiopia, Guinea, Cote d'Ivoire, Nigeria, Republic of Congo, and Senegal.

²⁰ Demet Yalcin Mousseau, "Democratizing with Ethnic Divisions," *Journal of Peace Research*, vol 38, no. 5 (2001), pp. 547-567.

²¹ *Ibid*, p. 550.

exposed the highly volatile nature of newly democratizing nations. Africa was particularly affected, given the spate of new democracies in the past two decades. In the 1990s, political violence has broken out after the adoption of democracy in Cote d'Ivoire, Togo, Ghana, Sierra Leone, Kenya, Chad, and Nigeria. Similarly, the onset of democracy has not put an end to violent conflict in the Democratic Republic of Congo, Uganda, or Burundi. From these examples, it is apparent that new democracies will not necessarily be less prone to violence.

Indeed, the literature on the impact of democracy and conflict is mixed. While there is general agreement that democracy positively affects peace, many scholars show that it is conditional on the stage of democracy and the existing institutions, in some cases. More specifically, newly democratizing states have been found to be more prone to conflict than more established democracies. The process of democratization holds the seeds of conflict for precisely the same reasons that it is hailed as a method of preventing conflict: while democracy allows for diverse political views without threat of a violent backlash, weak democracies do not have the institutional strength to allow both an expression of an opposing political view and the tolerance to mitigate a violent response.²²

New democracies are more prone to political violence because the institutions that moderate conflict are weak. As a result, democratic mechanisms can be manipulated or politicized, fueling dissent among more marginalized groups. States with weak democratic institutions cannot manage opposition groups well.²³ Nascent democracies have trouble accommodating and managing the wide spectrum of new political interests that appear on the scene when the political process opens up. Moreover, elites who perceive their political power dwindling compete—sometimes with violence—for supporters. Finally, political coalitions, mechanisms that manage diverse interests in mature democracies, may be difficult to keep in new democracies where the tradition of political compromise is weak.²⁴

The process of democratization is particularly difficult and prone to conflict in ethnically diverse societies or very centralized political systems. In these cases, elections are often perceived as zero-sum, increasing the likelihood that they may be followed by violence (by the losing party).²⁵ Indeed, this has been the experience of many African countries, where democratization has exposed political divisions that reflect ethnic or religious cleavages and where political power tends to be centralized.²⁶ In fact, in some countries, politicians have blatantly used ethnicity to rally supporters, creating even deeper social and political cleavages. In such an environment, not only does winning the presidency consolidate power, but it can also consolidate the power of a

²² Ibid, pp. 550-1.

²³ See Edward D. Mansfield, and Jack Snyder, "Turbulent Transitions: Why Emerging Democracies go to War," in Chester Crocker, Fen Osler Hampson, and Pamela Aall, eds. *Leashing the Dogs of War: Conflict Management in a Divided World*, (Washington, DC: United States Institute of Peace Press, 2007), p.163.

²⁴ Ibid, pp. 169 – 171.

²⁵ Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, "Introduction: What Makes for Democracy?" in Larry Diamond, Juan J. Linz, and Seymour Martin Lipset eds. *Politics in Developing Countries: Comparing Experiences with Democracy* (Boulder, CO: Lynne Rienner Publishers, 1995).

²⁶ Mousseau, p. 551. See also Shaheen Mozzafar, James R. Scarritt, and Glen Galaich, "Electoral Institutions, Ethnopolitical Cleavages, and Party Systems in Africa's Emerging Democracies," *American Political Science Review*, Vol 97, no. 3 (August 2003), pp. 379-390; and Nicolas Van de Walle, "Presidentialism and Clientelism in Africa's Emerging Party Systems," *Journal of Modern African Studies*, Vol 41, no. 2 (2003), pp. 297-321.

particular ethnic group—giving the effect of completely shutting out other groups. In general then, for democratization to succeed in deeply divided societies, institutional arrangements should be structured such that groups are not systematically excluded from political or economic power. For this reason, many advocate the use of proportional representation, federalism, and decentralization, and other means of devolving power to mitigate the conflict that may result if elections or other policies are seen as zero-sum in deeply divided societies.²⁷

Democracies in Conflict: Nigeria, Mozambique, and Burkina Faso

Experiences with democratization in Nigeria, Mozambique, and Burkina Faso offer salient examples of democracy's violence triggering characteristics as well as its opportunities for reducing conflict. While they provide somber lessons for introducing democratization efforts in Africa.

Nigeria

Despite the return to democracy in 1999, ethnic and religious conflict in Nigeria is at an all-time high. In the eight years since the country embarked on democratization, several sources report that approximately 14,000 people have died in political and communal clashes, with much of the violence taking ethnic and religious tones.²⁸ Conflict in Nigeria over the last eight years has intensified most notably over religious and ethnic clashes, economic and political grievances felt by residents of the oil-rich Niger Delta, and elections.

Religious and Ethnic Competition

The current pattern of violence in Nigeria is rooted in the country's long history of military rule, weak institutions, centralization of power, and federal structure. Indeed, the 1967-1970 civil war was an attempt by Igbos in three states in the east to secede from the newly configured 12-state federation, which they charged was dominated by northerners. While the conflict did not result in the division of the nation, it did mark Nigeria's use of federalism as a means of mitigating conflict and a pattern of inter-ethnic struggle for economic and political power in post-colonial Nigeria. Today, there are 36 states in Nigeria. Although the original expansion was meant to balance out the populations in the three states (the Igbos charged that the northerners were dominating the country) and to discourage further secessionist movements, federalism has strengthened the center, weakened the states, and kept conflict concentrated at the state-level.²⁹ Moreover, the presence of oil has not delivered the hoped for development. The combination of a weak economy, a strong legacy of ethnic suspicion, and an environment of open political competition has contributed to the surge in violence in the last several years.

There have been several high profile incidents of violence. Most notably, in 2001 clashes between Muslims and Christians in Jos (Plateau state), claimed the lives of more than 1,000 people as demonstrations against Shari'a took place. Reprisal attacks for those attacks took place in Abia, Imo, and Anambra states resulting in 400–500 deaths of Muslims. The state governor endorsed the vigilante group, the Bakassi Boys, who had carried out the attacks, citing

²⁷ Diamond, Linz, and Lipset (1995).

²⁸ William Reno, "Sectarian Violence and its Cure," in Robert Rotberg, ed. *Crafting the New Nigeria: Confronting the Challenges* (Boulder, CO: Lynne Rienner Publishers, 2004), p. 219. On number of deaths see: International Crisis Group, "Nigeria: Want in the Midst of Plenty," *Africa Report* No. 113, July 29, 2006, p. 14.

²⁹ Rotimi T. Suberu, "Democratizing Nigeria's Federal Experiment," in Robert Rotberg, *Crafting the New Nigeria*, 62; Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley, CA: University of California Press, 2000), p. 604.

the absence of federal security.³⁰ In 2002, 215 people lost their lives in Kaduna as religious tensions arose after an article in a local paper sparked controversy. More troubling however, was that the violence began several days later, after the opponents of the state governor transported armed youth into the area.³¹

The Niger Delta

The center of economic-related violence in Nigeria is the Niger Delta region. The violence in the Niger Delta arises because of the stark lack of development in the region that is responsible for 90 percent of Nigeria's oil. It is by several accounts the least developed region in the country. While actions of armed groups and militarized youth have seized the headlines, there is an equally vibrant civil society that first led the region's advocacy efforts. Civil society organizations began to lobby the multinational organizations and the Nigerian government for greater development projects in the Niger Delta in the early 1980s. Although the government and the oil companies have acknowledged the grievances expressed by the Niger Delta residents and deplored the environmental degradation caused by the oil industry—even creating the Niger Delta Development Corporation—civil society has not been integrated into the decision-making processes. As such, advocates for the region became increasingly frustrated and their efforts ever more aggressive. In turn, the government's response was increasingly more violent.³²

In the last year, militias and other armed gangs in the Niger Delta, who charge that the government and the oil companies are not returning the oil-producing region its fair share of oil revenues have taken to abducting oil workers, in addition to bunkering. At least 200 people have been abducted.³³ Oil production has been reduced by 25 percent, according to many reports. Many attribute the government's harsh response to dissent in the delta to the importance of oil to the Nigerian economy. Given the country's dependence on oil, it cannot afford any unrest in the region, a constraint that limits the government's options in managing political dissent.³⁴

The new Nigerian government at first seemed prepared to use a different approach to reducing the violence in the Niger Delta. In the first place, Umaru Yar'Adua's selection of Goodluck Jonathan, who hails from the Niger Delta as vice president is a clear signal to the Niger Delta that the government will take their grievances seriously. During the electoral campaign, many in the Niger Delta claimed that it was "their turn" at the presidency—a reference to the widely discussed agreement between former President Olusegun Obasanjo and the northern political elite that the presidency would revert to a Northerner in 2007. While, Yar'Adua pledged during his inaugural address to prioritize the issues of the region, since his inauguration, the violence in the region has escalated sharply. More recently, the armed groups have also abducted Nigerian political officials or those with ties to political officials to press their case for increased economic and political attention to the Niger Delta. Today the region is under a state of emergency, with a heavy military presence.

³⁰ Reno, p. 233.

³¹ Ibid, p. 235.

³² Augustine Ikelegbe, "Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resource Struggle," *Journal of Modern African Studies*, vol. 39, no. 3 (2001), pp. 460-461.

³³ "New Nigeria Oil Worker Abductions," *BBC News*, July 9, 2007 (<http://news.bbc.co.uk/2/hi/africa/6285324.stm>).

³⁴ Ikelegbe (2001).

Electoral Violence

Perhaps no period manifests Nigeria's political and economic marginalization issues as the electoral campaign. While democracy is expected to provide more protection for minority groups, in Nigeria's case they claim to feel less secure. The fear that a political or economic win for one group translates into a loss for another drives many leaders to shun compromise—restricting options for settling grievances. Exacerbating the competition for political positions is the centralization of the presidency, a result of almost four decades of military rule that emphasized centralization.³⁵

Elections in Nigeria have been violent and deeply flawed—as typified by the most recent polls. During the April 2007 elections observers reported tremendous difficulties in accessing the polling booths, incidents of intimidation by politicians' 'security guards,' blatant removal of ballot boxes by the military, and other acts that marred the polls. Some of these incidents were related to the poor logistical planning for the elections, but other acts were deliberate attempts to secure the vote.³⁶ Similarly, while the actions of the Nigerian state, in the lead-up to the elections, certainly showed political manipulation to rig the voting in its favor, it also demonstrated a stark weakness of democratic institutions that only served to agitate the public and fuel fears of insecurity. For example, the blatant use of the Economic and Financial Crimes Commission to marginalize potential opponents, the build up of military units ostensibly to maintain law and order, the poor communication between the INEC and the public regarding voter registration facilities all cast doubt on the government's commitment to a peaceful and fair political transition. These deficiencies led to claims that the elections might not take place, Obasanjo might declare a state of emergency to seek yet another opportunity to extend his term, and provided ample excuses for politicians to hire and arm unemployed youth to "guard" them. The many clashes that took place in the charged environment before the 2007 polls left nearly 200 people dead.

Still, as bad as the violence and intimidation was, it could have been much worse. The judicial institutions in Nigeria, displayed great independence when ruling on various cases brought by political opponents who charged that the ruling party was trying to subvert their political campaigns. They offset the biased decisions of the electoral commission. While the government tried to keep the Vice President off the presidential ticket by asserting that he was ineligible, the Supreme Court's decision that the electoral commission did not have the power to disqualify him allowed him to remain on the ballot. Although, with the decision arriving just days before the election, it threw the process into additional confusion. The Supreme Court was also instrumental in overturning other decisions that had barred others candidates from running. Throughout, the Supreme Court was consistent in its rulings and demonstrated independence. Because of the Supreme Court's consistent and independent judgment, it is arguable that presidential aspirants chose to use legal rather than violent means to settle their disagreements.

³⁵ Richard Sklar, Ebere Onwudiw, and Darren Kew, "Nigeria: Completing Obasanjo's Legacy," *Journal of Democracy*, vol 17, no. 3 (2006), p. 102.

³⁶ Human Rights Watch, "Nigeria Polls Marred by Violence, Fraud," April 17, 2007 (<http://hrw.org/english/docs/2007/04/16nigeri15708.htm>);

Human Rights Watch, "Presidential Election Marred by Fraud, Violence," April 25, 2007 (<http://hrw.org/english/docs/2007/04/24/nigeri15763.htm>); and Commonwealth Secretariat, "Nigeria: State and Federal Elections, 14 and 21 April 2007," *Report of the Commonwealth Observer Group* (electronic version).

Nigeria's Response to Political Violence and Marginalization

The Nigerian state has been slow to respond to civil society pressures in a constructive way. The initial response has been to react defensively, which usually escalates tension. However, these reactions by the government come from a position of fear—fear of losing political and economic benefits associated with their positions. The actions of the Supreme Court in Nigeria suggest that when independence is institutionalized, it can provide the incentive to forgo violence. The selection of Goodluck Jonathan was also a positive attempt to address the political grievances in the Niger Delta through accommodation. But as the example below in Mozambique will show, accommodating practices can only go so far. Ultimately, the aggrieved groups will have to believe that the political system itself is not exclusionary.

Mozambique

Mozambique's transition to democracy has been more successful and less violent than Nigeria's. Despite transitioning from a civil war to multiparty democracy, Mozambique has not returned to violence. The difference between the two countries lies in the political institutions that have developed to deal with political conflict, but there are danger signs in Mozambique, as well, that cast doubt on the degree of democratic consolidation since the signing of the 1992 General Peace Agreement. Still, within Mozambique's transition to democracy, there are lessons to be learned about strategies by which a government and the opposition can work together in a potentially volatile environment to avert conflict and move the democratization process forward. Since the 1992 General Peace Agreement, the ruling party (Frelimo) and the main opposition group (Renamo) have used consensus and bargaining arrangements to settle political grievances. Some scholars have termed the accommodating practices by Mozambique's political parties evidence of the beginning of elite habituation to accommodation in Mozambique.³⁷ The focus in this section is on Mozambique's elections, since they encapsulate the relationship between the government and the opposition.

The 1994 Elections

Starting with the first post-conflict election in 1994, which required the National Electoral Commission (CNE) to make decisions by consensus, Renamo has expected all other elections to follow the same pattern. The 1994 elections were considered special and thus the international community, along with Renamo, insisted on making decisions by consensus in order to convey to Renamo that the political process was open for their participation.³⁸ For example, the use of consensus was instrumental in selecting the chair of the electoral commission—Brazão Mazula was largely viewed as politically neutral, especially since he had been outside the country for the preceding ten years. Admittedly, trying to obtain consensus slowed down the decision-making process, but each side felt that it had been heard.³⁹ After the 1994 elections, the consensus rule was abandoned, with Frelimo arguing for the return to so-called normal politics. In response, Renamo has tried to replicate the accommodation it received by following each electoral exercise by protest, contestation, and bargaining.⁴⁰

³⁷ Manning, (2002).

³⁸ Ismael Valigy, Interview, August 2001 (Valigy represented the government on the electoral commission).

³⁹ Manning (2002), p. 182

⁴⁰ Ibid (2002)

Changing Rules: The 1998 & 1999 Elections

In 1998 municipal elections, the government voted to remove the requirement for consensus – over the objections of Renamo. Importantly, the international community was ambivalent about this rule change, depriving Renamo of international support. Without requiring consensus, the CNE found it easier to overrule Renamo’s disagreements on various aspects of the elections; most notably, unable to reach an agreement on which localities to hold elections and other procedural issues, Renamo and the other political parties boycotted the elections. The 15 percent turnout was an embarrassment to the government, which had argued that it was on the road to normal politics.⁴¹

Renamo chose to participate in the 1999 elections, perhaps thinking that it had demonstrated the need for special processes and gaining confidence from the US’ criticism of the 1998 elections. A new electoral law provided increased opportunities for verification of results by opposition parties, but did not restore the requirement for consensus in the CNE. According to the new law, a parallel vote-counting process would take place in addition to the official process, as a means to double check the vote. However, in order to meet the deadline for announcing the ballot results, the CNE stopped the second counting process, despite Renamo’s concerns about accuracy and its participation in the verification process. Renamo took its complaints to the Supreme Court, but the court did not find that Renamo had a valid case. After this defeat, the informal bargaining with Frelimo began. A number of secret meetings were held between Raul Domingos of Renamo and Tomaz Salomao of Frelimo to negotiate appointments of Renamo representatives in provinces where Renamo had won and other powersharing issues.⁴² Ultimately, Frelimo appointed the governors in the ‘Renamo’ provinces, after talks broke down amid claims that Domingos was negotiating the acceptance of the 1999 results in exchange for money.⁴³

Conflict Management Difficulties

However, there are limits to conciliatory and extra-systemic negotiations. In November 2000, more than 100 Renamo demonstrators protesting the 1999 elections were killed in clashes with police and during custody.⁴⁴ After the 2003 municipal elections, 12 people were killed in clashes between Renamo and Frelimo. The deteriorating quality of democracy in Mozambique indicates that political accommodation is a good temporary measure, but ultimately the democratic systems and institutions in place must be seen as beneficial to all. In Mozambique, bringing Renamo into the political process stopped the violent conflict. But the central issue in the political conflict that has ensued following the 1992 peace agreement is whether the political process is fair enough to allow Renamo to realize its potential. Each time, there have been questions about the integrity of the political process; Renamo and Frelimo have made amends by extra-system negotiations. But in order to move beyond that, the political process must adhere to standards that ensure transparency and accountability without special negotiations.

⁴¹ Dorina Bekoe, *Implementing Peace Agreements: Lessons from Mozambique, Angola, and Liberia* (2008, forthcoming).

⁴² Bekoe (forthcoming) and Weinstein (2002), 153.

⁴³ Manning (2002), p. 201.

⁴⁴ *Ibid*, (2002), p. 202.

Burkina Faso

Burkina Faso's experience with political reform shows the power and benefits of an active civil society. The assassination of Norbert Zongo, a popular and outspoken journalist and critic of the government, was the spark that galvanized civil society groups in Burkina Faso.⁴⁵ The political fallout of the assassination and the trial resulted in electoral reform and an increased representation of the opposition in the parliament. It could be argued that Burkina Faso represents a case where improving the democratic system reduced tension. In general, claims of conflict prevention are hard to substantiate, because of the difficulty of proving a counter-factual (i.e. conflict was prevented because it did not happen). Still, the events in Burkina Faso show how the critical elements of democracy—such as opposition parties, civil society, and the media—can effect change peacefully and reduce the likelihood of conflict.

For most of 1998, Norbert Zongo covered the death of David Ouédraogo, the driver of François Compoaré. Ouédraogo died in January 1998 while in custody of the president's security forces for questioning about money that had been stolen in the François Compoaré residence. Zongo criticized the involvement of the presidential security forces, arguing that the case should have been brought to the police or gendarmerie. Moreover, there were differing accounts of what killed Ouédraogo: while the government's medical officer stated that he died of an illness, others in the opposition claimed he had been tortured. Ouédraogo's family was not told where he had been buried. Zongo also covered the lawsuit filed by Ouédraogo's brother and reported that Compoaré did not honor a request to appear in court.⁴⁶ In December 1998, Zongo and three associates were found murdered.

Rather than silence civil society, the Zongo's murder sprang it to action. For many, the killing of Zongo and Ouédraogo's represented the longstanding impunity with which the government operated and the price to be paid for speaking out. A protest movement calling itself "Enough is Enough" emerged and the incidents continued to be covered in the independent media. The prime minister, Kadré Désire Ouédraogo, generally perceived as honest, resigned over the Zongo case and the president's links to it.⁴⁷ In response to these events, President Compoaré formed a commission to investigate Zongo's death. In the meantime, civil society organized itself into the *Collectif d'Organisations Démocratiques de Masse et de Partis Politiques*. The commission submitted its report in May 1999 and named the presidential security forces as suspects in Zongo's death, as well as linked the Zongo and Ouédraogo deaths. Later that month, President Compoaré addressed the nation, promising to compensate the surviving family members and reform the security forces. He also formed the *College de Sages*, a council of the wise, to provide recommendations on how the country could resolve the instability caused by these events.⁴⁸

The political environment in Burkina Faso remained tense for nearly two years. The political opposition, while small, heavily criticized the government for its weakness on rule of law, impunity, and legitimacy. In protest, not only did the major opposition groups boycott the 1998

⁴⁵ Stan Hagberg, "Enough is Enough": An Ethnography of the Struggle Against Impunity in Burkina Faso," *Journal of Modern African Studies*, vol 40, no. 2 (2002): 217-246.

⁴⁶ Hagberg (2002).

⁴⁷ Africa Confidential, "Losing Friends," Vol 41, no. 22, (November 10, 2000), p. 8.

⁴⁸ Hagberg (2000), pp. 221-223. 2002.

presidential elections, but they boycotted the 2000 municipal elections as well. Faced with domestic and international questions about his legitimacy, Compoaré himself began to view the ruling party's majority as problematic. In response, Compoaré began to reach out to the opposition and the secretary-general of the ruling Congress for Democracy and Progress advocated for a strong opposition. In July 2001, the Burkinabè government also revealed a new electoral code that would increase the proportional representation of political parties in parliament.⁴⁹ The combined effect of the mobilization of civil society and the reforms instituted by the government increased the number of opposition members significantly: the ruling party obtained 57 seats (down from 101) and the opposition had the remaining 54 seats (up from 7).⁵⁰ Some senior politicians celebrated the arrival of a "responsible" opposition."⁵¹

Conclusion

These conflicts and incidents of political violence described above underscore how difficult democratization is in Africa. The emergence of new voices in a newly democratizing states or states emerging from conflict can highlight problems of political legitimacy, inequality, and marginalization: Zongo's reporting of Ouédraogo's death served as a catalyst for other grievances in Burkina Faso. These new perspectives will, in the end, improve the quality of life for all citizens, as finally those who had no voice can now be heard. But the reality, as the cases show, is that many newly democratizing countries in Africa are institutionally underdeveloped to attend to these new needs. The result is often a harsh response to civic protest, which then may escalate into more intense violence. Zongo paid dearly for his courage.

Institutionalizing political fairness and transparency are the keys to successful democratization. Accommodating practices are important measures as countries embark on democratization. But, they are temporary measures that eventually become ineffective. As groups feel that the nation's institutions will consistently shut them out, frustrations will begin to increase. Rather, the emphasis should be on creating democratic institutions that are accessible to all.

References

Africa Confidential, "Losing Friends," Vol 41, no. 22, (November 10, 2000).

Africa Confidential, "Blaise Wins Again," Vol 43, No. 16, (August 9, 2002).

Bekoe, Dorina. *Implementing Peace Agreements: Lessons from Mozambique, Angola, and Liberia* (Palgrave Macmillan, 2008).

Commonwealth Secretariat, "Nigeria: State and Federal Elections, 14 and 21 April 2007," *Report of the Commonwealth Observer Group* (electronic version).

Diamond, Larry, Juan J. Linz, and Seymour Martin Lipset, "Introduction: What Makes for Democracy?" in Larry Diamond, Juan J. Linz, and Seymour Martin Lipset eds. *Politics in*

⁴⁹ Carlos Santiso and Augustin Loada, "Explaining the Unexpected: Electoral Reform and Democratic Governance in Burkina Faso," *Journal of Modern African Studies*, vol. 41, no. 3 (2003), p. 411-413.

⁵⁰ Ibid, p. 405.

⁵¹ Africa Confidential, "Blaise Wins Again," Vol. 43, no. 16 (August 9, 2002), p. 4-5.

Developing Countries: Comparing Experiences with Democracy (Boulder, CO: Lynne Rienner Publishers, 1995).

Hagberg, Stan. "Enough is Enough": An Ethnography of the Struggle Against Impunity in Burkina Faso," *Journal of Modern African Studies*, vol 40, no. 2 (2002): 217-246.

Horowitz, Donald, *Ethnic Groups in Conflict* (Berkeley, CA: University of California Press, 2000).

Human Rights Watch, "Nigeria Polls Marred by Violence, Fraud," April 17, 2007 (<http://hrw.org/english/docs/2007/04/16nigeri15708.htm>).

Human Rights Watch, "Presidential Election Marred by Fraud, Violence," April 25, 2007 (<http://hrw.org/english/docs/2007/04/24/nigeri15763.htm>).

Ikelegbe, Augustine, "Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resource Struggle," *Journal of Modern African Studies*, vol. 39, no. 3 (2001): 437-469.

International Crisis Group, "Nigeria: Want in the Midst of Plenty," *Africa Report* No. 113, July 29, 2006.

Ismael Valigy, Interview, August 2001.

Manning, Carrie L. *The Politics of Peace in Mozambique: Post-Conflict Democratization, 1992-2000* (Westport, CT: Praeger Publishers, 2002).

Mansfield, Edward D and Jack Snyder, "Turbulent Transitions,: Why Emerging Democracies go to War," in Chester Crocker, Fen Olser Hampson, and Pamela Aall, eds. *Leashing the Dogs of War: Conflict Management in a Divided World*, (Washington, DC: United States Institute of Peace Press, 2007).

Mousseau, Demet Yalcin. "Democratizing with Ethnic Divisions," *Journal of Peace Research*, vol 38, no. 5 (2001): 547-567.

Mozzafar, Shaheen, James R. Scarritt, and Glen Galaich, "Electoral Institutions, Ethnopolitical Cleavages, and Party Systems in Africa's Emerging Democracies," *American Political Science Review*, Vol 97, no. 3 (August 2003): 379-390.

New Nigeria Oil Worker Abductions," *BBC News*, July 9, 2007 (<http://news.bbc.co.uk/2/hi/africa/6285324.stm>).

Reno William, "Sectarian Violence and its Cure," in Robert Rotberg, ed. *Crafting the New Nigeria: Confronting the Challenges* (Boulder, CO: Lynne Rienner Publishers, 2004).

Santiso, Carlos and Augustin Loada, "Explaining the Unexpected: Electoral Reform and Democratic Governance in Burkina Faso," *Journal of Modern African Studies*, vol. 41, no. 3 (2003): 395-419.

Sklar, Richard, Ebere Onwudiw, and Darren Kew, "Nigeria: Completing Obasanjo's Legacy," *Journal of Democracy*, vol 17, no. 3 (2006): 100-115.

Suberu, Rotimi T., "Democratizing Nigeria's Federal Experiment," in Robert Rotberg, *Crafting the New Nigeria: Confronting the Challenges* (Boulder, CO: Lynne Rienner Publishers, 2004).

Van de Walle, Nicolas, "Presidentialism and Clientelism in Africa's Emerging Party Systems," *Journal of Modern African Studies*, Vol 41, no. 2 (2003): 297-321.

Weinstein, Jeremy. "Mozambique: A Fading U.N. Success Story," *Journal of Democracy*, vol 13, no. 1 (2002): 141-156.

Summaries of the PRIO/Uppsala Conflict Data Program are found in the following:

Wallensteen, Peter and Margaret Sollenberg, "Armed Conflict, 1989 – 2000," *Journal of Peace Research*, Vol 38, no. 5 (September 2001): 629-644.

Gleditsch, Nils Petter, Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Håvard Strand, "Armed Conflict 1946 – 2001: A New Dataset," *Journal of Peace Research*, Vol 39, no. 5 (September 2002): 615-637.

