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Globalisation and the Challenge of Democracy in Arab North Africa

Shahida El-Baz*

Abstract

Democratization processes have emerged recently as an essential component of globalization and thus, have been paramount in its discourse, and as a political prerequisite for integrating developing countries in the global market. The emphasis, however, has been on liberal democracy. The paper argues that the very process of globalization based on unequal global power relations and the externally formulated policies imposed on developing countries of the south are neither democratic nor an expression of their authentic needs and interests. In this respect globalization represents a denial of democracy on the global level. Meanwhile, the early and involuntary adoption of structural adjustment programmes by globalized countries of the south, with their socially polarizing impact, have enhanced the exclusion of greater numbers of the people from economic, social, and political processes and led the already undemocratic governments to adopt a more authoritarian praxis to enforce unfriendly globalization policies. A nominal liberal democracy was adopted only to bring the globalized economic elite to power to the further exclusion and marginalization of the majority of the population. The paper then discusses the debate by African and Arab intellectuals on the different types of democracy and their relevance to Arab North African societies.

Résumé

Les processus de démocratisation sont récemment devenus un critère essentiel à la mondialisation, tout en occupant un grande part dans le discours sur ce phénomène. Ils constituent également une condition sine qua non pour rejoindre les pays développés au niveau du marché mondial. Cependant, l'accent a surtout

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été placé sur la démocratie libérale. L'auteur affirme que le processus même de la mondialisation (qui est basé sur des relations de pouvoir inégales), ainsi que les politiques formulées de l'extérieur et imposées aux pays en développement du Sud ne sont ni démocratiques, ni le reflet des réels besoins et intérêts de ces pays. Ainsi, la mondialisation est un dénigrement de la démocratie au niveau mondial. En outre, l'adoption prématurée et involontaire des programmes d'ajustement structurel (caractérisés par leur focalisation sur le social) par les pays globalisés du Sud a renforcé l'exclusion des populations des processus économiques, sociaux et politiques, et poussé les gouvernements déjà non démocratiques, à adopter des pratiques encore plus autoritaires, afin d'appliquer des politiques hostiles de mondialisation. Une démocratie libérale que de nom a ainsi été mise en place pour amener au pouvoir une certaine élite économique globalisée et pour mieux exclure la majorité de la population. L'auteur aborde ensuite le débat des intellectuels afro-arabes portant sur les différents types de démocratie, ainsi que leur adaptation aux sociétés nord-africaines arabes.

The problematic

During the last two decades of the twentieth century globalisation has become a sweeping phenomenon re-shaping world societies through socio-economic, political and cultural mechanisms with the objective of integrating all world economies into a global capitalist market.

At the same time the world has witnessed a series of important changes, the most significant of which were the crisis of the welfare state; the collapse of the Soviet Union and the Socialist Bloc; the failure of the state-led development strategies and programmes in the developing countries of the South leading to their debt crises.

While the reason for the first one was explained in terms of the crises of capital accumulation, the reason for the second and the third was the absence of democracy.

To promote developing countries' integration into the global market, they had to adopt economic and political reforms, which were largely prescribed by the IMF and the World Bank. The main reform agenda included economic measures such as financial liberalization; privatisation of the public sector, and reduction of public expenditure on social services, and political measures such as the 'democratisation' of political systems through adopting political pluralism and greater freedom for civil society.

As a transnational phenomenon, globalisation transcends national boundaries. Consequently, the role of the state, being a barrier to the TNCs freedom of movement, had to decline. In addition, the objective of integrating all world economies into a global market controlled by international capital presumes a minimal role of the state. Meanwhile, the responsibility of

economic and political reforms pertinent to globalisation with their negative impact on the majority of the population is assigned to the state, which tends to resort to coercive authoritarian measures to maintain its power and control.

In this context, while Arab/North African countries adopting reform policies moved relatively faster in implementing economic liberalization, they were slow in introducing political liberalization, and showed strong resistance to real democratisation. Representative liberal democracy was formally adopted, albeit with mechanisms to preserve state control in alliance with the new economic elite. Regarding civil society organizations, the majority of which are NGOs, their statutory status also ensured close control by governments.

In addition, governments encourage only the formation of promotional welfare, service delivery and pseudo-development NGOs which play a functional role in reducing, if only partly, the negative impact of the globalisation policies, soothing social tension and thus, help to sustain the status quo.

The main argument of this chapter is that in the past decades, with the development of the globalisation processes, the experience of Arab North Africa has proved that within the context of underdeveloped market economies, socially polarized class structure and increasing poverty rates, the majority of the citizens, who exhibit very low indicators of social capital, are increasingly marginalized through the mechanisms of liberal/representative democracy and thus are excluded from effective participation in development processes. Civil society organizations using the same representation mechanisms only succeed in maintaining a dominantly patron/client relationship in which the beneficiaries are permanently kept as recipients of aid and services, instead of being transformed into active development agents.

The chapter will try to explore the impact of globalisation on Arab North Africa, their possibilities for democratisation and structural constraints. In this context it will deal with the following issues:

- An analysis of the socio-economic and political conditions of globalised Arab North Africa countries, in connection with the democratisation process.
- The impact of globalisation and the role of the state vis-à-vis civil society in relation to the democratisation processes.
- Relevant debates on globalisation and democracy.

Preamble

Despite the variations in the socio-economic and political formation of Arab societies, and despite the different attempted strategies to promote

development over the last five decades, development remains the major challenge for Arab countries. Democracy, as an issue closely linked with development, was another challenging issue. In recent decades globalisation became a prominent factor, and a context in which all other issues, especially development and democracy, are being greatly influenced and shaped. However, it should be noted that these three processes are dialectically interactive and mutually influential.

As concepts are socially and historically determined, they are normative and their meaning and content change according to historical and social context. Thus, it is necessary to define the main concepts of this paper i.e. globalisation, development and democracy in relation to the socio-historical conditions of Arab North African societies at this historical juncture.

Globalisation

Despite its sweeping impact, globalisation is still one of the most controversial issues, both on the intellectual and the political level. Although there are several definitions of globalisation, we will give two which are pertinent to two divergent approaches: the functional, and the structural definition (El-Baz 2001). Both definitions could be divided also along the line of the difference between globalisation discourse and ideology, on the one hand, and globalisation as a historical process, on the other (Abdel-Fadil 2000:115). Moreover, each definition tends to produce a strategy consistent with its logic and methodological assumptions.

The functional definition is descriptive and symptomatic. It addresses globalisation by describing its manifestations and achievements such as, great technological and scientific achievements, information and communication advancement, the power and dynamism of the transnational corporations (TNCs), and a dominating open global market that guarantees the free movement of capital, products and services, and labour. The cultural and ideological discourse of this definition is the propagation of globalisation as the victory of western civilization that marks the end of history (Abdel-Fadil 2000:116). It is in this context that globalisation is presented as the ultimate inescapable phenomenon which is turning the world into a universal village. Therefore, those who wish to survive in this world should rehabilitate, restructure and adjust themselves and their societies so that they can become sufficiently fit to be accepted and integrated into the one existing model i.e. the global market as an outcome of western civilization. The advocates of this approach are not concerned with existing contradictory interests between different parts of the world arising from structural inequalities, nor with potential marginalizing or even exterminating impact of globalisation on some societies, nor the inherent contradictions of the process of globalisation itself.

In this context, the social Darwinian principle of 'survival for the fittest is the name of the game'.

However, a more humanistic offspring of this approach continues to believe in the 'inescapable' quality inherent in the globalisation process, but not only are they aware of its positive impact on the human race, but they are also aware of its potential negative impact. Therein, the globalisation strategy pertinent to functional definition defines the ultimate goal as the integration of all world economies in the global market. To achieve this goal, the developing economies should be restructured and adjusted, so as to qualify for global integration, by following a universal prescription formulated outside their societies by the global managers of the globalisation processes. However, growing awareness of the negative impacts of globalisation highlighted by UNICEF's report titled 'Globalisation with a Human Face', drew the attention to the possible disfunctioning of globalisation mechanisms if concerted action is not taken to reduce these negative impacts. It is in this context that, the functional vision of globalisation added to its strategy supportive policies with the objective of facilitating and minimizing, as much as possible, the globalising pains.

The structural definition of globalisation is analytical, dynamic and historically oriented. While it deals with the manifestations of globalisation, it analyses its mechanisms and the structural logic/rationale of its development, in a historical perspective. In this context it presents globalisation as a dialectical historical process, and an advanced phase of an ever-changing human history, in terms of cumulative scientific knowledge and technology, and therefore, it is not the end of history. It is also an advanced phase in the development of capitalism, based on the differential and unequal levels of development of different world societies and thus, it creates a new world division of labour characterized by economically and politically unequal power relations on a world scale. The advocates of this approach maintain that globalisation is, by its very nature, polarizing i.e. the logic of global capitalist expansion produces growing inequality between the members of the system. Thus, there could not be catching up mechanisms from within the system. The catching up from late development comes from policies of de-linking which means submitting any society's relationships with the global market to the primary requirements of the internal development of that society (Amin 1999:120).

De-linking in this sense is the opposite concept of 'adjustment' to the global trends because such unilateral adjustment, by necessity, leads to more peripheralization/marginalization of the weaker members of the system. De-linking also means becoming an active agent in shaping the globalisation

process getting it to adjust to the requirements of one's own development (Amin 1999). National policy-makers, herewith, should be able to determine economic policies on the basis of actual national priorities and future needs. The policies thus, should arise from and express national interests (Abdel-Fadil 2000:81). In this sense globalisation, which would benefit the developing countries, should be authentically participatory with driving mechanisms towards social and human equality.

Globalisation assumes the global integration through freedom of movement of the markets of goods and services, capital, and labour. Nonetheless, only the markets of goods and services and capital have been able to embark on global integration, while the labour market remains segmented. This phenomenon increases global inequality through the differential exploitation of workers based on the segmentation of the labour market (Amin 1999:121, 141). This is further aggravated by the restrictive immigration policies adopted by the advanced countries of the North. Therefore, the polarizing effects of global markets need to be investigated more carefully. With capital, especially 'financial capital', becoming infinitely mobile, and labour being only partially mobile, the globalisation process should not be seen as synonymous with a global labour market at the world scale (Abdel-Fadil 1998:1).

Globalisation and the Arab/North Africa region

The special nature of the Arab region today is derived greatly, among other things, from its oil wealth. The oil has been functional, for the second half of the twentieth century, in shaping all Arab societies. It had a strong impact on the development of both the oil as well as the non-oil countries through labour migration, which was accelerated during the 1970s with the boom in oil prices. However, other factors have influenced the socio-economic formations of the Arab countries, such as their relationship with western capitalist countries, in addition to the radical socio-economic and political changes resulting from the revolutions, which occurred in some Arab countries in the 1950s and the 1960s. The response to globalisation by different Arab countries would depend, to some extent, on: the initial socio-economic and political conditions of each country; their different levels of development; and their actual degree of integration into the global economy.

It has been argued that globalisation is not a new phenomenon and that the first wave of globalisation began in 1870 through commercial activities and overseas investments. Thereafter, came the second wave of globalisation starting in the 1970s through the TNCs operations within the process of 'internationalisation of production' (Abdel-Fadil 2000:116). Each wave of globalisation had a centre from which its influence spread all over the world. The Arab region, it is suggested, was a radiant centre for globalisation in that

sense more than once throughout history. However, since the rise of modern western civilization the Arab region became a passive recipient of the influence of globalisation. In 1998 two centuries have passed since the first contact between the Arab region and the 'Modern West' through Napoleon's campaign on Egypt. Few years later Mohamed Ali inaugurated a new round of interaction between the Egyptian and the world economy through exporting cotton to Europe and importing production, knowledge and war arts from Europe. The nineteenth century and the first decades of the twentieth century witnessed series of integrations of Arab countries, one after the other, into the world economy through British or French occupation or American hegemony. These processes had strongly affected the Arab region economically, socially, politically and culturally (Amin 1999:8).

However, the recent form of globalisation has its own features, manifestations and mechanisms for global integration. Given the dialectical nature of the globalisation process, it is necessary to highlight the recent processes through which the Arab region along with other developing countries began their formal integration into the recent globalisation process.

The crisis and the aftermaths

The crisis that has engulfed the developing countries over the last two decades can be traced to the oil crises of 1973 and 1979, that precipitated the recession in the developed countries, which, in turn, impacted developing countries through declining demand for raw materials, high international interest rates and deterioration in the terms of trade. The signs of emerging crisis were increasing; current account deficits as most governments of the developing countries continued to finance expenditure through borrowing. On the other hand they had a much higher level of investment than could be covered by domestic savings. In addition, many developing countries were encouraged by financial international institutions to borrow in international financial markets (Mkandawire & Soludo 1999:21; Zaki 1999:44).

By the early 1980s it became obvious that this situation was unsustainable. Unable to pay their debts most developing countries were abruptly frozen out of international financial markets. By the mid-1980s the debt crisis reached its peak.

The explanation of the crisis was polarized between external factors (decline in terms of trade, the instabilities in the global financial and commodity markets) and internal factors, i.e. policy failure. Each explanation failed to integrate the other factors into their policy proposals. For those who focused on domestic policy failure namely: the World Bank and the IMF, they failed to estimate the role of external factors. For them a pivotal explanation of the crisis was the monopoly of policy making by the state,

which represents social elements in a manner that particularizes policy and drives it away from the larger societal concerns (Mkandawire & Soludo 1999:22). This has led to the claim that the role of the state must be minimized.

Since the understanding of the source of the crisis affects the perception of the solution, the prescription of the World Bank and the IMF for the developing countries was formulated in what became known as the Stabilization Policies and Structural Adjustment Programmes (SAPs). The initial formulation of these policies had no reference to either poverty or social justice.

The burden of debt became increasingly unmanageable, Egyptian debt reached nearly $50 billion in 1990; Algeria's was $26 billion, Morocco $28 billion. For Egypt, and Morocco the ratio of debt to GDP was close to 100 per cent. Mauritania had one of the highest debt burdens in Africa. As debt service began to consume over one-third of export earnings, Arab countries were increasingly forced to undertake stabilization and structural adjustment policies (Richards 1994:5, 6). Thus the initial impetus for the SAPs came from outside the Arab countries. It was the unwillingness of foreign creditors to continue to finance budgetary deficit that led the Arab countries to turn to the IMF for assistance (Ibid). While these policies were a solution for the crises, they were at the same time mechanisms for integrating the adjusted Arab countries in the global market.

Globalisation and the role of the state in the Arab region

Globalisation as a transnational process transcends national boundaries. Consequently, the importance of the state, as a barrier to the TNCs freedom of movement, declines. In addition, the objective of global integration of all world economies in a global market, controlled globally, presumes a minimized state role. Therefore, it is possible to point out to the link between this postulate and the emphasis of the World Bank and the IMF on the 'policy failure' assumption and hence, recommending as an essential prerequisite for implementing reform policies, the withdrawal of the state from most/all economic, social and political functions.

Although there are considerable differences among globalisation theorists, the majority would advocate and adopt a global point of view. They deal with the world as a whole and as a unit of analysis assuming the existence of a general autonomy and 'logic' to the globalisation process, which operates, relatively, independent of other subunits of analysis e.g. the nation, the state or the region (Ritzer 1998:81–82). 'While they may be right about the traditional imbalance in sociological concern, to the benefit of the nation state, and the contemporary importance of global processes, it is correct to

say that the nation-state still has a paramount importance in the contemporary world' (Ritzer 1998:82).

The situation in the Arab region reflects with even greater clarity the necessary role of the state, albeit based on democracy as a prerequisite, since some Arab countries are still in the stage of state building with no solid economic, political or social institutions to replace the state in managing public affairs. However, it should be clear that any successful development requires real popular participation through institutionalised and participatory democratic mechanisms.

Moreover, ERSAPs present an inherent contradiction in the reform processes, i.e. the responsibility of implementing the ERSAPs, with their negative impacts on many people, is designated to the state which, in order to achieve this goal, usually resorts to the use of every powerful, authoritarian and coercive measures that could be used. Meanwhile, the state is requested, within the context of globalisation, to do away with its power and authority and to democratise the system. Thus, the state in the Arab region is still playing a very important role especially in implementing the ERSAPs. It is worth noting, however, that while Arab states have gone a long way in economic liberalization, they are still holding back against political liberalization.

Regarding the state's economic role, even in the oil producing countries, despite the dominance of free market economies, it adopts a state-led welfare development strategy. The concentration of wealth in the state is far superior to private incomes and savings. This places the central state in a unique position to allocate resources to comprehensive development activities. A number of these countries invest intensively in relatively successful industrial and services projects. Other investments benefit from state subsidies within the context of development plans for well-defined economic and social objectives (Abdel-Ghani 1999:177).

Globalisation, social mobility and socio-economic polarization of Arab/North Africa societies

Globalisation as a multidimensional complex process has a diverse impact on different countries of the world as well as on different social groups within the same society, based on their different socio-economic conditions and their level of human development. Therefore, the globalisation process produces two contradictory processes of integration and exclusion. It is suggested that the impact of globalisation on developing, including Arab, countries tends to integrate a small part of the country's elite into the processes of production and capital accumulation within the global market, which grants them a standard of living way above the country's per capita income.

Meanwhile, the number of people who get marginalized and socially excluded from production and income circles increases rapidly. The dynamics of social and economic exclusion produce poverty, which results in poverty in poor people's abilities, which then, reproduces itself in a vicious circle until social polarization becomes, in different degrees, the main characteristic of developing societies. This situation is bound to threaten the social cohesion in society and the very basis of the state. It produces social tension and, economic and political instability (El-Khawaga 2000:24).

The adoption of the ERSAPs by a number of Arab countries has resulted in different forms of social mobility, largely to the benefit of the business classes active, mostly, in non-productive activities in the private sector. Meanwhile, as a result of increasing poverty rates, a downward social and economic mobility of the vast majority of the population has taken place comprising civil servants, unemployed graduates and the uneducated females. Most of these groups were forced to turn to the unstable and unprotected informal sector to earn their living.

Moreover, class polarization connected with the new liberal policies is having a negative impact on the very existence of some strata of the middle class. The members of the upper stratum, characterized by higher income and close connections with decision makers and public sector management, benefit from the new liberal policies. The conditions of the middle stratum, which depend mainly on fixed income, are worsened due to the decline in their real income as a result of price inflation of goods and services. In addition, large numbers of them lose their jobs through privatisation processes. Their situation is continuously degenerating to the level of the poor majority. The deterioration of the lower stratum, which represents the majority of the middle class, is usually devastating (Zaki 1998:168). This situation is reflected in low quality of life indicators in the Arab countries compared to countries like Malaysia or China, which are subjecting the process of integration into the global market to the needs of their countries' development.

It is worth noting here that while the globalisation discourse emphasizes liberal democracy and political pluralism, the problems arising from social polarization and exclusion, and the authoritarian coercive measures adopted by adjusting governments are, in themselves, obstacles for achieving democracy or for developing a dynamic civil society. Economic and social marginalization would, by necessity, lead to political marginalization i.e. the negation of democratic participation.

Development

An analytical definition of development should include the following elements:

- Development is an ongoing process i.e. it does not have an ultimate fixed goal, but rather a continuous progressive societal movement. The goals and mechanisms of development change according to time and different societal contexts. In each historical phase development produces the social forces/agents who have the right and the power to lead, to determine development goals, and the mechanisms and tools for achieving them. In this sense development is a relative and an ever-changing concept.
- Development is a comprehensive process i.e. its subject is society as a whole with its economic, social, cultural and political structures as interconnected and mutually interactive. In this context, development's main goal would be enhancing and mobilising economic, social, and political resources and opportunities so as to satisfy peoples' needs in such a way that they are integrated in society and able to participate in decision-making processes.
- The objective of development is to enhance and mobilize human, material and cultural resources of society and put them to optimal use. However, it should be noted that human resources are the most important factor. Human beings are the creators of material and cultural wealth/resources, which they endow with social value. Thus, people-centred development is the viable strategy in which all citizens can participate in realizing its goals, as well as benefiting from the product of their work. This type of development entails the adoption of both participatory democracy and social justice as necessary conditions for achieving a comprehensive sustainable development.

It should be noted, herein, that achieving comprehensive sustainable development entails, in addition to the above mentioned elements, the existence of the following conditions:

a) Development goals and objectives should express the real needs of the majority of citizens. Thus, they should emanate from society itself, and thus, should be determined by the people at the local level as well the national level. Therefore, development strategy and its objectives should not be decided and imposed from outside the concerned society. This, by necessity, raises the question of independent, but not isolated, development.

b) In this context utmost consideration should be given to the citizens' creative initiatives through real popular participation in the processes of decision-making and implementation of development policies. Mainstreaming marginalized groups, especially women, in all development processes is a prerequisite for their success. Consequently, elimination of mechanisms of social polarization, discrimination and exclusion is a necessary condition for successful development.

c) To attain development goals, all efforts should be made to maintain national independence vis-à-vis dependency and hegemonic globalisation. In this respect, development should become a tool for an alternative globalisation, based on equal global power relation.

Democracy

Democracy is a concept and a socio-historical process. Thus, while the term 'democracy' had only one definition since the Greeks i.e. rule by the people, throughout history there have been 'people' and 'non people'. Since the French Revolution in 1789 the modern definition of democracy has established three concepts of democracy in European theoretical and political discourse. These concepts were liberal democracy, social democracy and socialist democracy. From a theoretical perspective each one of them emerged as a critique of pre-existing economic and political forms of organizations. However, after the World War I and after the Bolshevik revolution in 1917 all three concepts/ forms co-existed e.g. liberal democracy in Western Europe and North America, social democracy in Scandinavia, and what was supposed to be socialist democracy in the Soviet Union and Eastern Europe. The product was three competing conceptions of democracy but two competing systems of economic and political organizations i.e. the capitalist and socialist systems (Mafeje 1992:2). Inability to distinguish between systems and models created a problem for the developing countries, which viewed these systems as models, i.e. abstracted forms free of their substantive content, and thus capable of being reproduced in different socio-economic and political formations. This was apparent in the ex-colonial countries some of which saw themselves as extensions of the metropolitan countries and thus, tried to reproduce the liberal political model, while others, who obtained their independence through a long anti-imperialist struggle, were ideologically inclined to adopt what they perceived as an anti-imperialist model, i.e. a form of socialism based on the one-party system.

On another level, concepts have an intellectual dimension as well as a utopian quality. Thus, the notion of democracy involves intellectual and political assumptions, which transcends actual reality. The discrepancy

between what is experienced in real life and what is perceived as an ideal life is, therefore, a source of tension and of revolutionary impulses in society. It should be admitted, however, that in no revolution can ideal society be attained. This implies that utopia is a permanent feature of all social existence and a guarantee for continuous social movement (Mafeje 1992:3).

Liberal democracy, which pervaded Europe, North America and the British dominions as a political form and utopia for two hundred years unrivalled, is by far the oldest and the most well advertised form of democracy.

In the second half of the nineteenth century the notion of social democracy emerged as a critique of liberal democracy and its social foundation. The issue was social democracy as against liberal democracy, which, while claiming democratic rights for all, did not realize social equity for the workers in industrialized Europe. Thus, throughout Europe the struggle for social democracy was associated with the labour movement. However, due to lack of clarity on the side of the social democrats on certain issues e.g. the national question, social democratic parties in Europe, except in Holland and Scandinavia, fell into the hands of colonial and fascist nationalist states. Some of them argued that the industrializing countries needed colonies so as to improve the living standards of the working class in the 'civilized world'.

Since World War I liberal democracy has lost its power as the leading democratic form. The critique of liberal democracy became general not only among socialists and social democrats but also in the capitalist countries themselves. The failure of the liberal parties to win popular support in the inter-war period and after the Second World War signifies the inadequacies of liberal democracy. This was not an ideological revulsion by the voters but a well-founded perception of the good that was not being delivered. This became much clearer during the Deep Depression of 1929–1933 when the liberal model with its trickle down assumptions could not help in easing the crisis. Thus, it paved the way for the Keynesian revolution in economics. The state was called upon to intervene which signalled the rise of the welfare state.

However, it should be understood in this respect that the critique of liberal democracy is not a denial of the value of the rights it introduced but about the same rights which are denied by the actually existing capitalist system (Mafeje 1993). Thus, theoretically the issue concerning 'liberal' democracy versus 'social' democracy was about distribution of the social product and political power between classes in capitalist societies, which liberal democracy does not address.

Socialist democracy as a concept corresponded with the emergence of communist parties in Europe and was the form adopted by the Soviet Union

in 1917. It is based on international proletarianism and the dictatorship of the proletariat. It was seen as a negation of class rule and exploitation. Thus, it assumed that social and equal economic rights would automatically produce equal opportunities for political participation. However, neither international proletarianism nor the dictatorships of the proletariat were achieved.

The concept of the 'New Democracy' introduced by Mao Tse Tung was a departure from 'socialist democracy' predicated on the dictatorship of the proletariat. Mao Tse Tung succeeded in situating the National Question within the socialist trajectory. For him the concept of 'New Democracy' cuts across classes so that progressive and patriotic factions and strata, from classes other than the peasants and the workers qualified for membership in the democratic national alliance against colonialism and imperialism, provided that their participation does not threaten the conditions of livelihood of the majority of the people (Mafeje 1992:17). In so far as the 'New Democracy' defines its subjects and objects, it is anti-liberalism. Thus, under the concept of 'New Democracy' primacy is given to the conditions of livelihood of the majority of the people. It derives its national character from being, by necessity, anti-imperialist. This was an important departure from European socialist democracy based on the dictatorship of the proletariat, both of which they failed to achieve. Not surprisingly the socialists in the 3rd and the 4th Internationals rejected this concept.

Debating democracy

The prevailing crisis in the developing countries since the 1980s was about the 'state and civil society' and 'democracy'. At the same time policies of globalisation were imposed on the developing countries, endorsed by the donor community and credited by autocratic regimes, which dominate the scene in the developing countries.

Interestingly enough, the same powers, which imposed these marginalizing policies, called for democratisation and good governance, as pre-requisites for development in the developing countries. Since the politics of globalisation tend to minimize the role of the state, western scholars found it expedient to construe this as a matter of 'civil society' versus the 'state' and linking it to democratisation and good governance as necessary conditions for development.

Acutely aware of the crises of democracy in their countries many Third World scholars joined the debate. Among them were African and Arab scholars, albeit with some differences. Their main concern was the intensification of autocratic rule by presidents 'for life', and recently for the life of their children, the increasing marginalization of vast sections of the citizens, and frequent violation of civil rights.

On the African scene this has inspired a collective intellectual effort by African scholars, which resulted in a publication entitled *Popular Struggles for Democracy in Africa* (Anyang' Nyong'o 1987) as well as the CODESRIA research project on 'Social Movements, Social Transformation and the Struggle for Democracy in Africa' launched in 1988. No longer was it assumed that the state had the monopoly of the political initiative. As far as one can tell, the debate of the late 1980s among African scholars represented initially a disagreement within the left about political priorities and strategies rather than ideological preference. However, the debate was escalated in the early 1990s to reflect that African scholars especially within CODESRIA have become less homogeneous than they were assumed to be. In his article (1989) Shivji denounced liberalism and attacked his fellow leftists for indulging in 'unabashed celebration of Liberalism' under prevailing African conditions. As a matter of fact his views were verified by the fact that in the new 'democratisation' in Africa the popular masses who initiated the process got usurped and marginalized by the liberal petit-bourgeois elite (Mafeje 1998).

The debate has since produced yet another confrontation between the more polarized African scholars of the left and the right. Jibrin Ibrahim (1993) has launched a severe attack on the African left accusing them of anti-liberal bias. He singled out senior African radical scholars such as Samir Amin, Claude Ake, Archie Mafeje, Mahmood Mamdani, Issa Shivji and Ernest Wamba dia Wamba whom he referred to as 'Icons'. He condemned them for 'having spent too much of their intellectual careers demolishing liberalism'. He, as Mafeje put it, ignored the well-known fact that the experience of liberal democracy in some African countries e.g. South Africa, Namibia, and Botswana has brought no change in the situation of the mass of the people. Neither 'participatory democracy' nor better access to means of livelihood has been achieved. Thus, liberal democracy had disqualified itself in the African context with no need to the effort of the 'Icons'.

To sum up the African debate, the supporters of liberal democracy had the following arguments:

- Liberal democracy is a value in itself. It should not be linked to or sacrificed for any particular economic system or development strategy (Mkandawire 1991).
- The critique of liberal democracy, is for some a justification for dictatorial and authoritarian regimes (Ibrahim 1993).
- Although liberal democracy is not sufficient, it is a necessary starting point to a better understanding of democracy, 'half bread is better than no bread (Mkandawire 1991).

- Some revolutionary intellectuals accepted liberal democracy as a phase in which civil liberties such as, freedom of expression, meetings, organizations could be used to enhance their political activities and thus can achieve their revolutionary goals.

The opponents of liberal democracy had the following arguments:

- Experience of liberal democracy in the third world proved that it could only create opportunities for power circulation among the ruling elites (Shivji 1990) the rest of the citizens were excluded from both political participation and access to means of livelihood.
- Liberal democracy is class bounded by nature. It aims at rationalizing and justifying the interests of the dominating classes. It is a necessary condition for reproducing the class structure and its social base (Mafeje 1991).
- While social democracy in the west superseded liberal democracy after World War II, to support globalisation processes the west, led by the USA, is enthusiastically trying to spread liberal democracy in Third World countries using foreign aid as an enforcing mechanism.
- Social democracy, after its short defeat, has emerged in the west again. The same is happening in the ex-socialist regimes, which show that political and civil freedoms as important as they are, are not sufficient if accessibility to means of livelihood is not guaranteed through economic and social democracy.

The Arab debate

Similar to African scholars, democracy has become an important concern to the different factions of Arab intellectuals, it was not clear whether this was a tactical move or a strategic belief. This lack of clarity was based on the nature of their intellectual and ideological positions which are inherently exclusive and thus, unable to accept other views. Moreover, none of these factions had a sufficient social or political base to dominate the political scene. In this context, defending democracy seemed to be one way to secure a place in the political arena rather than an authentic belief.

The previous statement, though not openly admitted by the factions concerned, might not be completely unfounded. For example, Islam for the Islamists is the ultimate epistemological reference. It is the rule of God and, thus, sacred. Therefore, it should be adhered to by everybody and those who do not are treated as unequal, if not altogether excluded. Likewise, Arab nationalists consider nationalism and national identity as the only force capable of integrating the Arabs into one nation, without which Arab renaissance and

progress cannot be achieved. The same belief stands for the leftist groups as the only holders of a scientific methodology capable of comprehensive analysis of the Arab societies and their dynamics towards progress and social change.

Nonetheless, Arab scholars, intellectuals and political activists are continuously engaged in debating national issues among which democracy takes an important place for several reasons. First, the failure of the national liberation regimes in the 1960s was attributed to the absence of democratic participation. Second, despite the adoption by many Arab regimes of political pluralism, the margin of democracy is still very limited and practised under strong state control. Third, globalisation has brought the issue of democracy to the forefront in connection with the newly reduced role of the state and the rising importance of civil society. The debate centred mostly around the constraints on democratic transformation in the Arab countries and the future prospects for democracy (Muwatin 1997).

The following are the general trends of the debate:

- Liberal democracy was accepted as the paramount form for democracy. The advocates included a number of intellectuals who were previously on the left. Their argument was blindly based on the failure of the Arab national 'socialist/populist' experiences of the one party system. While their doubts were partly justified, they did not, objectively, evaluate these experiences in their historical context, nor did they pay any attention to the hegemonic role of external forces, which was instrumental in the collapse of these regimes.
- The emphasis on liberal democracy with its political and civil liberties through a strong civil society set the scope of the battle as between two protagonists; the state on one side, and the intellectuals as representatives of civil society on the other. This tendency reflected a lack of understanding of the complex relationship between the states and the socially determined differentiated civil society, of which some factions are in alliance with the state. Moreover, the emphasis on liberal democracy represented an honest adherence to the agenda of globalisation. Therefore, the fact that the USA and the World Bank, which are imposing liberal democracy as part of their 'political conditionality', are strong supporters of many autocratic and authoritarian regimes is never discussed.
- Only a few intellectuals of Marxist's and nationalist's stand questioned the class nature of liberal democracy and called for the inclusion of

social and economic rights into the concept of democracy (Abdalla 1997:167)

- Other intellectuals, e.g. Nasserites, argued that democracy was never a popular demand for the Arab masses while social justice was. In addition, democracy requires the building up of a strong popular base committed and willing to change anti-democratic regimes (Issa 1997:210). Otherwise, liberal democracy continues to circulate political power among the political elite.

Democracy discourse of different Arab political factions

The Islamists

Islamic movement in the Arab region is the only political movement, which was able to transcend elitism and build a base among the masses. This gave it a real political power, despite the fact that it is not recognised by state as a legitimate political movement, and it is continuously harassed by state security. Although the movement uses Islam as the ultimate reference point, it should not be treated as a homogeneous body of political thought. Organizationally, it is divided into several factions according to their specific political agenda and strategies, with many contradictions between the factions and within the same organization.

Regarding the position of these movements vis-à-vis democracy they could be divided into three sections. The first section comprises the radical political Islamic movements, which work clandestinely. Thus, their ideological writings are not for public circulation. The information about them comes mainly through the security, judiciary and media, which consider them terrorists (Abdul-Fattah 1997:17–18). The ideological product of these groups is not only anti-democratic, but it is also anti-state, anti- society and anti- other political forces. They reject all existing social political systems as Anti-islamic.

The other two sections whose ideological product could be acquired are the 'conservatives' and the 'enlightened' Islamists. The first group adheres literally to the text, emphasizing the literary meanings of written words. The texts (the Quran and Sunna 'the Prophet's sayings'), to them are eternally applicable to any society and at any historical moment. For them liberation of the Islamic nation takes priority over democracy. Their version of democracy is based on the 'Shura' notion (a consultative council appointed by the ruler to advise him with no commitment on his part). Democracy for them is only an institution for governing. What is more important is the rules and principles from which governing is derived i.e. Islam (El-Shawi 1997: 28). Thus, democracy for this group is the rule of Islam according to the text, which does not allow differences, pluralism, or circulation of power.

The 'enlightened' Islamists believe that Islam should be renewed through 'Igtihad' i.e. informed effort, so as to be compatible with the societal changes occurring over time and in different social contexts. They use much more flexible interpretation of the text ensuring that it is relevant and beneficial for society. While Islam is their reference point, they do not see it as incompatible with modern political thoughts such as democracy, i.e. people's right to vote, to choose their ruler and to depose him if he proves to be unfit for the post (El-Awwa 1997:150–154).

Evidence suggests, however that the position of Islamists vis-à-vis democracy changes according to the political incidence and whether they are in power or out of it. For example, the Islamic state in Sudan contained the civil society and transformed it to branches of its political organization (Ibrahim 1997:32–36).

The Arab nationalists and Nasserites

The priority issues of the national liberation struggle have influenced Arab nationalist and Nasserite political thought. Thus, democracy came third after independence and Arab unity. This was even more consolidated by the confrontation with Israel and imperialist powers. However, when nationalist forces came to power socio-economic democracy was given priority over political and civil liberties. The first was considered more relevant and effective in mobilizing the masses for building a strong Arab nation. The issue of democracy for Arab nationalists came to the forefront after the 1967 war as a prerequisite for national liberation and Arab unity (El-Dajani 1997:98–99). The issue emerged again forcefully in 1982 after the Israeli invasion of Lebanon and it continues to gain greater value among Arab nationalist nongovernmental research centres. It was suggested that the problem is not the absence of democracy from the Arab nationalist thinking, but rather the predisposition to push democracy aside in nationalist thinking, especially on the level of praxis (Saied 1997:115–16). Other nationalist views attribute the lack of popular demand for democracy in the Arab countries to the fact that it was replaced by anti-imperialism and national independence and not by social justice. Worse than that, while the Arab states are facing external threat, some intellectuals call for exchanging national/state sovereignty for democracy. While democracy is a human need, as the Nasserites claim, realizing it at the expense of social justice is bound to create social and political conflict. Thus, what should be done in the context of globalisation is to democratise the state rather than weaken it. Further, social justice should be part of the democratisation process so as to satisfy the needs of the masses. This vision brings social democracy to the core of the Nasserites discourse (Issa 1997: 134–35).

The Arab Marxists and Socialists

In their critique and evaluation of the failure of the socialist experience in Europe, the Marxists objective was to renew and rebuild the socialist paradigm democratically (Bekdash 1998:182-188). Their discourse maintained that:

1. Liberal democracy is not a product of bourgeois society but it was the outcome of the struggle by the working classes in alliance with other progressive forces in European societies at the end of the 19th century. The bourgeois classes accept this form as long as it does not threaten their interests. If it does, other effective forms of bourgeois dictatorship, such as Nazi Germany, Fascist Italy and Spain and later on Pinochet in Chile, emerge and control political power (Bekdash, Ibid).
2. Likewise, oppression and absence of democratic liberties are not inherent in socialism. Examples from the Paris Commune and the birth of the Soviet Union were given to show that political pluralism existed under the leadership of the communist parties. They maintain that the one party system was developed owing to the rising class conflict in Russia and the increasing external threat to the new revolutionary regime.
3. Political pluralism existed in other socialist countries e.g. Poland, Bulgaria, and China ...etc. Nonetheless, major mistakes were committed during these experiences, which marginalized the non-communist parties politically, albeit without destroying them, so much that they have continued to exist after the fall of the socialist regimes e.g. the Bulgarian Farmer's party and the Polish Peasants Party.

Concluding that there is no contradiction between socialism and political pluralism, some Arab Marxists believe that the package of 'liberal democracy and economic affluence' introduced recently by 'American imperialism' and its allies is a trap which will cause the Arabs to lose their independence and national sovereignty. Thus, they argue that:

1. The struggle for democracy is closely linked to the struggle for national liberation, sovereignty and independence.
2. The concept of democracy is much wider than political and civil liberties, important as they are. It should, by necessity, include equitable distribution of income on both the national and international levels (Bekdash, Ibid).

Other Arab socialists were more critical of the absence of democracy in the Soviet Union and Eastern Europe as well as Arab societies. They were especially disappointed by the failure of Arab populist regimes with socialist

inclination, which failed to fulfil their expectations. The failure was attributed to the undemocratic nature of the regimes, which patronized the masses and appropriated their rights and initiatives to build their own society. This opinion maintains that while the Arab society has many common characteristics, due to the uneven development of its different parts, as well as, the adoption of different economic and social strategies, some signs of pluralism are showing. Arab pluralism is reflected in the existence of religious, national, cultural and political minorities, which has produced differentiated interests, and different levels of political awareness. In their opinion future Arab socialist society, should respect pluralism, eliminate discrimination and grant equal economic, social, cultural and political rights to all citizens. The mechanism for achieving this goal is nothing less than democracy. Learning from experience, they maintain that future socialist society should be based on a combination of different types of ownership of means of production i.e. public, private, cooperative and communal ownership. The economic system would be a mixture between planning and market mechanisms based on the principles of social justice. Political power under future socialism should not be monopolized by the state. A strong civil society should share political power, which would take the form of a wide front representing all social forces benefiting from socialist transformation. Thus, democratic pluralism is the only guarantee for bringing about this change through citizens' free choice and not through imposition (Shukr 1998:192-195).

According to this view, liberal democracy is a necessary mechanism for managing such pluralistic societies. However, liberal democracy cannot be truly representative unless social and economic democracy is realized. The suggested alternative to liberal representative democracy, therein, is participatory democracy in the form of elected popular councils, political and social organizations, trade unions and civil society organizations. Thus, building socialism would be achieved by the people and not on their behalf. This should, by necessity, provide mechanisms for the circulation of power, which obliges political groups to evaluate their actions and redress their mistakes (Shukr & El-Hilali 1998).

Everywhere now lines are drawn between the right, which strongly believes in the concentration of wealth and power and to this end is prepared to dismantle the welfare state and dispense with distributive justice, and the left which zealously believes in the redistribution of wealth and power in favour of underprivileged social groups. However, advocating social democracy as well as democratic pluralism, Third World scholars would be on firmer ground since these have turned out to be universal issues after the collapse of the ex-socialist societies, which helped to re-introduce the question of social

democracy in united Europe. The triumphant right wing could not consolidate the power of the bourgeoisie without making social democratic concessions. Furthermore, the new Eastern European regimes have discovered very quickly the negative impact of introducing liberal democracy without social democracy.

In Third World countries the struggle for social democracy entails a number of civil liberties. However, the people do not only want freedom of organizing and expressing their views, but they also want to have access to means of livelihood and a fair share of the national product, as well as access to decision making.

It is important at this point to highlight the fact that neo/liberal democracy is structurally linked to globalisation discourse and mechanisms, which are inherently antagonistic to social democracy, or any form of democracy that implies more equitable distribution of wealth among nations or among social groups within the same society. This reality places the struggle for social democracy within the context of anti-globalisation struggle.

Civil society and the state

Renewed global interest in civil society should be looked at as part of the globalisation agenda. On the level of discourse it is considered an essential component of the democratisation process. Operationally, civil society is being promoted as an alternative to the state, the functions of which should be minimized, so as to create the necessary conditions for globalisation.

History has shown that individual civil rights are not attributable to individual achievements but rather to social struggle. Bourgeois thinkers knew this during the eighteenth and nineteenth century. Their problem was to reconcile individual freedom with the necessity of social organization. They resolved the issue by drawing a sharp distinction between the 'state' and 'civil society'. The state, however, was seen to impose its will on individuals. To protect them, the solution was that the individuals should insist on independent existence outside the state. Thus 'civil society' was seen as a 'community of private citizens who by virtue of their collective existence and political awareness guaranteed individual freedom'. This assumption was not totally true for two reasons. First, since civil society derives its strength from its organization into different social groups with different interests, it is likely to have social competition for power and for protecting common interests. In this case it is difficult to talk about the abstracted individual, as did the bourgeois thinkers. They, on the other hand, called on the state to guarantee and protect civil liberties. To realize this objective the state should have the right to overrule individuals or even groups.

The second point is that the counter position between the 'state' and 'civil society' is negated by the fact that civil society is not homogeneous. Part of civil society reflects the social character of the state and, thus, is organized to guarantee its social reproduction (Mafeje 1998). This part of civil society usually comes from among the elite, which controls economic and political processes to the exclusion of other social groups. Therefore, they are usually strong supporters of liberal democracy. In the meantime, being there, they vote for 'presidents for life' and entrench themselves in power through fraudulent use of the mechanisms of representative democracy. On the other hand, other parts of civil society, which represent social forces whose interests are opposed to the socio-economic and political regime, might organize themselves for the purpose of achieving social change. This part of civil society would usually develop into social movements, which create their own autonomous democratic space within civil society and engage dialectically with formal political and governmental institutions (Craissati 2000).

Given the differentiated nature of civil society relative to the state, structurally and institutionally, independence becomes a necessary condition for Arab CSOs democratic participation. Such independence is determined by two factors:

- The first is the nature of the dominant political regime as a point on a continuum between the two poles of authoritarianism and democracy. It should be noted that the degree of polarization towards either of the two extremes changes with historical and political instances, and the level of political and institutional development of the regime e.g. a change towards democracy is easier in countries, which tolerate, even to limited extent, political pluralism and have the relevant institutions such as, Egypt, Tunisia, Morocco and Lebanon. While countries such as the Gulf States where democratic institutions are absent, the change would be more difficult.
- The second is the level of development of the civil society; institutionally, structurally and operationally; its civil, political and intellectual dynamism; its commitment to authentic representation of the social forces as its social base and source of legitimacy. A strong social base guarantees its protection from the pressure and hegemony of the state and/or any other external powers. The degree of development of civil society is also influenced by the existence or absence of civil culture based on dialogue and peaceful means for solving conflicts in society.

It should be noted, however, that the relationship between the state and civil society is dialectical and interactive. It develops through the dynamics and mechanisms of confronting contradictions and conflictual issues, which are determined by economic, social, cultural and political changes in society (El-Baz 1997:110-113). However, for proper understanding of the operational dynamics of civil society regarding its role in development and social change, it should be analysed according to one of the two paradigms in which CSOs operate, i.e. the functional and the structural paradigms (El-Bassam 1997).

According to the functional paradigm, the role of functional Civil society organisations (CSOs) falls mainly within the realm of philanthropy, welfare and service delivery functions. In developing countries CSOs have recently started some fragmented development activities in the context of the liberal policies of poverty reduction. These activities are void of any real meaning of comprehensive development. In this context, the role of functional CSOs is characterized as follows:

1. Through the welfare and service delivery activities, functional CSOs replace the state in its responsibilities for social services, especially within the context of ERSAPS.
2. By providing care and services to the impoverished and marginalized groups, functional CSOs reduce the social and political tensions emanating from severe social polarization and exclusion.
3. Although functional CSOs are increasingly playing an economic role i.e. generating income through production and employment activities, the selected activities aim at reducing part of poor people's hardship, rather than changing their social status by tackling the structural causes of social inequality, nor bringing about any radical change in the social system i.e. social transformation.
4. Functional CSOs are, as generally observed, politically conservative and thus work to maintain the status quo.
5. The welfare and service delivery role of functional CSOs does not enhance citizens' participation. Thus, some scholars consider this type of CSOs a mechanism for reproducing, the dominant patron/client relationship which historically dominated civil society all over the world (Landim 1992:3).

The structural paradigm is linked to the structural role of CSOs in the processes of development and social transformation. It is viewed, herein, as an institution and an essential actor in the social structure. Civil society thus become a

collective agent for social and political change. The role and characteristics of structured CSOs are as follows:

1. They play a balanced role with other institutions i.e. the state and the market and thus, are independent and not a residual category to any of them.
2. They acquire more permanent institutional characteristics as a sector with established rules and norms. Thus, their activities are usually planned rather than ad hoc reactions.
3. They transcend the welfare/service delivery functions, as a goal, to the comprehensive development role based on mobilization, advocacy, capacity building and empowerment of the target groups who would be prepared to become the de facto owners of the CSOs.
4. Through their role in advocacy and empowerment, they become a mobilizing force for integrating the people in a process of 'participatory development'. Civil society thus become an equal partner with the state and the private sector.
5. They play a militant role through their mobilizing and empowering mechanisms. They help people to develop critical abilities, which is the base for social creativity. Civil society thus becomes a collective agent for development and social change.

This type of CSOs are best exemplified by some grass-root NGOs in Latin America and Asia which aim at bringing about structural changes in society, and creating citizens who are able to militate for their social, economic and political rights.

It is worth noting that within the context of globalisation, Arab functional welfare and service-delivery CSOs are the dominant type, and they are strongly encouraged by international organizations, donor agencies, and Arab governments. Structural CSOs, though they rarely exist, are permanently harassed by governments.

Arab civil society/democracy and the state

In the last three decades Arab civil society grew rapidly in terms of size and role performance. However, this applies mostly to one part of Arab civil society i.e. NGOs. Unfortunately, NGOs are neither the best example for judging the strength of Arab civil society nor the best way of conceiving it. In order to have a lasting impact on their society, NGOs must attain a recognized institutional status for themselves i.e. become structural NGOs. In this part of the study reference will be made to three areas of Arab civil society,

which are relevant to the issue of democracy: Arab NGOs/state relationship, NGOs/beneficiary relationship, and democracy within Arab NGOs. The information in this part depends mainly on the findings of a comparative, theoretical and field study in ten Arab countries (El-Baz 1997).

Arab CSOs/state relations

The relationship between the state and Arab NGOs is influenced negatively by a number of factors i.e. the undemocratic nature of Arab regimes; the mutual lack of trust between the governments and the people; peoples' dependence on the government to serve and patronize them at the same time. Positively, the relationship is influenced by growing international interest in the role of NGOs; the governments' need for the NGOs welfare and service delivery activities as a result of adopting ERSAPS and pertinent reduction of public expenditure.

However, all Arab countries including those who adopted economic reform policies are showing strong resistance to 'democratisation'. While some of them adopt a limited form of liberal democracy, they maintain a strong control over political and civil actions. As a result, chances for the formation of structural CSOs are very limited. The few existing advocacy and empowerment CSOs are facing a lot of pressure from governments. Using legislation, among other things, as a tool for controlling civil society, Arab legislators have given vast prerogatives to governments over CSOs, from the time of their inception to their legal end. The study previously referred to (El-Baz 1997:132-135) underlined the following observations:

1. Despite the fact that a high percentage of CSOs' leaders said that the law and the relationship with the government did not affect the organizations' independence, many, particularly among the educated and the intellectuals, believed that there was a pressing need for legislative change so as to realize more independence and democracy for NGOs.

2. Arab governments maintain a contradictory and opportunistic attitude towards CSOs. On the one hand, they wish to activate the CSOs so that they can relieve governments from their social services responsibilities, especially within the ERSAP policies. On the other hand, they insist on keeping a strong hold on the sector. Hence, Arab governments practice the relationship in a functional and selective manner, which changes according to circumstances and to their objectives at different points of time.

3. External factors, as embodied in global interest in CSOs' participation, had a positive influence on the relation between the state and CSOs in most Arab countries in the study, except in the Gulf States where foreign influence is restrained by the governments. Although this was meant partly

to improve their image in the international arena, such positive influence was apparent both in the change in governments' formal discourse regarding CSOs in most Arab countries, and in the greater margin of tolerance shown by the state in dealing with them.

4. Arab CSOs, as functional CSOs operate in accordance with governments' policies. They accept the latter's control as a normal part of the relationship. In practice, there is no demarcation line between government and civil actions. This situation negates Arab CSOs independence, which is a precondition for the existence of an effectively functioning civil society.

CSOs/beneficiaries relations

With almost complete absence of Arab structural CSOs, the existing functional Arab NGOs, mainly the promotional type, maintain an undemocratic relationship with the beneficiaries/the target groups. Research results indicate that the relationship of CSOs with the target groups is a patronizing one i.e. a patron/client relationship. The CSOs see the target groups as incapable of identifying their own needs because they lack sufficient awareness. In this context CSOs act as if they have the monopoly of awareness, knowledge and, hence, the ability to make decisions on behalf of others. The target group's role is thus, reduced to sheer dependence on others for receiving aid, in utter negation of the requisites of development, which insist on peoples' real participation.

This kind of relationship could be attributed to the traditional spirit of Arab civil society which was originally associated with charity and welfare. Hence, the target groups were regarded as powerless, incapable, and permanently in need of assistance. Considering the target groups as potentially active social partners, who should be mobilized and empowered so as to participate in development processes. It may also be due to the prevalence of the charity and welfare functions of Arab NGOs over other functions. This tendency is likely to increase due to social polarization, rising poverty, and the withdrawal of the state from its responsibility for social services.

Democracy within Arab CSOs

Since the main objective of civil society organizations is to widen the scope for democratic participation. The democratic practice within the institutions themselves should become a basic component of their internal mechanisms; otherwise it would be rightly said that 'one cannot give what one does not have'. Research results (El-Baz 1997:99) show that in 92 per cent of Arab NGOs, election is the common tool for selecting Board members and chairpersons. In some Arab countries, a number of board members are appointed by the state, or by other institutions, such as donors' agencies, or religious

sects in control of NGOs. However, the prevalence of the election system is not, necessarily, an indication of real democratic practice. For elections are often a mere formal procedure. The result is the domination of the same leadership for years on end; so much so that some organizations are called by the name of their leaders, a phenomenon referred to as 'the personalization of NGOs'. Regarding circulation of power, the results reveal that 1 to 5 presidents have headed 82 per cent of the NGOs since their inception. By relating the number of presidents to the age of the organization, the results showed that the average number of years a president of the board of directors spends in his post is high in Egypt, Morocco and Lebanon. It is low in Tunisia and the Sudan where most of the NGOs are relatively new.

The results also revealed a difference in the number of Board members, being at its highest in Morocco, Palestine and the Sudan and lower in Egypt and the Gulf states. A smaller number of Board members reflect a greater concentration of power. As for the frequency of board meetings, there is a relationship between the high number of board meetings and the momentous role played by the NGO sector in society, especially in a situation of war or civil strife, where the role of the state is limited or even absent. Thus the average number of meetings was higher in Lebanon and Palestine than it was in other countries. Though the General Assembly is the main subject of the democratic process in CSOs, its role is still marginal. Thus, the president and the board of directors monopolize decision-making in Arab NGOs.

The practice of democracy in Arab non-governmental organizations is thus sheer formality, with power remaining in the hands of few individuals at the top.

Globalisation, democracy, and civil society

It has been argued throughout this chapter that while liberal democracy has been a central issue in the globalisation discourse, it has been practically negated by the very essence of the globalisation process i.e. its mechanism of social polarization, marginalization and exclusion of the impoverished majority from economic, social, and political processes.

Evidence suggests that, liberal democracy, as practised in globalised underdeveloping countries of the South, has become a prerogative of the corrupt economic elite, in alliance with autocratic political regimes. Meanwhile, social democracy, as a subject for peoples' struggle and socio-economic empowerment, is being denied as an obstacle for capital accumulation / economic growth, which are necessary conditions for the integration in the global market. In the same context, globalisation discourse and mechanisms are promoting and advocating civil society, as a mechanism for people's democratic participation in the development processes.

However, examining the impact of globalisation on CSOs of the South, including Arab CSOs, highlights the following observations:

- The promotion of civil society in the South is structurally linked with the diminishing role of the state as a requirement for accelerating globalisation processes. The fact that the strong and effective civil societies of the North have developed along with the development of strong and well-established States, is usually ignored. Civil society in this context is used as a globalisation mechanism. In this respect, international donors blindly support, and sometimes encourage CSOs in their conflict with their Arab governments, with the objective of weakening the state.
- Arab CSOs are subject to the same global unequal division of labour/power of their countries. This is reflected in Arab CSOs' residual/dependent status within global CSOs networks. Their representation in the Boards of global networks is mostly ceremonial. The candidates are usually selected from among the supporters of globalisation agendas, which are formulated in the global centres and thus, do not reflect the needs and rights of Arab societies. The specific interests of Arab societies are, therein, ignored and mystified through advocating false issues, such as global citizenship and global village. In this respect, the prevailing undemocratic international relations, which is a characteristic of globalisation, is reproduced to characterize the relationship between Arab and International CSOs and thus, help to perpetuate the unequal power relations globally.
- Recruitment of national CSOs by external/global powers, to realize political objectives in accordance with globalisation agenda. CSOs are used to undermine political regimes and to change socio-economic and political systems, e.g. the role played by the CSOs in undermining socialist regimes in the Soviet Union and the Eastern European countries (Soros 1991). This role is being played in some Arab societies, especially in war situations or in areas where social and political conflicts could weaken, or lead to the dissipation of the state. In this context, foreign funding becomes an important area for investigation.
- Global institutions, UN and donor agencies adopt the functional definition of CSOs based on welfare and service delivery functions. The practice of development activities by these CSOs is mostly limited to local community development projects, with the objective of improving the standard of living of the target groups. Most funded projects tend to serve globalisation policies and principles, e.g.

> promoting market economy and neo liberal values. The donors' intentions do not include changing the social position of, or empowering the target groups. The latter are thus, kept as receivers of help in a patron/client, dependent relationship. Under this conditions the target groups could neither have access to participatory democratic mechanisms, nor to be transformed to positive agents for development.

This practice by functional Arab CSOs is antithetical/impeding to the mobilizing and empowering role of structural CSOs as mechanisms for transforming the people to become active agents for development and social change, within the context of real participatory social democracy. Only structural civil society can become a mechanism for participatory democracy. However, this form of civil society is being strongly curtailed and undermined by both globalisation policies and autocratic regimes.

On the other hand, globalisation has also had a positive impact on Arab CSOs. New opportunities for Arab CSOs were created. They were able to have contact with CSOs from both the South and the North through networking and meetings in international forums. They could develop their capacities by exchanging views, and learning from each other's experience.

Despite the suspicion cast on foreign funding, some Arab CSOs benefited from funding by international CSOs with humanistic world vision. The benefits were much higher when the targets were related to CSOs' capacity-development. Embryonic forms of Arab structural CSOs are beginning to emerge, especially in the areas of environment, gender empowerment, and some human rights organizations. Moreover, some Arab structural CSOs are developing into social movements, and becoming active in the ever-expanding anti-globalisation campaigns. Internally, they are forming a base for the struggle for real democracy i.e. participatory social democracy.

Conclusion

Despite the existence of a limited democratic margin in some Arab societies, real democratic participation does not exist. Globalisation, structurally defined, leads increasingly to socially polarized societies with unequal distribution of wealth and, consequently, unequal access to social, economic and political opportunities. The impoverished and marginalized social majority are excluded from participating in the development processes. In globalised Arab societies, more citizens and classes are marginalized every day through globalisation mechanisms. In this context talking about liberal democracy is a negation of the citizen's rights to real participation.

In Arab societies deformed liberal democracy has been reflected on civil society's functional performance, setting limits on its possible transformation to a structural agent for development and social change. Globalisation and

Arab autocratic regimes have led Arab civil society to be reproduced in conformity with the undemocratic forms dominating the Arab political scene.

Bibliography

Abdallah, A., 1997, *Renewing Political Thinking in the Context of Democracy and Human Rights: Islamic, Marxist and Nationalist Orientations, Korrasat Ibn Rushd*, Cairo: Cairo Centre for Human Rights Studies.

Abdel-Fadil, M., 1998, 'Differential impact of globalisation on labour in the MENA Region', Working Paper Series no. 9816, Cairo: Economic Research Forum.

Abdel-Fadil, M., 2000, *Egypt and the World on the Threshold of a New Millennium*, Cairo: Dar El-Shorouq.

Abdel-Ghani, G., 1999, 'Intervention' in: M. Hafez, (ed.), *Evaluation of Economic Stabilization and Structural Adjustment Policies in the Arab Countries*, Proceedings of the Fourth Scientific Conference of Arab Society for Economic Research, Arab Research Foundation, Beirut, Lebanon.