Eriksson, Mikael, Peter Wallensteen, and Margareta Sollenberg, "Armed Conflict, 1989 – 2002," *Journal of Peace Research*, Vol 40, no. 5 (September 2003): 593 -607.

Eriksson, Mikael and Peter Wallensteen, "Armed Conflict, 1989-2003," *Journal of Peace Research*, vol 41, no. 5 (September 2004): 625-636.

Harbom, Lotta and Peter Wallensteen, "Armed Conflict and Its International Dimensions, 1946-2004," *Journal of Peace Research*, Vol 42, no. 5 (September 2005): 623-635.

Harbom, Lotta, Stina Högladh, and Peter Wallensteen, "Armed Conflict and Peace Agreements," *Journal of Peace Research*, Vol 43, no. 5 (September 2006): 617-631.

Harbom, Lotta and Peter Wallensteen, "Armed Conflict: 1989-2006," *Journal of Peace Research*, Vol 44, no. 5 (September 2007): 623-634.

This paper does not represent US Government views.

This page is intentionally left blank.

The APRM: A Regional Approach to Strengthening Democracy and Governance Institutions in Africa

By Kojo Busia⁵²

Introduction

APRM is a key program of the New Partnership for Africa's Development (NEPAD), Africa's common vision and framework to lift its people and citizens out of poverty and underdevelopment. NEPAD provides a vision and a framework for development and progress, and is a departure from the past in that it was conceived and promoted by African leaders and countries. Among its programmatic pillars, NEPAD clearly identifies poor governance as an impediment to progress throughout much of the continent. The African Peer Review Mechanism (APRM), largely recognized as the crowning jewel of the NEPAD initiative, is an attempt by Africans to improve governance by identifying weaknesses, setting benchmarks, and monitoring progress in meeting them.

The APRM is intended to involve governments and civil society actors, as well as independent assessors, and thus promote a national dialogue about governance. The mechanism is designed in a way that involves a host of complex structures and lengthy processes that facilitate dialogue on governance issues among a range of stakeholders. The designers of the APRM deliberately made it a non punitive instrument to enforce adherence and a peer -learning tool to help improve governance in Africa. The voluntary accession to the process is intended to encourage participating African countries to learn from each other by recognizing and disseminating governance best practices. Contrary to popular belief, the concept of peer learning embedded in the APRM framework is aimed at encouraging and building responsible leadership through the self-assessment process, constructive peer dialogue at the summit level, and the sharing of information and common experiences in order to reinforce successful and exemplary practices among Africans (NEPAD, 2002). Ultimately, the goal of the APRM is to advance the basic values of democratization and good governance in Africa which NEPAD explicitly recognizes as the key missing ingredient for sustainable development (APRM, 2007).

By July 2007, 28 countries had voluntarily acceded to the APRM, and the review process had been completed in Ghana, Kenya, Rwanda, South Africa and Algeria. About 13 countries are at different stages of the process with more countries to be reviewed within the next year or two. Collectively, the membership of the APRM currently represents more than 50 percent of the AU member states and an equivalent of 74 percent of the total population of Africa (652.7 million). The APRM is a significant engagement within Africa.

This paper will review briefly the progress so far in implementing the APRM framework, discuss some elements of the process that have the potential to contribute towards strengthening governance institutions in Africa, highlight some of the findings from the first three countries that have completed the process—Ghana, Rwanda and Kenya—and finally draw some theoretical conclusions about donor approaches to strengthening governance institutions. Anticipating the core argument of this short paper, that is, the APRM process is an exercise in strengthening the demand-side of domestic accountability which is sorely missing in externally

⁵² Officer-in-Charge, APRM Support Unit, Governance and Public Administration Division (GPAD), UNECA.

driven (donor) accountability mechanisms that have so far proven to be ineffective in Africa. It argues that the APRM represents a new departure by emphasizing the demand-side approaches to institutional strengthening in African governance.

But before going into the depth of the analysis, it is important to briefly review some of the initial debates surrounding the APRM initiative found in the literature. This will help put in context the different perspectives that have emerged about the prospects of the initiative since its inception.

Reactions and Critiques of the APRM Initiative

The APRM naturally elicited a variety of reactions, ranging from enthusiastic embracement of the novelty of the idea and the vision behind it as marking a new dawn in African governance, to a skeptical reception as yet another African initiative soon to be marred by a behavior of collective indulgence among African leaders who so often ignore each other's governance shortcomings. There was also a vociferous rejection of the APRM by civil society who felt that the framework lacked domestic buy-in from the grassroots.

At the core of this debate is the issue of the lack sanctions or coercive measures contemplated against a reviewed state whose governance system falls below the mark. This led to the common criticism that the APRM process lacked teeth and would not make any difference in reforming African governance systems. The absence of explicit punitive mechanism of governments violating the APRM principles gives the impression of a velvet mechanism (Gottschalk and Schmidt, 2004; Bekoe, 2004).

Another stream of the critics challenge the value of a peer review without institutionalized mechanism for tackling dissenters on the grounds that the voluntary nature of peer review means that it is "too soft" as a means of reforming governance practices and doubt the credibility and independence of the review process (Kanbur, 2004; Venter, 2003; Bekoe, 2005). Indeed, the negative perception that the APRM lacked teeth was originally reinforced by another debate between NEPAD leaders and some leading donor countries regarding the mechanism's design that included the review of performance in political governance. The pronouncements by South African President Mbeki that issues of political governance would not come under the purview of the APRM but rather would be handled by the structures of the African Union had a dampening effect on donor interests in the process. In contrast to the African leaders perspective that the APRM is a non-adversarial and a process for constructive dialogue among Africans, the donors initially perceived the mechanism as an instrument for enforcing good governance. In fact, since NEPAD/APRM derived its external support from the promise of aid from the G-8, many donors saw the APRM reviews as an element of donor conditionality. This expected punitive reaction by the donor community is probably one reason why African leaders did not see the necessity of sanctions in case of a negative review outcome. This debate, however, has since been resolved: the APRM reviews now cover all the four areas of the APRM including the democracy and political governance dimensions; the APRM is not being used explicitly as a form of donor conditionality, even if donor behavior or engagement is inevitably being shaped by the outcome of the reviews in each of the participating countries.

Another criticism since the inception of the APRM process has come from the civil society sector. Because the initial promotion of NEPAD and the APRM was directed at the international community (i.e. the G-8), a perception was created that the mechanism primary purpose was to appease the IMF, the World Bank and western donors and was largely unconcerned with achieving the buy-in from African civil society (Verwey 2005; Dave 2003; Deng, 2006). In response to this perception, civil society adopted two approaches: 1) to reject the APRM as a legitimate exercise; and 2) to examine methods which promote greater civil society participation and advocate for these methods to be adopted.

The harshest critique from civil society rejected the APRM stated purpose, criticizing its design and operations, and most importantly, condemning the mechanism's architect for lack of broad and meaningful consultations prior to finalizing the APRM design (Verwey 2005; Deng, 2006). While of these critiques may be valid, it impeded the civil society participation in the APRM process, as much of the opportunity for early engagement in promoting and understanding the larger implications of the APRM were initially missed by civil society organizations (Maloka, 2004). In part, this lack of a meaningful engagement from civil society was due to information constraints and the availability of and access to information on the APRM by civil society (Verwey, 2005).

This debate about the legitimacy and lack of adequate participation was anticipated by African regional organizations including the UNECA. In a parliamentary paper presented at the biennial meeting of the Committee of Human Development and Civil Society (CHDSC), the governing body of its Governance Division, the ECA strongly advocated for strategies for enhancing civil society organization participation in the APRM process (UNECA, 2005). The ECA argued that the impact of the input and participation of civil society in the APRM process presents far greater opportunities to enhance the process than any negative effects that participation might bring. This view point is also shared by other analysts, who also stress the importance role of civil society participation in the APRM and the contribution that civil society can make to enhance the legitimacy of the APRM and confidence in its findings (Herbert, 2003; Kajee 2004; Landsberg 2002).

Progress So far and the Roll-out Experience of the APRM

The rollout experience of the APRM so far has revealed significant achievements and challenges in building sustainable governance institutions in Africa. There are many positive lessons already emerging about the APRM, although many significant challenges remain to be overcome. To be sure, the APRM is a functioning and a resilient governance monitoring system that is fast gaining traction, despite a steep learning curve given its novelty and the lack of a model to draw upon. This section will review the a few insights of the process and show how it is strengthening domestic accountability in the few countries that have gone through the process. The challenges confronting the process will also be highlighted.

National Conversations on Governance have been Initiated

The three reports on Ghana, Rwanda and Kenya are a fair reflection of the state of good governance in these countries and have shown that governments cannot hide issues or downplay them because the Panel of Eminent Persons and the independent experts comprising the Country Review Team will uncover them and highlight them. The process of establishing the structures

and institutions needed to conduct the national self-assessment reports has also provided opportunities for countries to make the APRM relevant to ordinary people by building trust between citizens and governments for a national dialogue on governance. Although each country took a different approach to suit the context of political development and maturity, it nevertheless had begun a process that would be difficult to reverse.

In Ghana, the government saw the need to win the confidence of the citizenry by appointing a completely civil society led National Governing Council (NGC). The government took active steps to demonstrate openness, political maturity and flexibility by consulting with opposition parties about individuals to be short-listed on the NGC; eventually selected only those seen to be non-partisan representatives to this body; established an independent administrative secretariat outside of any ministry staffed by professional who are not part of the public service; employing well respected and independent think-tanks to conduct the self-assessment research; and developing a multi-pronged, robust research methodology to capture popular and elite opinion on the state of governance in the country. All these measures helped to dissuade the public that the APRM was a serious national dialogue on matters affecting the welfare of ordinary people. Critics of the Ghana process argue that although the process was open and participatory, there was no way to verify how the inputs from civil society and the general public were finally used in the APRM report (AfriMap, 2007c).

Kenya established a task force of both government and NGO representatives to design and refine its peer review plans, and allowed civil society to elect its own representatives to sit on the national governing council. Although the process was acrimonious reflecting the contentious nature of state-society relations in Kenya, it has opened up a space for civil society to dialogue with the state and has laid a firm foundation for eventually monitoring the implementation of the national program of action (AfriMap, 2007b).

The process in Rwanda posed two major challenges: how to make the process participatory and inclusive without opening up opportunities for “divisive ethnic-based politics” that has characterized the history of Rwanda? How do you make up for the lack of research capacity at the national level due to the massive depletion of capacity in both the government and civil society sectors as a result of the 1994 genocide? The other main challenge was the compression of time for conducting the national self-assessment which made it difficult to allow sufficient time for consultations across all sections of society. Thus, in Rwanda, the tendency was to carry out the APRM self-assessment without necessarily seeking out the contribution of civil society, although it had to be included somewhat at a latter point (AfriMap, 2007b). Nevertheless, the space for dialogue opened up by the APRM is a valuable opportunity to establish a sustainable culture of dialogue between civil society and government; an opportunity which should not be wasted by civil society. The gaps in domestic research capacity were filled by contracting a South African think-tank, African Institute for Policy Analysis (AIPA) for technical review of its self-assessment report. Similarly, the South African Institute of International Affairs (SAIIA) was requested to conduct training workshops for civil society to increase its capacity to engage in the process. While some analysts may see this practice as undermining national ownership of the APRM process, it should be seen as an exercise in peer learning, which is a basic principle of NEPAD/APRM (AfriMap, 2007 a).

Whatever the shortcomings in conforming to the standardized APRM review process as stated in the APRM documents and guidelines, it can be safely argued that the process is shaping up to be the most consultative national “development dialogue” and is slowly supporting a culture of domestic accountability that is often missing in previous attempts at creating accountability institutions in Africa. The real challenge for African countries undergoing the process is how to institutionalize the national dialogue and consultation processes around key governance issues, thereby creating demand for accountability.

Peer Review and Learning at all levels of the APRM

One of the most misunderstood concepts of the APRM is the notion of peer review and peer learning as stated in the basic background documents of the process. From the perspectives of the participating Heads of States and Governments in the APRM process, peer review remains at the summit level. Official documents refer to the participating head of states and governments comprising the ‘Forum’ as the supreme governing body of the APRM as the “peers.” However, experience from the first few countries shows that peer review and learning is evident at all levels and stages of the process: among governance institutions at the domestic level; among emerging networks of civil society organizations (CSOs), private sector institutions, research institutions and think-tanks, governing councils, national focal points and ordinary citizens across the continent.

At the domestic level, the national self-assessment process provides a unique opportunity for governance institutions to interact, interrogate and evaluate each other’s function and performance both in terms of horizontal and vertical accountability. APRM is essentially aimed at strengthening domestic accountability systems between state and society and to regional and continental peers, which is a unique feature emerging on Africa’s governance landscape. The mechanisms guidelines stipulate that the governments must develop a roadmap for their national process “in collaboration of with key stakeholders . . . which should be widely publicized and provide information about national coordinating structures, the stages of the APRM and the roles and responsibilities of stakeholders from government, non-governmental organizations, private sector and international development partners.” These guidelines further stress that “the organization of public participation in the APRM process is in itself a central aspect of enhancing the state of governance and socio-economic development in the participating country. Such interactions can build trust, establish and clarify mechanisms for ongoing engagement and empowerment of stakeholders.”⁵³

Experience from the three pioneer countries has shown that the self-assessment process is designed to evaluate the performance of institutions that make up the systems of governance in those countries and not a scorecard or rating of certain individuals in government or political parties in the past or present regimes. The APRM looks at both the systems of governance and the outcome or end results: for example, what is the quantity and quality of education or what is the impact of corruption on the social welfare in a given country? In every country or society, there are many views about these issues and as a result, APRM requires that countries engage in

⁵³ New Partnership for Africa’s Development (NEPAD), [APRM Basic Document](http://www.nepad.org/2005/files/aprm/aprmguidelines_forcountryreview200104final.pdf), adopted by the African Heads of States and Government at Durban, July 8, 2002. See also “Guidelines” and associated documents: http://www.nepad.org/2005/files/aprm/aprmguidelines_forcountryreview200104final.pdf http://www.au2002.gov.za/doc/summit_council/aprm.htm.

broad-based consultations to inform the national self-assessment report and the finding solutions in the form of the National Program of Action. Governments (executive branch), parliament, the judiciary, political parties, civil society, and private sector will all have a degree of consensus about these issues but may not agree on the best way forward in addressing them. The APRM presents an alternative channels of accountability, albeit informally, within and between government institutions and non-governmental actors. Thus, the process creates opportunities for public demand for accountability (through representative institutions or organized civil society) which is said to be very low in between elections.⁵⁴

At the regional and continental levels, the peer review offers a different kind of accountability pressures that can have indirect positive impact on national governance systems. The growing networks of regional CSOs and research think-tanks, government focal points and national governing councils have helped to reinforce the process of learning from each other and deepening African solidarity.⁵⁵ By raising sensitive cross-cutting and inter-state issues such as conflicts, land management, managing diversity and corruption, the APRM provides an early warning system to avert political and economic crises in Africa, thereby contributing to the institutionalization of democratic governance. Likewise, the acceptance of outsiders to examine national findings and express a view on how a country is governed is a fundamental shift in Pan-African thought and a modification of sovereignty from the principle of non-interference under the OAU to the principle of non-indifference under the African Union.⁵⁶ By harmonizing reform efforts, tackling difficult inter-African issues and sharing best practices, the peer review is laying a critical foundation for a united states of African.

Toward the Strengthening of Domestic Accountability: Implications for International Development Partners

The World Bank, the IMF, economist and specialist in public administration and financial management have tended to focus on the need to increase the supply of accountability mechanisms, especially, those housed within the state (executive branch) including the following: better budgetary processes; better revenue generation; better monitoring of state expenditures; better public service reform; better and more transparent procurement processes; better and more responsive delivery of services; more aggressive efforts to investigate and prosecute corrupt practices by independent investigatory bodies established to do that – anti-corruption commission (Levy and Kpundeh, 2004).

Other donors, mostly bilateral organizations such as USAID, DFID and some NGOs tend to emphasize the need to improve the demand-side mechanisms, especially those located outside

⁵⁴ Logan Carol and Michael Bratton, Voters But Not yet Citizens: The Weak Demand for Political Accountability in Democracies, *Afro Barometer*, Working Paper No. 63, 2006. pp. 7-12

⁵⁵ The UNECA organized a training workshop, *APRM Best Practices and Lessons Learned: Workshop for National Focal Points for Eastern, Central and Southern Africa*, in February 2007 in Addis Ababa, Ethiopia. The workshop brought together participants from civil society, the media and National Focal Points to deliberate on the lessons and best practices so far for the process. At the workshop, it was made clear that the success of the APRM hinges on seeing the process as collective responsibility among all states and that it was not enough to have one country succeed while leaving others behind.

⁵⁶ This view is forcefully expressed in a recent review of the progress made by the APRM at the recent African Partnership Forum (APF) document entitled *The APRM: Africa's Innovative Thinking on Governance*, APRM Secretariat, Midrand, South Africa, July 2007, pp. 6-7.

the state that exert pressure for downward accountability to ordinary citizens or those state institutions that have direct contact with citizens or civil society such as the legislature or the courts. These institutions can better exert pressure for horizontal accountability on the executive branch.

It can be fairly argued that the emphasis on supply-side mechanism have not yielded much significant results with respect to improving economic development and reducing poverty. On the other hand, the expected pay offs from an emphasis on demand-side mechanisms have not yet materialize, although donors now turn to increasingly as part of their development assistance strategies, especially in sub-Saharan Africa.

Domestic accountability is fundamentally different from externally driven (push) accountability mechanisms that have proven to be ineffective. There is now a consensus that institutional reform does not take place unless there is a strong domestic demand from either bottom-up in terms of civil society or top-down in terms of elite demand driven for reform (Fukuyama, 20007).

The APRM is Africa's hope that domestic accountability is institutionalized so that international donors may eventually abandon their own monitoring process and accept the outcome of the APR as the basis for supporting democratic governance institutions in Africa.

Conclusions and Observations

The APRM is an inward looking mechanism, designed to encourage the culture of domestic accountability in Africa based on self-imposed standards of good governance. It highlights the fundamental problem that institutional development designed by outsiders cannot be effective. Its ultimate value would be that the “software for institutions”—rules, habits, norms—that support growth and development are apparently a result of a long process by which societies experiment with and continually fine-tune to suit their needs, constraints, and opportunities.

In the final analysis, the APRM seeks to address the following issues in development assistance for strengthening governance institutions in Africa:

How to avoid interference in domestic accountability when governments are so dependent on aid (50 percent of national budget in some cases) and ensure that government are accountable to their citizens?

How to avoid the aid-institutions paradox for aid dependent countries? In other words, how do you develop local institutions of the state that makes politicians more accountable to citizens and not donors?

How to create space for local institutional development—encouraging, exploration of processes—which outsiders cannot do?

How can developing countries build local institutional capacity through learning-by-doing without an externally imposed conditionality hanging over their heads?

Referemces

AfriMap, 2007a “Critical Review of the APRM Process in Rwanda” authored by Ligue des Droits de la Personne dans la region des Grands Lacs (LDGL), Kigali, January 2007.

AfriMap, 2007b “The APRM Process in Kenya: A Pathway to A New State” OSIEA, authored by Steve Ouma Akoth, March, 2007.

AfriMap, 2007c “Ghana and the APRM; A Critical Assessment,” Adotey Bing-Pappoe, June, 2007.

Bekoe, D “NEPAD and Its Achilles Heels,” *Alternatives*, Turkish Journal of International Relations, Volume 1, Number 4, Winter, 2002.

De Waal, A “What’s New in the ‘New Partnership for Africa’s Development?’” *International Affairs* 78:3 (2002): 464.

Deng, B.K. 2006 “*The African Peer Review Mechanism and Its Participatory Process*,” Inside AISA, 2, April/May 2006, African Institute of South Africa

Deve, T 2006, “Taking a firm stance against NEPAD,” presented at African Civil Society Meeting on the Occasion of the 2nd Conference of the Heads of State and Government of the Africa Union, Maputo, Mozambique, 27 June-July 2, Pambazuka at <http://www.pambazuka.org/en/category/development/16447>

Herbert, R 2003 ‘Becoming my brother’s Keeper’ in *eAfrica Newsletter*, 1, October 2003, SAIIA, Johannesburg.

Hope, K Snr. ‘Toward Good Governance and Sustainable Development: The African Peer Review Mechanism.’ *Governance: An International Journal of Policy, Administrations and Institutions* 18:2 (April 2005): 306.

Fukuyama, F “Civil Society and Improved Governance in Developing Countries,” Key Note Addresss given at the Transparency and Accountability Program (TAP) conference, Brookings Institute, March 20, 2007.

Kajee, A 2004 “The African Union and the African Peer Review Mechanism: Implications for Regional Integration in the Context of Continental Structures,” Unpublished paper.

Kajee, A 2004 “The African Peer Review Mechanism: A Progress Report: Practical Limitations and Challenges,” In South African Yearbook of International Affairs 2003/4, SAIIA, Johannesburg, http://www.foundation-developmentafrica.org/nepad/nepad_general/nepad_aprm_progress_report.htm.

Kanbur, R 2004 “*The African Peer Review Mechanism: An assessment of Process and Design*” Cornell University.

Keet, D. 2002 *The New Partnership for Africa's Development and the African Union: Unity and Integration within Africa or Integration into the Global Economy*, Alternative Information and Development Center, Reprinted.

Landsberg, C 2002 "Democratic Governance Crucial for Africa's Future" in Global Dialogue, 73, November 2002, *An International Affairs Review* Published by the Institute for Global Dialogue.

Malachia, Mathobo, "An African Peer Review Mechanism: A Panacea for Africa's Governance Challenges?" Johannesburg: Center for Policy Studies. Policy Brief # 29, August 2003: 12.

Maloka, E 2004 "NEPAD and Its Critics" In *Africa Insight*, 34 (4), December 2004.

NEPAD, 2002 "Declaration from Civil Society NEPAD Meeting," Durban, South Africa 4-8 July, 2002

Shultz, N. "African States Experiment with Peer Reviewing: The APRM, 2002-2007" forthcoming, *Brown Journal of World Affairs*, 13:2 (Summer/Fall 2007).

The Completed APRM Reports for Ghana, Rwanda and Kenya, were as of January, 2007. [See http://www.nepad.org/files/aprm.php](http://www.nepad.org/files/aprm.php)

UNECA, 2005 '*Strategies for Enhancing Civil Society Participation in the APRM Process*,' Parliamentary Paper for servicing the Biennial meeting of the Committee of Human Development and Civil Society (CHDCS), DMD/O5/2005.

UNDP, "Implementing the African Peer Review Mechanism: Challenges and Opportunities" Report of the VI African Governance Forum, Kigali, May 9-11, 2006. See <http://www.undp.org/agf/>

Verwey, L 2005 "NEPAD and Civil Society Participation in the APRM," Occasional Papers, IDASA – Budget Information Service, Africa Budget Project

Venter, D. 2003 "Democracy, Governance and Leadership: Towards an African Renewal," Otto Krause Memorial Fund: Occasional Paper Series, 1/2003. Rand Afrikaans University

This paper does not represent US Government views.

This page is intentionally left blank.

Political Parties in Africa: Challenges for Democratic Governance

By Abdalla Hamdok, PhD⁵⁷

Regional Director for Africa and the Middle East International IDEA

Introduction

The promotion and building of democracy and good governance has been an important focus and key element in the strategies of the majority of African governments and their partners since the early 1990s. This focus has also highlighted the broad-ranging obligations of governments to their constituencies. Such obligations include the establishment and maintenance of law and order, creating transparent administrative structures, extending social infrastructure to the rural areas, protecting poor and vulnerable groups and including them in the decision-making process, and the preservation of peace and security.

This paper is set to address the challenges and complex issues of “political parties and democratic governance in Africa”. Political parties have increasingly become a prominent feature of political systems in Africa, and particularly following the democratization process and the democracy wave that swept Africa from the early 1990s. And for sure since the end of the cold war, combined internal and external pressures for democratization and good governance in Africa resulted in the reinstatement of multiparty politics and competitive elections in country after country. In essence, therefore, political parties have become, in the majority of African countries, a critical linchpin for the institutionalization, nurturing, deepening and consolidation of democracy in the continent.

The paper proceeds as follows. Section two provides a brief outline on context and background and addresses the global and regional issues in democracy building, including a perspective on recent trends. Section three discusses the political party external regulatory environment. Section four gives an account on internal democracy, with section five providing a brief on major challenges to political parties in Africa. Concluding remarks are given in section six.

Context and Background on Global and Regional Issues in Democratic Governance: A Perspective on Recent Trends

The enormous challenges involved in rebuilding functioning states from above and outside, as in Afghanistan and more recently in Iraq, have absorbed much of the energy and resources of the international community, but have also alerted public opinion as never before to the complexities of building democracy—problems of security, legitimacy, local ownership, the interplay of cultural, religious and democratic values, the importance of the “process” of decision making as well as design of political institutions, and the need for a very long term perspective. The approach to democracy building and conflict management needs to be based on extensive dialogue and consensus building with local stakeholders. It also needs to draw on comparative experience in other situations which proved to be very relevant⁵⁸. Also the democratic governance must be seen to have an instrumentalist value and relevance to improving human development in order for stakeholders to buy-into the culture of democracy. But a caveat is

⁵⁷ The views expressed in this paper do not necessarily represent those of International IDEA.

⁵⁸ International IDEA (2004) “IDEA Framework Programme of Activity 2004-6”, Stockholm, Sweden.

necessary here. It is that, while the core tenets of democratic governance have universal validity, the UNDP Human Development Report (2002)⁵⁹ reproves that “The democracy a nation chooses to develop depends on its history and circumstances- countries will necessarily be “differently democratic.” Democracy that empowers people must be built it cannot be imported”.

Participatory development and democratic governance are increasingly recognised as key factors for an enabling environment for the achievement of the Millennium Development Goals (MDGs).

Democracy assistance in the broader context of development cooperation has thus become commonplace, though most frequently focused on the performance of public institutions ("governance") and on anti-corruption strategies, rather than on improving the mechanics of the political system itself. Local ownership is frequently emphasised as a principle of development cooperation, but this tends to stop at dialogue with the beneficiary government and maybe a few NGOs. It is rare that donors urge their partner governments to engage in full consultation with their parliament on the political issues of development, which could serve to strengthen the legitimacy of political processes in the newer democracies. Small support may be given to strengthening legislatures and some ad hoc training for political parties, but attention is focussed if at all on involving elements of civil society, bypassing and thus diminishing formal politics⁶⁰.

Despite significant steps towards democratisation in the last two decades, problems of consolidation are evident. In several countries, semi-authoritarian regimes persist, manipulating electoral processes or otherwise allowing little space for opposition forces. Elsewhere, elections may produce a change of governing elite, but little change in levels of corruption or delivery on election promises. Electoral processes may be well managed in many countries, but voter registration may be biased and inadequate, election systems may freeze out specific interests and ignite tensions. In older as well as newer democracies, ethnic, religious and social divides tend to become magnified and polarized in the discourse of competing political forces. Political parties across the globe fail to inspire trust or respect, and in most countries appear self serving and unable to demonstrate a worthy role between elections. Women continue to struggle to participate in the political system, few party elites being convinced of the value of inclusiveness or representivity. Too often, steps towards democracy may disappoint, and bring few benefits in terms of equality or better governance and leave the people disenchanted.

The situation varies across and within continents. Africa, beset with problems of poverty, debt, HIV-Aids, armed conflict etc, has managed against great odds to move forward in many respects in the last few years. Despite continuing imperfections in elections and chronic corruption, there appears to be a strong popular demand for more and better democracy. The emergence of the African Union, and particularly the NEPAD initiative, has focussed the minds of political elites on the business of responsible economic and political governance and a new sense of collective responsibility would seem to be developing. To give a rather more detailed account on democratic trends in Africa, the pattern that is emerging is that, an overwhelming number of countries have and are transforming their regime types from the authoritarian variant to a more pluralistic type; with constitutionally guaranteed provisions for periodic elections and commitment to civil and political liberties, effective transfer of power and renewal of leadership

⁵⁹ United Nations Development Programme (2002) “[Human Development Report](#)”, New York: UNDP.

⁶⁰ International IDEA (2004) “IDEA Framework Programme of Activity 2004-6”, Stockholm, Sweden.

(although there are evidences of attempts such as in Malawi and Togo to alter the constitution for extended tenure of incumbent presidents). In addition, transparent electoral processes and a more inclusive political system in which minorities and previously disadvantaged groups have gained access to elected and appointed offices⁶¹.

Under the watchful eyes and pressures from an increasingly active civil society and steadily increasing politically-active and mobilized citizens, the level of political participation has been quite high in many African countries as judged by the high voter turnout, even where the credibility and transparency of the electoral process may be suspect. This represents a major turning point in Africa's political transition to democratic governance. With all the imperfections of the nascent political framework, the high level of political mobilization and participation in the electoral process, based on research findings from a number of countries, it suggests the following: a commitment to a peaceful and orderly transfer of power as a preferred alternative to the decades of political turmoil and non democratic means of political competition and a growing (albeit slow) confidence of the electorate in the democratic dispensation and the political and electoral/framework. The more inclusive the political space becomes, the more the likelihood of sustaining the gains made in democratic governance. The issue of deepening democracy remains a serious concern, given the socio-political challenges facing the continent. It is noteworthy that certain states have thus far shown some remarkable resiliency, such as: Ghana, Benin, Botswana, Mauritius, Namibia, Senegal and South Africa in the face of these challenges. The unevenness in the level and depth of democratic governance across countries may be in part due somewhat, to the intractable nature of democracy challenges in the respective countries. The expectation is that the experiences of these countries may provide "demonstration effects" that could provide the forward to other states where the commitment to democratic governance may yet be tenuous and grudging⁶².

External Party Regulatory Environment

Political parties operate within a context of external regulations and environment that either enhances or inhibits their effectiveness. IDEA (2004) research project on political parties identified about five elements of the external regulatory environment that affects parties, namely: registration and de-registration of parties; elections law and/or party law; prevailing elections system; the parliamentary system; and party funding. While in the majority of countries political parties are required by law to be registered, others (e.g., Mauritius and Zimbabwe) did not require formal registration. However, conditions or criteria for the registration of parties have been significantly liberalized as in the case of some West African countries (e.g., Ghana, Liberia and Nigeria)⁶³. In many countries that require formal registration of parties, this was usually

⁶¹ Hamdok, A. and H. Kifle (2000) "Governance, Economic Reform, and Sustainable Growth: The Policy Challenge for International Development Organizations", presented at the First International Forum on African Perspectives on Emerging Africa, organized by the African Development Bank and the OECD, Paris: OECD Development Centre.

⁶² Hamdok, A. (2003) "Governance and Policy in Africa: Recent Experiences" in Steve Kayizzi-Mugerwa (Ed.) (2003) "Reforming Africa's Institutions: Ownership, Incentives, and Capabilities", United Nations University Press.

⁶³ Said Adejumobi (2007), "Political Parties in West Africa: The Challenge of Democratization in Fragile States". Report prepared for the International Institute for Democracy and Electoral Assistance (IDEA) as part of its global Program on Research and Dialogue with Political Parties.

conducted under the Societies Act or through the Office of the Registrar of Political Parties.⁶⁴ However, while it is a pre-requisite for parties to register for their legal existence, they are also required to register with the Electoral Management Body (EMB) for purposes of contesting periodic elections.

During elections political parties conduct is usually governed by the electoral law, as well as, the electoral code of conduct. The electoral law and the code of conduct regulate actions of parties in respect of nomination of candidates and election campaign. However, it was found out that in between elections, the internal operations of parties are not governed by any specific piece of law or legislation except party constitutions and internal rules and regulations. Perhaps the most serious factor and that have the most impact on the operations of political parties are the electoral systems in place. They do not only condition the stage for electoral contest, hence electoral outcomes, but also influence the form and substance of party systems too. Plurality-majority system or FPTP is presumed for promoting two-party systems, while proportional representation systems are noted for promoting multi-party system. However, in practice, as is observed in SADC region (which is also marked by largely dominant party system irrespective of the adopted electoral systems). As it is clearly observed that, Botswana a long-enduring dominant party system under conditions of the FPTP, while South Africa is also a dominant party system under conditions of the PR⁶⁵.

Furthermore, the parliamentary system is yet another external factor influencing the way parties operate and their effectiveness as key actors in the democratic process. However, one of the most controversial external factors for party operations relate to funding political activities. To be able to perform the tasks expected of them parties need to generate income. The reality is that it is often the lack of financial resources which prevents certain groups and leaders from achieving political participation through representation. Even the gender imbalance in parliaments across the world can partly be explained by the inequalities in access to funds. Political financing is relatively under-regulated in Africa and in general the raising of funds is a matter of unregulated self-help. If there are strict regulations these are often not enforced. The phenomenon of a candidate owning a party as a businessperson is fairly frequent and the differences in getting financial resources between governing and opposition parties seems to be greater than elsewhere in the world. One major reason for the relative absence of public funding is the partisan interest of the ruling parties. The opposition which stands to benefit the most from the adoption of regulations that enhance transparency and limit funding and spending has usually been too divided and too weak to influence these provisions strongly. A significant source of income for political parties in Africa comes from private donations, and all parties depend on it to varying degrees. Donations from citizens living abroad are particularly important for opposition parties⁶⁶. However, instead of a blanket party funding, one can argue for targeted financing for important decisive moments in competitive politics: that is elections and election campaign funding.

⁶⁴ Khabele Matlosa (2006) "The State of Political Parties in Southern Africa". Report prepared for International Institute for Democracy and Electoral Assistance (IDEA) as part of its Programme on Research and Dialogue on Political Parties.

⁶⁵ Khabele Matlosa (2007) "Are Political Parties Agents of Democratization in Southern Africa? Paper presented at the International Conference on Sustaining Africa's Democratic Momentum, Johannesburg, South Africa.

⁶⁶ International IDEA (2003) "Funding of Political Parties and Electoral Campaigns". Handbook Series, Stockholm, Sweden.

African Political Parties Structures: Issues of Internal Party Democracy

In the last 50 years there have been two major developments, as far as, political mobilization is concerned, in Africa: the period preceding political independence in the 1960s, and shortly thereafter, and the era of multiparty political competition since the early 1990s. In both periods, political recruitment has tended to follow the ethnic regional and linguistic cleavages. In a few states notably mainland Tanzania, Ghana (1951-61), Somalia (1960-67), Burundi (1960-65), Botswana, and Malawi (1958-64), nationalist parties with broad-based national following emerged. However, in most states, political parties in the 1950s and 1960s tended to have restricted regional and ethnic following, often despite the best intentions of their leaders.⁶⁷ Ethnic, regional or religious cleavages and patronage all affect internal party democracy, as political parties become either properties of their political leaders or democratic institutions and instruments for the recruitment of democratic leaders. Internal party democracy as can be observed in the selection of candidates, leadership contests, regular membership conventions, and internal rules to discipline the party leadership and hold it accountable to party members is in short supply in all the major political parties in Africa. Invariably, small core committee members decide party affairs and policy⁶⁸.

Many African political parties—especially dominant ones—engage in internal ‘dissent management’ leading to autocracy. They curb voices within the party and restraint MPs and other members who disagree with leadership positions. They tend to exercise strict control over the selection of party officials and candidates for public office. There are four major internal performance challenges for political parties, these are: selection/election of the party leadership; party primary elections; management and administration of the internal affairs of the party; and policy/program development⁶⁹.

With some exceptions, party leaders use their privileged position to enrich themselves at the expense of the majority. Most African political parties are not democratic; they tend to exclude ordinary, mostly uneducated people from the political process, and are elitist and non-transparent. In some cases, non-elected wealthy and powerful party members conspire with the state to control the party, thus creating a situation in which the legislative or political checks and balances on the Executive Branch are subdued. Although the situation has improved substantially in many countries since the early 1990s, checks and balances and the financial transparency of party leaders remain a very serious concern. The current data on political party leadership indicates that, in most cases selection rather than election is the rule. Party leaders rise to fame within the rank and file of their parties, due to patronage relationship that characterizes party leadership and constituencies. Election in most cases is merely a nominal and an empty formality, except in cases where a party leader is challenged from within by hopeful and determined rivals.

⁶⁷ M. Chege (2007) “Choosing Electoral Systems to Consolidate Democracy in Africa”. Paper presented at the International Conference on Sustaining Africa’s Democratic Momentum, Johannesburg, South Africa.

⁶⁸ M. Salih (2007) “African Political Parties: Challenges for Sustained Multiparty Politics a Synthesis. Paper presented at the International Conference on Sustaining Africa’s Democratic Momentum, Johannesburg, South Africa.

⁶⁹ Khabele Matlosa (2007) “Are Political Parties Agents of Democratization in Southern Africa? Paper presented at the International Conference on Sustaining Africa’s Democratic Momentum, Johannesburg, South Africa.

The process of nomination of party candidates for purposes of contesting elections tends to be filled with disagreements and disputes due to the manner in which it is executed by the party leadership. A number of issues become crucial in terms of the legitimacy of the outcome of primary elections: eligibility criteria for party candidacy; election process and procedure for party candidacy; and the type of electoral system used to select party candidates. Problems around primary elections are influenced by issues such as, whether the process emphasizes centralized leadership control or it allows for the party rank and file to participate actively in the selection process. These issues are common in almost all the African countries irrespective of the electoral model adopted. However, it is much more evident in those countries that are practicing the FPTP, which easily allows candidates to contest elections in their independent capacity. The challenge revolves around the degree of openness when nominations for candidates are made. Parties need to open up to their rank and file membership for the collective ownership of nominations and party lists. In fact, it is desirable that an independent and impartial body is engaged and involved during party nominations and drawing of party lists. This ensures that the process is monitored and observed by an external impartial body as in the case of the party list development process in South Africa which is facilitated and observed by EISA for various political parties⁷⁰.

Management of the internal affairs of the party is an important measure for the extent to which intra-party democracy is deepening in most of African countries. This issue is inextricably linked to the one around party leadership in some sense, but it is also dependent upon the ideological clarity and distinctiveness of each party, as well as, the relevance of its manifesto and programme. The management of party affairs involves the day-to-day running of party affairs, building of national, provincial, district, community and village branches of parties, management of party resources both human and financial. This also includes the development of manifestos and programmes as well as the organization of regular meetings and conferences for parties. In those countries where the leadership of parties is rather autocratic then obviously the management of parties tends to be less transparent and accountable to the party rank and file. In others where the leadership is more open and fairly democratic the management of parties tends to be more transparent and accountable. It is imperative, therefore, that parties strive for an efficient, transparent and accountable management of party affairs if intra-party democracy is to be recognized and institutionalized.

Policy and programme development determines the degree of effectiveness of parties especially when it comes to mobilisation of support base and contestation for state power. In this regard, what is crucial is how parties develop their policy positions by way of programmes and manifestos. By and large, political parties experience difficulties developing policies and programmes. Parties hardly ever develop clear-cut ideological positions on a variety of issues. As a result, most of the political parties across the continent (with few exceptions) show signs of commonalities in ideological outlook and this situation presents the electorate with little political menu from which to make their choice during elections.

⁷⁰ Khabele Matlosa (2007) "Are Political Parties Agents of Democratization in Southern Africa?" Paper presented at the International Conference on Sustaining Africa's Democratic Momentum, Johannesburg, South Africa.

Women's Political Participation

Gender equality is a crucial standard for the entrenchment and institutionalization of intra-party democracy. The African experience in respect of women empowerment in both quantitative and qualitative terms is a mixed bag. With Rwanda having the highest record of parliamentary representation in the world, yet there are countries with less than 10 percent women representation in national assemblies (e.g., Kenya, Egypt, and Nigeria). It is indeed observed that an electoral system can either smooth the progress of or hinder greater women's participation in governance. Clearly the PR system seems more acquiescent to and contributing to enhancing gender equality in politics and increased participation of women. The opposite is true for the FPTP system. Although PR, in and of itself, is not a sufficient guarantor for improved women's participation in the legislature, it is surely a catalyst for gender equality in the political governance arena.

Challenges to Political Parties in Africa

Strong and sustainable democracy is dependent on well-functioning political parties. Political parties are crucial actors in bringing together diverse interests, recruiting and presenting candidates, and developing competing policy proposals that provide people with a choice. In a democracy there is no substitute for open competition between political parties in elections. Throughout the world, however, political parties find themselves in crisis, unpopular and increasingly distrusted, suffering declines in membership and often failing to attract or mobilize new intellectual and organizational energy.

Weak parties jeopardize democratic political systems, not least in emerging or restored democracies. Political parties are expected to play a particularly active and responsible role in the process of democratization, but struggle to organize and legitimately finance themselves. Parties are supposed to lead, represent and educate their constituencies, which tend to expect rapid dividends from democracy as well as impeccable behaviour on the part of leaders. Parties everywhere have the potential to be effective and accountable, but they face many challenges. The political context and the legal environment in which they function, as well as, their systems of internal organization, management and operation require attention and are often in need of reform.

The majority of African countries—where IDEA research⁷¹ on political parties was conducted—seemed to face a common challenge of democratic deficit which results from political institutions, especially political parties, which are poorly resourced, undemocratic and less accountable to the public and their members. The myriad of salient gaps which undermine the ability of political parties to serve as agents of democratization included:

- Lack of policy programmes, policy coherence, and participation of members in party policy development;
- Lack of transparency in the funding of political parties;
- Capacity deficit in the political party leadership;

⁷¹ Global International IDEA Research Programme on political parties. In Africa the research programme covered 27 countries in three regions, namely: Eastern, Southern and Western Africa.

- Inadequacy of the legal framework to provide for effective functioning of political parties as agents of democratization;
- Corruption and incumbency abuse;
- Poor participation and representation of women and minority groups in political party activities;
- Lack of equity among political parties to access media and other public resources necessary for fostering free and fair electoral competition;
- Poor interface between political parties and civil society as co-participants in the ecology of governance; and
- Negative role played by money in political party operations, including in leadership renewal and selection of election candidates.

Conclusion

The analysis and the approach adopted in this paper suggest that, democracy is a process that has no short cuts. There is a need for a long-term perspective on democracy. The democratic governance must be seen to have an instrumentalist value and relevance to improving human development in order for stakeholders to buy-into the culture of democratic governance. Also while the core tenets of democratic governance have universal validity, the democracy a nation chooses to develop depends on its history and circumstances—countries will necessarily be “differently democratic.” Democracy that empowers people must be built—it cannot be imported.

Strong and sustainable democracy is dependent on well-functioning political parties. Political parties are crucial actors in bringing together diverse interests, recruiting and presenting candidates, and developing competing policy proposals that provide people with a choice. In a democracy there is no substitute for open competition between political parties in elections. Throughout the world, however, political parties find themselves in crisis, unpopular and increasingly distrusted, suffering declines in membership and often failing to attract or mobilize new intellectual and organizational energy. Also the majority of African countries seemed to face a common challenge of democratic deficit which results from fragile political institutions, especially political parties, which are poorly resourced, less than democratic in an organizational manner, and less than accountable to their members and the general public.

It seems that there is a serious gap and knowledge about how political parties are managed and internally organized, how their programmes are developed (and in fact the content of these programmes and how the global context affects them). Also what mechanisms parties have in order to implement these programmes once in government, or how opposition political parties develop policies to influence government programmes by actively referring to and improving their own. There is therefore a need for capacity development programmes on political party management and organization in order to increase their effectiveness, transparency and accountability. In addition, more efforts are needed to find ways in which to curb domination by

This paper does not represent US Government views.

ruling parties through the abuse of state funds and resources. Independent audit functions can be introduced, but parliamentary committee systems can also contribute to transparency in this regard. The establishment of a code of conduct for ruling parties and opposition in Africa could be another important step in the right direction.

This paper does not represent US Government views.

This page is intentionally left blank.

The Institutionalization of Democracy in Africa

By Jeffrey Herbst⁷²

Over the last 15 years, a revolution has occurred in Africa: routinely scheduled elections are now the norm in the overwhelming number of countries across the continent. Of course, these elections vary immensely in quality and the mean level may not be very impressive. In addition, a large number of the institutions necessary to support democracy—including parliaments, courts, and a free press—are either sadly lacking or severely compromised in many countries. However, it is critical to remember that as late as 1989, multiparty elections were held in literally only a handful of countries and there seemed little prospect for change. The electoral revolution that swept Africa has been swift and dramatic. It is also historically unprecedented: never before have so many poor countries with such weak institutions attempted to democratize at once.

In recent years, perhaps inevitably, the rate of positive progress has declined. The inevitable question is whether democratization has reached a high point and will follow the life cycle of previous regime changes in Africa (including the collapse of post-independence democracies and the collapse of one-party rule) and start to recede or if regularly scheduled elections—albeit of continuing and variable quality—and the other institutions of democracy have now become institutionalized so that the form of democracy will be a permanent part of the African landscape. This very important issue has become even more salient with the rise of China and fears that the international consensus that democracy should be promoted in Africa will deteriorate given Beijing's political and commercial stance of not interfering in the domestic affairs of African countries.

Democracy's Big Win

It is important first to examine the context in which African democratization now occurs. In particular, democracy has won the intellectual argument across Africa. In the 1960's, there were sincere (and, of course, a great many insincere) arguments made that democracy was not appropriate for Africa, most notably by Julius Nyerere and other theoreticians of the one party state. In the 1970's, there were arguments that military men or benign authoritarians were necessary to solve Africa's economic problems. At the same time, there were also a number of countries that had adopted communism as their official ideology. In contrast, today, while the urge to democratize across Africa is hardly uniform and there are many who have used current political developments for their own ends, there is no intellectual alternative to democracy. Even Robert Mugabe continues to sponsor elections, although he also tries (usually but not always successfully) to manipulate them for his own purposes. As long as there is no intellectual contender to democracy, the prospects for further democratization remain at least positive. Implicitly, I am arguing that the significant and inevitably increasing Chinese presence in Africa will not pose an intellectual alternative to democracy, irrespective of Beijing's eventual commercial and political stature. The Chinese have made it clear that they are not interested in interfering in the domestic affairs of countries and are certainly not pushing their own model of widespread political repression amidst high levels of growth. Indeed, few could argue given the

⁷² Provost, Miami University. Herbstj@Muohio.edu.

differences in scale, location, technology, and history that there are many analogues at all between China and African countries.

Actual Evolution of Democracy in Africa

It is important to understand what has and has not happened in Africa since 1989. The most important development has been the fall of a large number of authoritarian one-party or military regimes that claimed a monopoly on political power. These have been replaced by some clearly functioning democracies but, more often, by regimes that have the form of multiparty elections but where either authoritarians manage to stay on by adopting the form of “democrats” or where elections are a regular occurrence but not run well. The gray area that African countries now occupy is clearly demonstrated by statistics from Freedom House. Compared to 1989, there has

	1989	2007
Free	3 (7%)	11 (23%)
Partly Free	11 (24%)	21 (45%)
Not Free	32 (70%)	15 (32%)

been a dramatic increase in the number of countries that are classified as “free.” However, the most significant movement has been from the “not free” category (the dominant category in 1989) to “partly free” (the most populated category in 2007).⁷³ This movement is dramatic and, given the number of countries involved, arguably suggests that Africa has been the locus of the most widespread political change since the end of the Cold War.

The 11 countries rated as “free” by Freedom House (Benin, Botswana, Cape Verde, Ghana, Lesotho, Mali, Mauritius, Namibia, Sao Tome, Senegal, and South Africa) vary considerably. They have different colonial histories, are located in diverse parts of the continent (although there is a striking East African absence), and have very distinctive geographies. At the extremes, it is hard to say exactly what Cape Verde and South Africa have in common.

However, there are perhaps two characteristics that are widely shared by the group that may be important. First, the majority are very small. Indeed, ten (once giant South Africa is removed) have an average population of 6.2 million, compared to the African median of 8.5 million.⁷⁴ Six of the countries (Botswana, 1.8 million; Cape Verde, 495,000; Lesotho, 1.8 million; Mauritius, 1.2 million, Namibia, 2 million; Sao Tome, 152,000) have two million people or less. Only one (South Africa, 46.4 million) can be considered very large. Thus, the percentage of Africans who are living in “free” countries is considerably lower than the percentage of countries that have been given that label. In contrast, the three countries that account for 36 percent of Africa’s

⁷³ Data is from the Freedom House web site www.FreedomHouse.Org. 2007 data is from the section “2007 scores released” while the 1989 data is calculated from the historical statistics page.

⁷⁴ Population data downloaded from the World Bank, World Development Indicators Online at www.worldbank.org.

population (Nigeria, 138 million; Ethiopia, 70 million, Democratic Republic of the Congo, 56 million) are either rated “partly free” (Nigeria and Ethiopia) or “not free” (Congo).

There are several reasons why small size may lend itself to political liberalization. It is easier to manage small countries as leaders have a better understand of emerging issues and know many of the principals personally. In large countries, in contrast, significant political developments occur far from the capital and are hard to control because weak, poor governments do not have the institutional capacity to know what is going on, much less to respond in a timely manner. Small countries are likely to have fewer and less complicated ethnic and regional divisions compared to larger countries. Thus, all three of the largest African countries have fought brutal civil wars that were fuelled by regional and ethnic differences.

The second characteristic the group of “free” countries share is that only Botswana and (arguably) South Africa are hard mineral exporters and none produce oil. The other countries have an export portfolio that is more dependent on agricultural exports. As has been widely noted, a political economy based on hard mineral exports, most notably oil, fuels authoritarianism because so much of the country’s total export revenue is captured by central government. These relatively large financial flows help support governments that would otherwise have collapsed and makes it very hard for authoritarians to walk away from state. Indeed, the one country that has less than one million people and that is rated as “not free” is Equatorial Guinea, also the only one of that group of small countries that has oil. Where states do not have recourse to hard mineral exports, especially oil, the old dysfunctional state sometimes collapsed when economic conditions became bad enough, clearing the way for significant political liberalization.

It would be foolish to venture a prediction about an entire group of countries and certainly the vagaries of individual actions and local dynamics will cause these countries to only roughly move along the same trajectory, with many possibilities for some of them to diverge from the overall group. However, as a group it seems reasonable to believe that the countries currently rated as “free” will continue their current democratic performance and may, in fact, improve. They have relatively easy populations to manage and their export profiles generally line up relatively well with democratic prospects because agrarian based production can benefit large numbers of people immediately. The two larger countries—Ghana and South Africa—have been particularly impressive democratic performers and seem to have overcome whatever problems of scale they face.

The 21 countries that rated as “partly free” obviously pose more analytic difficulties. They⁷⁵ are more numerous and more varied, although they are clearly more populous as a group than the countries coded as “free.” Indeed, their population averages 20 million as a group and is still 11.3 million even if Ethiopia and Nigeria are removed. Thus, the 19 countries (leaving out the two giants) coded as “partly free” are, on average, more populous than those considered “free.” The political problems in managing these larger populations in the process of political liberalization could be an important impediment in the process of political liberalization. The

⁷⁵ The complete list is Burkina Faso, Burundi, CAR, Comoros, Ethiopia, Gabon, Gambia, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Mauritania, Mozambique, Niger, Nigeria, Seychelles, Sierra Leone, Tanzania, Uganda, Zambia.

countries in the “partly free” category also have a potentially more difficult export profile. There are some oil producers (Gabon, Nigeria) and also countries that have hard mineral exports (e.g., Zambia).

A seeming prerequisite for systematic improvements in the democratic performance of the “partly free” countries will be significant innovation that attempts to come to grips with the problems posed by scale and the export profile. By and large, the “free” countries have not experienced that much democratic innovation: their democratic institutions quite closely resemble the West. The telling exception is South Africa, the country that has had to confront the most pressing scale problems and that has a relatively difficult export profile. The South African innovations include a constitution with a notable number of enumerated rights, a powerful constitutional court, a modified form of federalism, and an executive president who is not directly elected.

There will probably be an even greater need for the “partly free” countries to engage in significant constitutional engineering given the structural problems they face in their scale and their export profile. For instance, nuanced electoral systems that take into account regional representation might be relatively more important for “partly free” countries, as would rules governing the devolution of certain powers. The clear precedent is the number of African countries who developed rules regarding how many regions had to be “won” in order for a party to claim a national victory, an attempt (that has worked more or less well in different countries) to incentivize parties to create cross-regional parties. With regard to exports, countries that develop a well-institutionalized regime on how the monies should be spent will reduce tensions around these large flows of revenue and allow greater confidence that losing power will not mean automatically being frozen out permanently from the benefits of the country’s patrimony.

The 15 countries that are “not free”⁷⁶ face perhaps the most daunting structural barriers. They are actually slightly smaller than the “partly free” countries if DRC, Congo, and Nigeria are removed from the calculations (the “not frees” average 9.9 million compared to 11.3 million for the “partly frees”). However, the “not frees” face two more daunting structural barriers. First, there are a number of oil producers, including Angola, Cameroon, Chad, Equatorial Guinea, and Sudan. There are also a significant number who are engaged in or just emerging from conflict, including Côte d’Ivoire, Rwanda, Somalia, and Sudan.

However, this is not an argument that political liberalization is determined only by structural barriers. Among the countries that are coded as “not free” are Eritrea and Zimbabwe. Both have populations that are quite manageable and varied export portfolios, although Zimbabwe was a much richer country at its height than Eritrea. In both, the decisions of the despotic leader and his allies have caused the country to deteriorate politically and economically. Enumerating structural barriers does no more than indicate which countries may face a relatively easier path to democratization. Countries with more difficult population structures and export profiles may have to innovate more and take longer if they are to democratize, although there is no guarantee that they will.

⁷⁶ Angola, Cameroon, Chad, Congo-B, DRC, Côte d’Ivoire, Equatorial-Guinea, Eritrea, Guinea, Rwanda, Somalia, Sudan, Swaziland, Togo, Zimbabwe

At the moment, the only seeming insurmountable barrier to becoming “free” appears to be the possession of significant oil reserves. This is hardly a challenge that is unique to Africa but it is striking how poor the countries with the most bountiful revenue endowment have performed politically. The rise of China will almost certainly pose a significant further obstacle to democratization in the oil-producing countries because their governance problems are so severe and because there will not, in most cases, be a politically powerful domestic impetus for democratization because so many can be bought off by the oil revenue. Of course, even without China, the rapid rise in oil prices in the last few years may have foreclosed on significant possibilities for democratization.