Abdel-Fattah, N., 1997, 'Great Illusions About the Renewal of Islamic jurisprudence', in: *Renewing Political Thinking in the context of Human Rights: Islamic, Marxist and Nationalist Orientations, Korrasat Ibn Rushd*, Cairo: Cairo Centre for Human Rights Studies.

Amin, G., 1999, *Globalization and Arab Development: From Napoleon's Campaign to the Uruguay Round 1798-1998*, Beirut: Center For Arab Unity Studies.

Amin, S., 1999, 'An Intervention' in: Abdallah, I.S. et al, *Capitalists of all Countries, Unite: Economic Aspects of Globalization in the Third World and Eastern Europe*, Cairo: Goethe Institute.

Anyang' Nyong'o, P., (ed), 1987, *Popular Struggles for Democracy in Africa*, London: Zed Books.

Anyang' Nyong'o, P., 1991, 'Democratisation Process in Africa', *CODESRIA Bulletin*, no. 2, Dakar.

Bekdash, A., 1998, *On Socialist and the Bourgeois Concepts of Democracy and Pluralism, in: The Arab Left and Future Issues*, (Shukr, A., edit.) Cairo: Arab centre for Research, Madbouly Publishers.

Collection of Authors, 'Impediments to Democratic Change in the Arab World, Proceedings of the Cairo Conference, 29 Feb–3 March 1996, Muwatin: Palestinian Institute for the Study of Democracy.

Craissati, D., 2000, 'New Social Movements and Alternative forms of Democratic Governance in Palestine, Conference on NGOs and Governance in the Arab Countries', CEDEJ et al., Cairo, 29-31 March.

El-Awwa, M., 1997, 'We Are Neither Iran Nor Sudan', in: *Renewing Political Thinking in the Context of Human Rights: Islamic, Marxist and Nationalist Orientations*, Korrasat Ibn Rushd, Cairo: Cairo Centre for Human Rights Studies.

El-Bassam, D.,1997, 'Common Arab NGO Action: The Concept, Reality and Alternatives', 2nd Arab NGOs conference, Cairo.

El-Baz, S., 1997, 'Arab NGOs On the Verge of the 21st Century, Present Situation and Future Prospects, The Follow-up Committee For Arab NGOs Conference', Cairo.

El-Baz, S., 1997, *Role of Arab NGOs in the Development of Local Communities*, Beirut: UNESCWA.

El-Baz, S., 2001, 'Globalisation and Public Policies in The Arab Region', in: *Globalisation and Women's Economic Participation*, Centre for Arab Women Training and Research (CAWTAR), Tunis.

El-Khawaga, L., 'Globalization, Social Policies and Labour Markets in the Arab Countries: Concepts and Interrelations, A Preliminary Working Paper, Faculty of Economics and Political Science', Cairo, October 2000.

El- Shawi, T., 1997, 'Liberation Before Renewal', in: *Renewing Political Thinking in the context of Human Rights: Islamic, Marxist and Nationalist Orientations*, Korrasat Ibn Rushd, Cairo: Cairo Centre for Human Rights Studies.

Ibrahim, H., 1997, 'Islamic Discourse in and external powers', in: *Renewing Political Thinking in the context of Human Rights: Islamic, Marxist and Nationalist Orientations*, Korrasat Ibn Rushd, Cairo: Cairo Centre for Human Rights Studies.

Ibrahim, J., 1993, 'History as Iconoclast: Left Stardom and the Debate on Democracy', *CODESRIA Bulletin*, no. 1, Dakar.

Issa, H., 1997, 'Consensus or Dealings?' In: *Renewing Political Thinking in the context of Democracy and Human Rights: Islamic, Marxist and Nationalist Orientations*, Korrasat Ibn Rushd, Cairo: Cairo Centre for Human Rights Studies.

Landim, L., 1992, 'What is an NGO? Notes on the Non Profit Organizations in Brazil', in *3rd International Conference of Research on Voluntary and Non-profit Organizations*, Indianapolis: Indiana University, Centre of Philanthropy.

Mafeje, A., 1998, 'Democracy, Civil Society and Governance in Africa', *Conference on Democracy, Civil Society and Governance in Africa II*, Development Policy Management Forum, Addis Ababa, 7-11 December.

Mafeje, A.,1993, 'On 'Icons' and Africa Perspectives on Democracy: A commentary on Jibrin Ibrahim's Views', *CODESRIA Bulletin*, no. 2.

Mafeje, A., 1992, 'Theory of Democracy and the African Discourse: Breaking Bread with My Fellow-Travellers', in: CODESRIA 7th General Assembly, *Democratisation Process in Africa: Problems and Prospects*, Dakar, 10-14 February.

Mkandawire, T., & Soludo, C., 1999, *Our Continent, Our Future: African Perspective On Structural Adjustment*, Dakar: CODESRIA.

Mkandawire, T., & Soludo, C., 1991, 'Further Comments on the "Development and Democracy Debate"', *CODESRIA Bulletin*, no. 2.

Richards, A., 1994, 'The Impact of Structural Adjustment on Agricultural Development in the Near East Region', Working Paper no. 9525, 23rd Regional Conference of Near East Ministers of Agriculture, Nouakchott, Mauritania.

Ritzer, G., 1998, *The McDonaldization Thesis*, London: Sage Publication.

Shivji, I., 1989, 'The Pitfalls of the Debate on Democracy', *CODESRIA Bulletin*, no. 2, 3.

Shukr, A., ed., 1998, 'Democracy and the Arab Road to Socialism', *The Arab Left and Future Issues*, Cairo: Madbouly Publishers.

Sidahmed, M., 1997, 'Introduction' in: *Renewing Political Thinking in the Context of Democracy and Human Rights: Islamic, Marxist and Nationalist Orientations*, Korrasat Ibn Rushd, Cairo: Centre for Human Rights Studies.

Wamba-dia-Wamba, E., 1994, 'Democracy in Africa and Democracy for Africa', *CODESRIA Bulletin*, no. 2.

Zaki, R., 1999, *Financial Globalization: The Political Economy of International Financial Capital: A Vision from Developing Countries*, Cairo: Al-Mustaqbal Al-Arabi Publishers.

Zaki, R., 1998, 'Farewell to: the Middle Class', Reviewed by: El-Fishawi, Kh., *Economic Research Journal* No. 13, Cairo: the Arab Society for Economic Research.

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Negotiated Economic Opportunity and Power: Perspectives and Perceptions of Street Vending in Urban Malawi

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Abstract

It is least acknowledged in daily discourses that street vending is a very important phenomenon. Little wonder that street vending involves negotiating for space in all its manifestations: physical space, economic opportunity and power. The vendors are coerced by both local urban and national authorities and sometimes the public at large to justify or negotiate acceptance. Very often such intentions are blind to the most basic and yet fundamental aspect that street vending is a pragmatic grassroots response to bleak socio-economic and changing political realities that have not of late spared anyone. Street vending appears in all fairness a means to legitimate ends. Hence, access to vending spaces should be perceived as a human rights issue. Otherwise, intentions to the contrary overlook the needs and capacity of street vendors to communicate, reorient and police each other in various and meaningful ways. Any discussion of the place of street vending in the urban economy of Malawi should therefore consider why and how individual street vendors become what they are - vendors. These perspectives can enrich our defective understanding and parochial pursuits of idealized versions of regulation that are hardly appropriate for a pressurized and underdeveloped country and also for a negotiated idea of the social consumption of space that we should always aim at.

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Résumé

Très peu admettent dans les discours quotidiens que le commerce ambulant est un phénomène important. En effet, ce type de commerce exige une négociation de l'espace, à tous les niveaux : l'espace physique, l'opportunité économique et le pouvoir. Les vendeurs sont forcés de justifier ou négocier leur acceptation auprès des autorités locales urbaines et nationales, et parfois auprès du public au sens large. Souvent, ces pressions ne tiennent pas compte du fait que le commerce ambulant constitue une réponse pragmatique populaire à la conjoncture socio-économique catastrophique ainsi qu'aux dures réalités politiques. Le commerce ambulant semble être avant tout un moyen légitime de survie. De ce fait, l'accès aux espaces de commerce ambulant devrait être considéré comme une question relevant des droits humains. Une attitude contraire aurait pour conséquence de minimiser les besoins ainsi que la capacité des vendeurs ambulants à communiquer, se réorienter et se surveiller de diverses manières. Tout débat relatif à la place du commerce ambulant dans l'économie malawite devrait donc considérer en premier lieu les raisons, ainsi que le processus par lequel les vendeurs ambulants en arrivent à exercer leur profession de vendeur. De telles perspectives pourraient enrichir notre compréhension de cette situation et mettre fin à nos raisonnements limités, qui nous poussent à privilégier des modèles idéalisés de régulation, qui ne sont guère appropriés à nos pays sous-développés en proie à de multiples pressions ; elles permettraient également de mettre en place un concept négocié de la consommation sociale de l'espace.

Introduction

This article seeks to resuscitate and extend the debate on street vending by asking two questions. First, is it not high time to reflect on the extent to which the popularity of informal activities, street vending in particular could be regarded as a challenge to the socio-economic and spatial systems? Second, can the resilience of street vendors to urban authorities and the government's drive to relocate them from streets be a reflection of their power or powerlessness against marginalisation and underdevelopment of their livelihood strategies? Responding to these queries inadvertently entails celebrating the virtues of street vending beyond the economic arguments to reveal complementarities regarding space, economy and power. This article argues that street vending encompasses negotiating for physical space, economic opportunities and power. We pursue this argument by drawing on examples from literature and appraisal of the study we conducted in Blantyre, Malawi to demonstrate how these contradictions are shaped by the dilemmas and changing contexts especially in the political arena. These twin processes provide an excellent milieu within which to situate the contrasting images of street vending as an activity involving negotiating for space, economic opportunities and power.

Street vending in perspective

Street vending is possibly the most visible and significant aspect and manifestation of how far informality has clipped in the structure of urban economies in developing countries. The practice of selling goods and providing services along streets defeats the planned role of streets and therefore elicits much attention from business elites, urban planners and public authorities. Street vendors transform streets into arenas for transacting activities aimed at making a living. The economic value of street vending cannot be overemphasized as studies and reports have demonstrated that street vending contributes to job creation, income generation and distribution, and guarantees convenience in the provision of essential goods and services (Murry 1991; Bayat 1997; Cross 1998). Street vending provides a viable alternative to formal employment and the parasitic or anti-social occupations like theft, prostitution and destitution (Murry 1991). Hart (1973), one of the pioneers in informal sector studies in developing countries observed in Accra, Ghana that economic informality is a buffer against instability and insecurity of work and income opportunities among the urban poor. Street vending is a survival strategy for those relegated to work and eke out a meagre existence in 'the dungeons of the informal sector' (Rogerson and Hart 1989:29). Consequently, vending on the streets represents one particular avenue of 'legitimation and recognition' for urban residents who find the 'promises of modernity are fast becoming a broken dream for all but an elite few' (Nyamnjoh 2002:118, 120). Street vending also stimulates small and micro production of goods and services, and encourages the development of entrepreneurship by providing a market for small formal manufacturing firms. In addition, street vending may provide local revenue through market fees levied by local authorities (Nattrass 1987; Cross 1998), and contribute to gross domestic and national product.

The expansion of street vending is perceived as a disincentive. For instance, street vendors weaken the urban economy because they do not pay trading tax, evade market fees and often illegally use public services and spaces (Taylor 1993:17). Street vendors also contribute to environmental problems by erecting structures that do not conform either to building codes, or zoning regulations, exacerbating waste disposal problems and carrying out unhygienic practices. In many ways, street vending reduces the satisfaction and efficaciousness of urban life (Scott 1980). Street vendors block the streets inconveniencing the free flow of pedestrian and vehicular traffic. They generate excess litter that stretches the capacity of city authorities to keep the cities clean. Food vending poses health risks, particularly the spread of food-borne diseases (Bromley 1978; Rogerson and Hart 1989; Murry 1991).

Further, street vending encourages crowding of people in the streets hence providing a haven for criminals (Rogerson and Beavon 1985). These concerns reflect negatively on street vending such that local town authorities see the practice as conflicting with the aesthetic, social and economic standards appropriate for cities (Murry 1991; Bromley 1998; Jimu 2003). Bromley (1978:116), in a study of Cali (Colombia), concluded that:

> The urban authorities usually consider street traders to be a nuisance, making the city look untidy and ugly by their presence, causing traffic congestion, dropping litter, molesting passersby, depriving the law abiding and (tax) paying shops of trade and spreading diseases by physical contact and sale of contaminated food.

A lot has been written on repression, persecution and prosecution of the street vendors in Jakarta, Indonesia since the 1970s, where the authorities are against the 'eating' of space meant for the general public; and relocation of street vendors is considered 'inhumane only if you see it from the peddlers' view that they will lose their way of making a living' (Murry 1991:90). Bromley (1998) noted numerous cases of repression of street vendors in Latin American cities such as Puebla (Mexico), Quito (Ecuador), and Cartagena (Colombia). Other cases include Tehran (Iran) (Bayat 1997) and Mexico City (Mexico) (Cross 1998). In Africa, the repression of street vendors in the 1980s in South Africa, for example, was used to entrench apartheid sentiments that regarded black South Africans as 'temporary sojourners' in white dominated cities (Rogerson and Beavon 1985:234), yet repression continues though the methods and rationale have changed. Street vendors in Dar es Salaam are engaged in constant struggles with the city council over what Tripp (1997:158-9) terms 'the battle over grounds'.

Street vendors resist relocation for a number of reasons. First, economic rationality suggests that the best location for trading is where there is a high level of flow of pedestrian and vehicular traffic. So the busiest streets are the best not the less conspicuous ones as this denies the vendors direct access to actual and potential clients. Second, street vending is the major source of livelihood of the street vendors. During the 2002 World Summit on Sustainable Development (WSSD), for example, street vendors were prohibited to trade in streets frequented by the participants at the summit. They organized a demonstration against the 'brutality' of the police against people who were only trying to subsist. One of the demonstrators remarked:

> What is sustainable development when our own government denies us the only means of survival. This conference is a sham and it will only perpetuate the existing imbalances in our society as only the rich are going to benefit from it.

The third reason is that street vendors feel that as citizens of their respective countries, they have the right to trade in the streets. Any effort by the municipal authorities to evict them is construed as contravention of their fundamental human rights. In extreme circumstances, the repression of street vendors has been followed by resentment towards the elite business community, particularly foreign owned enterprises run by people of Asian origin as is the case in most Southern African cities. During the 2000 eviction of street traders from the streets of Maseru (Lesotho), street vendors complained of unfair treatment towards citizens while the Chinese were allowed to trade. One irate woman vendor complained:

> We are not comfortable in our own country. Only the Chinese will survive in this country while its poor citizens will always go hungry'.... 'Before the Chinese go out of this country, we will not go away from the streets....

These sentiments cannot be ignored. In a study we conducted in Malawi we noted that these sentiments reflect the precarious livelihoods and discontent among the street vendors.

The situation in Blantyre, Malawi

Just like many human phenomena, street vending does not have an exact point of origin. There are no precise records because street vending is a subject that has not attracted significant attention. However, in Malawi, the 1966 Local Government (urban areas) Act stipulated the need to regulate street vending, implying that by then street vending was already in vogue. Another pointer is the coverage of street vending in the local newspapers as early as 1966.[4] In January 1967, a concerned citizen complained of the 'unbecoming' behaviour of street vendors in Blantyre as follows:

> There is one practice that must be dropped, ...some young men sell fruit and vegetables along Victoria Avenue. These people can be, and are very disturbing; someone parking his car to do serious business is only hindered by one of these unscrupulous and irritating men.[5]

So street vending is as old as or even older than Malawi's independence. Street vendors have been operating along the Victoria Avenue, Glyn Jones and Haile Sellasie Road in Blantyre central business district and the Market Street in Limbe CBD since 1967.[6]

Political developments have played a catalytic role in the unfolding of street vending. Between the mid 1960s and early 1990s, the growth of street vending was constrained by the prevailing political climate. The highhandedness that characterised the one party dictatorship of the late Dr Banda,. limited the growth of street vending. The street vendors operated

under constant fear and repression and confiscation of their merchandise was very common. City rangers and state agents like the police corroborated in the suppression of street vending which is an indication that street vending was a menace to both the city authorities and the national government. Street vendors were construed as thieves in disguise parading as small-scale entrepreneurs.[7] The transition from one-party and autocratic politics to multiparty and liberal democracy has introduced remarkable changes and opportunities in the areas of human rights and freedom (Englund 2002:138). Political and economic liberalism ushered in an era of unbridled ambitions and freedoms and promises of economic progress and prosperity for various hitherto oppressed interest groups. With a change in political milieu in the mid 1990s, street vending has mushroomed at unprecedented speed. The rhetoric, willingness and ability of street vendors to claim and assert their rights to trade in the streets is however, controversial in many ways from the perceptions of city authorities and the general public at large as would be outlined later. Probably what people should be asking is why do we have street vending as the most noticeable aspect of our changed political system?

What is in street vending for the Malawian vendors?

Street vending is an outward manifestation of repressed and frustrated human aspirations for success. Commentators on the subject have observed that vending represents people's quest for progress and a search for opportunities for socio-economic success. The street vendors, most of whom are recent rural-urban immigrants are motivated by higher expectations to partake in the promises of a better life. Cities are deemed as places where opportunities for self-fulfilment are in abundance.[8] Street vending is one of the open avenues for self-fulfilment especially for poor men and women struggling for survival or success. As an occupation, the street vendors attach great value to the streets, referring to the spaces they operate on as 'offices'. The rhetoric of street spaces as 'offices' implies that the street vendors and the streets, like a labourer and his tools, are two inseparable entities; in as far as the quest for livelihood security is concerned. Access to the street spaces is presumably the essence of the street vendor's life in the city. As one of the street vendors clumsily described the situation,

> if you go to the university and ask the students what they would like to be, nobody will say he or she would like to be a street vendor. Nobody wants to be a street vendor, but being a street vendor means one has to operate in the streets, otherwise one is not a street vendor.[9]

Street spaces represent the totality of a street vendor's life in the city and access to street spaces, albeit controversial is necessary for urban existence. However, growth of vending reflects failed promises of success. The proliferation of street vending signifies the failure of the formal sector in cities to guarantee livelihood in the formal sector with the effect that 'many are called but only an elite few succeed' in a way worth writing about (Nyamnjoh 2000). In this context, one remarkable aspect of street vending is that it stands out as one of the imaginative ways though precarious through which people concerned assert themselves; fulfilling the assertion that 'it is the people who determine for themselves whatever developments they require'.[10] Street vending is infused with certain resourcefulness, ingenuity or intelligence not mediated through regulated economic logistics and structures.

Necessity defined as poverty or unemployment, whichever is convenient, is the prime reason that compels people to join street vending. Most of the street vendors in Blantyre are recent rural-urban migrants from poor backgrounds and vending is their only source of livelihood. Joblessness, low education attainment and lack of employable skills make their situation precarious. Most of the street vendors lead a hand to mouth existence, often described in religious and moral overtones. According to Joseph a street vendor along the Glyn Jones Road, life is not easy for most street vendors: 'we just pray for our daily bread'. Peter who sells 'illegally' medicinal drugs in Limbe, summarised his desperate situation as:

> What else can I do besides street vending. I dropped out of school in primary school. I can't find a job. I am married with two children. I support 5 nephews and nieces orphaned by the death of my sisters. Should I become a thief?

These sentiments emphasize the burden and caring attitude of some street vendors and also the legitimacy of street vending as a legitimate means to make ends meet unlike anti-social behaviours such as theft, and prostitution common in Malawi's urban areas. It also suggests that abject poverty and deprivation propel the street vendors to operate in the streets as the less evil way for survival in the urban environment. This is evident in the life stories of Fyson and Wilson.

Fyson was 21 years old at the time of study. He is a last born in a family of three children. He dropped out of school in standard 8 because of financial problems. His parents could not afford to provide enough food and good clothing, let alone school fees. He came to Blantyre when he was only 16. He left the village without taking leave of his parents and for sometime he was presumed missing and possibly dead. He had never been to Blantyre and he had no relative to live with. The first three days were hard; he spent the

nights in the bamboo bush behind the Imperial Tobacco Group (ITG) forests (Limbe). During the day, he did some casual labour as a porter. On the third day he met a friend (a fellow casual labourer) who took him to his home at BCA. After two months he rented his own house in Bangwe Township. He worked briefly for three months with Zenith Construction Company. He was dismissed. He invested his little wages for the third month in street vending. His life is now better, he can afford food and clothes and he remits money to his parents in the village. He doesn't dream of ever settling in the village. There are few opportunities; it is better to be a street vendor than a subsistence farmer. His major concern is lack of access to credit opportunities to expand his enterprise.

Wilson was just two weeks old in the city at the time of interview and he offers a different dimension of desperation reminiscent of most job seekers.

> I came with my wife and our two children to look for a job. I don't have any school certificates, having dropped out of school in standard six following the death of my father. My mother could barely provide for my needs so that from a tender age I learned to fend for myself by doing casual labour and later growing vegetables, which I used to sell in the period markets in my home district of Ntcheu. The whole of last week, I moved from one office to the next looking for a job without success. Last Friday I came to a security company. I have been told to go back for interviews after two weeks. While waiting for the prospects of getting a job at the security company I realized that the money I brought from the village was getting finished so I decided to invest what I had left in street vending. My intention is to live on the profits while looking for a job. I could not leave my wife and children behind in the village because she is an orphan and I feel it is better to be with them wherever I go.

Lony, 48, a widow and mother of 7 children, adds another dimension of desperation among female street vendors. She is the sole breadwinner, a 'driver, assistant and conductor' in her household as she described herself. As she put it,

> Whenever I am sick or I cannot sell goods on the streets for different reasons, life comes to a standstill. I don't see myself quitting street vending. As long as I am healthy, I will not stop street vending. The city authorities say we should not sell goods on the streets but I cannot stop. What do they expect from me? They can arrest or kill me. I have two sons in school who are expected to sit for junior certificate (JC) examinations this year, they will not sit for their exams if I cannot raise money for their examination fees. If they were daughters I could just let them get married.

The fact that Lony attaches greater value to the education of her sons, whom she supports through street vending, suggests that street vending is seen among some street vendors as a way through which the future of their children could be improved through education. This is indeed indicative of the attitude of most street vendors we interviewed.

Forcing street vendors to operate in established markets as is often advocated by city authorities has serious implications. Most street vendors indicated that markets have their own established big shots and for an aspiring vendor to establish himself or herself, more drawbacks have to be overcome, unlike in the streets where the situation is different. As one street vendor recounted, in the streets 'trading is fast and the playing field is level to both old and new players. It's free for all'.[11] In the markets, competition is not only waged by the mortal beings. As some of the street vendors confided, 'markets risk exposing street vendors to magical charms' of the established market vendors who steal money from fellow market traders. Three street vendors interviewed in Blantyre indicated that 'some market vendors use wood energy'.

> On the day we were forced to move into the flea market, we discovered that four tiles at the main entrance into the market had been removed and replaced. We noticed that they were not properly fixed as the rest of the tiles. We were very suspicious, so we decided to remove these four tiles and we found four neatly cut pieces of wood. They were fresh and could not be mistaken for anything but *muti*. You know some people believe that one cannot succeed in business without consulting a traditional medicine man. We are convinced that those pieces of wood were either protective charms or charms to woo customers and *chitaka* (steal money by magical means) from others. Would you just imagine a situation whereby you are doing business for somebody else? We are afraid; moving into the flea market would compromise our business opportunities.

Those who do not have charms are termed 'children' or are described as having come to the city 'without taking leave of the village grandmother or grandfather'. Streets, like children, are associated with innocence, while the produce markets are associated with malice and evil. By operating in the streets, the street vendors exorcise themselves of evil influences without the mediation of a traditional medicine man. This development is not peculiar to the urban; it is also common in the rural periodic markets, where whirlwind is associated with magical powers capable of siphoning money from unsuspecting vendors less fortunate or innocent enough not to have protective charms.[12] This means that we cannot understand the feelings and perceptions of street vendors in Blantyre about space without understanding the supernatural beliefs and anxieties; and the multiplicity in the uses and interpreta-

tions attached to space, a point often overlooked or missed in 'official' discourses of space as the following section demonstrates.

Authorities' responses to vending

Street vending is considered a social problem incompatible with the values of the significant people: the more organized, the leaders and more powerful in economic, social and political affairs (Outhwaite and Bottomore 1993). In Malawi these are the municipal authorities, political and business elites. As early as 1976, the first President of Malawi the late Dr. Banda urged the city authorities to keep the city clean: 'We believe in cleanliness, grace and elegance'.[13] This was repeated in 1988, laying down what urban life ought to be:

> Cities were meant for civilized persons, and in that regard people should be able to differentiate life in the city from that of the village by the way you look after the city. If you should be proud of the city don't bring village life into the city.[14]

Not surprising, Mary Battiata described Dr Banda's Malawi, as, 'Its cities are free from squalor'.[15] As the mayor of Blantyre at the time put it:

> We are disturbed by these people who are trying to spoil and detract us in our efforts to keep the city clean. The city has therefore decided to take drastic measures against all illegal vendors'. ... The measures were in line with the wishes of 'His Excellency Ngwazi Dr H.K. Banda that cities in this country must be kept clean at all times'.[16]

The rhetoric of cities as distinct from rural areas were echoed by the now retired president Bakili Muluzi in a speech calling on the street vendors to relocate from the streets without delay: 'how do we distinguish *ku Ntaja* and Blantyre',[17] Ntaja being the president's home village.

These sentiments highlight and galvanise the feeling that urban life ought to be better and must be preserved from the encroachment of what is rural, chaotic, unhealthy and untidy- street vendors. Street vendors, like litter, have to be cleared from the streets and confined in flea markets away from the gaze of the public. Malawi is paraded as a rare case where street vending is common:

> Even in developed, democratic countries, like Britain, people do not trade everywhere. I have been to many countries in the world, you will not see people selling goods on the streets, you tell me which government.[18]

The street vendors are branded arrogant, conservative, ignorant, uncivilized, enemies of development and democracy:

A man's difficulty begins when he is free to do what he likes. It saddens me that when we have freedom and democracy some people still want someone to grab them by the neck to obey the rules.[19]

The myth that Blantyre was in the past the cleanest city in central Africa and probably the whole of Africa[20] lingers on. City authorities struggle 'to keep the city clean and beautiful to uphold Malawi's good name abroad'. The late President Dr. Banda put it succinctly; 'Blantyre is the major city in this country. Visitors coming to Malawi don't end up only in Lilongwe but also come to Blantyre', and urged the city authorities: 'please keep the city clean... to maintain the good name'.[21]

Although these sentiments have served as the basis for persecution of street vendors in all major urban areas of Malawi since independence in 1964 little has been achieved. Street vendors appear resilient despite being beaten and their goods taken away without compensation[22] and few street vendors prosecuted and fined at different times. The highhandedness by the law enforcement agents has failed to dissuade people from joining street vending. Although this has waned considerably, street vendors cannot claim to have all the freedom they need. The City authorities believe that a solution to street vending is providing fenced flea markets, fixed kiosks or pushing the street vendors to overcrowded produce markets, which are also inconveniently located[23] and unattractive to the street vendors. This is reflected by the reluctance of the street vendors in Blantyre central business district to relocate into the just finished flea market at gunpoint.

Fighting for space or negotiating acceptance

When the going was really tough under the one party dictatorship, street vendors devised different survival strategies. They bribed law enforcement agents to evade being apprehended or alerted each other by whistling to escape.[24] Sometimes they fought back to avoid confiscation of their goods. For example, in 1992 when the Blantyre City Council decided to step up its campaign against the street vendors[25] they fought back with stones, and broke the windscreens of the city rangers' vehicles. One of the city council security men even lost two fingers.[26] Other street vendors hid merchandise in a bush by the roadside, or foodstuffs in dustbins until the city rangers passed.[27] Others disguised themselves as travellers by carrying the merchandise in their bags and occasionally producing a few to potential customers. These were creative ways street vendors devised to fight harassment and marginalisation in their search for 'redemption from victimhood' (Nyamnjoh 2000:34), albeit crude and risky healthwise. The use of forceful resistance has ceased since the mid 1990s, a reflection of thawing in political highhandedness and softening in

the approach by city authorities to the street vendors issue. This has resulted in an explosion in the population of street vendors.

Street spaces are however, not free. Prospective street vendors pay established street vendors some fee which ranges from K 200.00 (US$ 2) to K 2 500.00 (US$ 25). The fees are high when one considers that 65.3 percent of the households in Malawi subsist on less than US$ 1.00 per day.[28] This signifies the willingness of street vendors to part with some money with the hope of making more once they get a vending space or it reflects pervasive permissiveness towards taking or giving bribes, confirming what some commentators have said on the entrenchment of corruption at every level or strata of Malawian society.[29] It could as well be a reflection of a political patronage system transcending the street life, giving the street vendors' 'leaders' space for manoeuvre because of their dual responsibility as leaders of the vendors and as collaborators with the governing party stretching its tentacles into every arena of life. As one female street vendor confided:

'We don't have freedom; it is as if we are under the one-party regime. We are forced to attend political party meetings. The penalty for failing to attend ruling political party meetings is a 2-week ban. Some of the vendors you meet do not have businesses of their own, 'they ate capital'. They live on the fines they levy from us'.