Conclusion

After more than 15 years of tumult and surprising change, the dust is beginning to settle on African democratization and it is possible to discern some potentially significant patterns emerging. In general, the countries that have faced the last daunting structural barriers have performed the best. This is not an absolute rule; certainly, no one in 1989 would have said that South Africa faced only limited barriers to democratization. However, most of the countries that are small and that have amenable export profiles have now made significant progress on political liberalization.

The task now becomes, on a continental basis, more difficult simply because the “low-hanging fruit” has been picked. On average, the countries that are going to democratize in the future will have to undertake more difficult political innovation than those who are ahead of them in the rankings. It is hardly surprising that innovation will be necessary for more political liberalization. After all, countless political experiments failed in Europe because of inappropriate political institutions. However, political innovation does not happen overnight and countries often learn how to construct the proper structures only after several instances of costly failure. It might therefore not be reasonable to believe that the bulk of the countries in the category of “partly free” will follow anything like the timeline of the countries not “free.”

Any country may be able to democratize over the long-term but those countries which, more than 15 years after the Berlin Wall fell, are in the “not free” category face very significant barriers. They need not only to innovate but also to have a significant political disjuncture with the current authoritarian regime or the chaos that surrounds them. The presence of oil in a significant number of these cases only highlights how difficult it will be for these countries to make significant progress.

A detailed review of the composition of African democratization reveals a perhaps more optimistic picture than would be gained simply by looking at a graph of the progress of countries that were becoming successful in political liberalization. First, the achievement of almost any African countries moving into the “free” category in a short period of time given difficult circumstances should not be undervalued, even if we have become accustomed to that development. However, it is not now the case that African democratization has simply “flatlined” or “stagnated.” Rather, in what might be considered the natural profile of liberalization given reasonably discernable structural barriers, countries are at different phases of the process. Again, it is not inevitable that they will progress to the “free” category but the fact that it has taken some time especially for countries in the “partly free” category to complete

This paper does not represent US Government views.

certain liberalization benchmarks should not be viewed as overwhelmingly significant. In the year 2050, a retrospective on African democratization would assign very little importance to the fact that some countries successfully liberalized by 2005 and others by 2015.

Growth Without Prosperity: Democracy, Poverty and Inequality in Africa

By Peter Lewis

Johns Hopkins School of Advanced International Studies

There is a generally recognized link between governance, economic performance, and popular welfare in Africa.⁷⁷ The region's protracted economic crisis and lagging recovery are often traced to the nature of political regimes. Authoritarian governments have misused public resources, impeded the development of markets, and refrained from providing crucial public goods needed for economic expansion. Leading analyses of economic failure in the region have elaborated the roles of dictatorial personal rulers and political systems grounded in patronage relations. The depredations of predatory rulers in Congo (Zaire), Nigeria, Uganda, Kenya, Liberia, Sierra Leone or the Central African Republic have been well documented, while economic mismanagement and authoritarianism in such countries as Tanzania, Zambia, Ghana, Guinea, Ethiopia, Togo and Zimbabwe have also been widely remarked. In other regions, notably Asia and Latin America, the possibility of an "authoritarian advantage" in economic development has been proffered. In Africa, however, it is difficult to escape the association between non-democratic rule and economic failure.

Historically, most African regimes have lacked accountability to their people, as rulers have maintained political control largely through authoritarian institutions and patron-client networks. In clientelist systems, leaders require broad latitude in using public resources, and they rely on ad hoc redistribution to procure support rather than the provision of collective goods such as law, infrastructure, or social services. State revenues are commonly diverted to maintain the support base of regimes, and governments serve as 'gatekeepers' for access to resources, jobs, and market opportunities. The result has been economic stagnation, recurring fiscal crises, and deepening poverty in many countries. The political incentives of elites, and the nature of governing institutions, work at cross-purposes with the requisites of growth and popular welfare.

A Democratic Dividend?

The trend toward democratization that swept the African continent in the early 1990s kindled hopes that political reform could lead to economic regeneration. If governments could become more accountable, transparent, and rule-driven, they would be inclined to perform better and to produce broad economic gains as a basis for support. The presumed link between democratic rule and economic growth has several foundations. At the most general level, there is an 'elective affinity' between democracy and markets. Both systems rely on open information, choice, and decentralized outlets for decision-making. Authoritarian regimes find it impossible to manage the flows of information and pragmatic decisions needed for a viable market economy. Conversely, market systems give rise to information demands and assertive social groups that impel governments to relax control. The fact that all the world's mature democracies are also market systems affirms this association.

Democratic systems also rest on accountability to voters and civic constituencies, which is likely to reinforce pressures on leaders to improve the economy and to provide gains in popular

⁷⁷ This is not universally emphasized. Jeffrey Sachs and like-minded 'aid optimists' are inclined to discount the importance of governance as a determinant of economic performance, stressing instead the region's unfavorable geography, capital shortages, and limited access to global markets.

welfare. In a system characterized by regular elections, political competition, activism among civil groups, and an independent media, politicians will find strong incentives to furnish public goods, expand the economy, and enhance livelihoods for citizens. Amartya Sen suggests that even in circumstances where accountability may be limited, a relatively open public domain of information and popular voice makes it difficult for leaders to entirely disregard public welfare or to commit flagrant violations of rights.⁷⁸ Information and institutions of accountability impel officials toward better performance as a basis for political survival.

A further reason to anticipate improvements in economic management and distribution arises from the sources of democratic transition in Africa.⁷⁹ Economic grievances were prominent among the catalysts of popular protest in the late 1980s and early 1990s, as charges of corruption and malfeasance by rulers were levied by virtually all the opposition movements in the region during this period of political ferment.⁸⁰ A similar animus was evident during later transitions in Nigeria and Kenya. While civic activists and political challengers were not wholly focused on economic concerns, the narrative of deprivation was certainly prominent in movements for change, and important elements of the opposition coalition could be expected to press for better oversight of the economy.

In particular, democratic reforms afforded space for business associations that could lobby for improved business conditions and more open access to markets. During the 1990s, advocates of improved governance also mobilized around such issues as corruption, legal reform, and budgetary transparency. Political change emboldened labor unions and other popular groupings who demanded social services, enhanced incomes, and efforts to improve equity. A renascent civil society, seen in Zambia, South Africa, Ghana, Nigeria, and Kenya, among others, was a potential vehicle for economic change.

The Paradox of Growth without Prosperity

The record of economic change in Africa over the last decade has not borne out this optimism. Many African countries have consolidated macroeconomic reforms, and regional growth has accelerated in the past few years. While improved policies create a foundation for better performance, much of this buoyancy can be attributed to rising commodity prices and new sources of investment from Asia and southern Africa. In most countries economic expansion has not been accompanied by rising incomes or popular welfare. South Africa, Nigeria, Ghana and Tanzania offer but four examples of countries where strong overall economic performance is trailed by badly lagging indicators of public well-being. The ‘disconnect’ between macroeconomic indicators and microeconomic performance is often remarked by officials as well as average citizens. Beyond the anecdotal evidence, data on poverty and human development do not reflect significant improvement, and citizens report discouraging conditions in surveys of attitudes and economic conditions.

Indeed, a crucial paradox of growth without prosperity surrounds Africa’s new democracies. There is sound evidence that political liberalization bolsters economic policy reform and

⁷⁸ Amartya Sen, *Development as Freedom*, New York: Anchor Books, 1999.

⁷⁹ Claude Ake, *Democracy and Development in Africa*, Washington DC: Brookings Institution Press, 1996.

⁸⁰ Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa*, Cambridge: Cambridge University Press, 1997.

enhances some of the institutional requisites for economic performance. Yet there are few signs that these improvements foster significant reductions in poverty or inequality, even when local regimes and external donors appear concerned with such change. This paradox presents a basic challenge for Africa's new democracies. However desirable democracy may be in its own right, political liberalization does not ensure economic regeneration or popular welfare.

The relationships between political and economic reform, and the politics of poverty reduction, remain problematic for researchers, practitioners and African citizens. If democratic rule cannot deliver improvements in livelihood for average citizens, some observers suggest that these regimes will lose support and legitimacy, leading to more contentious and violent politics, or even regime breakdown. Alternatively, citizens in new democracies may separate their evaluation of political and economic "goods" and preserve their commitment to democracy while pressing for improvements in welfare. While the tension between democracy and welfare is evident, the effects on democratic performance and consolidation are less clear.

Comparative Economic Performance

A brief review of economic performance among African regimes can help to frame these issues. Early observations suggested that Africa's new democracies did not reflect advantages in economic performance. At the end of the 1990s, an assessment of key economic indicators for 36 sub-Saharan African states found undistinguished economic records among many democratic regimes in the region.⁸¹ At that time, African democracies averaged slightly lower growth rates, higher inflation, and greater budget deficits than non-democracies. These patterns suggested political business cycles and high spending that could impede growth in democracies.⁸² More recently, however, a number of studies have concluded that democracies do display advantages in economic performance when compared to their authoritarian counterparts. Brian Levy has examined 21 African states from 1975 to 2000, finding that countries pursuing superior policy regimes achieved better economic performance.⁸³ When countries are categorized according to the quality of their adjustment initiatives, the better-adjusting countries are found to be democracies or transitional states, the late adjusters are predominantly non-democratic, and the non-adjusting ('polarized') states were all authoritarian during the period of the study.⁸⁴ A larger multi-country African study by Benno Ndulu, Robert Bates, Paul Collier, et al, strongly affirms the relationship between regime characteristics, governance, and policy approaches to the economy, with resultant differences in economic performance.⁸⁵ Recent work by David

⁸¹ Nicolas Van de Walle *African Economies and the Politics of Permanent Crisis, 1979-1999*. Cambridge: Cambridge University Press, 2001.

⁸² Democracies also registered substantially higher investment spending than non-democracies, which over time could compensate for the growth-hampering effects of inflation and fiscal deficits. See van de Walle, p. 255.

⁸³ Brian Levy, "Are Africa's Economic Reforms Sustainable? Bringing Governance Back In," in Muna Ndulo, ed. *Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation*, Athens, OH: Ohio University Press, 2006

⁸⁴ In Levy's classification, "strong adjusters" include Benin, Burkina Faso, Ghana, Malawi, Mali, Mozambique, Uganda, and Zambia; all but two were electoral democracies by 2000. "Later adjusters" include Cameroon, Chad, Guinea, Madagascar, Mauritania, Niger, Senegal and Tanzania, three of which were democratic by 2000. The 'polarized governance' countries included Cote d'Ivoire, Kenya, Nigeria, Togo, and Zimbabwe, all of which were essentially authoritarian regimes during the 1990s.

⁸⁵ [Benno Ndulu](#), [Stephen A. O'Connell](#), [Robert H. Bates](#), Paul Collier, et al, *The Political Economy of Economic Growth in Africa, 1960-2000*, Cambridge: Cambridge University Press, forthcoming.

Stasavage augments this view, demonstrating comparatively higher expenditures on education in African democracies.⁸⁶

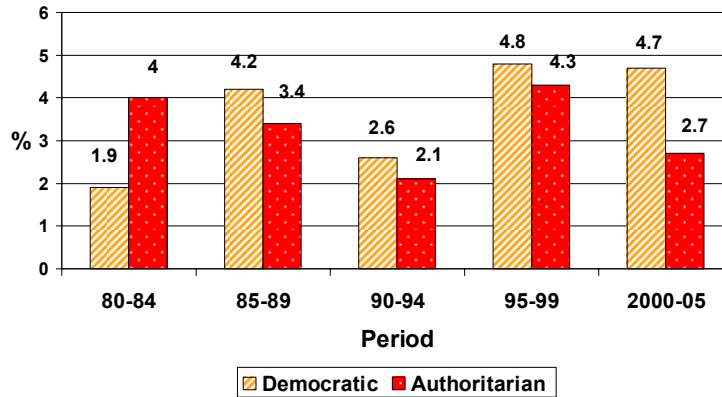
We gain perspective by examining some basic indicators. Figure 1 provides a simple illustrative comparison of 22 African states, showing comparative economic growth from 1980-2005.⁸⁷ Countries are classified according to their regime type in the mid-1990s and then tracked separately to assess their growth over time. The democracies display uneven performance prior to the mid-1990s, when they rise to a relatively healthy average growth rate of nearly 5 percent over a ten-year period. The authoritarian regimes begin with stronger growth and then decline over 15-year period. The non-democracies experience a transitory boost in the mid-1990s before growth slows again. The authoritarian states also decline relative to the democratizing states, essentially trading places over the period under consideration. This revealing comparison concurs with the conclusion reached by other studies: over the longer term, regime type does appear to influence economic performance. In the course of 25 years, countries undertaking political reform have increased their average growth, while those countries abjuring political change have experienced slowing growth.

⁸⁶ David Stasavage, "Democracy and Education Spending in Africa", *American Journal of Political Science*, Vol. 49, No. 2 (April 2005), 343-358.

⁸⁷ Democratic countries: Benin, Botswana, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Tanzania, Zambia. Authoritarian countries: Burkina Faso, Cameroon, Congo (Republic), Ethiopia, Eritrea, Guinea, Kenya (through 2002), Nigeria (through 1999), Togo, Uganda, Zimbabwe.

Figure 1

**Regimes and Economic Growth in Africa
1980-2005**



A more discriminating measure of welfare is the Human Development Index (HDI), which provides a composite measure of average income, life expectancy, education, and literacy. In Tables 2 and 3, the available HDI for 16 countries are tracked over a period of two decades. Table 2 includes eight countries that have been democracies for approximately a decade or more, while Table 3 illustrates countries that have not had a political transition, or did so only recently. The difference between 1990, the eve of transition for most new democracies, and 2004, the most recent date for which data is available, provides a useful comparison. Among the sample of current democracies, five countries saw increases in HDI values and three experienced declines between 1990 and 2004. The countries with declining HDIs all reflect high rates of HIV/AIDS, which depresses life expectancy, a crucial component of the index. For most countries the HDI increment is modest, though the net gain for the entire sample is 0.16, and the average a modest though positive 0.02.

Table 1:

Human Development Index (HDI) in Selected African Democracies, 1985-2004

	1985	1990	1995	2004	Difference [1990/2004]
SSA	0.45	0.46	0.46	0.47	+0.02
Benin	0.37	0.37	0.40	0.43	+0.06
Botswana	0.64	0.68	0.66	0.57	-0.07
Ghana	0.48	0.51	0.53	0.53	+0.05
Madagascar	0.44	0.45	0.46	0.51	+0.07
Mali	0.26	0.29	0.31	0.34	+0.08
Mauritius	0.69	0.73	0.75	0.79	+0.10
South Africa	0.70	0.74	0.74	0.65	-0.05
Zambia	0.49	0.46	0.43	0.41	-0.08
Net across countries [1990-2004]					+0.16
Average					+0.02

Source: UNDP, accessed at http://hdr.undp.org/hdr2006/statistics/flash/statistics_trends.cfm

In Table 2, the non-democratic sample, a different pattern appears. Five of eight countries registered declining HDI values, with the sharpest depressions in Swaziland and Zimbabwe. When added to the slight gains in three countries, the net result among the sample is a markedly negative 0.19, or an average of -0.02.

Table 2:

Human Development Index (HDI) in Selected African Non-democracies, 1985-2004

	1985	1990	1995	2004	Difference [1990/2004]
SSA	0.45	0.46	0.46	0.47	+0.02
Burkina Faso	0.30	0.31	0.31	0.34	+0.03
Cameroon	0.51	0.52	0.50	0.51	-0.01
Congo (Rep)	0.54	0.53	0.53	0.52	-0.01
Kenya*	0.53	0.55	0.53	0.49	-0.06
Nigeria+	0.39	0.41	0.42	0.45	+0.04
Swaziland	0.58	0.62	0.60	0.50	-0.12
Uganda	0.41	0.41	0.41	0.50	+0.09
Zimbabwe	0.64	0.64	0.59	0.49	-0.15
Net across countries [1990-2004]					-0.19
Average					-0.02

* transition 2002

+ transition 1999

Source: UNDP, accessed at http://hdr.undp.org/hdr2006/statistics/flash/statistics_trends.cfm

This comparison suggests a small but noticeable democratic advantage in popular welfare. However, it is necessary to caution that most countries reflect modest changes, and the variations among samples are hardly conclusive. It is also important to qualify the comparison, since there has been no effort to delineate precise dates of transition, or to control for such variables as size, terms of trade, or factors such as HIV/AIDS. Keeping these qualifications in mind, however, we

can reasonably conclude that democracies in Africa perform at least as well as non-democratic regimes in the economic domain, and in some areas their performance is measurably better.

Another way of assessing economic performance is to consider the subjective experience of average citizens. Survey data from African democracies reflects a more restrained assessment of economic conditions and prospects. The Afrobarometer network has completed three rounds of surveys in 12 countries (mostly democracies) between 1999 and 2006. Table 3 reflects trends in Africans' assessments of general economic conditions, their own personal circumstances, and one indicator of poverty: periodic (or chronic) shortages of food.

Table 3:
Personal Assessments of Economic Conditions
(12-country mean)

	Circa 2000	Circa 2005	Change
Present Macroeconomic Conditions <i>[% fairly good/ very good]</i>	29	29	0
Personal Economic Conditions <i>[% fairly good/ very good]</i>	31	27	-4
Gone Without Food <i>[% at least once in past year]</i>	53	56	+3

Source: The Afrobarometer Network, *Where is Africa Going? Views from Below*, Working Paper No. 60, May 2006, available at www.afrobarometer.org

Samples: ca. 2000, n=21,531; ca. 2005, n=17,917. Countries included: Botswana, Ghana, Lesotho, Malawi, Mali, Namibia, Nigeria, South Africa, Tanzania, Uganda, Zambia, Zimbabwe.

These measures suggest poor economic conditions that have not changed significantly in recent years. Citizens express low assessments of the general macroeconomy and their personal circumstances, with scant movement over time. They also register a slight increase in food shortages, with more than half reporting some deficit within the previous year.⁸⁸ Africans in new democracies do not perceive substantial improvements in their economies, and they report few advances in living conditions. While broad measures of macroeconomic performance and welfare show that democracies perform comparatively well, citizens' perceptions in these countries reflect a more sober reality.

Explanations of Performance

Although democracy appears to yield economic benefits over time, regime change has not fostered economic dynamism or substantial improvements in welfare throughout most of Africa. We can seek explanations for these patterns in both domestic and international factors. Political reform in Africa has yielded important alterations in institutions and actors, yet resilient structures of politics limit the depth and extent of change. African politics have long been characterized by strong presidential regimes, dominance by a single party or elite cohort, control through extended patron-client networks, and the dispensation of patronage for political support.

⁸⁸ Although the situation in Zimbabwe is especially acute, reported deficits of food have also significantly increased in Malawi and Nigeria, with more modest increases in Tanzania and Uganda. The 'food shortage' measure is not driven by a single case.

These factors are encompassed in the concept of neopatrimonialism, portraying the tensions between institutional rule and clientelist management that shape most African political systems. Neopatrimonialism is largely incompatible with democracy and economic growth.⁸⁹ As discussed earlier, clientelist politics tend to reinforce inequality, undermine accountability, and hamper the provision of public goods. Further, weak formal institutions, unregulated discretion over resources, and the bias toward consumption rather than investment erode the possibilities for capital formation.

Neopatrimonialism in authoritarian regimes has been closely associated with personal rule, oligarchic control and pervasive corruption. The transition to electoral democracy, however, does not necessarily eclipse neopatrimonial structures and practices. In many African countries undergoing political reform, neopatrimonialism has been reconfigured rather than displaced by the new democratic arrangements.⁹⁰ Presidents continue to exercise broad discretionary powers, even if they must now contend with constitutional restraints and countervailing institutions. The relative weakness of opposition groups and civil society often creates latitude for executive control, prompting leaders to extend their power through formal and informal means. Many elected presidents have adapted patronage structures, cultivating crony relationships with key notables and marginalizing political rivals or opponents.⁹¹ Leaders often attempt to manipulate or alter democratic institutions to bolster their control. The extension of term limits, seen in Namibia and (unsuccessfully) in Nigeria, is a further reflection of executive ambition. In weak institutional settings, presidential control fosters many of the problems of government accountability and transparency that characterized earlier systems of personal rule.

The dominance of strong parties throughout the region reinforces the strength of political clientelism. In Mozambique, Namibia, Nigeria, South Africa, Tanzania, and Zambia, for instance, parties have held substantial majorities through several elections, consequently marginalizing the opposition. Parties from the old regime govern in Mozambique and Tanzania, while new parties that took power during the political transition have become entrenched in Nigeria and Zambia. The dominance of ruling parties is mirrored by the circulation of political elites, who may reconstitute networks of control even amidst changing institutions.

Elite groups in transitional democracies often sustain traditional networks or, where the old regime has been sufficiently eclipsed, they constitute new ones. In Tanzania, incumbent party cohorts still govern, while in Zambia and Senegal, the post-transition ruling parties embody veteran leaders from the trade union movement or the traditional opposition. In Nigeria, retired military officers permeate the political parties. Previous executives may also return to power, as did Mathieu Kerekou in Benin and Didier Ratsiraka in Madagascar. Resilient elites tend to reproduce clientelist systems and outlets for patronage. They inherently limit competition, and thus accountability, in the political domain. Clientelism also fosters crony networks among politicians and the private sector. Among these networks, the volatility of electoral politics and

⁸⁹ Bratton and van de Walle, 2001. See also Peter M. Lewis, "Economic Reform and Political Transition in Africa: The Quest for a Politics of Development," *World Politics*, 49, October 1996.

⁹⁰ Ake, p. 139.

⁹¹ Nicolas van de Walle, "Presidentialism and Clientelism in Africa's Emerging Party Systems," [*The Journal of Modern African Studies*](#) (2003), 41: 297- 321.

elite rivalries tend to shorten the time horizons for politicians. Persistent corruption, weak oversight, and politically-driven fiscal cycles typically result from these structures.

The deficits of civil society also hinder accountability and improved government performance. Political reform has undoubtedly opened new outlets for civic expression in much of the region, reflected in the proliferation of associations, independent media, and a wider public sphere. Few countries, however, have developed an autonomous domain of civil society that can effectively press politicians for better policies or economic performance. In such countries as Mali, Senegal, Mozambique, Malawi, Benin, Ghana, or even Nigeria, we commonly find that many associations are small, focused in urban areas, reliant on donor funding, or fragmented regionally and ethnically. Most African democracies have yet to develop habits of effective advocacy and critical citizenship. Even in South Africa, with the strongest tradition of dissent and civic mobilization in Africa, the hegemony of the ruling party limits the efficacy of popular protest.

In consequence there are few coherent lobbies for public goods, or coalitions for reform, in most of Africa's new democracies. With limited countervailing pressures from below, politicians find little inducement to focus their efforts on general improvements for constituents. Instead, elected leaders seek to preserve their standing among ruling networks while dispensing piecemeal benefits to supporters. This generally reinforces distribution through clientelist links rather than programmatic or policy-driven agendas.

A further problem arises from the long-standing institutional deficiencies of Africa's weak states. Democratic rule cannot readily turn back the legacy of state degeneration found in most countries in the region. Elected leaders must contend with feeble bureaucracies, cumbersome government enterprises, sparse public services, deteriorating infrastructure, and in more than a few cases, depleted treasuries. Regime change offers few panaceas for the resource constraints and institutional weaknesses that have accumulated over a period of decades. Countries such as South Africa, Botswana, Namibia and Mauritius provide exceptions to this generalization, but most new democracies in Africa operate under severe limitations of resources and capacity. Weak systems of finance, regulation, information, and law hamper investment and undermine the credibility of incentives offered by policy reform.

These political structures have implications for the extent of reform and the distributional effects of policy change. Politicians in new democracies are reluctant to forgo patronage resources by relinquishing influence over the economy. The slow pace of change in institutions and market structure hampers investment in key sectors such as manufacturing, commercial agriculture or value-added services, that could generate employment and disperse wealth. Further, political elites have often captured rents from privatization, financial liberalization, the removal of subsidies, or trade reform, which limits the dissemination of wider economic benefits.

The International Dimension

Disappointing economic outcomes in new democracies are not only a consequence of domestic political dynamics. Several aspects of the international environment also influence the possibilities for redistribution and poverty reduction. First, policy choices for African regimes remain limited. The overarching influence of external donors, led by the multilateral financial institutions (the IMF and the World Bank), has reinforced policy orthodoxy across the region.

This framework emphasizes balanced budgets, low inflation, reduced subsidies, trade liberalization, smaller government, and less intrusive state economic activities. African governments under continuing fiscal pressure are subject to donor leverage, and find it difficult to break from orthodox prescriptions. In terms of resources and political opportunities, African democrats are not drawn to the types of resurgent populism that has recently spread across Latin America. Put simply, they cannot afford it, and they gain little electoral advantage from a populist stance.

More by circumstance than by design, orthodox adjustment policies have had adverse distributional effects in many African countries. In theory, structural adjustment calls for both reductions in government spending and a shift of resources away from less efficient uses toward productive sectors and social services. In practice, governments have recognized that compliance with core macroeconomic indicators—notably fiscal balance, low inflation, and market-determined exchange rates—is often sufficient to sustain a flow of needed resources from the donors. Fiscal balance is often achieved by limiting expenditures and levying user fees on services such as health or education.⁹²

For African leaders, penalizing rural groups or the urban poor is less hazardous than cutting the military budget or divesting state enterprises, which may create large job losses among urban constituencies. While donors do not encourage the contraction of social provisions, they find it difficult to measure short-term performance in these sectors, and they clearly emphasize budget discipline as a condition for assistance. Governments economize in the areas that are least risky, though this often creates hardship among politically vulnerable groups. Redistributive or populist policies are largely precluded by the need for fiscal and monetary restraint.

Donor-sponsored efforts to directly address poverty and redistribution have also yielded modest results. The Heavily-Indebted Poor Country (HIPC) initiative, launched by the World Bank and IMF in 1996, is an effort to substantially reduce debt loads in countries following prudent economic policies, with the intention of freeing resources for investment and social provisions. The poverty alleviation goals of HIPC have been accentuated through requirements for Poverty Reduction Strategy Papers (PRSPs) on the part of debtor countries. The PRSP process calls for plans to channel the resources earned from debt cancellation toward services and programs for deprived segments of society. Another initiative, the US-sponsored Millennium Challenge Account, provides significant amounts of supplementary aid to countries that meet benchmarks of economic responsibility and good governance.

These policies appear to support desirable priorities in benign governments, but the results have not been unambiguously positive. Many of these programs are excessively bureaucratic and cumbersome, resulting in the slow delivery of resources and indefinite outcomes for target groups. Moreover, PRSP and MCA processes are often criticized for absorbing energies and resources from weak African bureaucracies that are already overextended, thereby straining rather than building institutional capacity. While some of the region's new democracies have

⁹² Survey data suggests that many Africans are willing to accept user fees if the quality of service improves. Unfortunately, this is not often the case. In many instances, user fees limit access to services while education and health remain underprovided.

reaped benefits from debt relief and aid premiums, it is not clear that these resources have significantly reduced poverty or improved welfare in recipient countries.

Finally, it should be noted that African countries, regardless of regime, continue to face hindrances in trade and investment that limit their potential for growth. Democratizing states in the region have few advantages in gaining access to overseas markets, offsetting the effects of agricultural subsidies in industrialized countries, or soliciting investment in crucial productive sectors. The US African Growth and Opportunity Act (AGOA) has opened export windows for several African countries, many of which are democratizing states undergoing economic reform. Yet the intractability of subsidy issues in the Doha Round of trade negotiations shows that African exporters of agriculture commodities still face substantial obstacles to improving their performance. Beyond the observable barriers to expansion, the handicaps of poor reputation and weak credibility in global markets can be seen in feeble investment responses, even in stable democracies such as Ghana, Benin, Mali, Tanzania or Namibia.

Prospects for Change?

In this overview, I suggest that Africa's new democracies have reflected limited progress in revitalizing economies or alleviating poverty. This should not be taken to mean that regimes are irrelevant to economic outcomes, or that the region's economic problems are intractable. Democratic governance clearly provides stronger counterweights to predatory rule, blatant neglect, and purely self-regarding behavior by leaders. Democracy fosters offsetting institutions to reign in the arbitrary power of the executive. More stable and transparent legal settings (even where they are flawed) strengthen the potential for investment and exchange. Further, political liberalization affords space for civic mobilization, public interest lobbying, and independent media outlets that can disseminate information and hold leaders to account. Electoral democracy may not be sufficient to transform African economies, but it appears necessary for economic advancement. A growing body of data and analysis affirms a democratic advantage, however modest, in economic performance throughout the region.

In order for African democracies to move toward the next stage of reform, however, several factors must come into play⁹³. The first is the selection and orientation of leadership. In several African democracies including Ghana, Benin, Nigeria, Kenya, Mozambique and South Africa, a newer generation of technocratic, reform-minded leaders is making a mark in the political scene. Institutionalized electoral systems and more active opposition help to shift incentives for political aspirants, and they create opportunities for the entry of "outsiders" into the political sphere. Some of these elements can help to drive change beyond the limits of current political and institutional arrangements.

Forward-looking politicians need allies among constituencies and civic groups, pointing to a second important factor, the formation of broader coalitions for change in democratizing states. In much of Africa, reform elements in the civic sphere currently lack cohesion and focus, yet the possibilities for more capable and better-coordinated movements for change can be glimpsed in

⁹³ Peter Lewis, "A Virtuous Circle? Democratization and Economic Reform in Africa," in Calvin Jillson and James Hollifield, eds., *Pathways to Democracy*, London: Routledge, 2000. See also Henry Bienen and Jeffrey Herbst, "The Relationship between Political and Economic Reform in Africa," *Comparative Politics*, Vol. 29, No. 1. (Oct. 1996), 23-42.

several countries. A third factor is the continued need for institutional development in democratizing states. This is an incremental and uneven process, but there is evidence from many countries that governments are making headway in stemming corruption, improving the legal environment, building workable financial systems, and regulating key sectors such as banking and telecommunications. Institutional development in democratizing states is a crucial requisite for sustainable economic expansion and a prospect of poverty reduction.

The Political Risks of Economic Failure

As a final reflection, it is important to revisit the earlier questions regarding democratic legitimacy and citizen support. If Africans are discouraged by their economic circumstances, does this create political disillusionment, or possible attraction to non-democratic alternatives? Turning again to survey data from the 12-country Afrobarometer sample, Table 4 shows Africans' assessments of democratic performance, as well as their overall commitment to democracy and their patience with the economy. African citizens are clearly disappointed by the performance of democracy, yet they are fairly resilient in their general commitment to democracy as a political regime. While average satisfaction with democracy has declined markedly, support for democracy has subsided only modestly. Without more sophisticated regression analysis, it is difficult to say how much of this declining confidence arises from economic concerns, and how much from other factors (e.g., corruption, insecurity, opposition grievances, etc). Yet this measure does not show a regional crisis of democratic legitimacy, notwithstanding obvious widespread dissatisfaction with economic conditions.

Table 4:
Attitudes toward Democracy and the Economy
(12-country mean)

	Circa 2000	Circa 2005	Change
Satisfaction with Democracy % fairly/very satisfied	58	45	-13
Support for Democracy % agree: “democracy is preferable to any other kind of government”	69	61	-8
Patience with Democracy % agree: “our present system of elected government should be given more time to deal with inherited problems”	46	56	+10
Economic Patience % agree/agree very strongly; “In order for the economy to get better in the future, it is necessary for us to accept some hardships now”	46	57	+11

Source: The Afrobarometer Network, *Where is Africa Going? Views from Below*, Working Paper No. 60, May 2006, available at www.afrobarometer.org

Samples: ca. 2000, n=21,531; ca. 2005, n=17,917. Countries included: Botswana, Ghana, Lesotho, Malawi, Mali, Namibia, Nigeria, South Africa, Tanzania, Uganda, Zambia, Zimbabwe.

When we consider patience with current conditions, the impression of resilience is strengthened. An increasing share of African citizens is inclined to wait for democracies to deliver better results, and to accept present economic difficulties in the hopes of future improvements. In African democracies, about six in ten citizens support the system over all others, and nearly the same proportion are prepared to show forbearance with current problems. The shortcomings of economic performance in democratizing Africa do not yet appear to pose a critical challenge to the sustainability of democracy. This does not lead us to disregard the questions of how economic inertia affects average citizens, or the quality of democratic development. It does suggest some merits of democracy and opportunities for economic change in a setting of political reform.

This paper does not represent US Government views.

This page is intentionally left blank.

The Judiciary, Constitutionalism and Human Rights

By Muna Ndulo⁹⁴

Introduction

One of the most important political and legal conceptions in democratic governance is that of the rule of law. It has become a central focus of domestic and international efforts to promote good governance. Although there is no consensus on what the term encompasses, many international development agencies have rule of law programs.⁹⁵ Constitutionalism as an element of the rule of law largely depends on how the limitations imposed on government by the constitution are interpreted and enforced. As Nwabueze⁹⁶ has observed “liberty implies the limitation of power by law and the one institution above all others essential to the preservation of the rule of law has always been and still is an honest, able, learned, and independent judiciary.”⁹⁷ The maintenance of an independent and accountable judiciary is fundamental to constitutionalism and the protection of human rights. The world wide emergence of constitutions with wide-ranging and justiciable Bills of Rights has rekindled public awareness and interest in the role of courts as forums through which to seek individual and collective justice and the sustenance of a democratic culture. In democratic states courts are asked to review government’s acts for compliance with the Bill of Rights. Only an independent judiciary can effectively review governmental acts and ensure the constitutional guarantee of human rights. Review of governmental acts by an independent body in the interests of maintaining the efficacy of the constitutional guarantee of individual rights is an essential and important mechanism of democratic governance. Such a review being at the instance of an individual assures the individual’s personal participation in government. African courts have a disappointingly mixed record in operating as effective checks on governments leading to unaccountable governments. Weak and unaccountable public institutions have largely been responsible for the failure of governance and economic decline in Africa. In this paper I consider the challenges that impact on the effectiveness of African judiciaries. The paper has six sections. The first section considers judicial independence, the second section deals judiciary and non judicial functions; the third with representation in the judiciary, the fourth section with financial autonomy, the fifth with the status of the judiciary and sixth evaluates the effectiveness of the judiciary in Africa.

Judicial Independence

Judicial independence is recognized in many international and regional human rights instruments⁹⁸ and constitutes one of the cornerstones of good governance.⁹⁹ The principle is also

⁹⁴ Professor of Law, Cornell Law School; Director of Cornell University Institute for African Development.

⁹⁵ Joel M. Ngugu, Policing Neo-Liberal Reforms: *The Rule of Law as an Enabling and Restrictive Discourse*, University of Pennsylvania Journal of International Economic Law, Vol. 26, Fall 2005, No. 3, p.523-534.

⁹⁶ B.O. Nwabueze, *Ideas and fact in Constitution Making*, The Morohundiya Lectures, Faculty of Law University of Ibadan, Spectrum Books Limited, Ibadan, 1993, p189.

⁹⁷ Ibid.

⁹⁸ “Everyone is entitled to a fair and public hearing by an independent tribunal . . .” (art. 10 Universal Declaration of Human Rights); ‘. . . everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’ (art. 14.1 International Covenant on Civil and Political Rights). See also art. 7(1) African Charter on Human and Peoples’ Rights.

⁹⁹ Its significance has also led to the development of the *United Nations Basic Principles on the Independence of the Judiciary* that are designed to ‘secure and promote’ judicial independence (para 1). See also the similar views of the International Commission of Jurists, *States of Emergency: their Impact on Human Rights* ICJ, Geneva, 1983, pp. 434-7 and J. Nyerere, *Freedom and Socialism*, Oxford, 1968, pp. 109-14.

enshrined in all democratic constitutions¹⁰⁰. It involves two principles; (a) that judicial power must exist as a power separate from and independent of, executive and legislative power, and (b) judicial power must repose in the judiciary as a separate organ of government, composed of persons different from, and independent of those who compose the executive and legislature.

Whilst discussion of the independence of the judiciary in rule of law discourse often centers on protecting and promoting the rights of judges in the higher courts, we must also recognize that magistrates require comparable protection, not least because it is they who deal with the vast majority of cases, both criminal and civil, and it is upon them that much of the public confidence in the legal system resides. The main pillars of judicial independence are institutional and financial autonomy. These encompass the need for an appropriate appointment procedure, security of tenure, satisfactory conditions of service which the executive cannot adversely affect, the provision of adequate financial resources and appropriate terms and conditions for all those involved in the administration of justice. These in turn are founded on the principle that the exercise of judicial functions is vested solely in the judiciary.¹⁰¹ Yet independence comes at a price. Judges and magistrates must recognize that they are duty bound to provide society with the highest possible standards of service and commitment and that a failure to maintain this is rightly a matter of public concern. As Stephens has observed: ‘What ultimately protects the independence of the judiciary is a community consensus that such independence is a quality worth protecting.’¹⁰²

The Appointment Process

In former British Africa, during the colonial period the judiciary formed part of the colonial legal service. Advancement to the Bench was a matter of promotion from the magistracy or from some other position in the judicial or legal departments such as the office of the Attorney-General. The appointment of judges was a matter for the Governor acting on the instructions of the Secretary of State for the Colonies. Judges technically held office during Her Majesty’s pleasure and were removable at will, although it was well known that they would never be dismissed without reference to the Judicial Committee of the Privy Council.¹⁰³

Such a system was not considered suitable for the newly independent states. A constitutional guarantee of judicial independence was viewed as a necessity, particularly given the political uncertainties and the newness of the states,¹⁰⁴ and the fact that judges would have the challenging task of ruling on constitutional provisions. The mechanism adopted was to establish a judicial service commission.¹⁰⁵ Judicial Service Commissions (JSCs) remain responsible for overseeing

¹⁰⁰ Art. 128(1). See also s.103(1) Constitution of Malawi.

¹⁰¹ S.103(2). See also s.165(1) Constitution of South Africa. On the other hand, Zimbabwe’s already beleaguered judicial system is also threatened by the power of Parliament to vest adjudicating functions in a person or authority other than court. See also the discussion in chapter 10 on the power of the Uganda Human Rights Commission to hear and determine complaints regarding alleged human rights violations.

¹⁰² Noted by S. Cartwright, ‘The Judiciary: Qualifications, Training and Gender Balance,’ in J. Hatchard and P. Slinn (eds.), *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach*, Cavendish, London, 1998, at p. 39. The issue of judicial accountability is discussed below.

¹⁰³ See *Terrell v. Secretary of State for the Colonies* [1953] 1 WLR 331 but note the views of K. Roberts-Wray, *Commonwealth and the Colonial Law*, Stevens, London, 1966, pp. 495-6.

¹⁰⁴ See B.O. Nwabueze, *Judicialism in Commonwealth Africa*, Hurst, London, p. 266.

¹⁰⁵ This did not apply to magistrates who were public servants and whose appointment and promotions fell under the auspices of the Public Service Commission.

judicial appointments in most Africa countries although there remain significant divergences of opinion as to their composition. With one exception, all are chaired by the Chief Justice. As head of the judiciary, this is entirely appropriate. The one issue is over possible excessive presidential influence in the appointment of the Chief Justice and thence over the entire commission¹⁰⁶. The concern is a real one although, arguably, the matter is best dealt with by providing for a suitably independent and transparent appointment system for the Chief Justice. The involvement of other senior judicial figures in the appointment process is also commonplace and necessary, for their experience together with their personal knowledge of potential candidates makes them well qualified to identify suitable individuals for appointment or advancement. Even so, the presidential influence as to the choice of the commission's judicial members is a cause of concern in many jurisdictions¹⁰⁷

Limiting membership of a JSC to the senior judiciary is now outdated and yet many countries continue to do that. Fears that 'outsiders' may seek to unduly influence judicial appointments (or removal) for political or other improper motives are understandable and must be addressed. Yet without a more representative membership, appointments may be (or perceived as being) made as part of an 'old boys' network' designed to maintain the *status quo* and which imports potential bias (unconscious or otherwise) towards particular individuals, political parties or ethnic groups. In addition, there are sometimes fears that members of the senior judiciary are elitist and do not necessarily represent or understand the views of the wider community.¹⁰⁸ These are real concerns and provide strong support for opening up the membership of a JSC to others who have a legitimate interest in, and expectation of, involvement in judicial appointments and removals.

It is certainly desirable to include members from the wider legal community for they can offer peer assessment on fitness for office and can also identify candidates who might otherwise be overlooked through the official channels because of, for example, their anti-government attitudes. Representation by practitioners and law teachers designated by their peers is desirable.¹⁰⁹ Law teachers are often in an excellent position to evaluate the academic capabilities of prospective appointees.¹¹⁰ In addition, this provides an important link between the profession and law teachers. Government representation in the appointment process is also legitimate and is often provided for by the Attorney-General's inclusion *ex officio*.¹¹¹

Opening the commission to lay members is a feature in both South Africa and Uganda. In South Africa the JSC includes six parliamentarians designated by the National Assembly from among its members, with at least three being members of opposition parties represented in the

¹⁰⁶ The Deputy Chief Justice and Principal Judge who were both formerly *ex officio* members of the JSC are also expressly excluded.

¹⁰⁷ For instance, the Namibian JSC includes a judge appointed by the President (art. 85 Namibian Constitution) whilst in Malawi, the judge is designated by the President acting in consultation with the Chief Justice (s.117 Constitution of Malawi). See also the similar position in Kenya and Lesotho.

¹⁰⁸ This was a particular problem in the South African context and helps explain the determined efforts to ensure that membership of the Constitutional Court reflected a broad spectrum of society.

¹⁰⁹ This is the position in South Africa.

¹¹⁰ One advantage here is that it is not uncommon for senior legal academics to have taught the prospective appointees during their legal studies. This is certainly the experience of the current authors.

¹¹¹ As is the case in, for example, Lesotho, Zimbabwe, Kenya and Namibia. The steady politicization of the office emphasizes the need to ensure the independence of other JSC members.

Assembly, plus four permanent delegates to the National Council of Provinces.¹¹² Four members of the public are also included whom the President designates after consulting with the leaders of all the parties in the National Assembly.¹¹³ In Uganda the JSC includes two lay members nominated by the President. A lay presence is supposedly justified on the grounds that the public and their elected representatives have a legitimate interest in the matter and can make it more difficult for political influence to sway appointments. Whilst these are valid considerations, it is still hard to justify the presence of such persons unless they also bring to the commission some specific expertise or experience that is otherwise lacking. It is certainly vital that judges enjoy a significant input in the selection and removal process, but the objective must be to provide for a demonstrably independent body whose membership comprises the necessary range of expertise and experience with which to assess the quality and competence of candidates.

Judicial Appointment and Tenure

Although some have argued that judicial independence requires the removal of political considerations from the appointment process,¹¹⁴ this is not necessarily appropriate. In times of political and economic transformation, in particular, the judiciary must be sympathetic to the country's needs and its membership should reflect broadly the country's gender and racial composition¹¹⁵. Even with a suitably constituted JSC, there remains the question of its role in the appointment process itself.¹¹⁶ Many African constitutions provide that the President must appoint 'after consultation with the Judicial Service Commission.' This is the weakest formulation, for the President is not bound by the Commission's views.¹¹⁷ A stronger approach is one that requires the President to act 'on the advice of' or on the 'recommendation of' the JSC. This implies that the making of the appointment is a purely formal function. It may be argued, however, that the head of government does have a legitimate right to more than just a formal role in appointments. A possible solution here is for the JSC to provide a shortlist of appointable candidates from which the head of government can select his/her preferred candidate(s).¹¹⁸ Whichever approach is adopted, it is essential that candidates for judicial appointment are professionally competent persons of proven integrity who enjoy the confidence of both the governors and governed alike.

¹¹² Their role is limited to dealing with the question of the appointment of judges: see s.178(5) Constitution of South Africa.

¹¹³ S.178 Constitution of South Africa.

¹¹⁴ See e.g., Roberts-Wray *Commonwealth and Colonial Law*, 1966, at p. 478.

¹¹⁵ P.T. Georges, 'The Court in the Tanzania One-Party System' in A. Sawyerr (ed.), *East African Law and Social Change*, East Africa Publishing House, Nairobi, 1967, p. 38.

¹¹⁶ In view of the importance of the office-holder, the position of the Chief Justice is considered separately below.

¹¹⁷ A futile attempt to provide presidential accountability appears in the Zimbabwean Constitution. Here if an appointment is inconsistent with the JSC's recommendation, the President must inform Parliament as soon as practicable (s.84(2)). However, the legislature has no power to overturn the decision and has no duty to even debate the matter. In practice, the task of the JSC is reduced to raising concerns about the suitability of individuals the President wishes to appoint to the Bench.

¹¹⁸ A model here is the appointment of judges to the South African Constitutional Court. Here the President is required to make appointments from a list prepared by the JSC, which contains three names more than the number of appointments to be made. S/he can reject the nominees in which case a supplementary list must be prepared but it appears that the President cannot again ask for such a list. The procedure is necessary because of the multiple appointments to the Constitutional Court, see s.174(4) Constitution of South Africa 1966. The acute shortage of suitable candidates in several SEA states makes such a system more difficult to operate, but it does provide a mechanism for compromise between the JSC and President over judicial appointments.

A different type of safeguard in place in some African countries is a requirement that the appointments of High Court and apex court judges are subject to ratification by the legislature.¹¹⁹ To be a meaningful process, however, requires that it is properly structured, preferably with the matter being considered by a fully representative and suitably qualified parliamentary committee. Given the ongoing weakness of many African legislatures, this attempt to incorporate elements of the presidential system is more likely to have the effect of politicizing appointments rather than providing for an independent assessment as to the suitability of nominees.¹²⁰

Security of tenure is a key to judicial independence and explains the importance of maintaining judges on permanent appointment and by prohibiting the abolition of their tenure of office without their consent.¹²¹ In the crisis in Zimbabwe the government has removed judges from the bench without regard to their tenure. Lack of tenure breeds insecurity and can only lead to compliant judgments.

The Judiciary and Non-Judicial Functions

The use of senior judges to head presidential or governmental commissions of inquiry and the like is relatively common in Africa. In the former British colonies, this practice follows the British tradition and is seen as facilitating the organization and running of the proceedings and helping to reassure public opinion as to the commission's objectivity. Few hard and fast rules are necessary for, as Goldstone has suggested, if judges act in a non-partisan manner 'they can hardly be accused with any justification of displaying bias or interfering with their independence or that of their colleagues'.¹²² However one essential rule is that a judge should not agree to head (or be a member of) a commission in circumstances that affect, or may be seen to affect, the independence of the judiciary or which could undermine the separation of powers.¹²³ Unfortunately, there have been cases where judges have accepted to lead commissions which adversely impact on the independence of the judiciary.

Magistrates

In Africa, magistrates are often the 'forgotten' persons in discussions on judicial independence. This is most unfortunate for they play a crucial role in the entire judicial system given that they hear the vast majority of criminal cases and make other key decisions such as the granting of bail. Magistrates' courts are also the places where the most impoverished; powerless and

¹¹⁹ See, for example, Constitution of Zambia, 1991, art. 93(2). The system was intended to reflect the approach in the United States.

¹²⁰ In the case of Zambia, the relevant parliamentary committee considered that security clearance of candidates was its prime task.

¹²¹ Cf. Kenya where the Constitution of Kenya (Amendment) Act 1988 repealed the security of tenure provisions in the 1962 Constitution. This blatant attempt to make judges serve at the whim of the President provoked considerable internal and external criticism and led to a 1990 constitutional amendment that substantially resorted to the pre-1988 position: see Constitution of Kenya (Amendment) Act 1990. See also G.K. Kuria and A.M. Vaquez, 'Judges and Human Rights: the Kenyan Experience' (1991) 35 *Journal of African Law* 142, at pp. 145-6.

¹²² R. Goldstone, "Do Judges Speak Out?" (1994) 111 *South African Law Journal* 268.

¹²³ See paragraph 24 of *Judicial Ethics in South Africa*. The 'code' was issued in March 2000 by the Chief Justice and other senior judges. See also E. Kahn, 'Extra-judicial Activities of Judges' (1980) *De Jure* 188. Widner notes that Chief Justice Nyalali 'agonized' as to whether to accept President Mwinyi's request to chair the commission on the future of the one-party state in Tanzania precisely because he feared it might adversely affect the independence of the judiciary: J. Widner, *Building the Rule of Law: Francis Nyalali and the Road to Judicial Independence in Africa*, Norton and Company, New York, 2001, pp. 293-4.

defenseless in society often come. If they have no confidence in magistrates and their court officials, perceiving them to be pro-executive and pro-police, this has a significant detrimental effect on society. Not only does it impact adversely on the administration of justice but also it carries with it significant social and economic consequences including potential resort to instant justice.¹²⁴

Yet in many African countries the magistracy faces serious difficulties. Firstly, continuing the colonial practice of retaining magistrates as public servants can lead to their politicization. To counter this, the trend towards bringing magistrates under the auspices of the JSC should become the norm.¹²⁵ Secondly, magistrates often face considerable operational problems including serious structural limitations.¹²⁶ These combined with isolation from a supportive legal community can lead to poor morale and performance. Here the only real solution is for states to provide magistrates with facilities and support comparable to that given to other judges. Thirdly, magistrates often experience poor conditions of service and a general lack of human rights training. Addressing such issues will inevitably take time but the goal must be to ensure that magistrates enjoy, as far as possible, comparable training and conditions of service as judges in the higher courts.¹²⁷ Finally, there remain serious problems relating to court staff. Corruption, inefficiency and lack of a 'service' ethos for court users must be addressed. As with magistrates themselves, the first challenge is to provide appropriate training and conditions of service for such staff.

Towards a Fully Representative Judiciary

Upholding the judicial oath of office to administer justice *to all persons* represents a considerable challenge for judges who are inevitably the product of their social conditioning, education, gender and ethnicity. If they are to discharge fully their judicial oaths and to enjoy the broad confidence of the people, they must be drawn from a wide array of different backgrounds to ensure a better understanding of the experiences of those with whom they will be dealing.¹²⁸

The need to maintain a gender balance within the judiciary is now widely recognized.¹²⁹ As Cartwright notes:

¹²⁴ See further J. Hatchard and M. Ndulo, *Readings in Criminal Law and Criminology*, Multimedia, Lusaka, 1994, p. 94.

¹²⁵ A good approach is that in Malawi where magistrates are appointed by the Chief Justice on the recommendation of the JSC and hold office until the age of 70. See s.111(3) Constitution of Malawi.

¹²⁶ These extend to such basic items as run down buildings, no lockable cupboards to store records and evidence securely, lack of reference materials and inadequate security for personnel buildings.

¹²⁷ Local courts also function in all the SEA states. Given their wide-ranging jurisdiction over family law, succession and the like, their work impacts directly on the majority of the people and particularly those in the rural areas. In practice their structure and operation varies considerably and a discussion on the courts is therefore beyond the scope of this book.

¹²⁸ See, for example, paragraph 7 of the Bloemfontein Statement of 1993: '... it is fundamental to a country's judiciary to enjoy the broad confidence of the people it serves: to the extent possible, a judiciary should be broad-based and therefore not appear (rightly or wrongly) beholden to the interest of any particular section of society'.

¹²⁹ One of the Principles enshrined in the *Latimer House Guidelines* states: 'It is recognized that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights. Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment'. The *Un Basic Principles on the Independence of the Judiciary* state that in the selection of judges there shall be no discrimination against a person on ground of sex (para 10).

This paper does not represent US Government views.

It goes without saying that women start with a better understanding of women's lives because that is our conditioning. It does not mean that women judges are biased in favor of women . . . but because gender means assumptions about men and women . . . it is essential for one half of the population to have one half of the judiciary understand something of their lives while the other half strive to learn more about them.¹³⁰

Much remains to be done for the number of women in the judiciary at all levels remains disappointingly low with very few women sitting in apex courts in African countries. The position is particularly serious at the local court level where the indications are that women are grossly under-represented, this despite the fact that no formal professional qualifications are required and that the majority of cases involve the family and domestic relations.¹³¹ Encouraging equality requires states to identify and tackle the factors that inhibit the entry of women and onto the bench: for example, not imposing the duty upon women to go on circuit or be posted away from their home areas. The 'fast-tracking' of appropriate candidates is also necessary although this should not be at the expense of applying less rigorous qualification requirements on them, for the principle that judicial appointment are made on merit is inviolable. Arguably, the appropriate approach to redressing imbalances is for all levels of the judiciary to have, as an objective, a selection system based on 'merit with bias', i.e., that where two candidates are of equal merit the bias should be to appoint a woman or member of an under-represented minority. But encouraging more women to seek appointment to the bench is only part of the story. It is crucial that steps are taken to ensure equality of men and women entering the legal profession itself.

Financial Autonomy of the Judiciary

Another area of major concern in Africa is funding of the judiciary. Sufficient funding to enable the judiciary to perform its functions to the highest standards should be provided. Appropriate salaries, supporting staff, resources and equipment are essential to the proper functioning of the judiciary. As a matter of principle, judicial salaries and benefits should be set by an independent commission and should be maintained. The salaries and benefits should be secured by law. The administration of monies allocated to the judiciary should be under the control of the judiciary. Financial autonomy is fundamental. Without it, the executive can seriously impact upon judicial independence by limiting the judiciary's access to the funds voted to it by parliament and/or by assuming control of the services and staff upon which the judiciary depends. Two aspects require particular attention.

Providing budgetary independence enables the judiciary to control its own funds and to make use of them according to its own priorities.¹³² This is not the case in many African countries where the judiciary is required to go 'cap in hand' to the relevant government ministry with a request for funds. This results in the decision whether to grant any or all of the funds requested resting with the executive according to its own policy or priorities or presidential dictates.

¹³⁰ Cartwright, 'The Judiciary', p. 45.

¹³¹ For example, a report on Zambia found that there were only 16 female local-court justices out of a total of 907 (1.6 percent). See 'The Dilemma of Local Courts in Zambia' Report of the Inter-African Network for Human Rights and Development, 1998, <http://afronet.org.3a/reports/Lcourts.htm>.

¹³² Ideally a constitution should also provide for a judiciary that is self-accounting. See, for example, s.118(3) Constitution of Lesotho.

Maintaining the Status of the Judiciary

Judicial independence and judicial accountability are closely related. A society must support and protect the judiciary for, as the Zimbabwe crisis demonstrates, judges remain an easy target for those wishing to make partisan political capital. In return, society can expect judges to accept fair and temperate criticism of judgments and to maintain appropriate standards of ethical behavior.