The major concern of an average street vendor is space and he/she is content when the rights to trade are not compromised. It could be part of the street vendors' strategy of territoriality: 'a spatial strategy to make places instruments of power' (Knox 1982:215).

The most significant aspect is however winning public sympathy and approval through practices and actions that give credence to vending. This entails improving on the negative perceptions and images associated with street vending. Littering and waste disposal is a critical negative effect of street vending in Blantyre city. Our study observed that street vendors encourage each other to keep their surroundings clean by sweeping and maintaining proper waste disposal. Occasionally, they sweep all the streets in the central to show the public that they too are making an effort. Sweeping the streets has been a tradition since the 1997 World Environment Day, celebrated on 5 June every year. The intention is 'to teach the public about hygiene'.

Street vending and spatial theory

Street vending is informal since it is not officially sanctioned and therefore no recognizable ownership exists. This is not strange considering that the vendors' intent contravenes codes governing street usage assigned by formal societal system (Laguerre 1994; Bayat 1997). Fundamentally, street vending

implies claiming a 'right[s]' to use central urban spaces, which is itself an aspect of spatial informality. Laguerre (1994:32) posits that spatial informality is characterized by way of the intentionality or personal needs of the actor with the individual often aware of his or her unconventional action with respect to the existing social, economic, and even political contexts. The implication is that the ability of street vendors to maintain access to and control over urban spaces depends on how various arrangements are negotiated and refined when confronted by local and national governments, the urban elite (businessmen and professionals) and the ordinary people, a group comprising people with similar but not necessarily supportive segments of the unemployed, squatters, and the destitute (Bayat 1997:7, Nas 1993:5). The local and national governments and urban elites thus represent the formal, front region or core, while the ordinary people represent the informal, back region, or the periphery of the urban socio-economic and political spectrum contending to determine the order of life in all dimensions.

The presence of street vendors in town centres definitely manifests that although the urban elite and the government may have resources and power to influence and enforce decisions on urban land use, these do not negate the capacity of the ordinary people to influence or change urban order. In post-structural theorization of the 'self' and 'other', to speak of the 'formal' and 'informal', or 'front' and 'back', or 'core' and 'periphery', is already to acknowledge the constitutive power of the latter (Natter and Jones 1997:151). While dominant groups including the local and national governments and business elites may have access to 'superior' resources to enforce 'modernity', subordinate groups including street vendors, never completely lack capacity to resist or direct dominant control (Laguerre 1994:33). It follows then that the urban order ought to be a negotiated order, a reflection of various influences and divergent interests, a 'symbolic configuration of hybrid and shifting, deconstructed images arising from tension, conflicts and social changes' (Nas 1993:5-6).

Many people are puzzled by the defiant mood of the street vendors. But we need to recognize that the contestation of urban spaces between the street vendors and the local government authorities draws strength in part from the willingness of the general public to use the services and goods the vendors provide. This is in part a reflection of ongoing meaningful social interaction between the vendors and their clients bordering on conveniences and inconveniences that confirm that space is not a neutral and passive geometry. Street spaces are not mere objective physical surfaces with specific fixed characteristics upon which street vendors contest rights to operate. Space also plays an active role in the constitution and reproduction of street vendor identities hence the need to recognize streets as both material and symbolic

or metaphorical spaces (Dear 1997:51) and 'anchorage in a space (as) an economic-political form' (Laguerre 1994:42).

The tendency of city authorities to perceive street vendors as a threat to public order and hygiene becomes worrisome when infused with politics. Space becomes 'filled with politics and ideology' (Soja 1989:6) since street vendors cannot be apolitical. The specific actions of the municipal authorities become engrossed in the socio-political milieu while the vendors become less immune to manipulation by political elites. Streets become a 'domain in which meanings are constructed and negotiated, where relations of dominance and subordination are defined and contested' (Knox 1982:224). In these contexts street vendors cannot be simply 'villains of development and modernization' or 'victims of maldevelopment and pseudomodernization' (Bayat 1997:23) as municipal authorities would generally justify attempts to relocate the vendors. On the contrary, street vendors become active agents in the consumption of urban spaces; not only in the sense of operating illegally, as Cross (1998:52), puts it, 'evasion of legal requirements', but the ingenuity street vendors manifest to win further acceptance by conforming to regulations set by local authorities. Further, acknowledging that street vending is a pragmatic approach to the bleak socio-economic realities of urban life legitimises it. Threats of relocation are interpreted by the street vendors as an assault on their livelihood, humanity and selfhood. We could therefore argue that for the street vendors access to street spaces becomes no less a human rights issue. Englund (2000:601) in a discussion of human rights among Catholic and Pentecostal Christians in Malawi argues that the fundamental aspect is, 'the tacit emphasis on humanity and selfhood as a condition which is acquired through specific actions and experiences'. It is a paradox that in the era of democracy street vending is regarded as a challenge to anyone's rights or power; yet democracy requires that the quest for freedom and progress should never be harnessed by the regulations or conventions that do not serve the interests of all (Leguerre 1994:29). Access or lack of access to street space structures the daily routine and social life of the street vendors and provides them with an arena for contesting social norms. These perspectives should enrich our defective understanding and parochial pursuits of idealised versions of regulation that are hardly appropriate for a negotiated idea of the social consumption of space.

Notes

1. Mmegi (Botswana) 'Hawkers and Drivers Scorn Summit', 30 August–5 September 2002.
2. Mopheme/ The survivor (Maseru, Lesotho) 5 September 2000.

3. Bayat (1997) argues that despite the growing significance, the street vendors are rarely a subject of serious scholarship.
4. *The Times*, 4 March 1966 (Malawi) 'Hawkers: call for new by-laws speed-up'.
5. 'Now the beggars have been cleared from the streets', *The Times* 5 January 1967.
6. 'Campaign to keep city clean' *Malawi News* 27 June 1967.
7. Based on interview with former chairmen of Limbe (Mr. Sokoya) and Blantyre (Mr. Daison) vendors committees/ association.
8. First black mayor of Blantyre Councillor John Kamwendo, is reported saying 'The city had to be a place where opportunities for self-fulfillment were in abundance 'Blantyre and Hannover Joined as Sisters', *The Times* 22 April 1968.
9. Based on a group discussion in Blantyre on 12/11/2002.
10. In The Times 22 April 1968, the mayor of Blantyre is quoted as stating that the development of Blantyre city is dependent on the people.
11. 'No ceasefire between assembly, food vendors' *The Nation* 17 July 2002.
12. The use of magic to woo customers and money from others is common in Malawi among informal sector players. Rats or mice adorned with beads or 'small pillows' containing charms are a common spectacle in the produce markets both in the city and rural areas. This partly indicates that the rural is not distinct from the urban as traditional medicine men have been seen to operate in both areas. See also Tellegen's (1997:97) observations about beliefs of witchcraft among maize mill owners in rural Malawi.
13. 'Blantyre and Limbe merged' *Daily Times* 8 November 1976.
14. *Daily Times* 1 September 1988. The choice of words suggests the need for continuity of traditions ideal for urban areas. Italics my own emphasis.
15. *The Herald Tribune* (US) of 13 August 1988, quoted in *Southern African Annual Review 1987/88*, vol. 1: country reviews. Centre for African Studies, University of Liverpool 1990.
16. 'Mayor warns illegal vendors', *Daily Times* 5 December 1991.
17. President Bakili Muluzi in a speech inaugurating the MALSWITCH centre on November 2002, indirectly blamed the street vendors for contributing to uncleanness in the Blantyre and stated that government will not allow the street vendors trade anywhere because even in the developed countries people do not trade anywhere.
18. Speech marking the inauguration of MALSWITH November 2002 (translated).
19. 'Council may use force on vendors' *The Nation*, Monday 7 April 1997.
20. *Malawi News* 28 November 1972.
21. *Daily Times*, 1 September 1988.
22. In November 1995, 30 street vendors in Limbe sought legal aid for compensation of their property worth K35, 954.00 destroyed by police and city rangers. Although section 28 (2) of Malawi's constitution states that 'no person shall be arbitrarily deprived of property' the city council refused to pay compensation arguing that the city rangers and the police officers were simply enforcing the law and moreover the street vendors 'do not have legal business premises' (*The Nation*, 30 November 1995- 'Vendors to sue mayor' by Chinyeko Tembo).

23. *Daily Times* (Wednesday, 24 January, 1996) quotes Mr. Lickson Namakhwa as saying 'we want them to sell their goods inside market not on the streets'.
24. Bayat (1997: 149) calls this behaviour 'passive networking' which as he puts it 'is the instantaneous and silent communication established among atomized individuals with common interests by virtue of a visibility that is facilitated through common space'.
25. 'War against street vendors hots up-mayor closes shop' *Daily Times* 7 February 1992.
26. War against street vending hots up: Mayor closes shop, in *Daily Times* 7 February 1992.
27. 'One time at a bus depot a street vendor hid a packet of yellow buns in the dust bin when he saw the city council rangers' *Malawi News* 12-21 May 1993 by Pilirani Kachinziri.
28. Poverty is estimated to be as high as 65 per cent, Government of Malawi, 2000b.
29. Chiefs in the rural areas do the same thing; they take bribes in allocating land. See also EIU, 2001.

References

Bayat, A., 1997, *Street Politics: Poor Peoples Movements in Iran*, New York: Columbia University Press.

Bromley, R., 1978, 'The Urban Informal Sector: Why is it Worth Discussing?' in Bromley, R., ed., *The Urban Informal Sector: Critical Perspectives on Employment and Housing Policies*, Swansea: Pergamon.

Bromley, R.D.F., 1998, 'Informal Commerce: Expansion and Exclusion in the Historical Center of the Latin American City', in *International Journal of Urban and Regional Research*, vol. 22 (2), pp. 245-64.

Dear, M., 1997, 'Postmoderm Bloodliness', in Benko, G. and Strohmayer, U. (eds.), *Space and Social Theory: Interpreting Modernity and Postmodernity*, Oxford: Blackwell, pp. 49-71.

Englund, H., 2000, 'The Dead Hand of Human Rights: Contrasting Christianities in Post-Transition Malawi', *The Journal of Modern African Studies*, 38, 4, pp. 579-603.

Englund, H., 2002, 'The Village in the City, the City in the Village: Migrants in Lilongwe', *Journal of Southern African Studies*, vol. 28 (1), pp. 137-154.

Hart, K., 1973, 'Informal Income Opportunities and Urban Employment in Ghana', in *The Journal of African Studies*, 11 (1), pp. 61-89.

Knox, P., 1982, *Urban Social Geography: An Introduction*, Essex: Longman Group Limited.

Laguerre, M.S., 1994, *The Informal City*, London: Macmillan.

Murry, A.J., 1991, *No Money, No Honey: A Study of Street Traders and Prostitutes in Jakarta*, Singapore: Oxford University Press.

Nas, P.J.M, ed., 1993, *Introduction: Urban Symbolism*, London: E.J. Brill.

Natter, W. and Jones III, J.P., 1997, 'Space and other uncertainties', in Benko, G. and Strohmayer, U., eds., *Space and Social Theory: Interpreting Modernity and Postmodernity*, Oxford: Blackwell, pp. 141-161.

Nattrass, N., 1987, 'Street Trading in Transkei – A Struggle Against Poverty, Persecution and Prosecution', in *World Development*, Vol. 15 (7), pp. 861-875.

Nyamnjoh, F.B., 2000, 'For Many are Called but Few are Chosen': Globalization and Popular Disenchantment in Africa', in *African Sociological Review*, 4 (2), 2000, pp. 1-45.

Nyamnjoh, F.B., 2002, 'A Child is One Person's Only in the Womb: Domestication, Agency and Subjectivity in the Cameroonian Grassfields', in Werbner, R. (ed), *Postcolonial Subjectivities in Africa*, London: Zed Books, pp. 111-138.

Outhwaite, W. and Bottomore, T., 1993, *The Blackwell Dictionary of Twentieth-Century Social Thought*, Oxford: Blackwell.

Rogerson, C.M. and Beavon, K.S.O., 1985, 'A Tradition of Repression: The Street Traders of Johannesburg', in Bromley, R., ed., *Planning for Small Enterprises in Third World Cities*, Oxford: Pergamon Press, pp. 233-245.

Rogerson, C.M. and Hart, D.M., 1989, 'The Struggle for the Streets: Deregulation and Hawking in South Africa's Major Urban Areas', in *Social Dynamics, A Journal of Centre for African Studies*, University of Cape Town, June 1989, Vol. 15 (1), pp. 29-45.

Scott, A.J., 1980, *The Urban Land Nexus and the State*, London: Pion Limited.

Soja, E., 1989, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*, London: Verso.

Taylor, R.W., 1993, 'Policy Context', in Taylor, R.W. (ed), *Urban Development in Nigeria: Planning, Housing and Land Policy*. Aldershot: Avebury.

Tripp, A.M., 1997, *Challenging the Rules: The Politics of Liberalization and the Urban Informal Economy in Tanzania*, Berkeley: University of California Press.

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The State and Labour Control in Malawi: Continuities and Discontinuities Between One-party and Multiparty Systems[1]

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Abstract

An analysis of state-labour relations in Malawi over a period of four decades reveals, like in other countries in Southern Africa, tendencies towards continuities and discontinuities in labour controls. While Malawi's political system has undergone a major transformation to democracy in the 1990s after three decades of dictatorship which was hostile to trade unions through administrative, political and legal apparatuses, the democratic state has been marked by 'diplomatic' hostility through divide-and-rule and hide-and-seek tactics. Using different means the state has succeeded in curtailing freedom of association in varying degrees during the one-party and multiparty periods. Thus, while labour control as an objective of the state has not changed, the means have changed dramatically. The desire to achieve political stability and economic development, against a changed international political order demanding human rights and good governance in the 1990s, explains the current 'diplomatic' hostility in Malawi's industrial relations. The role of the international donor community in exporting democratic structures and values to societies that do not have an inbuilt culture of democracy similar to western societies is viewed as a further explanation for the creation of significant degrees of discrepancies between labour policy and practice in Malawi.

Résumé

En examinant de près les relations entre l'État et le monde du travail au Malawi, sur quatre décennies, l'on observe, comme dans bon nombre d'autres pays d'Afrique subsaharienne, diverses continuités et discontinuités au niveau du contrôle du milieu du travail. Si le système politique du Malawi a connu des

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changements significatifs tendant vers la démocratie, dans les années 90, après trois années de dictature combattant les syndicats à travers divers instruments administratifs, politiques et juridiques, le nouvel État démocratique, lui, se distingue par une certaine hostilité " diplomatique ", en tentant de diviser pour mieux régner, mais également en déployant des tactiques contradictoires. Usant de diverses méthodes, l'État est parvenu à limiter la liberté d'association à divers degrés, pendant la période du parti unique et du multipartisme. Ainsi, tandis que le contrôle du monde du travail demeure l'objectif de l'État, les moyens employés pour ce faire ont cependant radicalement changé. Le souhait d'instaurer une certaine stabilité politique et de favoriser le développement économique, dans un nouveau contexte politique international exigeant le respect des droits humains et une bonne politique de gouvernance (années 90), explique certainement l'actuelle hostilité «diplomatique» qui caractérise les relations diplomatiques, au Malawi. Le rôle qu'a joué la communauté internationale des bailleurs de fonds dans l'exportation de valeurs et structures démocratiques auprès des sociétés n'ayant pas une culture démocratique intrinsèque, justifie également la présence des diverses contradictions entre la politique établie régissant le monde du travail et la pratique réelle.

Introduction

Based on archival sources such as documents, official statistics and newspapers, and primary data sources in the form of questionnaires and interviews this paper analyses contrasting approaches to labour control during the one-party and the multiparty periods in Malawi. The one-party period stretched from 1966 to 1993 and the multiparty from 1994 to date. While the state demonstrated a policy of 'open' hostility to labour control during the one-party period, it was 'diplomatically' hostile through 'divide and rule' and 'hide and seek' tactics during the multiparty period. Thus, there are interesting paradoxes of continuities and discontinuities in state-labour relations in spite of changes in political systems. In its concluding remarks, the paper stress two major points: the dilemma between economic development and human rights and the role of the international donor community in influencing state behaviour and therefore industrial relations.

The first part provides empirical evidence on state-labour relations in southern Africa as a framework for discussing Malawi's experience. The second part examines labour control in Malawi during 1966-91. Later, a brief discussion of the transition to multiparty democracy is made before analyzing its impact on labour relations. The new policy on industrial relations, rebirth of trade unions, constitutional and legal reforms, are examined before analyzing forms of labour control in the multiparty period. The question of dilemma and role of international donor community concludes the paper.

The state and labour control in Southern Africa: An overview

One of the typical features of African states since independence has been a shift in political management systems. A significant transformation of the superstructure of the state occurred after independence (Tordoff 1997:1-13). Most of the countries moved from initial pluralism toward the concentration of power in the hands of a single party and president. Tordoff (ibid) notes that in some states, it meant heavy concentration of powers in the office of the president to the detriment of other ministries. There was a move from federal and quasi-federal constitutions adopted at independence to unitary structures, as in Ghana, Uganda, Zaire, Nigeria and Zambia. These moves were justified by the perceived fears that sub-national structures would aggravate sectional sentiments and therefore make the task of national integration more difficult. Unbalanced economic growth whereby development concentrated in a few regions or enclaves created an urgent need to create economic development in other backward areas. This was compounded by the fact that, at independence, the new states inherited problems of finance, acute shortage of qualified personnel to manage socio-economic development programmes and the scarcity of indigenous entrepreneurial class (ibid). Consequently the role of the state became crucial in economic development. It had to invest in social infrastructure, expand education, health, agriculture, and housing, among other services; formulate development plans, and engage in industrial and commercial undertakings through public enterprises. According to Nwabueze (1974), it was the need for state formation, consolidation of new nationhood and state boundaries, modernization of the economy and socio-economic development, which forced political elite to adopt different paths towards economic, social and political transformation.

Beginning with Ghana in 1960, Kenya and Zambia in 1964, Uganda, Nigeria, Botswana and Malawi in 1966 and Gambia in 1970, all former British colonies broke away from the dual British model of separate head of government and head of state in favour of executive presidential system. This meant the subservience of the legislature and the judiciary to the executive and the integration of other non-political organisations into the ruling party and state machinery (Nwabueze 1974:242). Such states could not tolerate any other pockets of power and therefore any organisations of significance such as trade unions, co-operative societies, farmers' association, women's and youth movements, were integrated into the executive wing of the state. For Nkrumah, his Convention Peoples' Party was 'a mighty tree' and non-political organisations were its 'many branches' (ibid:249). According to Nwabueze, what emerged was a highly centralised governmental structure

where the legislature and judiciary were subordinated to the executive; bicameralism was replaced by unicameralism and federalism by unitarism and the emergency of one-party states characterised by concentrating too much power in the presidents (ibid: iii-iv).

As a result of dissatisfaction with the economic and political performance of the state after three decades of independence, reforms occurred. Between the 1980s and 1990s a move from one-party systems and socialist ideologies toward multiparty systems and liberalised economies took place (Chazan et al., 1994:64-66). It was increasingly believed that the revival of Africa's economy was dependent on getting rid of authoritarian, corrupt and inefficient one-party regimes and that multiparty system of government could halt Africa's downward economic spiral. As one Zairean politician noted: 'we cannot do anything in the economic field until we change the political field' (Tordoff 1997:14).

Protracted strikes, demonstrations and national political conferences were held to demand multiparty elections and the removal of incumbent presidents in favour of democratic governments. Western governments began to pressurise African states for good governance from the 1980s and into the 1990s (Tordoff 1997:40). The World Bank and the IMF continued to insist on economic liberalisation, transparency and accountability as preconditions for further financial assistance. In most of Southern Africa, the demand for democratisation as a precondition for continued financial assistance started with the collapse of communism in Eastern Europe and the wind of democratic dispensation across Africa (ESAURP 1994:26). By the middle of the 1990s, countries such as Ghana, Kenya, Tanzania, South Africa, Angola, Mozambique, Zaire, Zambia, Togo, Morocco, Benin, Gabon, Tunisia and Malawi had adopted multiparty political systems. Although these developments did not reduce the role of the state in Africa, they nonetheless modified the power balance between states and civil society organisations like trade unions. The centrality of the state in social economic development and political stability, which led to the adoption of authoritarian political systems and later democratic systems, has had impact on state-civil society relations.

This meant a regular change in the 'frontier of control' of the state vis-à-vis other elements of civil society. At one stage the state had adopted more elements of an authoritarian political systems and, at another, more liberal democratic elements. Thus, one would see the state becoming more interventionist and controlling, and adopting elitist policies far removed from the interests of the masses at one stage, with a more guardian and arbiter role in favour of open market and more competitive behaviour at another. It is

also possible to see a hybrid variant where some aspects of liberal democracy and the authoritarian mode co-existed within the same stage. Tanzania's Julius Nyerere, who advocated 'Ujamaa socialism', and Zambia's Kenneth Kaunda, who advocated 'humanism' ideology as a development strategy, became violators of human rights through one-party dictatorship (Mihyo 1995:204).

Labour controls in Southern Africa

Against this background one central question is to find out the impact of changes in political systems on state-labour relations. In the immediate post-independence era control of indigenous voluntary groups such as trade unions became a typical feature in state such as Zambia, Tanzania, Kenya to name a few. Labour rights such as freedom of association, collective bargaining and the right to strike were heavily curtailed and unionism was restructured to fit the needs of independent states.

For three decades after independence in 1964, Zambia's industrial relations were influenced by the one-party state led by Kaunda in its attempts to control and incorporate the labour movement within the state machinery (Mihyo 1995:203-4). Kaunda used his massive powers to impose, punish, reward, detain, appoint and dismiss. The state restructured industrial relations policies by creating industrial unions and worker participation in management schemes controlled by party branches and state appointed managers. It integrated the Zambian Congress of Trade Unions (ZCTU) with the ruling United National Independent Party (UNIP). This was to ensure that ZCTU acted as UNIP's administrative wing in communication and civic education to workers on the productionist role trade unions were called to play in line with state economic development policy and plans. The state controlled unions, increased the Registrar's power to supervise trade unions; and restricted international affiliation and funding. It used detention powers and presidential intervention in industrial relations matters to control unions (Gertzel 1979:335-337). Intimidation and marginalisation of dissenters, surveillance and arrest of ZCTU leaders were other means to weaken unions (Mihyo 1995:208). According to Liatto (1989:101), the state used the 'carrot and stick' approach through the legal framework, wages and salaries, control of ZCTU leadership, and the process of engineering consent (through worker participation mechanisms, political exhortation and workers' education) to tame Zambia's labour movement.

In Kenya, the colonial state was able to sabotage the growth of African trade unions by identifying and persecuting trade union leaders as communists. The colonial state banned the first trade union in 1947 and deported its leaders. When unions became legal, the state enacted the Trade Union Registration Ordinance and a Deportation Ordinance Act with provisions for state control

over unions and workers (Iwuji 1979:201). A Nairobi strike in the 1950s was ruthlessly crushed by the state using the police and the army. Up to 300 workers and union leaders were imprisoned (ibid:203). These repressive measures affected both union membership and union activities. For example, a one-day operation, to crack down union supporters on 24 April 1954, reduced the Local Government Union membership from 1,300 to 500 with consequent closure of union offices.

Post-independence Kenya also experienced state control over trade unions. Although unions were allowed and the right to strike was included in the labour laws, the 1962-63 strikes after independence provoked the wrath of the political elite. Tom Mboya, then Minister of Labour, threatened to take away the right to strike if workers abused it (ibid: 234). Following inter-union disputes between the Kenya Federation of Labour (KFL) and the Kenya African Workers' Union (KAW), a 1965 presidential decree created the Central Organisation of Trade Unions (COTU) and de-registered KFL and KAW (ibid: 207). In 1974, a presidential decree banned unofficial strikes. This, perhaps, reflects Mboya's view that 'a Government sometimes needs unusual powers to enforce some decisions' (in Etukudo 1995:54). According to Liatto (1989:238-9), through a series of tripartite agreements in the period 1964-1980, the state co-opted union leadership, influenced collective bargaining through wage freezes and curtailed the right to strike through a presidential ban on strikes.

Owing to the predominance of the white settler economy and the need for the state to meet settlers' desire for cheap labour, the colonial state enacted several laws (Shadur 1994). Starting with the Master Servant Act 1901 to the Industrial Conciliation Act 1959, the colonial state aimed at suppressing labour rather than the development of trade unions among black workers (Liatto 1989:262).

When unions were recognized under the 1959 Act, their number grew to 26 in 1962 but had declined to 22 in 1966. Shadur (1994:61-62) argues that unions remained extremely weak not only because of financial problems and leadership ineffectiveness, but also due to state control through close police surveillance, breaking strikes, harassment and arrest of leaders. Trade union weakness in Zimbabwe was also attributed to the unusual political history of the country. For Shadur, the post-independence period witnessed a high degree of state corporatism aimed at controlling unions, employees and strikes thereby enforcing industrial peace. Like the ZTUC in Zambia, the Zimbabwe Trade Union Congress was used as an administrative arm of the state to interpret and implement state policies and programmes of economic development. The state crushed all strikes that had characterised Zimbabwe at independence

and some years later (ibid:72-74). Mugabe intervened, like his Zambian counterpart, in introducing extensive legislative powers aimed at neutralising militant unions. Other measures included beating with button sticks, suspended sentences, arrests, and detention or dismissal of strikers. Mugabe's public speeches carried strong warnings. Following protracted strikes at Wankie Colliery, Swift transport, and Express Nickel Mine, for instance, Mugabe warned that his Government's priority was law and order and he would give the police whatever authority was necessary to end lawlessness (Shadur 1994:86).

Between 1947 and 1953 the colonial state repressed trade unions until the Tanganyika Federation of Labour (TFL) emerged later as an amalgamation of small unions. Nyerere's view that 'everybody was paid too much except the poor peasant'[2] perhaps spoke more about the expected behavioural orientation of workers in independent Tanzania. For him, 'although one of the purposes of trade unions was to ensure for workers a fair share of the profits of their labour, such fairness would be judged in relation to the whole society' (in Nwabueze 1974:375). Between 1962 and 1963, the state passed legislation to eliminate 'dissident' unions and to consolidate 'loyal' unions into the industrial wing of Tanganyika African National Union-TANU (Bienefeld 1975:243, in Liatto 1989:243).

A series of strikes in sisal plantations, mines and railway unions from independence to 1972 demanding unconditional Africanization, led to an army mutiny, which forced the state to take action. 200 union leaders were arrested; competing union federations, including TFL, were abolished and an Act of Parliament created a National Union of Tanganyika Employees (NUTA). All unions became affiliated sections of NUTA (Mihyo 1979:250). The general secretary and his deputy were to be appointed by the President. NUTA's role was to study wage structure annually; advise the government on wages in accordance with the country's income and wages policy; implement the wages and incomes policies; settle disputes between members themselves and implement and propagate the policy of the ruling party (ibid:250).

In 1978, NUTA was replaced by the Jumuiya ya Wafanyakazi Tanzania (JUWATA). JUWATA was responsible for the interpretation of TANU's policy to the workers and to ensure that workers complied with the party's directives. They were also responsible for the protection and defence of party policy against those opposed to Tanzania's Ujamaa socialism; promotion of worker education, creativity, productivity, confidence, pride; and protection of workers' rights and improvement of wages and other conditions of employment (ibid:252). Like Mboya who supported the need for government's strong hand in Kenya, President Nyerere justified state intervention in

industrial relations as the only way in which 'any African government could act in accordance with the aspirations and wishes of its people' (Etikudo 1995:54).

During the multiparty systems in most of these states, union activity has also come under increasing state control in spite of adoption of international labour conventions and worker-friendly legal framework. The negative state attitude towards trade unions is reflected in different countries in the Southern African region. Madhuku's (1997) study on Botswana, South Africa, Namibia, Zambia, Zimbabwe, Malawi, Lesotho and Swaziland, revealed different degrees of state restrictions on the right to strike. He argued that these restrictions could be explained by the high priority accorded to economic development, with human rights being perceived as luxuries (ibid:529). Similarly, in a study of Zambia, Botswana, Swaziland, and Malawi on union rights, Sibanda (1999:16-19) argued that, although the ILO Convention No.48 gave workers the right to organise, and that the UN Declaration of Human Rights recognised union rights as human rights, 'these rights were under threat in Southern Africa'. Although there was a decline in unilateralism in employment in Southern African region, some countries such as Zimbabwe, Botswana and Lesotho did not provide for trade union formation and collective bargaining in the public service (Kalua and Madhuku 1997:4-5). There was a blanket prohibition of the right to strike in the public service in Zimbabwe, Botswana, Lesotho, and Zambia and Tanzania's top management (ibid:7). Though most countries in this region oblige employers to bargain collectively with unions which achieve a certain threshold, collective agreements are vulnerable to court review and ministerial sanctions as they are enforceable after being registered by either the Ministry of Labour or the Industrial Relations Court (Christie and Madhuku 1996:4-6).

Labour control during the one-party period in Malawi: 1966–1991

Independent from 73 years of British colonial rule in 1964, Malawi became a one-party state in 1966. She adopted a multiparty political system in the 1990s. The need to maintain political stability, bring national integration and spearhead socio-economic development amidst scarce human, material, financial and administrative resources made the Malawian state a major actor in social, political and economic development from independence. The near collapse of Government within weeks of independence as a result of a cabinet crisis and Chipembere rebellion (McCracken 1968:206; Short 1974:197-230) was a major justification for Banda, the first president, to rise to 'presidentialism and executive dominance' (Nwabueze 1974:242). Banda

stressed his desire to maintain political stability, an efficient, incorruptible and honest administration, and economic development, and if he had to detain up to 100,000 to achieve these goals, he would do it (Dept. of Information, 1965:7). The consequence was the subordination of the other branches of government to the party and president (Tordoff 1997:4). As Phiri and Ross (1998:11) noted, 'all executive authority was concentrated in the Office of the Life President, checks and balances were very limited and ineffectual and absolute and unquestioning loyalty to Banda himself was required ...'. Banda used the Malawi Congress Party (MCP) for the mobilisation of people for rural development as well as an instrument for political control. As the single largest employer and actor in economic development through the public service, public corporations (UNIDO 1987:14) and quasi-government Malawi Young Pioneers (MYP) training bases (MCP 1967:5) and elite-owned companies (Kydd and Christiansen: 1982), the state became the biggest activist in repressing labour rights. The impact of the 1964 cabinet crisis and the quest for political stability and economic development not only shaped the role of the MCP in labour relations but also impacted on the attitude of political elites towards labour rights. Coupled with a restrictive legal framework for labour relations the final outcome was the total domestication of the labour movement.

The cabinet crisis and labour relations

The cabinet crisis was an attack by six cabinet ministers on President Banda's domestic and external policies six weeks after the 6 July 1964 independence celebrations. At the domestic level, the ministers were opposed to the introduction of hospital fees and the policy on Africanisation of the public service and public corporations, and also the Skinner Report, which called for the scaling down of conditions of service for the civil service. On external policy, they criticised him on his position in relation to Southern Rhodesia, Portugal, Mozambique, China and Taiwan. The 1964 cabinet crisis heightened state hostility to the labour movement. The punishment of expulsion, banishment and detention without trial inflicted on the dissenting cabinet ministers extended to their colleagues in the labour movement, as many unionists were seen as rebels. Among Chipembere's friends were a number of trade union leaders who received the same punishment on the dissenting politicians (Ananaba 1977:51). As Lwanda (1993:69) argues, the cabinet crisis not only removed any lingering opposition from Banda's Government, but also ensured that the next generation of potential leaders of Malawi, both intellectual and technocrat, were consigned to exile. The cabinet crisis, according to one analyst, 'cast a dark shadow on labour rights - the freedom of association and the right to strike to defend workers' interests'.[3] According to Chiume

(1982:217), 'youths were ordered to spy on members of their own families ... became infused with terrible delight in beating and killing people after the cabinet crisis. There was a witch-hunt against trade unionists and rebel politicians and that Banda infiltrated Tanzania and Zambia with spies posing as political refugees (ibid:224).

Although workers had grievances, the absence of freedom of expression due to the fear of intimidation and harassment after the cabinet crisis meant that they could not openly articulate these grievances. As Mangozo[4] noted, the one-party state did not want to hear of any organisation that had the potential to challenge its policies. The arrest and self-exile of strong unionists such as Chihana, and the MCP's harassment and intimidation of union leaders and members weakened the labour movement. By removing key figures in the labour movement, Banda's regime cleared the way for its further consolidation over the economic and political spheres in Malawi without any inhibitions. Throughout the one-party period, the attitude of political elite towards the labour movement was hostile.

The MCP in labour relations

As a key policy making body in the Government through the annual convention (*Daily Times*, 23 July 1973:1), the MCP shaped labour relations through compulsory integration with unions, intervention in trade disputes, recruitment of key personnel in organizations, harassment of unionists at workplaces, inculcating worker discipline, and public threats against dissent. In the 1965 MCP convention, an amendment to the party's constitution was made to provide for recognition of the Trade Union Congress of Malawi (TUCM) as the only union federation. There was a policy of compulsory affiliation of unions to the MCP, a proviso that was endorsed in section (d) of the MCP membership card. This provision gave the MCP power to control unions' affairs, including election of office bearers and ensuring they conformed to party interests (Ananaba 1977:52). Unionists who challenged such things as the state's wage fixing machinery were removed, and sometimes arrested and replaced by individuals willing to uphold government policies (Otanez 1995:51).

State control over unions through union affiliation to the MCP ensured that union leaders were accountable to the state. This view is further supported by the experiences of the Teachers Union of Malawi (TUM). Formed in 1945 as an association, it registered as a union two months after independence. It then changed from a union to an association in the same year and back to a union in 1966. It was banned in 1976 because it was outspoken. It was re-established in 1982 as an association under the management of the

Ministry of Education who made membership a compulsory requirement for all teachers and also appointed officials of the association. As Kamphonje[5] noted, although the union was financially powerful, because the Ministry made membership compulsory and deducted fees at source, it was politically and professionally weak.

The MCP's supremacy was highlighted in the 1966 Malawi Constitution (s.4) and elaborated in political rallies. Reminding delegates to the 1986 party conference, the MCP Administrative Secretary argued that the party was supreme because the Government and everything that Malawians were enjoying came about through the MCP. He noted that the MCP's ideology of unity, loyalty, obedience and discipline provided a behavioural framework for workers in public and private sector organisations (*Daily Times*, 23 October 1986:3). 'Everyone holding a responsible position in the party, Government or any organisation associated with the party would be in that position as long as he/she worked within the framework of the party' (*Daily Times*, 3 October 1986:3). As one interviewee noted, political leadership of the country influenced management systems at the workplace: managers were dictatorial, one-way communication prevailed as directives were issued from above, and workers had no chance of negotiating their wages and conditions of employment. The worker was a 'yes bwana' (sir), a loyal recipient of instructions from a state-cushioned employer.[6]

Since the 1964 cabinet crisis a typical call for most politicians during their public rallies was the need to intensify vigilance against all forms of subversion because 'in the absence of peace, calm, law, and order there could be no political, economic, and social development' (*Daily Times*, 30 December 1977:3). In this context, any form of protest or expression of dissatisfaction was viewed as an attack on party ideology. Employers invoked party ideology in cases where workers demanded higher wages and improved conditions of work. Not only did employers report union activists to the MYP, designated by the President as his eyes and ears, but also refused entry of unionists on the shop floor. Thus, taking advantage of the negative attitude of the state towards trade unions, employers used state informers at the shop floor to their advantage. As Nyirenda[7] noted, 'as there was no freedom of expression, employers benefited from our helplessness ... they could change conditions of employment at will and were not obliged to increase wages'. State policies and strategies benefited employers as evidenced by the Employers Consultative Association chairman at the 1979 annual general meeting in Blantyre when he noted that employers in Malawi were fortunate because of 'continued industrial peace under the wise and dynamic leadership of His Excellency Ngwazi Dr Kamuzu Banda' (*Daily Times*, 25 April 1979:1)

According to Otanez (1995:51), the state's ability to demobilise the union movement also helped to sustain a bipartite arrangement, which provided legitimate roles for government, and employers in labour relations while relegating labour to the distant background in labour relations and policy-making.

Managers at David Whitehead and Sons (DWS) and the Eastern and Central African Railway Ltd argued that 'the MCP government viewed companies as state property as the party relied on companies to fund conventions; public functions and party cards drive campaigns'.[8] They also claimed that state wage controls ensured that companies did not run out of money to fund party activities. Thus, the 1969 cheap labour policy was an attempt to attract investors who could in turn be relied upon to meet MCP's financial needs. MCP controlled labour relations at the workplace through the appointment of chief executives of public corporations to oversee profits and direct them to the party. It also appointed party functionaries on the shop floor to ensure that the rank-and-file observed the MCP ideology of unity, loyalty, obedience and discipline. These political appointees dismissed employees who were suspected to have no allegiance to the MCP. At the workplace workers could not discuss any wage issue for fear of intimidation and harassment by party spies.

The MCP created party branches at workplaces to involve workers in party activities. For example, opening a new party branch at Lauderdale Tea Estate in 1971, the deputy regional party chairman said the branch was created to enable estate workers participate in running the affairs of the country through the party (*Malawi News*, 14 May 1971:14). He asked employees to co-operate with employers and to intensify party activities in the area. The party also intervened in the Ministry of Labour's third party role of conciliation, mediation and arbitration. Workers at Lauderdale Tea Estate for example were to 'seek the advice of their local party leaders if they had problems with the employer'. Why workers had to consult party leaders on labour issues when the Mulanje District Labour Office was less than one kilometre away is evidence of this. According to the district labour officer in Thyolo, MCP's intervention in labour disputes created conflict between the state machinery entrusted with labour relations responsibilities and the party.

The domestication of unions

The hostility between the state and unions hindered the operation of trade unions throughout the one-party period. In 1964, the Ministry of Labour cut to 5 the 19 trade unions formed before independence (Ministry of Labour, 1969:63). Civil service unions were banned and the TUM was renamed the Teachers Association. The MCP dictated 'what tune to sing and how to

dance'.[9] Although it was the first registered trade union in 1949, the Transport and General Workers' Union (TGWU) remained insignificant throughout the one-party period.[10] Because political leaders knew the potential threat of unions to political stability from pre-independence nationalist struggles, they were keen to weaken trade union power.[11] State control of unions led to a slow unionisation during the one-party period. By 1990, union density was 12 per cent (Manda 1994:35).

Speeches by trade union leaders, employers and the Minister of Labour during the opening and closing ceremonies of trade union training courses or workshops reveal the extent of the domestication of the labour movement. For instance, TUCM general secretary, Kelly Zidana, told the nation on the 1966 May Day celebrations that responsible unions should assist the planning of the country's economic development. He warned that 'our demands must be economically possible, supported by solid economic facts and morally justified ... they must not be selfish demands which make progress at the expense of equally needy people' (*Daily Times*, 6 May 1966:7). At a closing ceremony of the Trade Unions' Seminar at Chancellor College in 1970, TUCM chairman Justin Liabunya, reminded union leaders that their 'primary aim was to find out how they could help the President Ngwazi Dr Kamuzu Banda, to develop the country' (*Daily Times*, 6 August 1970:8). In 1986, the Plantation and Agriculture Workers Union acting general Secretary warned members in Mulanje against any form of insubordination to employers and appealed to them to work hard. He also asked them to respect employers so that they 'could help the Ngwazi develop the country economically' (*Daily Times*, 11 February 1986:3). The Minister of Labour warned union leaders to adhere to what was required in Malawi and that they 'should be reasonable in their approach to relevant matters' (ibid:8).

The need to do things in a Malawian way was also emphasised by the Minister of Labour, when he briefed a group of migrant workers before they left for South Africa in 1972. 'Don't copy the bad behaviour of your friends from neighbouring countries, instead obey your employers' orders and work hard' (*Daily Times*, 17 July 1972:3). He also warned that it was dangerous for trade union leaders to emulate foreign union ideologies and policies that were not in line 'with the tradition and aspiration of our leaders and governments' (*Daily Times*, 7 August 1991:1).

President Banda wanted absolute loyalty, obedience and discipline in the civil service. At a public rally in Zomba in 1970, he warned civil servants against subversive activities and that 'once caught practising anti-government activities, they would be punished more than the ordinary people' (*Daily Times*, 31 August 1970:1). Anti-government and subversive activities in the context of workers in the civil service need to be understood in relation to

demands for wage increases as well as improved conditions of work. As far as political state elite was concerned, any attempt to initiate changes from below was a sign of lack of loyalty, obedience and discipline and a sufficient case for detention without trial.

At the 1974 MCP annual convention in Lilongwe, the President asked MCP central executive committee members, cabinet ministers, parliamentary secretaries, Members of Parliament, the women's league and the MYP in the country to be vigilant. He warned that whether a civil servant, a secondary school, technical college or university teacher, anyone involved in subversive activities had to be reported to party authorities so that they could 'dealt with him/her since the country needed political stability' (*Daily Times*, 28 May 1974:1). Banda dismissed his own Secretary to the President and Cabinet 'for not being loyal and honest in carrying his duties' and further warned that the 'Government will not tolerate any civil servant with similar behaviour and attitude' (*Daily Times*, 2 December 1991:1).

As a result of the interventionist role of the MCP in industrial relations, political exhortation against all forms of employee subversion and the imposition of strict adherence to party ideology and discipline, the state managed to create a docile labour movement.

The first 13 years of the one-party period experienced 156 strikes, an average of 12 per annum. Between 1980 and 1988, the economy deteriorated as a result of a number of economic and non-economic shocks. It was during this period when the minimum wage was lowest and workers' purchasing power had declined by 42 per cent (GoM 1993:57). Yet strikes fell from 4 in 1980 to nil in 1988. The last 13 years of the one-party state saw a tremendous decline of strike activity from 156 strikes to 26. Government acknowledgement that 1988 was the peak of the 'below poverty line' wage levels (GoM 1993:57) suggests that workers' wage grievances might have piled up. Why were there fewer strikes during the last 13 years when workers' wages were so low? For Manda,[12] with Dr Banda's Press Holding reaching every inch of economic activity, it would be unthinkable for one to contemplate going on strike. According to Chitwanga[13] 'practical experience taught workers the hard realities of the time; we saw people being murdered, tortured, detained without trial, and banished into exile for expressing different views on the economy'. And for Chiwone,[14] 'to go on strike was tantamount to signing one's death warrant'. 'At the height of Banda's iron rule between 1973 and 1990, it would have been foolish in the extreme and probably treasonous for anyone ... to agitate for improvement in the legal regime for industrial relations' (Ngo'ngo'la 1994:2).

Another important tool for the control of labour during the Banda regime was the legal framework, which undermined freedom of association, collec-

tive bargaining and the right to strike. The Trade Union Act 1958 restricted freedom of association by enhancing the state's power to control the formation, registration and financial management of unions. The Registrar of Trade Unions could refuse or cancel registration and determine international financial assistance or affiliation. The prevalence of a unilateral system of wage and salary determination and conditions of employment in public and private sector organisations undermined collective bargaining. The absence of trade unions in most sectors including the civil service, the presidential intervention in wage determination, wage freezes and the 1969 low wages and salaries policy created additional limitations to collective bargaining. Reliance on Wages Advisory Councils (WACs) and Wages Advisory Board (WAB), which rarely met (Kantsemo 1995:13), and the absence of collective bargaining provision in the Trade Union Act 1958, further delayed the development of collective bargaining and therefore worker participation in matters affecting their terms and conditions of employment. Attempts by workers to punish the employer through the strike were severely curtailed by the Trade Disputes (Arbitration and Settlement) Act 1952, which prohibited strikes in essential services and remained silent in non-essential services. The restrictive political, legal and administrative environment made it difficult for workers to mobilise any strikes to defend their economic interests. An analysis of Daily Times from 1966 to 1991 demonstrates that there were only 3 reported strikes during this period, though the paper did report up to 16 strikes for South Africa, Zimbabwe, Britain, Australia, America and other countries (Dzimbiri 2002:115). On the other hand, 54 organisations that responded to a questionnaire on their experience of strikes between 1966 and 1991 reported 4 strikes (ibid:114). Official statistics from both the ILO Yearbook of Labour Statistics and the Ministry of Labour have shown that there were 182 strikes during 1966-91(ibid:113). Most of these strikes were less that a day, and were over workloads and human relations problems with supervisors on tea estates in Mulanje and Thyolo. For the Ministry of Labour, these strikes 'were minor and unofficial' (Manda 1994:47). In retrospect, these would constitute what McCracken (1988:280) described as 'the most trivial forms of independent worker action'. Thus, the need for political stability and economic development necessitated the need to control labour radicalism. The consequence of this was to produce an institutional, legal and political environment that created a docile labour movement, which could not use the strike weapon to defend its economic interests during the one-party period.

Democratic transition and labour relations

The one-party repression of human rights created internal and external pressure for change to a multiparty democratic state. Detention without trial, repression of basic freedoms, politically motivated murder of 'dissidents', forced party cards sales, forced attendance of MCP meetings, forced gifts to the head of state and the punitive role of youth league wing of the party in the rural and urban areas, caused disgruntlement with the Banda regime (Dzimbiri 1998:90). It was however dangerous to talk openly about political change until the Catholic Bishops' letter of 8 March 1992 attacked the social, political, cultural and economic decay, the abuse of human rights and deep inequalities. On 6 April 1992, Chakufwa Chihana, then Southern African Trade Union Co-ordination Council's Secretary General, was arrested for denouncing the MCP as a 'party of death and darkness and unreformable' (ibid:97). His 1992 arrest and trial for sedition and subsequent two-year imprisonment for advocating democratic change provoked further discontent against the Banda regime. Donors withheld non-humanitarian aid in order to secure 'tangible and irreversible evidence of transformation' in basic human rights (GoM 1993:2). Pressures from Amnesty International, the World Bank, IMF, Organisation of African Unity, and Commonwealth Secretariat, British, and American governments made the state 'weak and vulnerable' (Migdal 1988:6). As McCracken argues, 'by reversing their previous policy and freezing aid to Malawi, the role of Western creditor states was a crucial factor in undermining the Banda regime' (McCracken 1998:234). The 1993 referendum declared free and fair by the international community and 1994 General Election led to the defeat of Banda's MCP and the success of Muluzi's UDF.

As part of the process, and the consequence of the transition, there was an increase in strike activity in Malawi. Starting at David Whitehead & Sons on 5 May 1992, strikes spread to other companies. As van Donge (1995:230) noted, 'the fabric of society seemed fundamentally shaken by riots resulting from industrial unrest during which there was widespread looting of shops in Blantyre and Lilongwe'. Public and private sector organisations took turns in strike activity during the following months. In 1993, the biggest single employer of over 120,000, the civil service, experienced two big strikes that paralysed the country's health, education, transport and other services. Different sections of the civil service such as teachers, nurses, junior doctors, custom officers, and clerical officers went on strike at different times. Between 1992 and 1999, the *Daily Times* reported of 90 strikes (Dzimbiri 2002:131). Fifty-four organisations that reported only four strikes for the 1966-91 period reported 75 strikes involving 70,000 workers and 400,000 days lost (ibid:133). Official records, which did not include 50 strikes in-

cluding many in the civil service, shows that there were 300 strikes involving 270,000 workers and 800,000 days lost (ibid:127).

The dramatic transformation of the conflict landscape in Malawi's industrial relations in the 1990s is that strikers did not just demand improved wages and conditions of employment. They also demanded the removal of senior managers and challenged or defied employers' and Government dismissal threats. Some challenged Government policy on privatisation and maize prices and refused to meet middle managers and demanded to meet the State President Bakili Muluzi.

The 1992-93 wave of strikes revealed the extent to which a communication gap existed between employers and employees. Employers found it difficult to call for the attention of angry workers who had stopped working, asking the employer to meet their demands before returning to work. As one commentator noted, 'institutions were caught sleeping having enjoyed so much unaccountability' (interview). This could be explained in terms of the weakness of the labour movement precipitated by state control of trade unions and the perpetuation of statutory means of wage determination, a top-down culture and a hostile political environment. Employers and employees had not developed skills and experience required in resolving disputes (*Daily Times*, 19 May 1992:11). The panic reaction experienced during the strikes was seen as the price 'we had to pay for our pretences at peace and calm because the Government's labour policy was threats of dismissals in the work places' (*Nation*, 9 August 1993:4). The paralysis of the one-party industrial relations institutions and law was obvious when both employers and the state failed to handle workers' grievances forcing President Banda, cabinet ministers and party officials to plead with employers and employees to resolve grievances amicably (*Malawi News*, 9-14 May 1992:1). At the bureaucratic level, senior state officials from the OPC, Labour Ministry, Finance, Trade and Industry, Economic Planning and Development, Department of Human Resources Management and Development (DHRMD) and Controller of Statutory Bodies, organised a round table conference in Blantyre in August 1993 to express Government's concern over the 1992-1993-strike activity. They appealed to companies and organisations to form Joint Consultative Committees (JCCs) 'to facilitate amicable resolve of employees' grievances' (*Daily Times*, 9 August 1993:1). Not only did they advise employers to be transparent to workers, but also advised workers to be aware that unrealistic wage demands would 'wreck the fragile Malawi economy' (ibid:1).

These strikes also forced the state to announce a policy on collective bargaining and trade unions (*Daily Times*, 4 October 1993:10). The Ministry promised to encourage not only the right to organise and engage in collective

bargaining but also to affiliate to international organisations. It promised to support employers and workers' education programme and the training of union leaders and negotiators; to encourage freedom of association and non-victimisation in employment and to provide the necessary legal framework and administrative arrangement for freedom of association and collective bargaining (ibid:11)

Renewal of trade unionism

The renewal of the labour movement stemmed from the wider impact of the 1992-93-strike wave that revealed that Malawi's industrial relations system could not manage a more demanding labour force. Against the background of positive state policy in industrial relations, a process of worker self-organisation and renewal was underway. On 27 June 1995 the TUCM registered as the national federation under the Malawi Congress of Trade Union (MCTU) with a new executive committee signifying a complete change of leadership at branch, regional and national level. By 1994, the civil service had three unions: the CSTU, the Customs Workers Union and the Teachers Union of Malawi (TUM). With the state taking the leading role in trade union development, the number of workers who joined unions increased from 56,000 in 1990 to 63,270 in 1994, representing an increase of 13 per cent and a density of 36 per cent (Manda 1994:48) .The growing interest among employees to join trade unions was shown by the overall density of 82 per cent for TUM, 75 per cent for the Railway Workers Union, 50 per cent for the Building Construction, Civil Engineering Allied Workers Union (BCCEAWU) and 40 per cent for the Transport and General Workers Union (TGWU). As the process of union formation, resuscitation and restructuring continued, registered unions increased from 12 to 21 during 1994–2000 (Dzimbiri, 2002:238). The additional unions include: the Malawi Congress of Trade Unions; Civil Service Trade Union; Customs Workers Union (CWU); National Union of Commercial and General Workers, which changed to Commercial and Industrial Workers Union (CIWU); Sugar Plantation and Allied Workers Union (SPAWU); Electronic Media Workers Union (EMWU); Carlsberg and Southern Bottlers Trade Union (CSBTU) and the Tobacco Tenants and Allied Workers Union (TTAWU). The Textile Garments Workers Union had changed to Textile, Garments Leather and Security Services Union (TGLSWU) as it widened its area of representation. Although some unions such as the RWU, BCCEAWU, PAWU, LGEU and the TGWU had existed for three decades, they were re-registered in 1995. None of the above unions was affiliated to a political party although individual leaders and members had their own party preference.

Legal and institutional reforms

Although section 2(1) (iii) of the 1966 one-party constitution provided that Government and the people of Malawi 'shall continue to recognise the sanctity of the personal liberties enshrined in the UN Universal Declaration of Human Rights and adherence to the Law of Nations', section 2(2) had set contrary terms of reference: 'That nothing in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 2 (1) to the extent that the law in question is reasonably required in the interest of defence, public safety, public order or the national economy'.

The 1994 constitution had provided a different constitutional order. It provided that the constitution was the primary law of the country and was to be given consideration in the interpretation of all laws. It enshrined human rights provisions that support independent trade unions. Section 13 (l) provides for the peaceful settlement of disputes through negotiation, good offices, mediation, conciliation and arbitration. Section 31 provides for the right to a fair and safe labour practices, fair remuneration, the right to form and join trade unions or not form or join trade unions, fair wages and equal remuneration for work of equal value and the right to withdraw labour.

One of the biggest steps in Malawi's industrial relations history was the enactment of the Labour Relations Act (LRA) 1996 'to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly and expeditious dispute settlement conducive to social justice and economic development'. Section 4 provides the right to freedom of association, and to form or join organisations of one's choice. Section 5 provides the right of an organisation to draw its constitution, rules and elect officers; organise its administration, activities and draw its programmes; take part in the formation and become a member of any federation of trade unions or employers' organisation; and affiliate to and participate in the affairs of international workers' or employers' organisation and to receive financial and other assistance from them. Section 6 (1) protects individual workers from discrimination; dismissal, prejudice and threats by union leaders or employers on grounds that they have or not joined a trade union. The LRA provides for enterprise and sectoral level bargaining as long as a 20 per cent membership threshold has been attained (s.25). Where the 20 per cent threshold is not possible, a union or employer associations' could apply for the establishment of an Industrial Council (IC) (s.27) composed of employer and employee representatives. An IC negotiates wages and conditions of employment, establishes dispute resolution machinery, and develops an industrial policy for the industry concerned (s.30).

The right to strike was guaranteed in the 1994 Malawi Constitution (s.31 (4). Sections 42-54 of the LRA also provide for the settlement of disputes and the right to strike. Section 43 stipulates the need for either party to report any dispute to the Secretary for Labour (PS) to arrange for conciliation after voluntary procedures have been exhausted. The LRA has reduced the Minister of Labour and the Registrar of Trade Unions' influence on freedom of association, collective bargaining and the right to strike, thereby enabling workers to gain more rights. Individual employment rights were provided in the Employment Act 2000 whose object is 'to establish, reinforce and regulate minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice'.

Labour control during the multiparty period

The growth of trade unions and legal reforms are indicators of a positive state attitude towards freedom of association, collective bargaining and the right to strike. This contrasts sharply with the open hostility towards unions and labour rights during the one-party period. However, union leaders, employees and analysts view the multiparty state as not being different in terms of its attitude to trade unions. BCCEAWU secretary general noted that:

> The current Government does allow the formation and operation of unions. However as workers we are interested in results not window dressing. The current state simply gives lip service but in practice the freedom that is professed is withdrawn through interference. The past regime was oppressive and this one is not but on results they are the same. You write examinations to get results and without results examinations are useless.[15]

Thus, unionists are not interested in the means but the end. A closer analysis of the means employed by the multiparty state to restrict freedom of association could be categorised as divide-and rule' and 'hide-and-seek'

Divide-and-rule tactics

The divide-and-rule tactics relate to alleged state sponsorship of splinter unions to create chaos in the labour movement. While the multiparty state sought to promote unionism, in practice it encourages rebellions within unions.[16] For example the MCTU breakaway Congress of Malawi Trade Unions (COMATU) created in 2000, as a second labour federation is perceived as state machination to strangle the labour movement. In March 2000 four trade unions including the CSTU broke away from the MCTU following differences between the CSTU- president Thomas Banda and MCTU leadership[17] more specifically over overdue union dues. Other unionists questioned the

wisdom of the state in registering COMATU when section 11(3c) of the LRA stipulates that the Registrar would register a union when the name 'does not so closely resemble that of another trade union or employer's organisation so as to mislead or cause confusion'. The closeness between Malawi Congress of Trade Unions (MCTU) and Congress of Malawi Trade Unions (COMATU) suggests that there might be confusion of identity. According to MCTU secretary general, the Government perceived the MCTU as anti-government, and COMATU's creation was aimed at weakening the MCTU. There is a strong perception among unionists that the state is working towards creating splinter unions in the CSTU and BCCEAWU. As one unionist argued, the fact that the state has proceeded with the registration of enterprise based unions in building, civil engineering, quarrying and mining contrary to the sectorization agreement demonstrates how far the state would want to weaken unions in industries.[18]

There is a strong view that the multiparty state is good at 'nipping leaders at the bud' and that the poverty and ignorance of the workers in Malawi make them vulnerable to all forms of manipulation. It is widely held that the state had silenced the most vocal and articulate CSTU president by giving him a car loan and allocating him a house suitable for a Professional Officer/ Administrative Officer or Under Secretary according to the MPSR (*Daily Times*, 10 July 1998:1). The house and the car loan had been a focal point of allegations for his withdrawal from an agreed mass action to force the Government to reduce maize and fuel prices and to raise minimum wage to K2000 in 1998. The car loan was approved when he became president of the union while the house was allocated to him when unions made a threat of a mass action against government policy on maize and petrol prices.[19]

The fact that CSTU president's move from a high density to a mansion in Blantyre's low-density suburb coincided with his change of mind towards the mass action suggests that the state's action might not have been unintentional. As a CTSU legal advisor decried in a similar instance in 1995, Government's action was aimed at frustrating civil servants' effort by buying off some of them to weaken their collective power' (*Daily Times*, 2 July 1995:1).

The sudden change of mind of the MCTU president on a threat of strike against the Government's 1995 maize price announcement was another example of state manipulation of union leaders. Closer to the end of the period of the ultimatum, the union president changed his mind and announced that MCTU was withdrawing its ultimatum because 'we did not know what we were doing' (*Nation*, 19 July 1995:3). The MCTU's failure to defend

staple food prices to win workers' confidence suggests that the opportunity cost was attractive.