To help retain the sensitive balance between independence and accountability, several African states have developed codes of judicial ethics. These are an extremely desirable means of establishing the parameters for public expectations and criticism of judicial conduct. The method of creation of such codes varies. Providing a statutory code, as in the case of Zambia, raises concern that the legislature or Minister may have too much input into determining the appropriate conduct for judges. In any event a statutory code is arguably inappropriate in that ethical rules are seldom absolute and it is preferable to set out standards of conduct rather than to lay down legally enforceable rules. This has led to the development of codes by members of the judiciary themselves.¹³³ These have the advantage of ensuring that the code has judicial support although, of course, it runs the risk of being viewed from the outside as being a self-serving document. Given its potential relevance to so many, the development of a code is best undertaken as a result of a co-operative effort on the part of judges, the legal profession, legal academics and civil society,¹³⁴ preferably based on internationally agreed standards.¹³⁵

Ideally, such a code should deal with both the exercise of judicial duties and extra-judicial activities and, in particular, require judges to disclose their assets: This is essential to guard against potential corruption. Whilst many lay down rules that are seemingly straightforward and obvious to lawyers, they provide the public with a clear statement as to what they can expect from their judges. It is extremely useful, for example, to know that judges who cause undue delay in the hearing of cases, or serve in a politically sensitive capacity are justifiably open to public criticism. The effectiveness of such codes largely depends upon their wide public dissemination and much more effort is required in this respect.¹³⁶

Curiously, there is rarely any formal procedure for the taking of disciplinary action for any breach of the code of ethics where the complaint does not involve the possibility of removal. In practice such matters are usually dealt with as an internal matter by the Chief Justice with no public admonition of the judge. This is not adequate. To maintain public confidence it is necessary to develop an effective method of upholding judicial accountability as well as offering appropriate protection for judges against unfounded criticism. A suitable approach is the establishment of an independent Judicial Ombudsman that is the link between the judges and the

¹³³ The *Latimer House Guidelines* call for the development and adoption by each judiciary of a code. Such codes exist in Tanzania, Namibia and South Africa.

¹³⁴ A suitable body for drafting, revising and overseeing the working of the code is therefore a fully representative Judicial Service Commission.

¹³⁵ See, for example, the *Bangalore Principles of Judicial Conduct* which was drawn up by the *Judicial Group on Strengthening Judicial Integrity* in February 2001 and whose drafting committee included senior judges from Uganda, Tanzania and South Africa. The Code highlights six values: *Propriety* (propriety, and the appearance of propriety, are essential to the performance of all the activities of a judge); *Independence*; *Integrity*; *Impartiality*; *Equality* (ensuring equality of treatment to all before the courts); *competence and diligence*.

¹³⁶ For example, ensuring a copy of the code in all the major languages is readily available to all litigants.

public. This might be a separate institution or an additional responsibility given to the Judicial Service Commission. For example, in Uganda the JSC is mandated to receive recommendations and complaints concerning the judiciary and the administration of justice from members of the public, and to investigate complaints and to take ‘appropriate action’ in collaboration with the judiciary. This is useful so far as it goes, but the lack of a requirement to make public the results of its enquiries is a serious shortcoming. There is a need for transparency in such matters and there is no reason why details of disciplinary action against any judicial officer should not be made public.

Legitimate criticism of judges arising from the discharge of their duties, even if somewhat emphatic and unhappily expressed, is permissible as being the exercise of the freedom of expression.¹³⁷ Unjustified and unreasonable attacks on judicial integrity strikes at the judiciary’s constitutional role and, in extreme cases, a court may cite its critics for contempt of court.¹³⁸ Unless they resort to this extreme action, inevitably judges themselves and their families must ‘suffer in silence.’ As Gubbay has put it: ‘Unlike other public figures, judges have no proper forum in which to reply to criticisms. They cannot debate the issue in public without jeopardizing their impartiality.’¹³⁹ This is why providing public support for the judiciary is essential, particularly on the part of the Attorney-General¹⁴⁰ and Minister of Justice. Speaking out in defense of judicial independence is also a prime duty of legal professional bodies in fulfillment of their commitment to uphold the rule of law and the protection of human rights. Law teachers in their writings must expose flawed judgments but this must never extend to personal attacks on judges.

The relationship between parliament and the judiciary remains a potentially tense and acrimonious one. Paragraph I of the Executive Summary to the *Latimer House Guidelines* emphasizes the need to apply the doctrine of ‘mutual restraint’, i.e.:

Relations between parliament and the judiciary should be governed by respect for parliament’s primary responsibility for the making of legislation and for the judiciary’s role in interpreting legislation and in ensuring its compatibility with the constitution.

Yet experience has shown that the judicial role of interpreting legislation (as well as the constitution itself) can bring it into conflict with both parliament and the executive and make it

¹³⁷ See, for example, Ogilvie Thompson C.J. in *S. v. van Niekerk* 1972 (3) SA 711 (A) at 720.

¹³⁸ There are two modes of conduct that fall within the scope of criminal contempt. One is contempt in the face of the court. The other is conduct calculated to bring a court, a judge or the administration of justice through the courts generally into contempt. It is sufficient ‘if it is a scurrilous attack on the judiciary as a whole, calculated to undermine the authority of the courts and endanger public confidence, thereby obstructing and interfering with the administration of justice. See *Chokolingo v. A-G of Trinidad and Tobago* [1981] 1 All ER 244 (PC) at 248’ per Gubbay C.J. *In re Chinamasa* [2001] 3 LRC 373 at p. 384.

¹³⁹ A.R. Gubbay, ‘The Independence of the Judiciary: Judicial Autonomy and Budgetary Control and Administration,’ in Hatchard and Slinn, *Parliamentary Supremacy*, p. 49.

¹⁴⁰ Regrettably, in many countries the politicization of the post has effectively removed the Attorney-General from playing any meaningful supportive role for the judiciary. See generally the unpublished paper by Charles Goredema, ‘The Attorney-General in Zimbabwe and South Africa: Whose weapons, whose shield?’ in which he argues that the politicization of the post of Attorney-General means that the incumbent cannot perform his/her functions in an independent manner with the result that the institution is ‘emasculated’ (at p. 25).

the subject of harsh and bitter criticism.¹⁴¹ Constitutional adjudication is inherently controversial and political disputes inevitably enter the judicial arena. Yet it is inimical to the rule of law if political pressure is directed towards the judges by those who have not succeeded in the judicial adjudication or who wish to influence future decisions. Parliamentarians and ministers, like everyone else, must accept court decisions until they are either overturned by a superior court or through a constitutionally authorized process. They are entitled to criticize a ruling but what is never acceptable is the making of vague allegations of improper motives for decisions, personal attacks on the integrity of individual judges or threats against their personal safety.

Sadly, as the crisis in Zimbabwe demonstrated, judges of an internationally renowned apex court, not forgetting several principled High court judges, were harassed and threatened both verbally and physically simply for carrying out their constitutional duties. In consequence, the Chief Justice was forced to take early retirement. Damaging to the judiciary, certainly. But even more damaging to society and especially those who seek the protection of their constitutional rights.¹⁴² Given that judges and magistrates hold office during ‘good behavior,’ invariably misbehavior is a ground for removal. Equally, removal for mental incapacity is unexceptional. ‘Incompetence’ is sometimes an additional ground for removal. This is a somewhat vague concept but can perhaps be judged against the criteria for judicial performance set out in the Judicial Code of Conduct.¹⁴³ The protection of judicial security of tenure means strictly limiting the grounds for removal.¹⁴⁴ Accordingly there is serious cause for concern when such removal can be for ‘any other cause’.¹⁴⁵ Judges must enjoy security of tenure if they are to act independent and serve as a check on government.

A transparent and independent removal procedure is also essential. A fundamental constitutional issue here concerns who has the right to initiate such proceedings. Whilst any person or body is entitled to call for removal, arguably the initiation is best left to an independent Judicial Service Commission (or Judicial Ombudsman) or the Chief Justice. If left in the hands of the President, Cabinet or Parliament, it provides a potential weapon through which to intimidate judges and thus help create or maintain a pliant judiciary. In effect, it undermines the separation of powers and the independence of the judiciary.

¹⁴¹ See, for example, the experience of the Zimbabwe Supreme Court discussed in chapter 3.

¹⁴² Another example comes from Zambia where the decision by Evans, J. in the politically sensitive case of *Silva and Freitas* [1969] ZR 121, led to physical attacks on the judge and the Chief Justice. President Kaunda himself added fuel to the fire by denouncing the judge stating ‘I think Justice Evans should have known that in taking up the case like that in a sensitive situation he was playing with fire’ (Interview with the *Times of Zambia* 29 September 1969). The attacks led to the departure of several senior judges and the affair undoubtedly undermined the independence of the judiciary for some years. See further John Hatchard, *Individual Freedoms and State Security in the African Context: the Case of Zimbabwe*, Ohio State University Press, Athens, Ohio, 1993, p. 132.

¹⁴³ See art. 144 Constitution of Uganda. A poor legal knowledge might perhaps fall into this category. Kahn refers to several South African judges who were known amongst practitioners as ‘Old Necessity’ because either ‘Necessity knows no law’ or ‘Necessity is the mother of invention’ (see Kahn, *Law, Life and Laughter*, Juta, Cape Town, 1984, p. 15).

¹⁴⁴ Although there seems to be no bar to a president ‘re-assigning’ a serving judge, with their consent, to another position within the public service. See for example, s.119(7) Constitution of Malawi. Whilst in the past this may have been necessary as a means of making the best use of scarce human resources, the provision now poses a potential threat to judicial independence. Of course this does not apply to the secondment of a judge to a senior international judicial posting, such as to the International Court of Justice.

¹⁴⁵ E.g., s.87(1) of the Constitution of Zimbabwe.

Effectiveness of the Judiciary and the Rule of Law

In every country a national constitution articulates the vision of the society, defines the fundamental principles by which the country is organized and distributes power within the country and plays an important role in national building and consolidating the nation state. As earlier observed, the idea of constitutionalism, good governance connotes a government defined, regulated and limited by a constitution. Constitutional democracy is founded upon the notion of checks and balances, namely the judiciary and the executive, while operating independently of one another, act to check each others operations and balance each other's power. The commitment to principles and enactment of constitutional provisions that provide for checks and balances alone cannot guarantee adherence to those provisions. Institutional effectiveness and accountability are central to good governance and the rule of law. It requires independent, functional and credible courts in order to translate constitutional provisions and principles into practice and into meaningful checks on government. The institutional effectiveness of watchdog institutions depends on their independence from other branches of the government, their capacity (human and materials) the probity and integrity of the persons appointed to run them, the transparency of their actions and decisions and the timeliness of administration of justice and responding to complaints based on the violation of constitutional provisions guaranteeing human rights. All these factors are important determinants of the efficacy and legitimacy of the various institutions.

While in most African states the general view is that the judiciary is largely independent, it is widely acknowledge that the performance of the judiciary is hampered by the shortage of both human and operational resources availability. In most jurisdictions courts are congested and are perceived as slow in their disposal of cases or complaints that are brought before them. Due to a lack of resources, a report in Zimbabwe revealed that the High Court failed to go to circuit in the province of Masvigo¹⁴⁶. As a consequence, 104 murder trials did not take place. The courts operate without computers or adequate stationery. Libraries are outdated and inadequate. Another problem is that in some jurisdictions, hundreds of judgments remain unenforced. In Zimbabwe score of cases remain undecided in instances where it appears that the political costs of deciding the cases would be too high. For example, recent constitutional cases in Zimbabwe have all gone in favor of the government. This outcome (that all the constitutional cases went in favor of the government), deprived the decisions of much of their legitimacy. A court that validates everything that is brought before it can impart little legitimacy to impugned governmental measures by its decisions.

Another major area of deficiency in the judicial system in Africa is lack of access to courts and corruption. Access to justice in Africa is notoriously hampered by delays in trials in the law courts. The legal system is not perceived by many as protecting the rights of all citizens equally and effectively. The poor and marginalized groups in society have generally received poor protection from the law. The general perception is that education and economic status play a major role in one's ability to access justice. This should be a major concern in Africa as the majority of the people live below the poverty line. The challenge for national institutions is to develop mechanisms to facilitate accessibility. There are strategies that can be used. They

¹⁴⁶ Gugulenthu Moyo, Your Honor, Its not Just about Money, p-ed on Judicial independence in Zimbabwe, The Mail Guardian, 23, January, 2007.

include the idea of circuit courts and the strengthening of legal aid schemes. These difficulties tend to undermine the public's confidence in the ability and suitability of the courts to act as a check on the executive and as forums for the protection of human rights and the advancement of the rule of law. Corruption completely undermines the legitimacy of the judiciary. It leads people to regard courts as inappropriate forums for the resolution of disputes and protection of human rights.

Conclusion

The improvement of the respect of human rights and the rule of law in Africa will depend on the strengthening of institutions that underpin democracy, good governance and the rule of law such as the courts. There has to be wide and popular dissemination of information about human rights and the mechanisms available to protect human rights and deliberate programs aimed at developing a culture of human rights and the rule of law. There has to be real and effective access to the courts, human rights commissions and other watchdog organizations. However the efficacy of the courts depends on public confidence in the integrity of the courts. To command acceptance of its decision as a national arbiter the integrity of the court must be above suspicion. Whatever the quality of its decisions in point of law, it cannot command respect or acceptability if the public has no confidence in it. These are challenges that Africa has to meet if good governance and the rule of law are to take hold in African countries.

The Persistence of “Imperial Presidency” in Africa’s Emerging Democracies

By H. Kwasi Prempeh

Since the end of the 1980s, the political context of presidential rule in Africa has experienced significant, sometimes dramatic, change. Across Africa, noncompetitive one-party and one-man rule has suffered a loss of popular and intellectual legitimacy, a result of the unrelenting social, economic and political costs of three decades of authoritarianism. Popular reaction against the status quo expressed itself first and most dramatically in the West African state of Benin, whose long-serving dictator, Mathieu Kérékou, was forced by months of street protests and strikes to yield to demands for a “National Conference.” Once convened, the National Conference wrestled power away from the president; it abolished the one-party regime, transferred the powers of government to an interim prime minister, and authorized the drafting of a new democratic constitution, which was later approved in a national referendum. Similar transitions from presidential autocracy to constitutional democracy, though not nearly in as dramatic a fashion as Benin’s, took place across Africa over the course of the 1990s.

As a result, single-party parliaments and presidents-for-life no longer dominate the political map of Africa. Competitive elections for legislative and presidential office, once a rarity in Africa, are now regular occurrences. Currently, over 95 percent of the presidential elections in Africa are contested—in the 1960s only in two of 26 presidential elections held in Africa did a sitting president face an opponent. More important, “African presidents today are more than twice as likely to lose power if they subject themselves to contested elections than they were before 1990, when the loss rate was just over 6 percent (just a single electoral defeat in 16 contested elections)” (Posner & Young, 2007).

The growing prospect of defeat through competitive elections is only one of the many new realities that Africa’s presidents must now reckon with. Constitutional reforms accompanying the democratic transition in several African states have introduced important new changes to the political landscape and power map. Notably, traditional legislative and oversight functions have been restored to Africa’s now-representative and multi-party parliaments, while new constitutional courts, or pre-existing supreme courts, have been emboldened by constitutional guarantees of independence and judicial review authority. Africa’s political authorities also must now contend with critical reporting and commentary from a newly assertive private media. A growing number of pro-democracy nongovernmental organizations are similarly revitalizing Africa’s civil society and opening new avenues for the mobilization and expression of civic activism.

By far the most profound change in the political and constitutional context of presidential rule in contemporary Africa is the growing popularity of presidential term limits. In sharp contrast to the period before 1990 when Africa’s presidents had the luxury of determining their own longevity or tenure in office or simply risked forcible removal through a coup d’état, today, in a growing number of African states, constitutionally-enshrined term limits impose a definite end to presidential tenure. By the end of 2005, presidential term limit provisions were contained in 33 African constitutions. In the overwhelming majority of these, elected presidents may serve no more than two terms. Term limits have already ended the tenure of 14 presidents in Africa since 1990. In Malawi, Nigeria, and Zambia, attempts by term-limited presidents to obtain

constitutional amendments to remove or extend their terms were defeated and the presidents subsequently retired as constitutionally scheduled.

The combination of term limits and regular elections has displaced the coup d'état as the primary mode of regime change and leadership succession in contemporary Africa. This new dynamic has created a novel political class in Africa: the class of elected presidents forced into retirement by constitutional term limits or electoral defeat. There are now over a dozen such former presidents in about as many African countries. The phenomenon of retired presidents living as "private citizens" in the societies they once ruled is such a political novelty in Africa that the question of what their appropriate role in public life must be has become a matter of some spirited debate among Africans.

The prospect of presidential term limits or electoral defeat is constraining presidential incumbency in yet another important respect. The possible loss of legal immunity that typically accompanies retirement from presidential office opens up the prospect of holding Africa's retired presidents to account legally for abuses of power during their time in office. Already, this has happened in Zambia, where former President Chiluba is facing prosecution on corruption charges relating to his term as president. In Ghana, too, several close associates of former president Jerry Rawlings, including the former first lady, are facing trial, and a few have already been convicted, on charges stemming from various financial dealings and transactions they allegedly were involved in during Rawlings' tenure as president. Former Malawian president Bakili Muluzi and some of his close associates have also been the target of official investigation for alleged corruption during his presidency.

In short, constitutional rules are beginning to matter in contemporary Africa in ways they did not during the first three decades after the end of the colonial era. Notably, even in those instances where presidents have managed to stay on past their limited terms, the term extensions were sought and obtained through hard-fought constitutional battles, rather than through unconstitutional means. Current trends clearly indicate that the notion of a de jure or de facto president-for-life is no longer a tenable proposition in Africa. Even the African Union (AU), postcolonial Africa's solidaristic interstate body notorious in the past (when it was called the Organization of African Unity) for being a club of dictators, has officially disavowed coups and adopted a policy condemning and rejecting "unconstitutional changes of governments."

Yet, despite these precedent-setting changes to Africa's political and constitutional landscape, one important feature of the *ancien régime* survives. This is the phenomenon of imperial presidency. Africa's presidents may have been term-limited, but the evidence suggests that they have not been tamed yet. Presidential rule in post-authoritarian Africa has no doubt become less fragrantly abusive and arbitrary, and the climate for personal liberty and rival political activity has improved appreciably in Africa's democratizing states. Still, power in the African state continues to reside disproportionately in the hands of one person: the president. The restoration and re-empowerment of parliaments and courts in Africa have not altered the presidentialist orientation of African governments or diminished presidential supremacy within the political sphere. Government and power in contemporary Africa are still very much matters to be understood from the vantage point of the presidency. As before, nothing good that needs done, and nothing bad that needs undone, in the African state seems likely to proceed without the

personal initiative or intervention of the president. The pace and direction of progress or reform, on nearly every important issue, appears to depend on the level of a president's personal interest and commitment. Presidents in contemporary Africa still make and announce major policy decisions and policy changes without recourse to parliament. The "presidential directive" remains a common mode of governing, and presidents continue to exert discretionary control over public funds. As a Nigerian columnist recently observed, describing the state of constitutional politics in Obasanjo's Nigeria, the contemporary president still "wears a dictatorial toga." Similar complaints about persistent presidential supremacy can be heard across post-transition Africa, and there are growing calls for another round of constitutional revision to reduce presidential power. In November 2005, Kenyan voters rejected a draft constitution because it vested too much power in the presidency.

The persistence of hegemonic presidency in post-authoritarian Africa is puzzling, but not only because of all the democratic and constitutional changes that have taken place in several African states since 1990. What makes it even more puzzling is the fact that Africa's postcolonial experience with this mode of rule has been an unmitigated disaster. Why, then, does the imperial presidency persist?

Transition without Change?

Africa's postcolonial tradition of imperial presidency is not an organic outgrowth of indigenous "African culture" or traditional systems of government. Rather, as a form of rule, it was purposefully and systematically constructed at the dawn of African independence by Africa's nationalist elites to answer their specific authoritarian regime needs at the time, and its "successful" implantation in the early postcolonial period was conditioned or facilitated by certain historical and external factors.

The times have changed, however. While development remains Africa's foremost challenge, the autocratic temptation of the early decades of African independence appears to have given way to a democratic imperative. The notion that what Africa needs is a "developmental dictatorship"—a trading of democratic representation and individual liberties for material progress—appears to have been replaced by the notion of a "developmental democracy"—the idea that, "for better or worse, Africa is doomed to democracy as the only viable framework within which it must seek to promote political reforms and economic development," (Olukoshi, 1999). Equally significant, the influential, larger-than-life architects of Africa's imperial presidency have exited the political scene, some of them forced out dishonorably. All of these changes have made the period after 1989 a "constitutional moment" of sorts for postcolonial Africa, the first such moment since the momentous independence decade of the 1960s. The post-1989 constitutional reforms across sub-Saharan Africa were thought to have reflected this "paradigm shift" in thinking about politics and governance in Africa. In light of this expectation, the continued survival of presidential imperialism in contemporary Africa raises questions about the content and depth of the recent transitions and related constitutional reforms.

Renewed calls in Africa's emerging democracies for fresh constitutional reforms suggest growing disappointment with the state of post-transition constitutionalism. The main focus of these complaints has been the persistence or re-emergence of presidential imperialism, a

grievance that was successfully mobilized most recently in Kenya to defeat a president-backed draft constitution.

Is faulty constitutional design, then, to blame for the re-emergence of the imperial presidency in the post-authoritarian African state? Are there factors extrinsic to the contemporary Africa constitution that might explain the persistence of presidential supremacy in Africa? Is the phenomenon remediable? If so, can constitutional design help?

On paper, and in comparison with predecessor constitutions, the constitutions of contemporary African states appear to announce the dawn of a new era of constitutionalism. Africa's "new and improved" constitutions abolish *de jure* one-party rule and rule by decree; protect the right of political parties to compete in regularly scheduled presidential and legislative elections; restore traditional lawmaking and oversight functions to legislatures; replace indefinite presidential tenure with term limits; empower the courts to rule on the constitutionality of challenged executive or legislative acts; and protect from arbitrary violation or abuse a set of rights and liberties associated with modern democracy, including, the right to freedom of association, free speech and press freedom. In addition, in several African states, there is now a new "fourth branch of government" on the constitutional scene, comprising a variety of specialized independent commissions or public agencies that are charged with bringing credibility and political detachment to the performance of such critical functions as conducting and managing public elections, investigating cases and allegations of public corruption, protecting the independence and fairness of the media, investigating and remedying human rights abuses, and auditing and reporting on the allocation and use of public funds. In light of the above, it is easily understandable why a literal reader of one typical African constitution would describe it as "a remarkable document of liberty," (Rossanet, 1998). How, then, in the face of these constitutional reforms, has presidential supremacy managed to survive in contemporary Africa? Must one conclude, given the persistence of the imperial presidency in Africa, that constitutions and constitutional design do not matter?

Constitutions do matter, of course—given auspicious political circumstances. Some of the changes that have followed in the wake of constitutional reform in many African states, including, notably, the incremental, and in some cases remarkable, improvement in the quality of personal liberty and media freedom, the successful legislative blocking of presidential bids for extended terms of office, and the instances of orderly regime succession upon the expiry of term limits or electoral defeat, confirm that constitutional rules can induce, or at least condition, certain positive social and political outcomes. At the same time, there is much that a textual or literal reading of a constitution—any constitution—cannot reveal about the reality and dynamics of constitutional politics. A constitution may be "an extraordinary document," as Arthur Schlesinger, Jr., believed the US Constitution to be. But it is still "only a document and what the Constitution 'really' meant—i.e., meant in practice—only practice could disclose." Moreover, even as documents, constitutions are neither exhaustive nor foolproof regarding the matters they regulate. Omissions and contradictions are frequently embedded in the text of the constitution. All of these limitations associated with constitutions generally are true of Africa's new and revised constitutions.

The content of Africa's contemporary constitutions should also be viewed within the context of the primary or immediate impulse that drove the recent transition. Africa's recent constitutional reforms did not occur behind a Rawlsian "veil of ignorance" involving a cast of moral actors embarked on a principled and idealistic quest for a "just" social and constitutional order. Both on the side of the coalition of regime opponents, civic leaders, and democracy and human rights activists that led the popular push for reform and on the side of the besieged incumbents who needed to find a credible way forward out of the crisis of legitimacy they were confronted with, the motives behind the democratic transition and accompanying constitutional reforms were mixed and, often, opportunistic. In many instances, regime opponents and 'new democrats' were "recycled elites" cut from the same political cloth as the discredited incumbents. In some cases too, where an authoritarian regime was strong enough at the time of transition to have retained control of the transition timetable and the reform agenda, as was the case in Ghana, Tanzania and Uganda, the ensuing constitutional revisions were often done with regime continuity in mind. Overall, then, the reform ambition and possibilities were limited. In the main, the objective was to democratize—and thereby re-legitimate—government by creating an opportunity and a mechanism for political contestation and possible regime change or power alternation through the ballot box. In general, Africa's current constitutions must be seen as reflecting this limited ambition. Inevitably, then, certain important aspects or features of the *ancien régime* did not make it onto the reform agenda.

The most important omission in this regard is the centralization of the postcolonial state. Contemporary constitutional design in Africa is notable for its failure to tinker with or alter in any way the territorial distribution of power within the state. Despite the resilience of sub-national identities and the strength of "local patriotism," it is hard to find a serious constituency or strongly held sentiment for federalism among Africa's influential elites. The obvious exception is Nigeria, where regional resistance to the centralizing impulses of successive national (military) elites remains strong, even though the country has maintained since independence a nominally federal system of government. Generally, however, elite consensus across Africa appears to be firmly behind preserving the unitary state model, and contemporary constitutional design reflects this implicit consensus. While decentralization, and thus the idea of local self-government within a unitary state model, has growing support, recent constitutional reforms in Africa have done little to transform or empower local government. Local *administration*, not local *government*, still best describes the role played by local councils and officials within the contemporary African state. In short, one of the structural pillars upon which presidential hegemony in postcolonial Africa was built, namely, the highly centralized unitary state, remains firmly in place.

As a consequence, African governments are, doctrinally speaking, still governments of *general powers*, not of enumerated or limited powers. In other words, unless the applicable constitution precludes or prohibits it from doing so, the government of the typical African state, because it has yielded none of its sovereign power to a sub-national entity, generally has plenary authority to act or legislate on all matters. In such a constitutional system, where there is no "vertical" countervailing power (other than periodic elections) to restrain the central government, the extent of presidential power—and thus whether the presidency will show imperial tendencies—will depend, by and large, on the "horizontal" distribution and balance of power between the presidency and the other branches and agencies of the central state, notably the legislature and

the judiciary. How, then, have Africa's new constitutions handled the horizontal dimension of the power map of the state? The focus of our discussion will be on the executive-legislature relationship, and, to a limited extent, on judicial power and the institutions of the "fourth branch of government"—the so-called agencies of horizontal accountability.

Legislature-Executive Relations in Contemporary Africa

In the recent transition from authoritarianism to democratic politics in Africa, "not a single democratizing state chose to move [from a presidential] to a parliamentary form of government." Of course, the vesting of executive power in a president does not, by itself, connote or preordain presidential supremacy. Nor, as Singapore's experience under Lee Kuan Yew or Britain's experience under Margaret Thatcher or Tony Blair demonstrates, does the Westminster parliamentary form, in which executive power is exercised by a cabinet headed by a prime minister, preclude executive or "prime ministerial" dominance.