The state promoted and sent to foreign services, or transferred other union leaders to other parts of the country to weaken union leadership. During the 1997 longest civil service strike against delays in the implementation of the 1995 Commission of Inquiry recommendation, the state posted away TUM's general secretary to South Africa and CSTU leaders to different parts of the country (Manda 2000:69). At the same time the state arrested and charged workers for participating in the strike or for being union leaders in areas where vandalism occurred. For example CSTU vice president was charged on allegations of smashing the Minister's windscreen in the Northern region. CSTU District Chairman for Zomba was charged with malicious damage because strikers damaged three ministerial cars (ibid:69).

Hide-and-seek tactics

The 'hide and seek' tactics are strategies the state use to acknowledge the presence of unions rights at one time and withdraw them at another. These include recognition, labelling unionists as opposition agents, delaying tactics, use of state apparatus to suppress labour rights and unilateral decision-making.

Although the LRA is clear on recognition threshold, as an employer, the state has not been exemplary in recognising two public service unions- CSTU and TUM. Resuscitated and registered in 1995, TUM has a density of 82 per cent but has since not been recognised. Since handing over its draft recognition agreement to the Ministry of Education in 1995, 'the Ministry has been looking at it'.[20] Every time Union leaders reminded the Ministry of Education to sign the document, the Ministry argued that it was not necessary since the state was aware of the existence of unions in Malawi. The hide-and-seek tactic is clear here. If the LRA makes the signing of the recognition agreement, a prerequisite for negotiation, how could the Ministry ignore this proviso? Although the Ministry has not come out to frustrate the TUM, there is danger that the Ministry could challenge the union on grounds that it had not recognised it.

However, the state has not signed CSTU recognition agreement because CSTU 'had fallen far behind the required 20 per cent recognition threshold'.[21] In 1999, CSTU had a 4.4 per cent density and 10 per cent in 2000. As Anders (2002:47) observes even by 2002, 'it was said that CSTU had no more than 800 members' out of 120,000 civil servants. What is not clear is why TUM's draft remains unsigned when it had achieved up to 82 per cent union density. Although the state has not formally recognised the two unions, it does negotiate with them. It is interesting that when CSTU threatens to strike, the

state warns that the anticipated action is illegal, as the union was not recognised. This is where unionists view the state as employing 'hide-and-seek' tactics. Why the CSTU has not been able to secure up to 20 per cent membership for recognition purposes is also of interest. Out of a potential membership of over 120,000 employees, why should there be only 5,000 registered members? Could the hide-and-seek, divide-and-rule tactics provide clues to the stunted growth in membership in a huge civil service?

Another indicator of 'hide-and-seek' tactics is the manner in which the state viewed union's action. As MCTU secretary general argued, the state viewed unionists as agents of opposition politicians bent on inciting the masses. The 1998 mass rally on maize and petrol prices mentioned earlier are examples of actions the state had treated unionists as opposition agents. For example, when the president of the MCTU visited the state president in 1998, he pointed that the major problems facing unions in Malawi was the strong anti-union elements within the Government and employers. The state president warned at a political rally in Kasungu on 27 January 1998, that the Government would deal with any trade union that incited people to rise against it (Manda 2000:64).

Delays in the implementation of what unions and the state had agreed upon are aspects of hide-and-seek. One example is the 1995 salary recommendation that the Government failed to implement through delay tactics. There were a series of strikes in 1995 that forced the state to appoint a commission of inquiry on salaries and conditions of service in the civil service. The Government accepted to implement the recommendations 'in full' effective from April 1995 (*Daily Times*, 2 March 1995:1). The CSTU threatened and took part in a series of strikes between April and August 1995 to force the Government to implement the new wages and salaries when it became clear that the Government did not honour its promise. In August 1995, the Government announced that it would start implementing the new salary structure in phases starting from April 1996 because it had no money (*Daily Times*, 9 August 1995:1). Faced with more threats of strikes, the Government shifted its focus to the need to establish the exact number of civil servants as rumours of 'ghost' employees intensified. It called for another study to verify the number of civil servants on the payroll and those physically in the offices. Although the state verified the presence of 'ghost' workers, the new wage and salary structure remained unimplemented for over two years (*Daily Times*, 5 May 1997:3).

In 1997, the Minister of Finance announced that the Government would not implement the wages and salaries recommendations not only because it had no money but also that it did not promise wages and salary increases in its 1994 election manifesto. This led to a series of strikes culminating into

the 1997 longest strike that accounted for the largest number of days lost. For Antonio 'this government is good at listening... you can sit talking for hours but when it comes to implementation, nothing comes out'.[22] As a result workers end up hardening their hearts and resort to illegal strikes because they are aware that the Government would do anything in its power to frustrate unions.

The state has the tendency of changing negotiating team members most of the time it is negotiating with the CSTU (Galafa 1997:28). For instance, in August 1995, talks between the CSTU and the Government mediated by the Law Society of Malawi and the MCTU 'collapsed after the Government had replaced its negotiating team' (*Daily Times*, 14 August 1995:1). Union leaders saw the state as employing delay tactics in labour relations. One example was when cabinet ministers failed to turn up to a Government-arranged meeting where union leaders were to meet cabinet ministers to discuss workers' concern on minimum wages and the price of maize in 1998. Thus, 'the state likes preaching freedom without giving it to the workers'.[23]

Another mechanism the state uses to deny workers the right to strike is the police and the law. Every time workers decided to strike, the state or employers mobilise the police to tear-gas strikers. Like in other strikes, the police were present to disrupt the nurses' strike at Queen Elizabeth Hospital, and the 1998 MCTU mass strike (Dzimbiri 2002:157). The Director of Public Prosecution had warned of the criminality of the strike. In an attempt to use the judiciary to make an injunction restraining the police from blocking MCTU, the High Court rejected MCTU's application on grounds that the police and city authorities 'were empowered to determine whether or not an assembly or demonstration should go ahead' (*Daily Times*, 19 February 1998:3).

The Ministry of Labour was also another state machinery some union leaders felt was used to weaken the solidarity of the labour movement during a planned strike. Using the state-controlled radio, the Ministry intimidates workers by invoking certain provisions of the LRA to label the strike illegal. Union leaders do not have the opportunity to communicate to members using the same radio, and this ensures that only the state's side is heard. The consequence of this was the poor turn up at mass rallies, failed strikes, and loss of confidence by workers on their union leaders and strikes in general. As one nurse argued, 'apart from wasted time and causing suffering to patients, strikes do not pay'.[24] State interference through the police and the letter of the law makes the availability of freedom of association 'mere window dressing'. Ufulu ulipo koma mphamvu zatengedwa' (there is freedom but our influence is eroded).[25]

Unilateral decision-making is also another aspect aimed at weakening union power. DHRMD, which is responsible for human resources management policy in the civil service, makes decisions unilaterally. Although the state negotiates with the CSTU on wages and salaries and conditions of employment, there was unilateral decision making behaviour in wage rise. CSTU leaders at times hear on the radio or through a circular letter about such changes to which they were not a party. Such manoeuvres are attempts by the state to sideline unions and portray to employees how unimportant unions are. The effect of state behaviour is also felt in the private sector industrial relations.

Anti-union behaviour in the form of victimisation of union leaders, refusal of time-off for union activities, refusal of access to workplaces by employers, divide and rule are some of the experiences some unionists in the private sector have experienced in recent years. As CIWU vice president stressed, retrenchment was one of the dangers unionists were exposed to. 'When you are union leader, you are the first person to be retrenched, I lost my job because I was President of the MCTU women section ... because I was involved in union activities, the employer was not happy to give me time-off most of the time; I was transferred to a division and later declared redundant'.[26] The Organising Secretary of the Hotel, Food Processing and Catering Workers Union's experience supports the victimisation of unionists by some employers: 'We organised a branch at Tambala Food Products but when we went the other time, we found that the Human Resource Manager had retrenched the whole department'.[27] The National Bank of Malawi Workers Union (NBMWU) was banned following disagreements with management over annual salary increments. NBMWU accused senior managers of awarding themselves hefty packages and small increments to bankers (*Daily Times*, 19 June 1998:1.) According to the Treasurer of the MHCWU, when a strike is agreed, the General Manager called heads of department to ask their subordinates 'to return to their office if they wanted to secure their jobs'. This, he argues, makes threats of strikes meaningless and leads to loss of interest among the shop floor workers in unionism.

A 1997 Human Rights Report noted that although unionisation has increased since the advent of democracy in Malawi, there was 'increasing resistance from employers' (*Daily Times*, 11 February 1998:2). Similarly, a Human Rights and Employment study commissioned by the Ministry of Labour to assess the effectiveness of the freedom of association and collective bargaining supports the anti-union behaviour in public and private sector employers (Ministry of Labour 2000:10). The study also blamed the state for constraining freedom of association because it 'took with one hand what the other gave (ibid:10). Anti-union attitudes were viewed as impacting union

growth negatively. For instance, out of the 11 unions the Ministry of Labour's study analysed, 6 were declining sharply (ibid).

State officials view the declining union membership as a product of many factors such as loss of faith in unionism by members due to failed strikes, fear of paying union fees, poor leadership, financial constraints, travel problems to meet members, and the alliances some union leaders made with opposition politicians. On the other hand, unionists interviewed view the decline in union membership as a result of the state's 'hide- and- seek' and 'divide- and- rule tactics'.

Thus, in the process of state transformation and legal reforms, there are some aspects of the 'old' regime that are retained to the advantage of the new order. For example, the independent state of Malawi retained most of the colonial industrial relations provisions in the Trade Union Act 1958, Trade Disputes (Arbitration and Settlement) Act 1952 and the Employment Act 1964. Though nationalist elite saw these provisions as repressive during their struggle for independence, they nonetheless retained them. The need for political stability and economic development necessitated a strong state through a strong legal apparatus and a political party. On the other hand, the reforms in the legal framework for industrial relations and other facets of state machinery have not wiped out completely all aspects of the one-party state machinery. The role of the Ministry of Labour to determine registration, supervise union accounts, and some restrictions and procedural requirement in strikes in essential services, dispute procedures, which in principle amounts to 'control' of labour rights, still persist. The unilateral determination of terms and conditions of employment and wages in the mainstream public service through the DHRMD, the OPC and the MPSR continues, as the latter has not been revamped to reflect the current industrial relations framework. While open control of the labour movement through political intimidation and administratively through the Ministry of Labour during the one-party period ended with the democratisation process, the same has resurfaced through 'divide-and rule' and 'hide-and-seek' tactics that the state employs.

Conclusion: Dilemmas and the role of the international donor community

Political repression that existed for three decades in order to achieve economic development and political stability soon after independence created a rather docile labour movement, which could not wage protracted strikes to defend its economist interests during 1964–1991. The transition to a multi-party state in the early 1990s led to an increase in strike activity, the growth in the number of unions, unionists and the reform of the legal framework to

enhance individual and collective labour rights. The 1994 constitution, and the Labour Relations Act 1996, and the Employment Act 2000 provided a legal framework for the realization of worker rights. The number of trade unions increased from 5 in 1992 to 21 by 2000. Despite a positive formal attitude towards freedom of association and other labour rights, the state is 'diplomatically' hostile through 'divide-and-rule' and 'hide-and-seek' tactics. The consequence is a wide gap between what is stipulated in the relevant labour laws and practice on the ground. How do we explain these continuities and discontinuities in state-labour relations in Malawi over the past years? Two points conclude this paper.

The first concerns the tensions between human rights and economic development. Both in the one-party and the multiparty state, like other developing countries in Africa, economic development has been a major priority in Malawi. Because of the critical resource and material shortage in most poor nations, the state has been in the forefront of formulating and implementing economic development policies. Through its efforts in collaboration with the private sector and non-governmental organisations, the Malawi state has been concerned with increased productivity in order to enhance the welfare and standards of living of the rural people, alleviate poverty, reduce infant mortality and other ills of society (GoM 1987:40). The need to provide workers – who constitute 13 per cent of the economically active – with a decent wage and conditions of employment in a context where the majority of the people live below the poverty line, is one of the most difficult challenges of the state in Malawi. Should it widen workers' rights to higher and better wages at the cost of scaring away private investors who would help the state in developing the country for the benefit of the majority? Should workers be given unrestricted freedom of association, collective bargaining and the right to strike in defence of their economic interests when the state cannot afford to meet such demands?

The IMF and World Bank have over the years insisted on reduction in government expenditure, the need to privatise some public service and corporations as part of economic reforms. These demands have in most cases run counter to workers demands for job security, higher wages and better working conditions. Under these circumstances, it would not be surprising to observe that while the national constitution and labour laws have enshrined freedom of association, collective bargaining and the right to strike, the multiparty state restricts them through 'hide-and-seek' and 'divide-and-rule' tactics.

The one-party state was notorious for the violation of human rights in general and workers' rights in particular in order to achieve political stability and economic development. The consequence was the total control of trade

unions and the suppression of strikes. On the other hand, the multiparty state has witnessed open defiance from unorganised workers who have continued to mount both political and economic strikes in recent years. The fact that the multiparty state manipulates union leaders, creates splinter unions, delays recognition of some unions, uses the police and the law to control strikes, suggests its dilemma in dealing with questions of human rights and economic development at the same time. Thus, tensions between the need to meet demands for human rights and economic development – in which the state takes a major role – will remain one of the major challenges facing industrial relations in Malawi.

The second relates to the significance of the international donor community in influencing the behaviour of the state in Malawi and other developing countries in Africa. Industrial relations reforms in the 1990s stemmed from the political reforms that led into the transition from the one-party to a multiparty state. This major state transformation was possible as a result of international pressure and in particular the withholding of Malawi's non-humanitarian aid and calls for democratic reforms. Since 1989 the World Bank has abandoned its previous economist interpretations of African crisis and advocated instead good governance, gender equality, decentralisation of power, human rights, the need to check corruption and the involvement of local people in decision-making (Ihonvbere 2000: 9). The consequence of this pressure led to the 1993 national referendum and the 1994 general election that in turn led to the formal creation of a multiparty state in Malawi.

The one-party state was not subjected to pressures for good governance and democratic reforms for close to three decades. Human rights violations such as detention without trial, forced donations to the president, murder of dissident, repression of freedom of speech and association, which Amnesty International documented, did not lead to an international outcry at the time. One reason for this had been Malawi's capitalist and pro-western stance during the Cold War period and Western capitalist nations saw Malawi as a good ally. As Lwanda (1993:76) noted, Banda's moderate policies of modest economic goals, slow Africanisation, stability, unity, loyalty, obedience and discipline were viewed as likely to provide a climate of stability attractive to Western investment. Like other authoritarian Africa states, which received international financial support despite human rights violations (Ihonvbere 2000:10), Malawi continued to receive financial aid from the donor community. The fact that such a position was maintained for three decades suggests that the international community indirectly helped the creation of a status quo in the role of the state in industrial relations.

By reacting to human rights violations and imposing economic sanctions, the Western donor community facilitated the breakdown of an authoritarian

one-party state and the creation of a multiparty state. The question that follows is how far externally- induced changes become institutionalised and sustained in practice. There are numerous examples of failures of democracies in Africa as evidenced by arguments over electoral results, voting along regional lines as the case of the 1994 and 1999 general elections in Malawi (Patel 2000), lack of tolerance for dissenting views, and suppression of labour rights. This is symptomatic of deep-rooted problems, which would continue to confront democracy, human rights and therefore industrial relations in Africa.

Newspaper headlines confirm these symptoms: 'Democracy is failing in Sub-Saharan Africa' (*Financial Times*, 5 March 2002); 'Zambia's leader in crackdown on dissent' (ibid, 4 January 2002); Protests over Madagascar's poll (ibid, 30 January 2002); 'Madagascar dispute deepens as Ratsiraka rejects vote recount' (ibid, 30 April 2002); 'South African unions condemn Zimbabwe violence' (ibid, 5 March 2002); 'Only closest allies at Mugabe's inauguration' (ibid, 18 March 2002); 'Violence still rising since poll in Zimbabwe' (ibid, 30 April 2002). For Malawi, headlines include 'Catholics denounce UDF attack' (*Daily Times*, 29 October 2001); 'UDF draws up list of journalists to be beaten' (ibid, 1 November 2001); 'Young democrats implicated in intimidation' (ibid, 4 November 2001); 'World jurists protest removal of judges' (ibid, 30 November 2001).

While international structures and institutions of democracy and human rights can be imported from the Western advanced industrial nations to poor developing states like Malawi, is it possible to do the same with values and norms of democracy? Why should the state interfere with freedom of association, collective bargaining and the right to strike in Malawi, when the national constitution and the labour laws reflect international democratic principles and ILO norms? As analysts have noted, externally imposed state transformations through aid have the potential danger of 'propping up theoretically multiparty regimes' (*Financial Times*, 5 March 2002). Thus, until, and only, when an internally developed structure and norms which might have sufficient anchorage within societal norms and traditions are created in Malawi, there will still be significant degrees of discrepancy between what is provided and what actually happens on the ground. As it might be difficult to develop indigenous structures and value systems because of Malawi's incorporation into the capitalist global political economy since the colonial period, Malawi's industrial relations will continue to be characterised by discrepancies. The discrepancy between what is provided in the labour laws and national constitution and what happens in practice. This is similar to the dilemmas between human rights and economic development noted above.

Notes

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2. Quoted from Liatto (1989:243).
3. Phiri, D.B.V. interview, chancellor College, 12 October, 2000.
4. Interview, Chitakale Tea Estate, Mulanje, 15 November, 2000.
5. Interview, Teachers' Union Secretariat, Lilongwe, 22 November, 2000.
6. Mhango, K. Interview, Blantyre, 12 October, 2000.
7. Interview, Blantyre, 12 October, 2000.
8. Kaipa, D. and Neston, P. Interview, Blantyre 12 October 2000.
9. Kamphonje, Lilongwe, 22 November 2000.
10. Vice President, Transport and General Workers Union, Interview, Blantyre 12 October 2000.
11. Antonio, F. General Secretary, Malawi Congress of Trade Unions, Interview, Lilongwe, 22 November 2000.
12. Interview, Blantyre, 6 December 2000.
13. Interview, Chitakale Tea Estate, Mulanje 20 January 2001.
14. Interview, Mpemba, 13 October 2000.
15. Interview, Blantyre, 13 October 2000.
16. Nyirenda, A. Interview, Blantyre 13 October 2000.
17. Anders, G. (2002:47) refers to Antonio as MCTU president. Ken Williams Mhango was then President and Antonio was Secretary General.
18. MCTU Secretary General, interview, 22 November, 2000.
19. Manda, interview, Blantyre, 13 October 2000.
20. TUM Secretary, interview, Lilongwe. 22 November 2000.
21. Chunga, A. Interview, Lilongwe, 22 November 2000.
22. Interview, Lilongwe, 22 November 2000.
23. Nyirenda, A. Interview, Blantyre, 13 October 2000.
24. Kapusa, C. Interview, Blantyre, 13 October 2000.
25. Ibid.
26. Interview, Blantyre 14 October 2000.
27. Ibid.

References

Ananaba, W., 1977, *The Trade Union Movement in Africa*. London: C. Horst.

Anders, G., 2002, 'Freedom and Insecurity: Civil Servants between Support Networks, the Free Market and the Civil Service Reform' in Englund, H. (ed) *A Democracy of Chameleons: Politics and Culture in the New Malawi*. Blantyre: CLAIM.

Bean, R., 1994, *Comparative Industrial Relations: An Introduction to Cross-national Perspective*. London: Routledge.

Chazan, N., Mortimer, R., Ravenhill, J. and Rothchild, D., 1992, *Politics and Society in Contemporary Africa*. London: Macmillan.

Chiume, K., 1982, *PANAF Great Lives: An Autobiography of Kanyama Chiume*. London: PANAF.

Christie, S. and Madhuku, L., 1996, 'Labour Disputes in Southern Africa: Resolution in Southern Africa: An Overview', in Christie, S. and Madhuku, L. (eds) *Labour Resolutions in Southern Africa*. Cape Town: FES and Institute of Development and Labour Law, University of Cape Town.

Chihana, C., 1992, *The Bumpy Road to Freedom: Mitigation Statement on Sedition Trial, The High Court*, Blantyre Malawi.

Department of Information, 1964a, *The Prime Minister Explains Reasons Leading to the Dismissal of Ministers*. Zomba.

Department of Information, 1965, *Prime Minister Speaks on the situation at Fort Johnstone September 1964-April 1965*. Zomba.

Dzimbiri, L., 1994, 'The Malawi Referendum Elections of 1993', *International Journal of Electoral Studies* 13: 3, pp. 228-234.

Dzimbiri, L., 1998, 'Competitive Politics and Chameleon-like Leaders', in Phiri, K. and Ross, K. (eds) *Democratisation of Malawi: A Stocktaking*. Blantyre: CLAIM.

Dzimbiri, L., 2002, 'Industrial Relations, the State and Strike activity in Malawi' PhD thesis, Keele University, UK.

Employment Act 2000.

Etukudo, A., 1995, 'Reflections on the Role of African Employers' Organisations in Tripartism and Social Dialogue'. *International Labour Review* 134:1, pp. 51-64.

ESAURP, 1994, *The Cost of Peace: Views of Political Parties on the Transition to Multiparty Democracy*. Dar-es-Salaam: TEMA Publishers.

Galafa, M., 1997, *Employee Relations in the Civil Service*. MSc thesis, University of Manchester.

Hyman, R., 1975, *Industrial Relations: A Marxist Introduction*. London: Macmillan.

Ihonvebere, J., 2000, 'Politics of Constitutional Reforms and Democratization in Africa'. *International Journal of Comparative Sociology* 41:1, pp. 9-26.

Kalua, E. and Mdhuku, L. (eds) *Public Sector Labour Relations in Southern Africa: Developments and Trends*. Cape Town: FES and Institute of Development and Labour Law, University of Cape Town.

Kantsemo, G., 1995, 'The role of the Ministry of Labour and Manpower Development in the Management of Labour Conflicts: Legal Problems and Perspectives'. Paper presented to the *Labour Law Reform Seminar*, Nkopola Lodge, Mangochi, Malawi, June 17-18.

Kydd, J. and Christiansen, R., 1982, 'Structural Change in Malawi since independence: Consequences of a Development Strategy Based on Large-scale Agriculture'. *World Development*, 10:5, pp. 355-375.

Labour Relations Act 1996.

Liatto, B.B., 1989, *Organised Labour and the State in Zambia*. PhD thesis, Leeds University.

Lwanda, J., 1993, *Kamuzu Banda of Malawi: A Study in Promise, Power and Paralysis: Malawi Under Dr Banda 1961-1993*. Glasgow: Dudu Nsomba Publications.

Madhuku, L., 1997, 'The Right to Strike in Southern Africa'. *International Labour Review* 136:4, pp. 509-530.

Malawi Government, 1966, *Constitution of Malawi*. Zomba.

Malawi Government, 1993a, *Situational Analysis of Poverty in Malawi*. Lilongwe.

Malawi Government, 1987, *Statement of Development Policies*, 1987-1996, Lilongwe.

MCP, 1967, *Malawi Congress Party Convention: Opening Address by President of Malawi Ngwazi Dr. H Kamuzu Banda*. Mzuzu.

MCP, 1968, *Opening Address by President of Malawi, Ngwazi Dr H. Kamuzu Banda, Malawi Congress Party Annual Convention 1968*. Lilongwe.

Manda, C., 1994, 'Labour Relations in Malawi', Paper Presented to the *Tripartite Seminar for the Promotion of Sound Labour Relations in Malawi*. Club Makokola, Malawi, November 28-30.

Manda, M. A., 2000, *The State and the Labour in Malawi*. Glasgow: Dudu Nsomba Publications.

McCracken, J., 1968, 'African Politics in the Twentieth Century Malawi', in T.O. Ranger, (ed.) *Aspects of Central African History*. London: Heinemann.

McCracken, J., 1988, 'Labour in Nyasaland: An Assessment of the 1960 Railway Workers' Strike'. *Journal of Southern African Studies*, 14: 2, pp. 279-290.

McCracken, J., 1998, 'Democracy and Nationalism in Historical Perspective'. *African Affairs 97*, pp. 231-249.

Migdal, J., 1988, *Strong Societies and Weak States, State-Society Relations and State Capabilities in the Third World*. New Jersey: Princeton University Press.

Ministry of Labour, 2000, *Human Rights and Employment Report*. Lilongwe.

National Constitution Act 1994.

Mihyo, P., 1979, 'Industrial Relations in Tanzania' in Damachi, U.G., Seibel, H.D. and Trachtman, L., 1979 (eds) *Industrial Relations in Africa*. London: Macmillan.

Mihyo, P., 1995, 'Against All Odds: Trade Unions in Zambia', in Henk, T. (ed.) *Globalisation and Third World Trade Unions: The Challenge of Rapid Economic Change*. London: Zed Books.

Ng'ong'ola, C., 1994, *Employment and Industrial Relations in Malawi: A Prospectus for Reform*. Cape Town: FES and University of Cape Town.

Nwabueze, B.O., 1974, *Presidentialism in Commonwealth Africa*. London: C.Horst.

Otanez, M., 1995, *Labour and Democratisation in Malawi*. MA thesis, Institute of Social Studies, The Hague.

Patel, N., 2000, '1999 Elections in Malawi: Challenges and Reforms', in Ott, M., Phiri, K. and Patel, N. (eds) *Malawi's Second Democratic Elections: Process, Problems and Prospects*. Blantyre: CLAIM.

Phiri, K. and Ross, K., 1998, 'From Totolitarianism to Democracy', in Phiri, K. and Ross, K. (eds) *Democratization of Malawi- A Stocktaking*. Blantyre: CLAIM.

Shadur, M., 1994, *Labour Relations in a Developing Country: A Case Study of Zimbabwe*. Sydney: Avebury.

Short, P., 1974, *Banda*, London: Routledge and Kegan Paul.

Sibanda, N., 1999, 'Unions Still Fighting for Union Rights-for Human Rights'. *Southern African Political Economy Monthly. 12:5*, pp. 16-19.

Tordoff, W., 1997, *Government and Politics in Africa*. London: Macmillan.

UNIDO, 1987, *Industrial Development Review Series: Malawi.*

Van Donge, J., 1995, 'Kamuzu's Legacy: The Democratization of Malawi or Searching for the Rules of the Game in African Politics'. *African Affairs*, 94, pp. 227-257.

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Oil Minorities and the Politics of Resource Control in Nigeria

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Abstract

The paper examines the contentious nature of resource control and distribution in Nigeria. It avers that resource control has been a big problem confronting the Nigerian state from inception. This fact has not been helped by the heterogeneous nature of Nigeria, the weak capacity of the Nigerian state, the politics of resource allocation and the primordial bend of leadership. Therefore, the contestations over resources have been heightened in recent years by the politicisation and ethnicization of the resource allocation process by the Nigerian state and its elites. In this situation, the Niger Delta minority ethnic groups have seen themselves as victims of this politicisation of resource control by the dominant majority ethnic groups in control of state power. This allegation of marginalization in resource control is given further impetus by the decline of the derivation principle of revenue allocation, over centralization of the resource allocation process and the general socio-economic plight of the region in spite of being the source of the oil upon which Nigeria's monoeconomy has depended in the last three decades. Therefore, the grievance of the Niger Delta minorities and the general conflict and violence over resource control in Nigeria can only be meaningfully addressed through a committed restructuring of the fiscal system.

Résumé

Cette communication analyse le caractère litigieux du processus de contrôle et de distribution des ressources au Nigeria. Elle montre que le contrôle des ressources constitue un problème épineux pour l'État nigérian, depuis la création de celui-ci. Cette situation est aggravée par la nature hétérogène du Nigeria, par les faibles capacités de l'état nigérian, par les politiques d'allocation des ressources pratiquées et, par la toute-puissance des dirigeants du pays. Ainsi, ces dernières

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années, les contestations relatives aux ressources ont été intensifiées par la politisation et l'ethnicisation du processus de distribution de ressources par l'État nigérian et ses élites. Les minorités ethniques du Delta du Niger se considèrent ainsi comme des victimes de la politisation du contrôle des ressources par les groupes ethniques majoritaires dominants qui contrôlent le pouvoir étatique. Ces allégations de marginalisation au niveau du contrôle des ressources ont connu un nouveau rebondissement suite à l'abandon du principe de dérivation de la distribution de ressources, conséquence de la centralisation du processus d'allocation des ressources ; elles ont également été relancées au vu de la situation socio-économique catastrophique de cette région, alors que c'est cette même région qui fournit l'essentiel du pétrole qui soutient la mono économie du Nigeria depuis bientôt trente ans. De ce fait, le seul moyen de satisfaire les revendications des minorités du Delta du Niger et de mettre fin au conflit général et à la violence liés au contrôle des ressources au Nigeria, est de procéder à une restructuration efficace du système fiscal.