At any rate, while most African constitutions have retained the executive presidency, few can be said to be patterned after the classical presidential form—which is not to suggest, knowing US constitutional history to prove the contrary, that the 'pure' form of presidentialism is invulnerable to presidential imperialism either. Of Africa's newly emerging democracies, Nigeria and Liberia, with their popularly elected presidents and two-house legislatures, come closest to imitating the US form. Most contemporary African constitutions, however, tend toward the "hybrid" model. In francophone and lusophone Africa, this has been accomplished primarily by restoring the position of prime minister, thus returning, essentially, to the bicephalous executive of the Gaullist model of France's Fifth Republic. In the anglophone African states that have adopted the hybrid form, such as Zambia, Uganda and Ghana, a nationally elected president typically governs with a cabinet of ministers all or a majority of whom may (or, in the case of Ghana, must) be selected from among current members of parliament.

Regardless of the specific form it takes, hybridization in contemporary African constitutional design has meant blending the "pro-executive" features of the parliamentary form (such as drawing the president's ministers from the current membership of parliament) with the "pro-executive" features of the presidential form (such as a veto-wielding unitary president; fixed term of office for the president; and a presidential cabinet whose tenure does not depend on the support of parliament). The impulse behind the hybrid form in contemporary African constitutional design is ostensibly to reduce the prospect of conflict or friction between the president and parliament. Thus, rather than restrain presidential power, the hybrid form has tended to facilitate or embolden it. But the fact that presidential imperialism remains a fact of political life even in a state like Nigeria, where the executive and legislative branches are formally separated *à la* the American constitutional form, suggests that the hybrid constitutional design alone cannot account for the persistence of the presidential hegemony in contemporary Africa.

Indeed from a textual or formal standpoint, few of Africa's new constitutions can be said to compel or enact an imperial presidency. The constitutions of Angola and Cameroon, which grant the president unilateral authority over appointments to a broad range of key executive, judicial and other constitutional offices and empower the president to bypass the legislature and

legislate or govern without the legislature's participation even in non-emergency situations, are exceptional among contemporary African constitutions in virtually imposing or preordaining an imperial presidency. Tanzania follows closely, as the "structure of the national presidency of Tanzania has not changed substantially since 1985 when Nyerere left office." (Ndegwa & Letourneau, 2004). The Tanzanian president is still empowered to declare a state of emergency and make key appointments to cabinet positions and the offices of prime minister and chief justice, all without obtaining the approval of the legislature. Outside of these glaring examples of constitutionally-implied presidential hegemony, modern African constitutions generally do not *affirmatively* grant the president exclusive or unilateral authority to act or govern. Presiding over governments of general powers, contemporary African presidents no doubt have immense authority. However, by constitutional command, they typically must now seek and secure *prior* legislative approval in the form of an Act of Parliament (or a binding resolution of parliament) for all of their intended actions that would have the force of law, including, notably, proposed legislation or subsidiary legislation, proposed budgets or supplementary budgets, proposed foreign borrowing or international transactions, nominations to ministerial and judicial offices, and proposed amendments to the constitution. In addition, the legislature has power under several African constitutions to impeach the president or launch parliamentary inquiries into the conduct of executive departments and officials. Thus, on paper at least, most contemporary African constitutions appear to empower parliaments to check presidential power.

Are African newly representative legislatures, then, to blame for not failing to rein in presidential imperialism in post-authoritarian Africa? Formalistically speaking, the answer is yes—at least in some cases. Arthur Schlesinger's insight, based on his study of the rise of imperial presidency in the United States, is equally true of contemporary Africa: the phenomenon is "as much a matter of [legislative] abdication as of presidential usurpation." Examples of such legislative abdication or self-subordination to the presidency abound in contemporary Africa. In Ghana, for example, parliament approved legislation in 2001 that empowers the president to create, merge, or abolish ministries and departments of the executive branch at will, without the need to obtain specific legislative approval for each such governmental expansion or reorganization. This is equivalent to giving the US president a one-time authorization to create and staff any number of new departments of the federal government or to abolish an existing department without an Act of Congress. In effect, the Ghanaian president has been *legislatively* empowered to expand the presidency and the executive branch *ad infinitum*, without regard to the budget cycle and without recourse to specific legislative approval. What explains this capitulation of Africa's new legislatures to the presidency they are supposed to check? Might constitutional design help correct this tendency?

In structuring the formal relationship between the president and parliament, contemporary constitutional design in Africa has typically adopted a passive or "open-ended" approach, whereby a power or responsibility is granted jointly to the president and the legislature and the two are expected to work collaboratively to enact the appropriate legislation or make the decision committed to their joint determination. Typically, the president is granted the power to initiate and the legislature the power to approve. What is important is that, under this constitutional plan of power allocation, approval or prior authorization by parliament is generally a necessary predicate for presidential action. Under such a constitutional scheme, presidential supremacy will usually occur *constitutionally* only with the acquiescence of parliament.

Within the *current* African political context, however, a constitutional plan that established juridical equality between the president and the legislature (thus leaving the two branches to “deal” or decide matters jointly), would still, in its practical operation, tend to skew the balance of power toward presidential dominance. The reason is not far fetched. The African president has at his disposal such vast *extraconstitutional* resources and advantages, and which he is able to draw upon in his dealings with the legislature (or, indeed, with any other institution of state) that, except in the event of “divided government,” expectations that Africa’s current legislatures will act to check or restrain presidential power have generally failed to materialize. It is important to identify where these presidential advantages come from.

First, contemporary Africa’s political parties are themselves presidentialist in their orientation. The capture of the presidential office, above everything else, is what primarily drives multi-party rivalry—and indeed the formation of parties—in much of contemporary Africa. Few “idealistic” political parties are represented in Africa’s new multi-party parliaments. Africa’s parliamentary parties have been known to support or advocate certain “good governance” reforms while in opposition, only to disavow or reject the same proposals once they have won political power. For instance, Zambia’s Movement for Multiparty Democracy (MMD), while an opposition party, put forth proposals to remove certain “dictatorial” clauses from the country’s 1991 constitution. However, as the party that now had “the privilege of being in Government,” the MMD defended the 1991 constitution as “adequate” and stated that it considered “presidential democracy” to be “the best system of government” for the country. Similarly in Ghana, the New Patriotic Party (NPP), while in opposition (from 1993 to 2000), strongly opposed the constitutional power of the president to appoint “district chief executives” (mayors) for the country’s hundred-plus local government units, advocating, instead, popular local election. Yet, as the governing party since 2001, the NPP has not only retained the presidential appointment of mayors, it has also backed the creation of several more districts, thereby expanding mayoral patronage opportunities for *its* president. Similar flip-flops have happened when governing parties have lost power and gone into opposition.

The intense rivalry—or, more aptly, “warfare”—between Africa’s parties is driven not by a desire on each side to gain power so as use it in the disinterested pursuit of the national interest or to implement a distinctive set of policies and programs; it is to capture for the winning party the spoils of power and thereby deny the same opportunity to its rivals. Indeed, once in power, Africa’s governing parties, both old and new, have tended to operate like “mutual benefit societies,” using control of the state more for patronage than for enacting and implementing particular policy preferences. Relations between the main rival parties in parliament are often characterized by such mutual loathing that the prospect of Africa’s parliamentary parties forming a bipartisan consensus to defend the legislature’s institutional prerogatives vis-à-vis the president seems remote. Thus where, as is typically the case, the presidential party also commands a parliamentary majority (either alone or through voting coalitions), it is expected that the party’s members of parliament will toe the president’s line. “Conscience voting” by majority legislators, even if it can be defended as consistent with values and ideas publicly espoused in the party platform or manifesto, is strongly disfavored if it would mean opposition to the president’s stated or intended agenda. In Malawi, one influential view of section 65 of the country’s constitution would even make cross-party voting against the wishes of one’s party grounds for forfeiture of

one's seat in parliament. In short, the Burkean conception of political parties as providing "a sort of extraconstitutional check on the executive or would-be executive," (Carnes, 2005) primarily by pre-committing the party's candidates for political office to a policy-oriented "party program that is tolerably representative of the views and interests of important segments of society," does not describe current practice in Africa. In Africa's zero-sum political environment, where partisan rivalry is primarily over personalities and patronage, not about ideology or policy, the majority party's legislative support for the president is assured *as long as* the president is willing to use the prerogatives of his office to advance the *material* interests of the party and its members.

The president's political leverage over his party's legislators is particularly enhanced in hybrid constitutional systems where the president is free to pick his ministers largely or entirely from the ranks of members of parliament. In Zambia, President Chiluba appointed nearly half the total number of MPs to ministerial or other executive branch positions within his administration. Ghana's President John Kufuor has used similar power granted him by Ghana's constitution to appoint a large number of his party's MPs (and nearly all of the most influential ones) to his cabinet and administration. In fact, in such hybrid regimes, the ambition of many legislators, in contesting election to parliament, is to secure subsequent presidential appointment to the executive branch, not to build a legislative career. The promise or prospect of such an appointment is indeed an important carrot with which presidents in Africa's hybrid systems are able to influence even the backbenchers in parliament.

Another important vehicle through which presidential dominance of the legislature is often assured is the office of Speaker. Although virtually all of Africa's constitutions entrust the election of the speaker to legislators themselves, presidential parties in control of the legislature, particularly in hybrid systems, have tended to yield to the president's known preference for the job of speaker. As the speaker determines what business may be done and what matters said in the legislative chamber, *de facto* presidential control over the speaker's gavel significantly inhibits the ability of the legislature, and in particular opposition parties, to ensure executive accountability. In Zambia, for example, a petition to initiate impeachment proceedings against President Chiluba failed despite meeting the minimum constitutional requirements, because the speaker refused to convene the legislature for that purpose. In short, as long as Africa's parliaments and parliamentary majorities view themselves and act as the legislative arm of the presidency, the legislature cannot reliably play the role of checking presidential power.

Second, the respective institutional histories of the presidency and parliament in postcolonial Africa place Africa's newly representative legislatures at a clear disadvantage. Unlike the executive branch, which can count on a history of unbroken organizational existence, most of Africa's parliaments have suffered substantial gaps in their institutional lives since independence; those that have a record of continuous existence operated largely in single-party regimes and, therefore, have little experience of autonomy. The absence of a tradition of parliamentary existence or autonomy means that most of Africa's current legislatures lack a clear conception of their institutional prerogatives and have little in the way of helpful precedents from their past to fall back on. This explains, in part, why despite its lawmaking and budget authorization functions, the typical African parliament does not have its own legislative drafting staff, a budget office, or a research department. The technical expertise and the supporting

bureaucracy in these areas have long been part and parcel of the executive branch, and that is where they remain to this day. In short, while the contemporary African presidency inherits a well developed and bold (if *ancien régime*-derived) conception of the nature and scope of its executive power, its legislative counterpart has a self-limiting and uncertain conception of the legislature's role.

Given the divergent histories and backgrounds of the presidency and the legislature in Africa, current president-legislature relations reflect strong elements of path dependency. The executive branch in Africa has too long been accustomed to governing without external (domestic) restraint, and the legislature not used to checking or disciplining the executive, that, on their own, neither institution is likely to change the familiar pattern. The force of path dependency also means that longstanding patterns of presidential behavior about which the current constitution might be silent come to be accepted as normal and appropriate and thus continue to be followed uncritically. For example, presidents in contemporary Africa, following past practice, routinely appoint MPs to serve as directors on corporate boards in the public commercial sector, despite the obvious conflict of interests inherent in such cross-branch appointments. Conventions and modes of operation established in the president-dominated *ancien régime* continue to shape political behavior and inter-branch politics in the present—and to the detriment of effective presidential accountability.

Third, although in theory African legislatures hold the power of the purse, as they must approve and pre-authorize the executive's taxing and spending proposals for each fiscal period, in practice control over the national budget and treasury resides with the president and his minister of finance. Importantly, under most African constitutions only the executive may initiate, introduce or amend a bill that has the purpose or effect of raising taxes or imposing a charge on the national treasury. The commonly cited rationale for denying parallel legislative initiative to individual legislators in matters affecting public finances is to discipline the legislature and curb legislators' presumed appetite for fiscally irresponsible constituent- or special-interest-driven "pork barrel" politics. The effect of such exclusion, however, is to grant the president monopoly control over "pork".

In light of Africa's longstanding postcolonial tradition of neopatrimonialism or clientelism centered around the presidency, a constitutional policy that grants the president monopoly over the allocation of "pork" entrenches presidential supremacy within the state. Indeed insofar as exclusive executive control of the scope and size of the national budget extends to the legislature's own institutional budget, it enables the president to manipulate and undermine the formal independence and checking functions of the legislature simply by starving it of needed resources and reducing the leadership of parliament to supplicants who must plead and curry favor with the president in order to obtain the resources they need to operate.

The fact that Africa's cash-strapped governments must depend on external donors and multilateral financial institutions to meet their recurring budget deficits has further strengthened the hand of the executive vis-à-vis the legislature. African presidents and their finance ministers have become the *de facto* "fundraisers" for their countries, appearing at G-8 and Beijing China-Africa summits and visiting Western capitals to solicit funds to finance investment and government budgets. Importantly, too, the finance ministry has remained the main route through

which external donors and multilateral financiers engage with and channel aid and assistance to African governments. In the process, Africa's parliaments have remained marginal players in the area of public finance. With the executive effectively controlling access to the nation's purse strings, it is the executive, not parliament, that is best able to call the tune.

Fourth, presidential power in Africa, which was expected to be restrained by democracy, may actually have been emboldened by the recent democratization of presidential office. Especially since general elections in Africa are essentially about control of the presidency, Africa's newly elected presidents have come to possess vastly superior democratic legitimacy. The fact of possessing singularly the "people's mandate to govern" is one more political resource that Africa's post-authoritarian presidents are able to deploy at the expense of divided legislatures. In this regard, Africa's emerging democracies bear some resemblance to Guillermo O'Donnell's "delegative democracies." Presidential power in Africa is particularly strong in those situations where recent democratization has been accompanied by regime change and by a discernible improvement in the climate for personal liberties and media freedom. In other words, by ridding African presidentialism of the most notorious and observable features of its authoritarian baggage, recent democratization has arguably strengthened, not weakened, the presidency.

In sum, the contemporary African president enters the political arena with such immense political resources and advantages vis-à-vis parliament that the passive policy reflected in Africa's new or revised constitutions, which is to allocate power and responsibility jointly to the president and parliament and then leave the ultimate outcomes to be determined according to the dynamics of politics, merely affirms pre-existing presidential dominance.

As currently designed, then, Africa's democratic constitutions do not effectively address or redress the inherent tendency toward presidential imperialism. The design defect, however, is, in most cases, one of omission, rather than commission. If Africa's constitutions do not affirmatively mandate or compel an imperial presidency, they also do little to prevent or minimize the tendency toward that result.

Is "Divided Government" the Remedy?

The one real possibility that exists, within Africa's contemporary constitutional systems, for a legislature effectively to "check" or restrain presidential action is in the event of a "divided government"—that is, when control of the presidency and the legislature is divided between rival political parties. In many African constitutions a "run off" election or second round of balloting is required to select a president when the first round of presidential elections has failed to produce a winner with an absolute majority. In others, such as Angola, the term of office of president is not co-terminus with the legislative term. Either scenario could give rise to divided government.

The possibility is not just theoretical. There have been instances of divided government in post-transition Africa. Madagascar, Benin, Niger and Congo are among the African states where, following elections, the president failed to secure a clear majority or a working coalition in the national legislature. While this state of affairs enabled the legislatures in question to "check" presidential action (literally speaking), the record shows that divided government is not a desirable antidote to the problem of presidential imperialism in Africa.

In the United States, where the tradition is well established, divided government, though associated with “gridlock” in Washington, has little chance of producing a paralysis in the running of the country as a whole. For one thing, the United States operates a federal constitutional system, where most of the everyday concerns of citizens (e.g., education, public safety, mass transportation, and sanitation) fall within the jurisdiction and responsibility of state and local governments that have independent taxing power. Thus, in the US, partisan gridlock at the federal level, even where it leads to a temporary shutdown of the business of the federal government itself, as happened during the Clinton Administration, will not create a nationwide governance crisis or administrative nightmare. The same cannot be said about divided government in Africa.

First, Africa’s postcolonial history of president-controlled one-party regimes and military juntas effectively precluded an experience of divided government. Thus, Africa lacks a tradition of workable divided government. Second, African states remain highly centralized unitary states. Thus all public administration, including regional and local administrations, must rely on one central government for operational resources and direction. Under these circumstances, divided government is a sure recipe for nationwide governmental paralysis and potentially destabilizing political crisis. Such indeed is the lesson of Africa’s recent experience with divided government.

In both Congo and Niger, the governmental paralysis generated by divided government eventually gave the military cause to intervene and bring an end to their country’s young democratic project. In Benin, divided government “paralysed reform for many months and compromised the government’s capacity to undertake further policy reform,” (van de Walle, 2001) And latterly in Malawi, where President Bingu wa Mutharika and his former party (which has a working majority in parliament) have parted ways over the party’s objections to the president’s stance against corruption, parliament’s refusal to bring the president’s budget to a vote threatens to precipitate a constitutional and political crisis.

Because divided government in the African context tends to be crippling in its impact on the orderly administration of the state, a reliance on that prospect as a way to check presidential imperialism in Africa is misplaced. Restraining presidential power should not be purchased at the cost of enfeebling government or paralyzing the administration of the country. In fact, rather than leave open the possibility of divided government, constitutional design in Africa should minimize or eliminate that prospect. Instead, presidential power must be restrained through the adoption of a more prescriptive-*cum*-proscription approach to defining the scope of executive power.

For example, if presidential appetite for excessive ministerial appointments is the problem at hand, a more effective constitutional remedy in the African context might be to prescribe a numerical limit to the size of the president’s ministerial contingent, as relying on parliament to use its approval or legislative power to rein in the president has proven ineffectual. Indeed it is precisely this approach—of express prescription or proscription in the constitutional text—that is reflected in the provisions on presidential term limits in several of Africa’s current constitutions. Rather than leave presidential tenure open-ended, in the hope and expectation that the normal democratic process would end a president’s tenure, consensus in Africa has firmed behind the

view that indefinite presidential terms are undesirable and that the most effective way to end presidential tenure constitutionally is to prescribe in the constitution the maximum number of terms a president may serve. And that is exactly what most of Africa's new constitutions do, and the results bear out the wisdom of that approach. Other undesirable but entrenched tendencies in the use of presidential power, such as unilateral presidential creation of ministries or cross-branch appointment of legislators, might respond best to similar direct proscription or prescription in the constitutional text. In effect, the idea, generally, is for Africa's constitutional framers to be more definite and specific in their delineation or enumeration of the scope and limits of presidential power, rather than write the constitutional text in a way that renders it unduly open to presidential imperialism.

Changing the orientation and behavior of parliamentary parties, another critical variable driving the presidential hegemony problem, is a much more difficult challenge. A common problem is the absence of "internal democracy" in Africa's political parties. Dissenters and nonconformists, particularly within Africa's governing parties, are routinely sanctioned, and oftentimes expelled, by their party leadership—and often for opposing the party's president. Internal party constitutions and rules tend to be highly authoritarian in their impulses and effects, giving party oligarchs the ability to limit participation and discussion within the party. Africa's political parties are not nearly as interested in expanding their regular membership as they are in gaining voters during election season. Encouragingly, certain African constitutions, notably Ghana's and Uganda's, contain provisions addressing the issue of internal party democracy, thus signaling that political parties are not to be regarded as private clubs outside the reach of public regulation and control. However, the vague generalities in which these provisions are couched have failed to provide sufficiently specific guidance for compliance or enforcement. Constitutional design in Africa can help address the problem of internal party democracy by imposing clear and specific obligations and restraints on parties and, then, granting party members (as well as independent election commissions) the right to enforce such constitutional obligations through judicial or administrative action. For example, specific constitutional rules regulating the process of party candidate selection for presidential and legislative elections and defining the scope and limits of parties' disciplinary powers and procedures would better promote internal democracy within Africa's political parties than precatory textual provisions requiring parties to "conform to democratic principles." Opening up Africa's political parties to greater participation and influence by rank-and-file membership is necessary to tame the oligarchic tendencies in parties that make it easier for presidents to control the party and its legislative representatives.

The Judiciary and "Fourth Branch" Institutions

What about the courts, ombudsmen, auditors-general, anticorruption agencies, and other extra-parliamentary institutions in the current African constitutional landscape? Why have these other institutions of horizontal accountability been unable to rein in presidential imperialism in post-authoritarian Africa? We begin with the courts.

In a sense, the contemporary African approach to promoting constitutionalism has been simply to "judicialize" it. Thus a disproportionate weight of the burden of limiting presidential power in post-authoritarian Africa is left to constitutional litigation and judicial enforcement of the constitution. Bills of rights and constitutional courts and supreme courts with constitutional review authority are thus *de rigueur* in post-transition Africa. Correspondingly, Africa's

constitutional review courts have been thrust into the role of “guardians of the constitution,” and a number of Africa’s new constitutions have liberalized standing requirements in order to encourage the public to challenge offending governmental actions.

In part, the judicialization of constitutionalism in Africa follows a global pattern. But it also reflects the disproportionate influence of Africa’s lawyers, both individually and as a class, in the recent agitation for political reform and in the ensuing process of constitution making and revision. Belief in the possibilities of “juridical constitutionalism” in Africa might also stem from the view, widespread especially within African legal communities, that weak-kneed judiciaries were largely to blame for the failure of early post-colonial constitutionalism in Africa. The opinion expressed by an African human rights lawyer, that “the first generation of the Constitutions and Bills of Rights in Common Law Africa was destroyed not so much by the intolerance of the executive as by the enthusiastic abdication of judicial responsibilities by the persons and institutions mandated by those Constitutions to perform them,” (Odinkalu, 1996) is one that is shared, curiously, by many. Judgments rendered by Africa’s early courts in cases like *Re Akoto* (from Nkrumah’s Ghana) and *Ex parte Matovu* (from Milton Obote’s Uganda) are often cited to support this opinion. Following from this assessment, Africa’s courts, now bearing explicit constitutional review powers and blessed with formal independence, are expected to rise to their new responsibility as the first line of defense against executive overreaching.

In some respects, the optimists have not been disappointed. Africa’s newly empowered courts have ruled against obstinate presidents in several important cases litigated since the beginning of the 1990s. Yet, despite these early indications of constitutionalism-friendly judicial activism in contemporary, Africa’s courts are still too enfeebled to be counted upon reliably to check presidential power.

Judiciaries across Africa suffer many of the same handicaps that undermine legislative effectiveness. The finance ministry’s control of the treasury, which in many African countries has been immensely reinforced by current “cash budget” laws, essentially places the judiciary at the financial mercy of the executive. Routine and gross under-funding of Africa’s courts often cause chief justices to explore informal routes to court influence with the executive in order to obtain the resources necessary to keep the courts functioning. Turning the judicial leadership into supplicants before government politicians carries an obvious risk to judicial independence.

This risk is heightened in many African countries by the extraordinary administrative power chief justices exert over their court systems and judicial personnel. In Ghana, for example, a longstanding judicial convention, with no mooring in any national constitution, past or present, but which likely stems from a similar power once exercised by the Lord Chancellor of England, allows the chief justice to select, single-handedly, any five justices of the Supreme Court to sit in judgment on any case filed before the court. This power of the chief justice extends to cases in the lower courts and cases on appeal to the intermediate court. Because of the exceptional vulnerability of African chief justices to executive influence (for the reasons stated earlier), the vast administrative powers of a chief justice within the judicial establishment, especially the power to assign and reassign cases, opens the door to improper executive pressure.

Sensible constitutional design might help alleviate or eliminate this last problem, by, for example, a clear constitutional stipulation requiring that all cases before the supreme court be heard by all non-disqualified justices of the court or, if panels must be used, that a predetermined and blind method of panel selection be applied. Additionally, it would minimize the judiciary's exposure to undue political influence to require, at least with respect to the appointment of the chief justice, that the nomination, which is typically made by the president, be approved by a super-majority of the members of parliament, thereby raising the prospect of meaningful minority party participation in the process of judicial selection. Judges who owe their appointments to both the majority and minority parties are less likely to feel the pressure to pay back a political debt to any one faction of the political class.

But even if judicial independence in contemporary Africa were secure, reliance on the judiciary to restrain presidential power would run into yet another problem. This is the problem of jurisprudence—of the body of judicial doctrine and associated philosophy embedded in extant case law. Often what might appear to be a problem of “bad judges” (of “timorous souls,” in Lord Denning's famous words) is actually a problem of “bad jurisprudence”—of judicial doctrine and attitudes about power and rights that derive from sources and contexts doctrinally at odds with the present constitutional order. The result, in the African context, is what I have called a “jurisprudence of executive supremacy;” a jurisprudence that is unduly deferential to executive power and, at best, skeptical of “novel” claims rooted in modern conceptions of constitutionalism. Thus, for example, courts in anglophone Africa, relying on established “common law” doctrine and presumptions, have continued to uphold against constitutional challenges anti-press and anti-free speech statutes passed during the period of one-party rule.

In a sense, this is the judicial aspect of the problem of path dependency in post-authoritarian Africa—of holding over to the present era a pattern of judicial decision-making developed and learned in the era of “constitutions without constitutionalism.” The traditional over-reliance on “promotion from within” to fill judicial openings in the highest courts, coupled with the tendency toward national insularity on the part of African judiciaries, exacerbates this problem.

Here, too, a passive, open-ended approach to constitutional design is unhelpful as a restraint on persistent abuse of executive power. Despite recent democratic and constitutional reforms, Africa's statute books and criminal codes are filled with volumes of repressive laws enacted in the early postcolonial period and by successive authoritarian regimes. And Africa's “democratic” governments or their compliant law enforcement agents have not been shy to use or enforce some of these laws. In Malawi, for example, a Protected Emblems and Names Act, in force since 1967, has been enforced over 15 times in the post-Banda era, to arrest or prosecute journalists and other public figures charged with insulting the president—presumably, still the ultimate “protected emblem and name” in newly democratic Malawi. Similarly, Zambia's Public Order Act, which dates back to the colonial period, has been used repeatedly in the post-Kaunda era to handicap the activities of parties opposed to the government of the ruling Movement for Multiparty Democracy.

Simply enumerating a list of constitutional rights and then leaving it to future constitutional litigation and judicial review to declare these laws unconstitutional or to bring them in conformity with the demands of constitutionalism is thus a proposition fraught with the risk of a

regressive jurisprudence. Moreover, judicial review is, at best, a reactive institution; a lawsuit must first be brought before the power of the courts can be activated. And, here too, despite more liberal standing rules, challenging governmental action, particularly by persons outside the political class, remains uncommon in contemporary Africa. The tradition of *pro bono* public-interest lawyering is also underdeveloped in most African countries. Under these circumstances, a more effective approach to constitutional design in contemporary Africa is to repeal *ex ante*—that is, by express provision in the text of the constitution—those specific pieces or classes of repressive legislation (such as press censorship, sedition and criminal libel laws, and others tending toward the same purpose or effect) upon which past authoritarian regimes relied for control. The advantage of this approach is that it will settle in advance the matter of the unconstitutionality of these laws, thereby eliminating the risk of a future court upholding as constitutional their continued enforcement by the state.