Introduction

Resource allocation has always been a very contentious issue even in the so-called homogeneous states of the world. Therefore, the potency of resource allocation or distribution to foment conflict in a plural society like Nigeria cannot be underestimated. However, the problem posed by resource allocation and even the ethnic politics around it are problematic to the extent the mediative roles of the state and political actors are interpreted as biased or in favour of one group to the detriment of the others. In Nigeria, resource allocation has been seen by the ethnic minorities as a tool of the majority groups to undermine them. In this case, ethnic minorities perceive a politics of resource control and allocation orchestrated by the majority ethnic groups with political power aimed at marginalizing the minority ethnic groups (other ethno-social groups different from the majority Hausa-Fulani, Yoruba and Igbo groups) in the scheme of things. Incidentally, the ethnic minorities seem to have taken a cue from the majorities and reinforced the position of resource distribution as a prominent plank of their contemporary politics. Hence the ethnic factor has become more politicised in the ensuing struggle for resources in the political arena. This struggle has been the product of the mono-economy nature of Nigeria which makes oil derived from the ethnic minority enclaves almost the sole revenue earner. In this situation, oil and the revenue from it have been fiercely contested by the ethnic minorities and the ethnic majority groups in control of state power.

Since the last five years there has been renewed uprising by the ethnic communities in the oil bearing South-South of Nigeria (in the most recent division of Nigeria into six major geo-political zones, the oil producing eth-

nic minorities are located in the South-South zone) directed principally against the federal government in Nigeria and the multi-national oil firms. This struggle which reached its peak during the erstwhile military regimes of Ibrahim Babangida and Sani Abacha has become even more energised with the onset of democracy. This struggle has been on both the conventional political and legal fronts and in the real unconventional and violent ethnic militia war of sabotage. In spite of the different theatres of the war, the goal has been the same and has been expressed in lucid terms by the combatants. The war revolves around the knotty problems of resource control and allocation in Nigeria's federal state.

The legal peak of this struggle which has been championed in the political sphere by politicians from the Niger Delta area was attained in 2003 with the Supreme Court ruling on the controversial on-shore/off-shore oil revenue contest between the states or sub-national governments and the federal government. The Supreme Court ruling (*The Guardian* 2002) even though maintaining the sole ownership of off-shore oil by the federal government, opened up the lingering irregularities and inconsistencies in the overtly fiscal centralism which has contradictly marked Nigeria's federal structure. The apex court in its ruling sought to curtail the fiscal excess of the federal government, under-reporting of federally collected revenue and the wanton creation of special projects funds unilaterally administered by the federal government to the financial detriment of the states or sub-national governments.

However, the judgement of the Court was more or less mainly an interpretation of the laws of the land which vests the power of ownership of off-shore oil on the federal government. Besides the court ruling, the political terrain for the most part of 2002 in Nigeria was inundated by the demands of the South-South leaders for an abrogation of the on-shore/off-shore dichotomy in the calculation of the derivation component of national revenue. Under the derivation formula, revenue is allocated on the basis of the geographical location of any revenue yielding resource. Thus, those on whose soil, a particular resource is located gets the lion share of revenue from that resource. The prevailing practice has been the calculation of the derivation component which belongs to the oil producing states from the revenue from on-shore crude only. Hence, the resource control struggle has been more of a political effort to improve the resources or revenue allocated to the South-South states by calculating the derivation component from both on-shore and off-shore oil revenues. Even though the South-South zone is synonymous with the Niger Delta region, there is a significant difference from a constitutional point of view. Ordinarily, the Niger Delta is defined in terms of the laws establishing the Niger Delta Development Comission (NNDC) as comprising

all the states in the federation from which oil is derived. This means the inclusion of some states in the South-East zone (Abia and Imo) and one state in the South-West zone (Ondo). Thus, for the purpose of clarity, the South-South states viz Rivers, Akwa-Ibom, Delta, Bayelsa, Cross-River and Edo are all oil producing states. Because of the above difference, the oil producing South-South states are often referred to as the core Niger Delta. Therefore, we use the expression Niger Delta in reference to these states in the South-South zone.

Incidentally, scholars have read the situation in the Niger Delta region as going beyond the activities of a horde of frustrated, unemployed and destructive youths or the handiwork of government saboteurs and professional miscreants in the area as the government and it apologists too are wont to argue. Therefore, Awolalu (2000) has seen the Niger Delta as presenting the problem of environmental degradation, pauperisation of the people and the appropriation of resources. In this sense, the Nigerian state has visited severe development constraints and hardship on this area in spite of its existence as the revenue base of the nation.

In other words, the Niger Delta case is reflective of the gross failure of the Nigerian state. The state has failed to respond to the existential needs of the people and has continued a large scale daily pauperization of citizens in spite of the enormous resources available to it. Therefore, lying at the heart of the resource control struggle by the Niger Delta minority groups is a disappointment with government so far. Such a disappointment emanates from the fact that the indigenous communities in the region argue resolutely that after decades of oil exploitation in the area which has devastated farmlands, killed livestock, polluted the waters and wrecked the general environment, the communities are yet to feel the positive impact of the enormous wealth derived from the oil.

The foregoing gives an overview of the politics of resources in Nigeria. It is obvious that the issue of resource distribution in Nigeria is webbed around the forces of ethnicity, ethno-nationalism, the politics of derivation and a weak state structure that vitiates both development and fairness in resource distribution. These issues set the stage for the marginalisation of the oil producing minorities (used here in reference to the ethnic minority groups in the South-South zone of Nigeria from whose environment Nigeria derives its crude oil resources) who in recent years may have risen up to the challenges posed by the politicisation of resource control in Nigeria. I will therefore, in the following sections of this article dwell expansively on these issues. However, the above issues can only be fully appreciated against the background

of the understanding of the theoretical basis of citizenship and the prevailing conceptualisation of the rights and privileges of citizenship in Nigeria.

A theoretical understanding of citizenship in Nigeria

The domination of the majority ethnic groups in the sphere of resources distribution in Nigeria throws up theoretical challenges regarding the definition of citizenship. In other words, under what theoretical paradigm can the marginalization of the ethnic minorities in resource distribution in Nigeria be captured? Generally, the dispute or contestation between ethnic groups and the larger state in the area of resource control may reflect either of the two competing ideas of citizenship in contemporary social science debate. These are the liberal and pluralist viewpoints. The dominant liberal perspective is anchored on a view of citizenship as reflecting the legal membership of a nation-state. In this situation, individuals are perceived as having equal moral worth and government is expected to accord equal respect to individuals (Rawls 1971). This in effect means that individuals have equal rights and entitlements in spite of ethnic affiliations. Interestingly, the liberal viewpoint underplays the importance of ethnic or sub-national groups since all rights and entitlements ideally emanate from and are guaranteed by the state. The liberal perspective logically gives rise to constitutions that have no peculiar obligation to any sub-national group. Such constitutions usually guarantee equal rights and oppourtunities for all citizens irrespective of social, cultural, geographical or ethnic backgrounds.

It is in such a circumstance that the nation-state is conceived as the arena of citizen formation and practice (Halisi et al., 1998). Therefore, the state exists as the equal property of all, treats all citizens as equal and every citizen identifies with such a state. As a result, the sub-national group becomes largely irrelevant while the nation-state becomes the bastion of solidarity for all citizens.

Quite unlike the liberal notion, pluralists contend that the modern state is basically multi-national and as such sub-national membership should be the building block for political membership in the wider state arena (Ejobowah 2000). Incidentally, this viewpoint while recognising the importance of the sub-national community in providing a primary identity to the individual promotes a consciousness of this primordial group that breeds ethnicity. In this case, the recognition of the sub-national membership of citizens creates a scenario whereby some members are considered disadvantaged since citizenship rights in the larger political community are particular and reflect the norms of stronger ascriptive communities who share a common way of life and can command influence in the nation-state's political process. In other words, the existence of some stronger or dominant sub-national

communities make fairness and equality far-fetched. Hence, equal treatment of individuals in such a situation would require differentiated citizenship in which sub-national groups are recognised as having rights that should be taken into consideration by the nation-state (Young 1990).

However, the pluralist idea of citizenship which is based on a recognition of the sub-national level that imbues citizens with primary identity before the larger nation-state is the predominant practice in Africa. This orientation which governs the socio-political organization of contemporary African societies has been well documented in literature (Ekeh 1990, 1975; Ndegwa 1996 etc.). But rather than playing a complimentary role in defining citizenship, the sub-national sphere in sub-Saharan Africa is usually the most significant. In other words, citizenship becomes more meaningful at the sub-national level since it usually provides the basis for negotiating the larger state political arena. Thus, 'the pluralist theory rejects the absolute necessity that is often given as characterising the nature of the state in terms of its legal and political order. In place of this idea of 'absolute necessity', the pluralist theory emphasises that the individual's loyalty or allegiance is to the group he belongs (Idowu 1999:77)'.

In Nigeria, the pluralist definition of citizenship has led to a situation where the possession of state power is seen as a contest between different sub-national groups; while those in charge of state power use it to favour their own sub-national groups. But even more interesting is that the realization of the fact that the sub-national group offers a more valid definition of citizenship makes the holders of state power more pliable and amenable to the desires of their sub-national groups. The pluralist conception of citizenship has also determined the allocation of resources. The minority ethnic groups on whose soil Nigeria's oil wealth is got are incidentally marginal from the centre of power at the state level. In this situation, the distribution of resources has followed a political process that enables the major ethnic groups in possession of state power to decide both the policy and process of resources distribution.

It is important to note that in the process of decolonisation, Nigeria's constitutional negotiators rejected the proposal of a political federation of ethnic groups. In place of this arrangement, these negotiators drawn from the elites of the three dominant or majority ethnic groups agreed on a federation of the three political regions – North, West and East – which incidentally while paying attention to the differences among the three major ethnic groups assumed that the interest of the minorities in each region would be protected by the majority ethnic group there. This federation was further modified following negotiations in 1953. The modification was built around the consensus that if Nigeria was to be a nation the centre has to be weakened

so that the regions can be kept apart. In other words, the weakening of the centre was made to strengthen the regions and defuse tension and conflict at the centre. It was on the basis of this understanding that a semi-sovereign status was accorded to the Northern, Eastern and Western Regions.

At this point in time, the regions enjoyed an overwhelming control of natural resources in their regions under an allocation formula dominated by the derivation principle that allocates resources mainly in terms of the geographical location of any given resource. This was before the advent of oil as the main revenue earner and the division of Nigeria into states that did away with the regional arrangement favoured by the colonial masters and the pre-independence era of nationalists. The impact of these changes on the fate of the oil producing minorities in Nigeria has been far from salutary as I will show in the course of this discussion.

Citizenship is defined by the 1999 constitution in terms of birth, registration and naturalization as well as the existence of dual citizenship where one can be a full citizen of Nigeria and any other nation (Constitution of the Federal Republic of Nigeria 1999). The constitution grants the usual array of rights of citizenship including the rights to life, dignity of the human person, liberty, fair hearing, private and family life, freedom from thought, conscience and religion, expression and the press, peaceful assembly and association, freedom of movement, freedom from discrimination, freedom to acquire and own immovable property anywhere in Nigeria, compulsory acquisition of property, restriction and derogation from fundamental rights, special jurisdiction of high court and legal aid. Incidentally, the Constitution shows a Nigerian nation that is free from discrimination and where all Nigerians in spite of cultural and geographical origins have an equal share in the Nigerian enterprise. But as my discourse in this paper will show, certain groups have more rights and stake in the Nigerian enterprise than others. This is in addition to the apparent fact that despite the definition of Nigeria as a federation, the status of the federating units has been affected by ethnicity and primordial loyalties. Thus, the minorities have had to contend with a less than equal membership of the federation with the majorities, which implies both a negation of citizenship and the ethos of federalism.

Therefore, the understanding of citizenship as involving three main ingredients viz. the idea of individual and human rights; political participation and the principle of socio-economic welfare have not been applied fairly on all groups in Nigeria. As a result, citizenship in Nigeria is characterised by inherent contradictions that make citizenship especially for the minorities mainly operative at the sub-national or primordial level.

Ethnicity and the state–oil nexus in Nigeria

There is obviously no gainsaying the fact that ethnicity has served as a primary divisive tool in Nigeria over the years. Actually, ethnicity and the problems associated with it in Nigeria has been the concerns of quite a robust body of literature (Nnoli 1978; Barongo 1987; Joseph 1987; Otite 1990; Sanda 1976). However, the crucial matter for us here is how ethnicity has over the years become a political tool that is manipulated in the competition for scarce national resources. In the seminal work of Nnoli (1978), ethnicity is cast as a phenomenon emerging in the context of the colonial contact period and in the struggle by individuals from different social groups for resources particularly in the wider setting. This trend of thought finds support in the views of Barongo (1987) and Usman (1987) that ethnicity in Nigeria can be related to the colonial experience. Hence, Usman (1987:46) posits:

> if there is a problem of ethnicity in Nigeria today it is certainly not because these ethnic groups existed before the colonial conquest. The contemporary tribes and ethnic groups of Nigeria as concepts and units of political action today, never existed in any real historical past of the people of this country.

Be that as it may, the history of Nigeria before the colonial contact shows a buoyant co-operation between different social groups in the country as well as the popular wars over territory, fiefdom and expansion. But the crucial point as has been made by Olukoju (1997) is that prior to the colonial contact, these groups never identified themselves as ethno-political units but rather identified themselves simply in terms of their towns. In other words, the ethnic expression Igbo, Yoruba and Hausa-Fulani never existed then as monolithic wholes. As a matter of historical fact, the so-called inter-tribal wars were really mostly intra-ethnic, as distance and crude means of transportation made inter-ethnic war infrequent. According to Ottaway (1999) ethnic groups should be perceived as politically dynamic entities and not just relics or products of the past.

Therefore, it is dynamic and political factors that give the ethnic group its unique character as a mobilization tool in the competition for scarce resources. In the case of Nigeria, beginning from the colonial contact era, as Nnoli (1978) has shown, ethnicity has been politicised as a tool for acquiring political and economic resources. This process of politicization of ethnicity and the ethnicization of politics continued even after independence and contributed significantly to the recurrent demise of democracy in Nigeria over the years (Joseph 1987, 1999; Anugwom 2000). In the current dispensation, ethnicity which has been in use in the contest for political power and the allocation of benefit or privileges emanating from it has become reinforced as a tool in the agitation for improved resources allocation by ethnic groups

in the state. In this sense, even while conceding political power at the centre, ethnicity has been reinvented in the bid to achieve desired resources allocation by the minority oil producing ethnic groups.

Without doubt, the minority agitation in the now South-South zone of Nigeria started much earlier. However, a pronounced agitation and serious threat on the Nigerian nation occurred in the 1960s. This was in February, 1966 when Ijaw youths rose in rebellion and declared a separate Niger Delta Peoples Republic under the leadership of Isaac Adaka Boro (Okpu 1977). But the earlier agitations were not really couched in the form of ethnicity as we know it today (they were anchored on a perceived monolithic Niger Delta region for instance) but rather small scale efforts at achieving resource control and a reasonable measure of self-determination. Moreover, these agitations until the Ogoni debacle (Anugwom 2003) were not popular, focused and a major threat of balkanisation of the Nigerian nation. It is in this light that one may see the struggle for independence and resource control now in the zone as having been influenced by the nature of politicking at the national centre and the role of ethnic majorities who have used their control of state power to entrench socio-economic marginalization. In other words, the ethnic politics at the centre in Nigeria which is championed by the majority ethnic groups has further reinvigorated and reinforced the agitations by the minorities.

Be that as it may, fiscal matters in a plural society transcends the limited purview of economics and assume political, religious and social dimensions. This explains why they are potential sources of conflict in such states. Therefore, fiscal matters on their own are usually volatile issues in a plural society like Nigeria. The making of fiscal centralism (the direct opposite of fiscal federalism) cannot be seen totally as a deliberate act of policy. Rather it is largely the product of a convoluted resource allocation framework, weakness of existing fiscal policies and the desire of the central leadership to assume control of resources. In other words, while the resources allocation system in Nigeria has suffered from instability and weakness, it is the role of the federal government through time that has gone a long way in establishing what can be termed fiscal centralism.

In this regard, 'the federal government (FG) has been guilty of the rapacious accumulation of power and the nation's wealth to the detriment of the federating units which has been further balkanised from nineteen in 1976 to twenty-one in 1989, thirty-six in 1996 (Adesina 1998:242)'. In this sense, fiscal centralism has been introduced through the various reckless acts of the different central or federal governments starting from the period of the first military regime in 1966. Thus, while continuous efforts have ostensibly been made to reflect the federal nature of Nigeria in resource distribution especially through the establishment of various revenue allocation and fiscal

commissions, the fiscal practice of the Federal Government has tilted heavily towards fiscal centralism. To this end, even the recommendations of some of the commissions that reflect Nigeria's federalism have been flouted by the central government while some commissions (usually set-up by the central government) have been tacitly guided into coming out with recommendations that reflect the desires of the central government while going against the aspirations of citizens. A good example in this regard is the controversial Okigbo Commission of 1979. According to Adesina (1998), the recommendations of the commission ran contrary to the firm conviction among a large percentage of Nigerians that the Federal Government was acquiring too-much powers disproportionate to the principles and philosophy of federalism.

The foregoing shows that fiscal matters are usually inherently conflict prone in plural societies. But even more than this, the instability and weakness of fiscal policies and resource allocation framework have also generated contradictions hinged on uncertainty for sub-units in the federation. Fiscal centralism breeds a lopsidedness in resource allocation that benefits the central government while weakening the sub-national governments. Actually, 'the total effect of the overbearing lopsidedness in the sharing formula was the strengthening of the position of the federal government vis-à-vis the regions or states and local governments. Eventually, the other layers became heavily dependent on the federal government through patronage, thus making nonsense of their independence, fiscal and otherwise, as envisaged by the federal principle and the constitution (Adesina 1998:238)'.

This shows a heightened contradiction that is quite incomprehensible for the oil producing minorities who can no longer discern the connection between the huge oil resources from their environment and a resources allocation system that pauperises the region. The contradiction becomes even sharper when the prevalent pluralist definition of citizenship as obtains in Nigeria is factored into the situation. The minorities easily perceive resource allocation as a tool for perpetuating their marginalization while sustaining the economic and political domination of the majority ethnic groups in power.

Definitely, the over-dependence of Nigeria on oil makes the whole situation more tense. In this case, all the ethnic groups are familiar with the fact that oil is and will remain in the foreseeable future the mainstay of the Nigerian economy. Therefore, even when acknowledging the spectre of deprivation and environmental degradation in the oil producing minority areas, leaders at the centre have continually approached the matter from a recognition of the need of all the groups in Nigeria to benefit from the oil wealth. In other words, no matter how loud the minorities may cry, the other groups cannot

afford to totally hands-off the oil wealth since there are no ready alternatives for them. Hence, the struggle for oil can be seen as lying at the heart of the politics of resource control in contemporary Nigeria.

Issues in resource control in Nigeria

The agitation of the ethnic minorities over resource control even though couched in terms of the management and ownership of Nigeria's vast oil resources can be viewed basically as a contention over the allocation of revenue from oil. In this sense, the agitation has been over the revenue allocation system in Nigeria's federal state which is seen as anti-Southern minorities who incidentally are the bearers of the oil which accounts for over 80 per cent of Nigeria's annual revenue. In order to appreciate this struggle over resources which has gone on, sometimes subtle and at other times pronounced, for some sometime now, one needs to examine the specific issues in contention.

These issues are the vertical revenue allocation system, the horizontal revenue sharing formula, the politics of derivation and the weak structural capacity of the Nigerian state which is easily manipulated to achieve fiscal centralism. However, the most pertinent of these issues which can be seen as causes of the current resources struggle are the vertical revenue allocation system and the weak structural capacity of the Nigerian state or the over concentration of resources at the centre. It is also in order to point out that it is the dissatisfaction of the various units of government, particularly the constituent states or sub-national governments, with these matters that generates the intense struggle over resources which has become over heated in the current democratic dispensation. Equally, it is instructive to understand that this struggle which predates the current democracy was only temporarily alleviated in the period 1954-1958 when there was a 50-50 derivation formula or the equal sharing of revenue between the federal and sub-national governments. Thus, the tendency towards fiscal centralism in Nigeria predates the independence of the country in 1960. As a matter of fact right from 1946 when Nigeria's federal finance took off, there has been a move towards centralization of resources. This has created a vertical revenue sharing logic which over the years have been grossly abused by the leadership. It was the introduction of the Chick Commission's revenue sharing formula in 1954 that really moved Nigeria towards some remarkable financial decentralization. This was the period when the country's external earnings depended on primary products such as cocoa, groundnut and palm-oil. These products were from the Yoruba Western heartland; the Hausa-Fulani dominated Northern region and from the Igbo Eastern region. Apart from the requirement by the Oliver Lyttleton Constitution on the federal government to return half of

general import, excise and export taxes and all revenue from mining rents and royalties to the regions, the regional financial standings were equally boosted by the establishment of the popular commodity marketing boards.

As has been reported (Adedeji 1969; Phillips 1971) these boards accumulated vast reserves running into several million pounds sterling and these reserves were shared on derivation basis between the regions. Thus, while only 22 per cent of federally collected revenue were allocated to the regions between 1952 and 1954, this increased significantly to over 40 per cent during the 1954-58 period. This period did not however last long since the collapse of international commodity prices and a continual improvement in federally collected revenue sources impaired the financial base of the regions while at the same time improving the financial buoyancy of the centre. In fact, though the region continued to take care of over 40 per cent of total public expenditure, the federal government rode on a crest of budget surpluses in the early 1960s.

The tendency towards financial centralism continued on the upward swing from the time of independence in 1960 and reached a crescendo during the military era between 1984 and 1998. This caused considerable distortions in the vertical revenue allocation system and left the state governments which replaced the former regions in a state of perpetual financial squeeze. The only respite was in the period between 1978 and 1983 when some efforts were made toward ameliorating the financial state of the state by decreasing the share of the federal government from the federation account. Therefore, this state of affairs has created a conflict over the proportion of federally collected revenue that should go to the states and what should be left at the centre. In Nigeria, federally collected revenues like petroleum and gas profits tax; custom and excise duties; mining rents, oil royalties, corporate tax are paid into a central pool known as the federation account which is ideally shared by the central government between the three levels of government in Nigeria – the federal, state and local governments. It is the politics which shrouds this sharing process and the unfair advantage which it bestows on the federal government that have been the sources of conflict between the federal government and the state government in recent years.

The weak structural capacity of the Nigerian state and political corruption in high places have also added to the problem of fiscal centralism in a supposedly federal state. In this case, the leadership has taken quite a huge advantage of the developing nature of the country and the incapacity or absence of technically sound, transparent and seasoned legitimate process of revenue administration. As a matter of fact, the greed of the leadership and pervasive corruption have contributed in ensuring that such a clear and legitimate process does not see the light of day. Hence, the struggle over re-

sources has not emanated in the context of the technical incompetence of the bureaucrats entrusted with such responsibility or the failure of several commissions including the current Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) to deliver but rather the lack of fidelity on the part of the federal government and the severe politicization of the entire resources allocation process. The application of several special funds like the one for the federal capital, the ecology fund and even that for the development of the oil producing areas have unwittingly created avenues for siphoning a large chunk of federally collected revenues which are then administered by the federal government. But even more worrisome is the fact that there has been a long practice on the part of federal government of under-reporting the amount of money in the federation account and in the era of the military, a penchant for the federal government to arbitrarily determine what proportion is to be shared. Therefore, as Phillips (1997) contends the states between 1984 and 1999 received only about half of what they ought to have got from the federation account. Equally germane to this structural deficit is the practice of the federal government to forcefully appropriate lucrative revenues sources hitherto defined as that of the state. A case in point recently in this regard is the introduction of the federally collected Value Added Tax (VAT) in 1994 to replace the state collected sales tax. Significantly, the proportion of internally generated revenue from the VAT has been on the upward swing since its introduction in 1994. Ironically, the federal government shares the VAT revenue between itself, the state and local governments. This three-pronged sharing had meant that the state governments get less than what they would have got if allowed to collect the former sales tax. Also, the lean financial state of the states has opened up an inter-state struggle for VAT revenue especially since the introduction of the Sharia religious law in the North and the limiting of the sources of VAT in that area as a result. Some states in the South have argued for a proportional allocation of VAT revenues based on percentage of the revenue derived from each state.

Be that as it may, the weak structural capacity of the state, the politics of resource allocation as well as the corrupt and primordial bend of the leadership have all ensured that the struggle over revenue and resources endures. A few instances of the confusion and selfish motives of the leadership that breed distortions abound. In the fist instance, the implementation of revenue sharing schemes has been fraught with irregularities and a general confusion. In this regard, several inconsistencies and discrepancies between the revenue allocation laws and implementation of the laws have been pointed out (Olusoji and Magbagbeola 1997). These inconsistencies are not really confined to either the military or civilian era but is a prominent mark of the federal government whether military or civilian. Even in the current dispen-

sation, there is no clearly drawn line of responsibilities between the RMAFC and the Federation Account Allocation Committee (FAAC). Ironically, while the FAAC handles the allocation of funds from the federation account, the RMAFC which ideally is the formulator and regulator of federal finance attends the monthly meetings of the FAAC as observer. Equally very problematic is the make-up of the RMAFC. The constitutional requirement that the indigenes of each state be represented in the commission has de-emphasized the technical nature of the body while stressing its political nature. There is apparently no need over-stressing the glaring loopholes in the revenue allocation system in Nigeria which have been furthered by structural incapacity. Not surprisingly the Supreme Court of Nigeria in its landmark ruling in April 2002 contends that the implementation of revenue allocation laws in the nation has been hampered by arbitrariness and inconsistency. The above scenario which smacks of a willingness on the part of the government to politicize the process have also added to the feelings in some quarters that the allocation of resources in Nigeria has been and is subjected to primordial ethnic consideration that has been the plague of Nigeria's politics since independence.

The military and resource distribution

It would seem that the military greatly aided the over-centralization of the fiscal regime in Nigeria (Fadahunsi 1997; Obi 1998). In fact, for Ibrahim (1999:96); 'the military have succeeded in destroying Nigerian federation sacrificing it on the altar of over-centralism'. The fact then is that over-centralization of fiscal policy goes contrary to the tenets and spirit of federalism since it emasculates the power of the sub-national governments and make them over-dependent on the centre. This has been the lot of the oil producing minorities in Nigeria.

Be that as it may, the military practice of fiscal centralism might be linked to the mindset of the military establishment everywhere in the world and the need for the military who usurped democracy in Nigeria to maintain a firm hold on power. The military like any other total institution is run on a very rigid principle that emphasizes superiority and obedience of order as well as loyalty. Therefore, the Generals in command of central government in Nigeria during the military regime might have seen an equitable fiscal regime with sub-national government as inconsistent with military mentality. But beyond this tenuous reason, the military in Nigeria just like the civilian regimes is characterised by a high level of corruption and primordial tendencies. Hence over-centralization creates room for massive appropriation of national resources by military elites in charge of state power.

Such resources have fed selfish desires and facilitated the rapid physical development of the ethnic enclaves of the leaders. This is often cited as the reason why infrastructure like roads, electricity and water are more developed in the majority ethnic areas than in the minority ethnic oil producing areas in spite of the fact that the revenue for such development comes from the oil produced in the minority ethnic areas in the Niger Delta region of Nigeria. As a matter of fact, a very recent report sees the Niger Delta region as the least developed region in the country with a 70 per cent poverty level which exceeds the national average (NDDC 2003). Thus:

> the greatest problem we have identified in the Niger Delta is poverty. Seventy per cent of the people in the area are on poverty line and the poverty level in the region is well above African standards...Over two million youths are unemployed and they seem to have lost hope; faith and dignity in life, while 40 per cent of the people are illiterates (Heiner Woller in NDDC, 2003:20).

Even though historically the regional or sub-national governments were already under severe financial crisis and facing repeated budget deficits as against the budget surplus of the federal government between 1959 and 1966 (Oyovbaire 1985), it was the military government starting from 1966 that embarked on the road of over-centralization of the revenue sharing system. The military grossly eroded the revenue base of other units and appropriated whatever it considered lucrative revenue source hitherto under the control of the sub-national governments like off-shore mining rents and royalties and export duties. This practice was aided by the statutory powers which the military vested in itself to make laws for any part of the federation on any matter whatsoever and a crude military mentality of might is right. What is however problematic is whether the military was motivated in this grand fiscal scheme by the need to pool national resources together and effect even development nationwide or by the lure of lucre as subsequent widespread corruption in the military would indicate.

But very crucial here is to appreciate that the Nigerian military is not above ethnicity or primordial considerations in decision making. Actually as Anugwom (2001) shows the Nigerian military itself was sired in ethnicity. Hence, the motive of the military from the perspective of the minorities may have been informed by basic ethnic and primordial considerations.

However, there were moves to reverse the seeming massive movement towards total fiscal centralism even by the military itself. Thus, towards the end of the first military era in Nigeria between 1978 and 1979 there was the implementation of the famous Aboyade allocation scheme, that allowed the centre the retention of only 60 per cent of revenue in the federation account. This move must have been in a bid to exorcise the ghost of fiscal centralism

by the then progressive Murtala Mohammed/Obasanjo regime before handing over to the civilians. This move was even stretched a little further by the Shagari government (1979-83) which acting on the Revenue Allocation Act, 1981 reduced the federal government's share to 55%. But any hope of redressing the resources allocation imbalance was dashed with the return of the military who pursued fiscal centralism with renewed vigour as it were, in spite of pretensions to the contrary. In fact, as Suberu (2003) contends despite the adoption of political rhetoric and legal rigmarole of decentralization, the recentralization of inter-governmental financial relations was a broad mark of the second military era (1984-1999).