The challenges facing Africa's new "fourth branch of government" are no less daunting. The most obvious is the familiar problem of institutional dependence on the good graces of the executive for adequate funding and resources. By the very nature of their constitutional or legislative mandates, these institutions—ombudsmen, human rights commissions, inspectors-general, auditors-general, etc—are more likely than even the judiciary to be perceived by the executive as "hostile." This naturally complicates their resource deficiency problem. Moreover, these agencies of horizontal accountability often have no independent enforcement authority; their mandates usually limit them to investigating and reporting findings to parliament and/or the executive. Prosecutorial discretion in contemporary Africa generally remains the constitutional monopoly of the Attorney-General, who is invariably a politician and a member of the president's cabinet holding office at the pleasure of the president.

Even where they have a reasonable measure of constitutionally protected independence, the exact juridical status or position of some of the newer of Africa's "fourth branch" agencies within the constitutional landscape has remained uncertain or contestable. For example, Ghana's constitutionally established anticorruption and human rights commission has been frequently demoralized by a series of judicial rulings that have denied enforcement, and often even minimal deference, to the investigation-based findings and decisions rendered by the commission.

In light of the entrenched tripartism of modern constitutional thought and design, the idea of "non-judicial," "non-executive" extra-parliamentary bodies with countervailing power is bound to present doctrinal and political difficulties, and not just for Africa's courts or politicians but for the "fourth branch" institutions themselves. Given the fact that these institutions of horizontal accountability are designed to maintain oversight of the executive in specialized areas of governance, a sensible conception of their role is to regard them as complements or auxiliaries to the legislature. Under this role conception, parliament, not the president, becomes the body best qualified to exercise the constitutional power to appoint or remove officers of these fourth-branch oversight agencies (through super-majority voting rules). The current arrangement under most African constitutions, whereby the president is the appointing authority for the constitution's "fourth-branch" oversight bodies, is at cross purposes with the intended mission of these bodies and with their need for detachment from improper executive influence.

This paper does not represent US Government views.

In sum, there is far too much wishful thinking, and not enough hard-nosed realism, embedded in Africa's current constitutions. The success of presidential term limits in contemporary Africa carries an important lesson for constitutional design in Africa: flat prohibitions and prescriptions, not open-ended provisions, hold far better prospects for taming presidential power and advancing constitutionalism in Africa.

This paper does not represent US Government views.

This page is intentionally left blank.

The Role of the International Community in Promoting or Encouraging (or Discouraging) Political Reform and Democratic Strengthening in Africa

By Richard Joseph

Department of Political Science

and

Roberta Buffett Center for International and Comparative Studies

Northwestern University

What have been the effects on political institutions and democratization of traditional aid flows and democratic assistance programs, as well as diplomatic pressure and other forms of engagement?

There is no consistent policy among external donors and countries in supporting the building of democratic political institutions and strengthening democratic processes in Africa. There was a relatively short period, following the end of the Cold War in the early 1990s, when a convergence of interests occurred among Western democratic nations to bring an end to pervasive authoritarian rule in its many forms. That consensus, however, was not very deep or enduring. Celestin Monga, a Cameroonian economist, conducted an analysis of French aid to African countries and demonstrated that the level of this assistance did not change to reflect the degree of democratic progress in former French colonies, contrary to French government declarations. While similar studies of other major donors may show greater variation, the reality is that the expected “democratic dividend” succumbed to the resurgence of African and international realpolitik.

In assessing the role of the international community in democratization in Africa, it should therefore be kept in mind that external aid flows, diplomatic pressures and other forms of engagement followed the ebbs and flows of the foreign policies of the respective governments and the mosaic of political configurations in Africa. Nevertheless, the post-cold-war international environment, democratic breakthroughs in key African states, and heightened external interventions by governmental and non-governmental actors did significantly widen the political spaces in Africa, contribute to the restoration of competitive elections, and engender transfers of governmental power.

The question of political institutions is more vexed. Tom Carothers has written about the “devastatingly weak institutions” in Africa. Alex de Waal has noted the declining capacity in Africa to operate complex institutional systems. An understanding of the mixed record of democratization in Africa cannot be divorced from an appreciation of its weak institutional endowment in many sectors. Weak organizational capacities can be transferred from one economic or social sector to another. The fact that a group of persons declare themselves to be a democracy advocacy NGO, for example, doesn’t mean that they will construct an organization largely free of the deficiencies of the very government and other institutions they criticize.

A key democratic institution is the entity responsible for the conduct of elections. The success achieved by Ghana in the creation of its Electoral Commission is often noted. However, in praising Ghana we are praising what should really be a “normal” phenomenon in a democratic country. Countries of far greater complexity than Ghana—for example, Indonesia and India—regularly conduct efficient elections without reliance on external assistance. However, this is not

the case in sub-Saharan Africa with the exception of South Africa, a country with a quite different institutional heritage. The re-emergence of political monopolistic practices—for example in Senegal and Nigeria—can also lead to severe setbacks in democratic fairness and probity, out of proportion to their institutional capabilities. The electoral chaos in Nigeria in April 2007, and the utter dysfunctionality of the Independent National Electoral Commission (INEC), was politically motivated, or even stronger, engineered. It is therefore very difficult for countries to show a steady strengthening of their democratic institutions when they are instruments of political chicanery in an already weak institutional environment.¹⁴⁷

In general, the overall effect of the various forms of external intervention to support democratization in Africa has been positive. However, there has been great variation (i.e., over the last 15-17 years) for the reasons mentioned above and also the quite divergent political environments in which these transitions took place. West African countries in which the most democratic advances have been made since 1989—Benin, Mali, Ghana, and Cape Verde—each possessed a different set of facilitating factors. Unanticipated breakthroughs continue to emerge, as in the cases of Niger and Mauritania, precipitated by internal actions by military personnel. The post-1989 international environment provided a welcoming context for domestic actors to pursue democratic outcomes, but it has had superficial impacts so far on countries—e.g., Burkina Faso, Cameroon, Côte d’Ivoire, Ethiopia, Guinea, and Uganda—in which ruling regimes have consolidated versions of pseudo-democracy and obliged the international system to tolerate or implicitly accept them.

What have been the positive and negative roles of specific international actors, including France and China?

Most African nations came to independence as constitutional democracies. By the 1980s, with the exception of semi-democracies in Senegal and the Gambia, and an untested dominant-party democracy in Botswana, all of sub-Saharan Africa slipped under some variant of authoritarian rule. All major external actors (in the case of nations) were complicit in the consolidation of dictatorships and autocracies and the marginalization of liberal democracy. So it is not possible to point a finger at any one nation because the finger-pointing could go around in a circle.

The small European democracies—in particular, the Netherlands and the Nordic countries—have been most consistent in their democracy advocacy in Africa. One or more of these countries usually take the boldest steps to eliminate or reduce aid to backsliding or repressive governments. Freed of their predictable support for left-wing governments during the first three decades of the post-colonial era, the Nordics have become even more forthright in linking their assistance to democracy building.

As the lead nation in the western world, security interests have always figured prominently in US relations with Africa.¹⁴⁸ American support for non-democratic regimes in Ethiopia, Sudan,

¹⁴⁷ The impressive electoral achievement in Sierra Leone in its 2007 presidential elections, won by the opposition candidate, Ernest Bai Koroma, demonstrates how even a country emerging from years of violent conflict can conduct acceptable elections when the electoral machinery sidesteps such chicanery.

¹⁴⁸ Space does not permit me to discuss other important external actors in Africa such as Britain whose actions have paralleled those of the United States in some regards and the smaller western democracies in others.

Liberia, Zaire and other countries are well-known. The immediate post-cold war years saw a dramatic change in this posture as the security imperative declined while commitments to democracy and human rights grew. Although the United States has not returned to the pat Cold War formula of support for “our dictators” against “theirs”, changing administrations in Washington, DC—and in the level of voice and efficacy of State Department and National Security officers responsible for Africa—has been reflected in an unpredictable and often ambiguous official approach to democracy strengthening. In recent years, the thinness of the American diplomatic presence in Africa coupled with its pinched budget (exacerbated by the Iraq calamity); the rise of counter-terrorism as an international priority; a partiality, once again, to working with autocrats such as Meles Zenawi in Ethiopia and Yoweri Museveni in Uganda; and deference to the illiberal pan-Africanism of Thabo Mbeki in South Africa, have rendered Washington an unreliable actor in the promotion of democracy. In this arena, we have become a low-hanging-fruit picker, willing to help the progressive Ghanas and Malis of Africa, and use the generally admirable Millennium Challenge Account program to support progress in democratic governance. However, whenever the fruit can be reached only with special effort—for example in Angola, Ethiopia, Nigeria, Uganda and Zimbabwe—we remain on the short ladders and flail our arms in unconvincing displays of frustration.

The above overview clears the way for me to address the more consistent examples of France and China. France, one of the most prominent countries in Africa for the past century, has never made democratization a major policy of state. There was some hope when François Mitterand was first elected President in 1981, but the deeply entrenched French diplomatic-military-business complex soon resumed its usual support for the African status quo. Even Mitterand’s son, Jean-Christophe, became a notorious enhancer, and consorter, with African venality in its myriad forms. Throughout much of the post-colonial era, France maintained a “special relationship” with Africa, and with her leaders, whether they were democratically-elected or military usurpers, that was unique among western nations. France’s presence in Africa has declined in recent years as its client-states became less important economically, the financial burden they represented for the French treasury harder to justify, the old Africa hands in the political/economic/intelligence community departed the scene, and more significant markets for French exports and investments emerged elsewhere in Africa and globally.

While France can take little or no credit for democratization in Benin, Mali and Senegal, it was its old self in blunting pressures for democratic advances in Cameroon, Togo, and Gabon. The return of Sassou Nguesso to power in Congo Brazzaville, last-ditched efforts to sustain a dying Mobutu, pussy-footing with Babangida and Abacha in Nigeria, Charles Taylor in Liberia, and Omar al Bashir in Sudan, are all consistent with France’s historic pursuits of its business and diplomatic interests in Africa without regard for democracy and human rights.

France does retain the capacity to use and project military power in Africa and, in this regard, remains a critical actor in reducing warfare and averting humanitarian catastrophe. It has done so in the case of Côte d’Ivoire where its military forces intervened to separate the combatants thereby saving many lives and curtailing physical damage. Under President Sarkhozy, France appears willing to be a forceful actor on the peace front in Africa, as witness its commitment to provide troops to secure Chad and the Central African Republic and its active encouragement of the peace progress in Darfur.

There is a possibility that France will gradually join the European consensus on dealing with Africa. Young English-speaking French elites no longer share the nostalgia for Afrique française; young Africans in Senegal, Côte d'Ivoire, Mali and other "francophone" countries are increasingly interested in learning English and emigrating to the United States; and a new realpolitik in the French government could lead to France treating African issues on their merits rather than in the well-known privileged and paternalistic manner. I do not hold out hope for France, however—as opposed to French civil society actors—becoming a strong force for democratization in Africa anytime soon. In fact, the dwindling of French national interests in political outcomes in various African countries—for example, Cameroon—could advance the prospects of delayed democratic progress there.

China's appearance as a major actor in Africa has been so rapid, and in so many areas, that it has significantly affected policy options for all involved with the continent. It would take several more years before we have achieved an adequate grasp of these transformations. And even that is not certain because their scale might not taper off for some time. Chinese companies, both state-owned and private, and Chinese traders and workers, have been moving into Africa in ways that can only be compared to the colonial penetration of Africa. But colonialism is not an appropriate metaphor because China has no interest in gaining sovereign control over African territories. Indeed, respect for African sovereignty and political non-interference is prominently posted on the masthead of China's advance into Africa.

No sooner does China's growing presence in one sector, e.g. gas and petroleum production and export, becomes apparent than it shows up as a major player in another, and then another. And there is seemingly nowhere in sub-Saharan Africa in which China is not prepared to be active, from failed to recovering to consolidated states. China has bypassed bilateral donors in their engagement with the continent and now apparently exceeds the World Bank itself in total development loans provided. What is more, with its huge financial reserves, China readily provides loans to African countries, such as Nigeria, to finance their participation in large infrastructural projects.¹⁴⁹ We have as yet no appropriate term to capture the scale of Chinese involvement in Africa in which so many aspects of external penetration are taking place within such a short time frame.

All I can attempt here is to provide some preliminary reflections on the impact of China's presence on democratization. The first point is that this impact of currently more significant in Africa's non-democratic states and those that are backsliding from democratic commitments. Western pressures for democratic progress, uncertain and fluctuating as it may be, are now countered by the presence of a major economic actor in Africa willing to provide aid, loans, and investments without regard to the nature of local political systems. Before the spotlight was turned on it, China benefited from a phenomenon with which western nations, as well as

¹⁴⁹ In the course of writing this paper, it was reported that a draft agreement between China and the Democratic Republic could "tie up mineral resources in exchange for \$5 billion in infrastructure projects and loans". If confirmed, such an agreement would vault China into becoming a major player in the exploitation of Congo's vast mineral wealth and upset debt-reduction plans of international institutions and the investment hopes of major western mining groups. William Wallis and Rebecca Bream, "Alarm over China's Congo deal," *Financial Times*, September 9, 2007.

international financial agencies, have been long familiar, namely, that it is easier to make deals with authoritarian, and weakly democratic, regimes that possess the military and other security means to impose agreements reached with external actors and silence dissent.

Chinese leaders and officials are fast learners. In countries with vibrant political systems, and active trade union, media, democracy and human rights organizations, such as Zambia and South Africa, China will come to respect these entities and traditions and their implications. Whether this respect extends beyond lip-service cannot be predicted. On the other end of the spectrum, China will gradually realize the cost to itself of doing business with rogue states such as Mugabe's Zimbabwe. It will also understand the risks it faces in its dealings with petro-states such as Angola which now displays the predatory behavior of the recent past combined with more transparent handling of its vast oil earnings. In general, however, western companies understandably believe that China enjoys many comparative advantages in gaining preferential access to Africa's minerals and markets. Many Chinese firms are state entities and therefore can make generous deals based on China's huge financial reserves. They are also not subject to the environmental, labor, transparency and other criteria that have been painfully constructed to promote more socially responsible behaviors on the part of foreign investors.

China also has a major card to play in a world confronted by dire security threats. It has begun to use its influence in Sudan to push Khartoum to accept a UN peacekeeping contingent in a hybrid force with the African Union. This is similar to its role in nudging the North Korean regime to relinquish its program to acquire nuclear arms in return for international development assistance and other guarantees. In brief, the more daunting the local situation in Africa, the more China may become an indispensable actor in the pursuit of international objectives.

Finally, China is itself a moving target. Although the communist monopoly on power is rigidly preserved at home, China is becoming an increasingly pragmatic and skillful international player. I have attended highly adroit public presentations by senior Chinese government officials able to hold their own in arguments with western experts. In brief, as China finds itself involved in relations with the wide range of African political systems, outside of the small number of highly repressive states, its behavior will tend to parallel that of western nations. It will certainly not emerge at the forefront of demands for democracy and human rights; but it will also not allow itself to remain too far out-of-step with the international posture. Furthermore, as more of its citizens become resident in Africa, and more of its financial capital is invested in the continent, from the standpoint of its own self-interest, it will have to pay greater attention to efforts to strengthen institutions that guarantee property rights, the rule of law, and measures to improve human security.

I therefore concur with the position taken by the Independent Task Force on Africa of the Council on Foreign Relations in 2006, namely that we need to engage with China in all areas of importance to the people of Africa and ourselves.¹⁵⁰ The history of the West in Africa does not automatically accord it the high ground from which to lecture the Chinese. Our current compromises with autocracy—and even complicity in some cases such as Ethiopia—means that stones thrown by us may well be thrown back. A sophisticated multi-track engagement with

¹⁵⁰ *More than Humanitarianism: A Strategic U.S. Approach toward Africa*, Independent Task Force Report, No. 56, Council on Foreign Relations (2006).

China, with national and private actors playing the roles appropriate to them, is therefore needed. African civil society actors must also be included in dialogues with China whose interactions have mostly been with government officials.¹⁵¹

On balance, I am hopeful about China's eventual impact on Africa which could be far-reaching in particular sectors, for example, overcoming the huge backlog in major infrastructural development: roads, ports, railways, dams, power-generation, etc.¹⁵² The 2008 Summer Olympics will bring China in full view of the world. It will be anxious that developments in regions such as Africa, in which it is already highly exposed and under challenge, do not adversely affect the success of the Games. As is well known, China's global outreach is anchored to the search for economic profit and advances in national prestige. It took many decades before western nations and multilateral institutions were willing to put democratic governance at the center of their African development strategies, with significant but incomplete success. That journey for China must begin in earnest. China has come very far economically and institutionally in just one generation. With regard to democratic advance, both internally and externally, this is a challenge it must eventually confront through learning, adaptation and transformation.

How can the international community improve its support and leverage for institutional strengthening in the near and longer term?

How can international actors generate incentives for better governance and more effective institutions (beyond methods already repeatedly tried)?

These two questions are so closely related that I will respond to them together. It is well-known that democracy is not an event, or a specific set of institutions, but a process that takes place via a variety of institutions, governmental and non-governmental. In the last decades of the 20th century, the United States made major advances in its democratic structures and institutions, for example, by removing legal impediments to the exercise of voting rights by citizens of African descent. Of course, other hurdles remain. As some are removed, the challenge usually moves on to other aspects of the polity.

It should also be remembered that democracy intrinsically involves political struggle. This is an understanding that is sometimes overlooked by political scientists and other analysts. The sharp decline of radical or socialist frameworks of analysis has resulted in the loss of the notion of struggle as a positive and dynamic concept. It is through struggle, and vigilance, that the demos, the greater number of citizens in any society, is able to influence, if not determine, the uses to which public power and public resources are put. At a conference on Nigeria in November 2006, Nobel Laureate Wole Soyinka stated that the Nigerian people have always tried to draw near to democracy and have often been pushed back by the elites and those in government.¹⁵³ Whatever the manner in which those in government acquired power, it is likely that they will eventually

¹⁵¹ For an informative and insightful essay by Akwe Amosu of the Open Society Institute, see "China in Africa: It's (Still) the Governance, Stupid", <http://www.fpif.org/fpifxt/4068>

¹⁵² Awosu, Ibid, describes what is becoming a prototypical Chinese engagement in its plan to develop large iron ore deposits in Gabon's interior that involves railway, dam, port, and other major infrastructure projects.

¹⁵³ "Nigeria 2007: Political, Social and Economic Transitions", Northwestern University conference, November 2-4, 2006, www.northwestern.edu/african-studies

seek to use it to their own benefit and gradually weaken instruments of horizontal and vertical accountability.

External actors and agencies can assist democratic strengthening and better governance in several ways:

They should favor democratizers while minimizing financial and other support for democratic backsliders and determined autocrats. Such support should involve the difficult but vital strengthening of legislatures, judiciaries, independent media and other agencies of vertical and horizontal accountability. African governments value greatly rituals of international recognition, e.g., levels of official contacts, and these can be used more vigorously to reward democratic leaders and marginalize autocrats. There must be clear, visible and tangible benefits for democratizing systems, and more special programs created for this purpose such as the Millennium Challenge Account.

Democracy as process, and democracy as inherently embodying struggle (beyond competition among organized political parties), require that external actors and agencies constantly seek to open up political spaces and protect citizens and groups that emerge at the forefront of domestic struggles for democracy and human rights. The many years of effort by philanthropic organizations—in this context I am most familiar with the work of the Ford Foundation—to support anti-apartheid activists and a vast array of civil society organizations in South Africa, brought great returns when the apartheid system began to crumble in the late-1980s.

Illiberal democracy, pseudo-democracy, and “democracy as presentability” are not just fanciful notions coined by students of democracy.¹⁵⁴ It is an increasingly significant phenomenon of the contemporary era. Illiberal regimes permit political parties to form but not operate freely; independent newspapers to publish but hobble them with restrictions; elections to take place but under unfair and repressive conditions; private firms to operate but prevented from developing freely by the punitive use of government patronage and other instruments; legislatures to convene but kept throttled by threats and bribery... External supporters of genuine democratization must adapt their strategies to these tendencies and resist the temptation to, once again, just resign themselves to the low expectations of “*démocracie tropicalisée*.” One outcome of this conference could be an effort to identify countervailing strategies based on lessons learned in many contexts, within Africa as well as elsewhere.

In a forthcoming book chapter, Michael Bratton and Carolyn Logan make a convincing case for African citizens to “claim democracy”.¹⁵⁵ On the basis of Afrobarometer’s survey research, they identify the weak demand between elections for responsive government on the part of the electorate. Aid donors, through the instrument of the PRSP (Poverty Reduction Strategy Papers) have obliged governments to give civic actors more of a say in the design of externally-funded programs. The Millennium Challenge grants also incorporate similar mechanisms. In addition to aid programs, external actors can identify—in association with African NGOs and University

¹⁵⁴ These terms are associated, respectively, with Fareed Zakaria, Larry Diamond, and this author. I have adopted Diamond’s “pseudo-democracy” in place of my notion of “virtual democracy”.

¹⁵⁵ “Voters But Not Yet Citizens: Elections, Vertical Accountability and External Actors in Africa’s Democracies,” in R. Joseph and A. Gillies, ed., *Smart Aid for African Development* (forthcoming)

experts—other incentives to amplify the voices of the demos and oblige governments to heed them. A dozen years ago, the editorial team of the Carter Center’s publication, Africa Demos, advocated the creation of a quality of democracy index. Freedom House scores and Afrobarometer survey research now provide abundant information about, and measurements of, democratic progress and regress in Africa. The African Peer Review Mechanism has also been created to take up this challenge, and APRM exercises have been conducted so far (Ghana, Rwanda, Kenya, South Africa) with notable thoroughness. I am not aware, however, of the visibility and impact of the findings of these organizations on local understandings of democratic practice. It is worth considering how the insightful information generated can be made available in ways that are lively and readily understood, and can inform popular action to enhance the claims made by citizens on their representative institutions and other governmental bodies.¹⁵⁶

It is generally appreciated that real democratic progress will take place in Africa when it acquires a vigorous internal dynamic. Most Africans are poor. Democracy strengthening must therefore connect with the struggle to improve, inter alia, access to health, education, transport, water, and jobs.¹⁵⁷ In recent years, liberal democracy has come under strong challenge in Latin America on the charge that combined with neo-liberal market strategies, it has failed to bring real improvements to the lives of the poor and disadvantaged. President Franklin Delano Roosevelt was one of the great democrats of 20th century United States. Among his many achievements is the institutionalizing of governmental responsibility for the basic social welfare and security of the American population.

No African government today can be truly democratic that does not design and implement vigorous anti-poverty programs. Combating corruption must be given priority because it is, among other things, the private appropriation of public resources that could be used to improve public welfare. Democracy in Africa requires that power be inclined to address the material and other needs of the demos. African democracy must, therefore, be liberal in its respect and promotion of political and other freedoms, and also social, in preferentially directing public resources to serve the classic demos: the greater number of the population who are also poor.

The strengthening of institutions, improvement of governance, and the advance of democracy can take advantage of new opportunities in Africa and globally. I will mention just a few on the expectation that conference participants can draw on their own experiences to suggest others: Advantage must be made of the growing human and financial resources present in the new African Diasporas in western countries and elsewhere. Many Diasporan Africans left the continent to seek better economic, educational and other opportunities for themselves and their families. In their overseas societies, they come to enjoy the benefits of democratic governance and inculcate further the norms of efficient and honest institutions. Diaspora communities play an increasingly significant economic role in the remittances they send home. As a political and institutional developmental force, however, they are yet to be seriously mobilized.

¹⁵⁶ For further insights, see Michael Bratton’s informative essays, for example: “Formal versus Informal Institutions in Africa,” *Journal of Democracy*, vol. 18, no. 3 (2007), pp. 96-110.

¹⁵⁷ For an impressive study that should greatly influence public policy, see Paul Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done About It* (Oxford, etc: Oxford University Press, 2007).

Information technologies revolutionize the conduct of business affairs worldwide. Africa has been one of the fastest arenas in the world in the expansion of cell-phone usage. As greater and cheaper bandwidth facilities become available, internet usage in Africa will similarly grow. Open communications, as we know, is a key ingredient of democracy. In Africa, governments can no longer control the domestic flow of information as in the past. Their citizens can communicate with each other, and internationally, in ways that make it possible to create myriad alternate fora for democratic thought and action.¹⁵⁸

A number of African countries are now experiencing renewed economic growth. This expansion is taking place in a context of unprecedented expansion of the global economy. African economies, outside of mineral exports, are yet to figure significantly in global capital flows. But this situation can change in the coming years. There is abundant financial capital seeking opportunities for investments and profits wherever they are present. To become full participants and beneficiaries of these global processes, African countries must continue to overcome daunting hurdles. The winners will be countries endowed with governments that promote the rule of law, democratic openness and participation, a conducive business environment, and an increasingly healthy and educated citizenry.

In this regard, I was impressed by another argument made by Celestin Monga at a Northwestern conference in 2005 that the emergence of Croatia from the disintegration of the former Yugoslavia may be relevant to Africa. Mongo contends that African countries that free themselves of the political and institutional debilities of their environment, and become dynamic sites of democracy and private entrepreneurship, can emulate in local contexts the Croatian model. I use the term “breakthrough nation” to describe countries that take advantage of contemporary opportunities to perform—governmentally, politically, and socially—in radically improved ways. As a Nigerian colleague recently told me, our elites continue to act in ways that may be beneficial to them in the short-term but in the longer term are very harmful to their countries while foreclosing opportunities for themselves. We should encourage a healthy competition among African countries, or regions or states within large countries, to become such arenas of dynamic democratic development. I believe the global community will respond affirmatively to bold initiatives that emerge within Africa, led by honest and forthright leaders in government and civil society.

I can think of no reason why such a revolutionary transformation should not begin in particular nations of Africa and then exert a strong influence on other parts of the continent. If Africa leads, the rest of the world is likely to follow with timely support. This is a much healthier trajectory than the prevailing one in which external actors largely set the democracy agenda, backed by ample aid funds, and African governments and civil society groups echo what is pronounced in western capitals. Democracy, as we are all aware, must become rooted in indigenous societies and cultures. While nutrients may be added from outside, the most important ones must be found within. Such vital resources are also present among Diasporan

¹⁵⁸ Comment from Alexandra Gillies: “Civil society in Mauritania was very weak until the recent coup that led to a transition government. As civic groups were rallied to participate in the PRSP process and the Extractive Industries Transparency Initiative (EITI), and contribute in other ways, they decided to create a Cyberforum—an umbrella civil society website for exchanging information.” I thank Ms. Gillies for this and other helpful responses to an earlier draft of this paper.

This paper does not represent US Government views.

Africans who can blend external technical knowledge with the cultural knowledge retained from their countries of origin.

In conclusion, despite the uneven course of democratization and development in sub-Saharan Africa, I believe that new actors and processes are emerging that, accompanied by smarter use of external assistance, can catalyze the long-promised renaissance.

This page is intentionally kept blank.



CONFERENCE REPORT

**DEMOCRATIZATION IN AFRICA:
WHAT PROGRESS
TOWARD INSTITUTIONALIZATION?**