The political economy of oil/resource control in Nigeria

The ethnicization of the resource allocation process in Nigeria has been buttressed by the decline of the derivation component of revenue allocation in Nigeria since the emergence of oil as the mainstay of the economy. In fact, as Ejobowah (2000) points out, the Niger Delta communities argue that in the pre-civil war years when agricultural exports were the principal sources of revenue, federal allocation to the regions of those days was on the basis of their relative contribution to the central purse. This arrangement was of immense benefit to the three major ethnic groups, who were the major producers of export crops. Thus, 'the emergence of oil as the principal source of revenue also required an application of the same method. Instead, the federal government has elected to abandon it because the rich resources are not derived form areas inhabited by the major groups' (Ejobowah 2000:40).

Implied in the above logic is that the three major ethnic groups who have been in charge of state power since independence have ensured that the derivation component of revenue allocation declines considerably. This suspicion has not been helped by the hasty nature with which laws such as the Petroleum Decree of 1969 which vested on the federal government ownership and control of petroleum resources in all lands in Nigeria and under the territorial waters of Nigeria have been made by the government on noticing the spiraling importance of oil in foreign exchange earning. The assumption of ownership by government has gone against the wish of the people of the Niger Delta who like any other ethnic group in Africa treasures its land and rivers and resources therein. Also, the ethnic suspicion in the acquisition of ownership by the federal government has been further reinforced by the posturing of ethnic jingoists from the North of Nigeria who have argued overtime that Nigeria belongs to all its citizens and so do the resources in Nigeria (Aminu 1994) with particular reference to the self determination struggles of the Niger Delta people.

It should not be surprising that the ethnic tool has been deployed in the struggle for scarce national resources in Nigeria. This deployment has bred both economic and political conflict as one group tries to undo the others in the struggle. But the ethnic tool has been appropriated by the elites who have used it as a good weapon in the quest for power and accumulation.

The matter, given this premise, becomes a glaring mismanagement and appropriation of resources by self-seeking elites. Hence, central to the occurrence of political and economic conflicts in Nigeria is the counter productive procedures by which the national elites have so far managed and distributed national resources (Ujomu 2002). What this implies is that aside from the unproductive and largely selfish ways the national elites or leaders have managed the resources in the country, political and economic conflicts are basically struggles to gain control of the resources of the state.

Even though it may be argued that the elites have managed the national resources of the country solely for personal or selfish ends, the ethnic question or group affiliation still rears its head. In this sense, the ethnic factor is not only relevant in the quest by the elite for state power but equally exerts a great influence on how national resources are distributed. As a matter of fact, groups that feel cheated in the resources allocation system come to that conclusion after comparing themselves with other groups or significant others rather than individuals. The point is that the ethnic group exerts significant pressure on the action of those in charge of state-power, so that even when the elites appropriate national wealth and resources, a considerable amount is diverted to their ethnic groups of origin. Perhaps this argument will make more sense if one considers the contention of Graf (1983) that the process of elite formation in Nigeria was contingent upon the capacity of the elites to meet the demands of their various ethno-political units. This form of relationship pressurizes the elites to ensure that once in power a disproportionate amount of national resources is channelled to their groups. In this case, the politics of clientelism naturally emerge and flourish.

But even more germane to my argument here is that the different elites from the various ethnic groups are perpetually enmeshed in this form of ethnic cross pressure to deliver and the consequent intra-elite and inter-ethnic conflict result basically from the scarce nature of resources and the insatiability of ethnic group needs. In this sense, the existence of many ethnic groups in the country feeds this process of differing allegiances among elites and the struggle by ethnic groups over national resources. This has not been helped by a history of colonial divide-and-rule policy which was the source of the enduring mistrust and intolerance among ethnic groups in Nigeria. The point therefore is that the major ethnic groups that have been able to produce the power elites at the centre have cornered national resources and appropriated

same to the advantage of their groups and to the detriment of the ethnic minorities in the Niger Delta who incidentally are bearers of the oil that is the base of the Nigerian economy.

The ethnic factor in resource allocation in Nigeria seems to be a fact that the ethnic minorities see as basically the cause of their disadvantage. Therefore, it has been argued by prominent people from that zone that the imbalance in revenue or resource allocation and the general plight of the Niger Delta derives essentially from ethnic politics (Okilo 1980). Thus, the centralisation of revenue and control of resources by the federal government is seen as a direct product of the control of political power by the dominant Hausa-Fulani and Yoruba ethnic groups. This is seen further by the Niger Delta minorities as a form of cheating bordering on robbery. Therefore, a spokesman of the group avers, 'we're taking oil from one part of the country and investing it in the North. I do not think you can go on taking money from a place without enhancing life there' (*Tempo* 1999:10). The above sentiments gain even more relevance when it is realised that the adverse poverty in the area does not bear evidence to the enormous amount of wealth derived from that area. It is then not surprising that Cohen (1999) states that oil has become the source of conflicts, claims and counter-claims engendered by both poverty and neglect by the Nigerian state.

Marginalization, resource control and conflict in the political arena

It would seem that the post independence history of Nigeria has been pock-marked with conflict between the centre and the periphery (Ifeka 2000) and between different ethnic groups in the nation (Anugwom 2001). Significantly these conflicts have centred around the issue of resources. As Ujomu (2002:200) posits:

> since independence in 1960, the problem of conflicts in Nigeria have centred around the experiences of the numerous individuals and groups in the country, who have been faced with oppression, marginalisation, insecurity and poverty in a country so richly blessed with vast human and material resources.

This then reveals that beneath the recurring social conflicts in the country is the struggle for different forms of national resources. Even when conflict arises from deprivation or the neglect of a social group, it is obvious that the ensuing conflict is a product of some fundamental dissociation between the situation of the group and the enormous resources in the country. In other words, conflict becomes a tool for the resolution of a form of cognitive dissonance for a group that finds it difficult to understand how impoverishment and marginalisation is its lot in a supposedly richly endowed nation. I think

that part of the restiveness of Niger Delta minorities emanates from a frustrating inability to relate the general impoverishment in the area to the enormous wealth which the area produces for the country.

Deprivation or unequal access to national resources in Nigeria has bred a feeling of marginalisation among some ethnic groups in the country. Actually, marginalization has assumed a very prominent place in the lexicon of different ethnic groups in the nation in recent times. Marginalization in this case is used to express either unequal or lack of access to valuable resources (political and economic) in the country. But marginalization within the confines of the Nigerian state or internal marginalization should be seen also as an expression that is very popular in political spheres. As Ujomu (2002:201) avers, 'this idea of marginalization which depicts the reality that some persons have been excluded, alienated or sidelined to the fringes of social and political life in the country, has however become a somewhat politicised concept in Nigeria'. However, this does not rid it of the implied economic deprivation in it since political power determines the allocation of economic and other resources in the country. It is also a term used in capturing the place of a particular ethnic group vis-à-vis the general scheme of things in the centre (Anugwom 2000). Hence, Adedeji (1999) sees internal marginalization as caused by the mismanagement of the economy and the pursuit of a development paradigm that has polarised the different social and economic groups in the society. Therefore, marginalization besides being a political catch-phrase expresses both the mismanagement and unfair allocation of collective resources. Obviously, marginalization in this sense acquires a meaning mainly in the context of a plural society where each constituent unit is bound to appraise its benefits with reference to both its contributions and more crucially the contributions and benefits of similar or other groups.

It is this comparison or appraisal process that breeds the feelings of marginalisation or relative deprivation when the group in question finds that its benefits are far less than its contributions or when it sees the benefits of other groups with little contributions as far higher than its own. In fact, this is at the crux of the resources allocation problem in Nigeria. Sectional identities become pronounced and people seek to focus allegiance on a nearer and more accountable local or primordial unit. But the shift of focus is not without conflict as each social group or ethnic group aspires towards capturing the largest share of national resources.

The fact of the domination of the state and its resource distribution process by the majority ethnic group in possession of power at the centre in Nigeria can hardly be contested. As a matter of fact, there is the development of what Weiner (1987) termed a 'mono-ethnic' tendency. In Nigeria, the Hausa-

Fulani group has benefited immensely from this mono-ethnic tendency since it had dominated the control of power at the centre until recently (1999) when the Yoruba ethnic group assumed control. The point however, is that power in Nigeria has rotated between the majority ethnic groups especially the Hausa-Fulani and the Yoruba.

Incidentally, mono-ethnic tendency in Nigeria has not been used only against the oil producing minorities but also against other ethnic/social groups not in control of state power at any point in time. In this sense, it has been very useful in the resource allocation process which favours the ethnic group in power in Nigeria. This point was made even more vivid by the spectre of state sponsored repression which followed the massive protests against the annulment of Nigeria's presidential elections result in 1993. According to Ifidon (1996) the result of the June 12, 1993 election had the potential of altering the then structure of access to and exclusion from state resources. It is within this structure of access that the distribution of resources in Nigeria operates. The allocation system is usually lopsided in practice such that the centre gets the lion share of the resources to the detriment of the federating units.

Even in the recent democratic dispensation in Nigeria, the contest for resources has become heightened both by the push of globalisation and democracy which create the conducive atmosphere for the articulation of sectional interests. In others words, globalisation as a process in Africa has meant also the third wave of democratisation and the guarantee of human rights. In this context enough space has been created for the re-emergence of dominated and minority groups who now seek to reposition themselves for the struggle to acquire the resources hitherto denied them. This struggle in Nigeria has been vividly captured in the struggle of the ethnic minorities in the Niger Delta zone for resource control. Incidentally, even the large ethnic groups have sought more shares in the allocation of national resources by alleging marginalization. Be that as it may, the ethnic minorities in Nigeria seem to have established a more resilient resource struggle in the last two decades.

The whole practice of politicking on ethnic planks which has been the plague of democratic experiments in Nigeria (Joseph 1987) has not be totally eliminated in the current democratic dispensation. A glaring illustration of the play of ethnic factors in Nigerian politics was the total support which the Alliance for Democracy (AD) with strongholds in the majority Yoruba Western Nigeria gave the candidature of Olusegun Obasanjo before the April 2003 presidential election. As a matter of fact, the AD refused to bring out a presidential candidate to contest the election but threw its support behind

Obasanjo, a Yoruba contesting on the platform of the rival Peoples Democratic Party (PDP). The support of the AD for Obasanjo can be rightly conceived as a grand scheme to ensure that the presidency remains in the West since a presidential candidate on the platform of the AD, which would in all probability be a Yoruba, would have divided the bloc vote which the Yoruba gave Obasanjo in the elections. Thus, even though the ruling PDP claims a national spread, the allocation of positions both in the party hierarchy and in the federal government is based on ethnic factors. In as much as one would see this as a likely attempt to avoid the marginalization of any group, it also reinforces primary loyalties and ethnic comparison of all sorts in the party circles.

But even more insightful is the fact that the PDP, even on the basis of the very controversial 2003 election results, have failed to make significant inroads in the North. Therefore, such core Northern states like Kano, Katsina, Sokoto, Borno and Kebbi were won by the rival All Nigeria Peoples Party (ANPP). Incidentally, even in Kaduna state where the PDP claimed the victory at the gubernatorial elections, the ANPP defeated the PDP in that state at the presidential elections.

Different dimensions to the struggle for resource control

In practical terms, the struggle for resource control may be seen as a three-pronged battle. Thus, there is the struggle between the oil producing minority states and the federal government in Nigeria; the struggle between the oil producing communities and the oil producing multi-nationals; and even amongst the oil producing communities themselves. The first struggle has been championed by the state governors of the South-South zone who have waged a relentless war with the federal government over the sharing of oil revenue and the need for the oil producing states to control their own resources. Secondly, there is the incessant conflict between the oil producing communities and the multi-national oil exploiting firms operating there. While the former struggle or face-off between the state governors and the federal government has been largely devoid of violence, the conflict between the oil communities and the oil firms has been violent. The violence which incidentally escalates as the days go by has involved the kidnapping and taking of hostages (oil workers) by the communities, destruction of oil pipelines and other vital installations, killing of oil workers as happened recently in the River Benin incidence where six expatriates were killed etc.

The oil communities reactions have been fuelled apparently by the devastating impact of oil exploitation on the general eco-system in the region as well as the perception of marginalization in the sharing of the dividends of oil by both the oil firms (in the lack of adequate compensation, basic

infrastructure, employment oppourtunities for indegenes etc.) and the federal government (disenchantment with the revenue allocation formular and the utilization of oil revenue in developing other areas of the country rather than the Niger Delta). Predictably, some of the actions taken by the oil communities against the oil firms have also been borne out of the conviction of a collaboration between these firms and the federal government. Moreover, while the federal government is far away from these communities, the oil firms operate in the immediate environment of these communities. Therefore, the oil firms have largely borne the brunt of the ire of the communities except on occasions when there have been conflagrations between these communities and federal security agencies in the areas.

But equally significant is that one may perceive a third dimension to the struggle for resource control in the form of conflicts between the oil producing communities themselves. At the lowest level, this has occasioned intercommunal/ethnic conflicts in the South-South zone. Apart from the popular Urhobo-Itsekiri conflicts in Warri, Delta state and the Andoni-Ogoni conflict in Rivers state, there have also been conflicts between other contiguous oil communities in both Rivers and Delta states. These conflicts have been, in more cases than not, over access to and control or resources whether political or economic. Also discernable since the advent of democracy from 1999 is the so far subtle struggle among the oil producing states. This struggle is clearly typified in the use of a distinction between the core Niger Delta states and other Niger Delta states. In this case, such high oil producing states as Delta, Rivers, Bayelsa, Akwa-Ibom would rather be seen as the core Niger Delta and require a different treatment from the other states in the region like Ondo, Edo, Cross Rivers, Abia and Imo. This thinking almost marred the establishment of the NDDC since the problem was on how to define the Niger Delta and the states to be included in it.

But criss-crossing these various dimensions of the resource control struggle has been the role played by the social movements in the region. These groups have been very instrumental in articulating the aspirations of the people and giving focus to the struggle. Incidentally, these groups which are largely militant in nature have also provided the human resources for some of the violent confrontations with the oil producing firms and forces of the federal government. Prominent among these groups are the Movement for the Survival of the Ogoni People (MOSOP); the Ijaw Youths Council (IYC); the Ethnic Minority Organization of Africa (EMIROAF); Association of Minority Oil States (AMOS); Ethnic Minority Rights Organization of Nigeria (EMIRON); Nigerian Society for the Protection of the Environment (NISOPEN); the Ijaw Ethnic Minority Rights Protection Organization; the

Southern Minorities Movement; the South-South Governors Forum; the Niger Delta Youths Movement etc. These groups provide the inner driving force behind the struggle for resource control in the zone. The roles of these groups have been aptly captured by Obi (1998:269) thus:

> The deepening of the economic crisis after the introduction of SAP in 1986 largely radicalised the struggles of the oil minorities. The demands of the newly formed oil minorities social movements included the restructuring of the federation in a manner that gives more autonomy to the other tiers, self-determination to the minorities within the federation and the return of the allocative principles of derivation, while providing for compensation for oil pollution of the environment.

It may be correct to state therefore that these groups have been the foundation of the oil minorities resource control struggle through time. Perhaps deserving special mention is the MOSOP which easily emerges as the most focused and articulate of these groups. Moreover, the extra-judicial murder of its former leader in 1995 brought the plight of the oil producing minorities to the full attention of the international community. Also, the Ogoni Bill of Rights presented to the government and people of Nigeria in 1990 represents a good articulation of the situation of the Ogoni ethnic group and by implication the general situation in the oil producing minority areas of the country. While the MOSOP gave the struggle the initial bite, the South-South Governors Forum has also been instrumental in advancing the struggle since the enthronement of democracy in Nigeria in 1999. The constitutional and largely peaceful approach of the governors to the struggle have gone a long way in complementing the activities of the prominent social movements in the area and winning cross-cutting support for the Niger Delta struggle.

The Declining State And The Struggle For Resources

Another crucial issue in the context over resources and the resultant conflict between groups is the ability or otherwise of the state to meet up with the minimum expectation of the citizens. According to Uroh (1998) the Nigerian state generates divisive tendencies by a failure to govern well or live up to the expectation of the citizens. In this sense, the state has failed woefully in the discharge of its statutory obligations to the citizens. As a result, national institutions collapse when they fail to fulfil the basic needs of the people and in the same process produce sectional groupings and loyalties (Synder 1993). This describes the contemporary history of Nigeria particularly during the infamous military regimes when the response of the state to the needs of citizens was below the expected minimum. In a situation like this, ethnic and sectional identities become pronounced and people seek to

focus allegiance on a nearer and more accountable local or primordial unit. But the shift of focus is not without conflict as each social group or ethnic group aspire towards capturing the largest share of national resources.

Certainly a perception of being cheated in allocation of national resources by any group breeds social conflict that makes mockery of security in any society. This feeling whether expressed as marginalization or domination by larger groups in a plural society has far reaching implications for development. As has been contended, marginalization makes people vulnerable and is a major expression or form of insecurity (Nolutshungu 1996). After all, marginalization in a plural society like Nigeria conveys the feeling that some groups have been excluded or alienated in the resources allocation process. Actually, the Niger Delta minorities perceive their situation as thus and have engaged in many forms of redemption struggle. But very incisive in the understanding of the struggle over resources in Nigeria is the perception of the state as a biased centre that perpetuates deprivation of the minority ethnic groups. This perception may actually unravel why despite numerous interventions by the Nigerian state and its security agencies, the violence against multi-national oil firms in different ramifications by the people have remained unabated. Therefore:

> central to the existence of social conflicts in Nigeria is the situation in which the groups possess, or have confirmed the suspicion or feeling that the state, or other sectors of society have shortchanged or deprived them of certain key social benefits, rights and entitlement (Ujomu 2002:203).

It is in this sense that the state in Nigeria, given its active role in the exploitation of Nigeria's oil resources and the allocation of accruing revenues, has been seen by the Niger Delta ethnic minorities as acting to deprive them of their rights. Actually a situation whereby the people from whose soil oil is got and who in the process bear enormous environmental damages are deprived of what may be considered a fair share of the revenue from the said natural resources is tantamount to a denial of rights (Anugwom 1998).

The role of the state in Nigeria with regard to the question of resources should be seen as going beyond the primordial prisms of ethnicity. Even if one agrees with the popular feeling among the oil bearing Niger Delta minorities on the collaboration between ethnic majorities to undermine the economic status of the minorities through the de-emphasization of the derivation principle in revenue allocation, the fact remains that in the last two decades people of the country in both the majority and minority enclaves have been the victims of a rudderless state apparatus captained by self-seeking leaders. In this regard, the predatory nature of the Nigerian state can be seen as a factor in the unending struggle over resources. Hence, despite the generous

view that political action cannot exist without conflict since politics implies disagreement and how to resolve it (Blandel 1966), a predatory state hampers both the general development of the state and the realization of the most primary of individual aspirations.

Hence as Castells (1998) posits much of the economies and societies of Africa have been destroyed by the misuse of capital which has characterized the predatory state or 'vampire state' which from all indications is a state totally patrimonialized by the political elites or leadership for their own selfish ends. Nigeria incidentally is no exception in this regard. No wonder the huge revenue which has accrued to the country over the years from its vast oil resources has not impacted on the lives of ordinary citizens. The dissatisfaction of the ethnic minorities with gross deprivation in their land despite the huge wealth being carted from there has fuelled current struggle and agitation for resource control. A struggle that has been bolstered by democracy which has created space for expression of grievance unlike the police state era of the military.

The Nigerian state therefore has failed to impact reasonably on the lives of the oil bearing communities and even beyond. In this regard, the state in Nigeria should be conceived as a typical predatory state in which prebendalism obfuscates the ability of the government to keep its part of the social contract entered with citizens. Indeed, studies have shown that the prebendal nature of politics in Nigeria has been responsible for truncating past experiments in democracy (Joseph 1987:19). However one still perceives deep marks of prebendalism even in the current dispensation which sadly retains all major negative features of the past exercises. As a result one agrees with the submission that:

> the predatory state is characterised by both prebendalism and predation understood as political patronage, systematic government corruption, concentration of power at the top and the personalization of networks for the delegation of this power. These tendencies are prevalent in Nigeria today (Ujomu 2002:209).

The ethno-national state, mediation and resource distribution

As the foregoing instructively shows, the problem of conflict, whether webbed around ethnicity or the more sensitive issue of distribution of resources, makes the role of the state is very crucial. In the case of Nigeria, the state has been indicted as even engendering conflict by not responding to the challenges of nationhood. In this regard, it is argued that political conflict in Nigeria's socio-political history is the outcome of disparate attitudes to the question of citizenship occasioned by the problem of statehood (Idowu 1999:73). Hence,

it is the approach of the state towards concretising the citizenship expectations of Nigerians that creates problems. Idowu therefore sees the Nigerian state as focusing on a biased definition of citizenship that confers more privileges to members of one group while denying others their own rights in the same nation.

The hijack of the state by one ethnic group in control of state power is a common feature among some African countries. In Nigeria, Idowu (1999) has seen this tendency as informing the action of the government. In this situation, Nigeria as already stated elsewhere is perceived as evolving a mono-ethnic tendency which distorts the enshrined principles for allocation of national resources. This mono-ethnic tendency vitiates the nation building process since it renders other ethnic groups devoid of power or influence (Weiner 1987). The same process can be seen as happening in Nigeria even though power has so far rotated between the majority Hausa-Fulani and Yoruba ethnic groups who have used it to further entrench the political domination of the majority to detriment of the minority. More crucially this power has been used in ensuring a warped resources allocation that deprives the ethnic minorities of their dues vis-à-vis the resources which are predominantly gotten from the minority enclaves.

But the problem of the state in this regard is made worse by the inability to free itself from the hold of the ruling dominant class. In this situation, the mono-ethnic tendency state compromises its role in fairly allocating resources or mediating in the usual conflicts that emanate from the plural or multi-ethnic state. This sort of state loses legitimacy defined in terms of representing the aspirations of all citizens since it has been captured by a dominant ethnic group. In this case of failure of the state, the citizens seek recourse in their primordial sub-national or ethnic groups. Thus, as Synder (1993) suggested the revival of ethno-nationalism is usually in the context of failure of state institutions to meet the people's basic needs or when satisfactory alternative structures at that level are not available. It is probably in this line that one may view the resources control struggle by the ethnic minority groups in Nigeria in recent times. The common logic is that in view of the failure of the Nigerian state and its institutions to address the development needs of the minority areas and to evolve and implement a resources allocation formula built on fairness, ethnic equity, contribution and needs, these groups feel that they can do a better job of it. Therefore:

> the vitiation of the rational capacity of the state to mediate and control the state of inter-group relations among existing ethnic groups, such that none is alienable nor dominated, often leads to the problem of ethno-nationalism. Generally, whenever the state is subject to the control and domination by a

> single ethnic group, it often renders other groups weak, fragile and excluded (Idowu 1999:80).

It is this feeling of exclusion by the ethnic minorities that drive their recent struggles for resources control. These groups feel that the Nigerian state has been hijacked by and for the majority groups in control of state power since independence.

Ethnic schism and even contestations should be mediated by the state in a plural society. However, this role can be effectively played by the impartial state. Hence, mediation and moderations of relations between groups in a given state is a central role of the state. In this sense, the actions of the state determine the nature and direction of ethnicity (Rothchild and Olorunsola 1983). This is particularly the case in a federal state like Nigeria where the constituent units ideally expect a centre that is grounded on fairness and equity especially with regards to the allocation and distribution of resources. The struggle which invariably ensues between different groups for scarce resources in the state should be seen also as gauge of the readiness of the Nigerian state to live up to the expectations and principles of federalism as enshrined in the constitution.

But when the state in Nigeria is perceived as an ethno-regional hegemony (Lemarchand 1994), the central structures upon which to anchor nationalism and allegiance to the centre become weakened. In other words, the emergence of the Nigerian state after independence as an ethno-regional hegemonic state and the persistence of this character since then serves as objective condition for the breeding of primordial and sectional factors, which ultimately erode the power of the state to mediate in conflicts between groups.

Re-inventing derivation and fairness in resource distribution

The agitation of the ethnic minorities in the Niger Delta has been bolstered by the feeling that the progressive decline in the derivation principle in revenue allocation has been the product of political and ethnic considerations or the outcome of political manipulation by the ethnic majorities in charge of state power. However, a closer reading of the trend of events would suggest that in as much as one may be advised not to casually dismiss this view, there are indicators that other exigencies may have also informed a move away from fiscal parity between the federal and sub-national governments that was very prominent between 1954 and 1958. Hence, the collapse of international commodity prices, expansion in regional budgetary obligations, the centre's responsibility for external loans and national planning after independence and the increasing buoyancy of federally retained revenues as the economy expanded may have gone a long way in aiding the fiscal supremacy

of the central government (Suberu 2003). But even more compelling than this logic is the fact that there was already a clear federal fiscal supremacy or lead before the beginning of the oil revenue supremacy from the mid-1960s. However, this argument should not be taken as justifying the gross neglect of the source of the new found oil wealth. But even more important and reminiscent of political manipulation is the use of two principal criteria of equality and demography that confers no advantage on the minorities in the Niger Delta in the allocation of revenue in contemporary Nigeria. This and the almost open connivance of the government with the multinational oil firms in a brazen neglect of environmental laws in oil exploitation bears eloquent testimony to the likely reality of politicking in the matter.

As a result, the derivation percentage of revenue allocation in Nigeria had nose-dived from over 50 per cent in the mid 1950s to 45 per cent in 1971; 20 per cent in 1975 and even to paltry 3 per cent in 1993 under the government of Ibrahim Babangida. A downward progression that the Niger Delta minorities see as inversely proportional to the growth of oil in international economy and revenue profile of Nigeria. This percentage eventually rose to 13 per cent during the regime of Sanni Abacha in the late 1990s and has been there in spite of the growing clamour by the Niger Delta minorities and even the spate of violence this perceived injustice has drawn from the youths and other militant groups in the Niger Delta.

Actually the decline of derivation has been seen in apt manner as dramatic, systematic and comprehensive (Suberu 2003). The main objective argument for the decline of the derivation principle in Nigeria rests squarely on the planks that it breeds interregional or inter-state socio-economic disparities and encourages sub-national governments revenue dependence on natural geographic factor rather than on the more reasonable superior productive capacity. It is also posited that the principle of derivation limits the volume of resources available to the federal government for nationwide economic planning, economic reform and the so-called special projects (the federal capital city building fund; the fund for the building of the new national stadium in Abuja, etc). However reasonable and intellectually convincing these reasons sound, they are contrary to the history of fiscal policy in Nigeria since derivation has always been a prominent feature of this policy until the mid-1960s. Also, these reasons are often selfishly incognizant of the huge environmental/ecological disaster consequent upon oil exploitation in the Niger Delta region. It would seem that derivation, while definitely not able to replenish what has been taken away or reverse environmental degradation, can function as a compensation of sort to the areas concerned and

provide the fund for development which could go a long way in assuaging the feelings of the people in the region.

In spite of the fact that the South-South governors are PDP members like the ruling President, the last four years have been marked by a big conflict between these governors and the Presidency over the issue of resources control. The grouse of the governors dovetailed into the on-shore/off-shore controversy in the allocation of oil revenue in Nigeria. A case that eventually went to the Supreme Court of Nigeria. The on-shore/off-shore dichotomy normally implies that the derivation component of national revenue for the oil producing states should be based only on revenue derived from on-shore oil production. In this sense, off-shore oil was defined as belonging exclusively to the federal government since they are in the territorial waters of Nigeria. As a result, there arose the on-shore/off-shore dichotomy in revenue allocation to the littoral states of the Niger Delta. But the states made a case for the abolition of this dichotomy and its replacement by an allocation formula that sees revenue from oil production on both on-shore and off-shore facilities as part of the derivation component. In other words, the 13 per cent derivation should be based on both on-shore and off-shore productions rather than on on-shore production alone.

Apart from utilization of the political arena for this struggle especially through the political leaders of the region, the oil producing ethnic minorities have also made good use of a large body of youths and ethnic militias that have perpetuated violence on both oil installations and oil workers in the area. These militia and youth groups have been involved in the destruction of oil pipelines and installations, killing and abducting oil workers and members of security agencies, taking of hostages, hijacking of vehicles and helicopters. These activities are mainly to attract the attention of both local and international stakeholders in the oil industry as well as that of the international community at large. Apart from evoking attention, these activities especially the ransom demands that follow some of them have provided an easy access to quick money for a lot of these youths who are unemployed. The violence of these groups apart from deriving from increasing frustration and desperation may be seen as equally deriving from the reaction of the government over the years to what is apparently a good cause. As a matter of fact, Ifeka (2000) insists that the reliance of these militia groups on violence to pursue their demands is an outcome of the repressive, anti-democratic practices of the erstwhile military government.

The only weakness in the above position is that the violence since the era of the current democracy in Nigeria has not abated significantly. This may be the result of the fact that not much has changed in terms of government

response in spite of the change from military to civilian government. The destruction of Odi town in Bayelsa State by federal troops occurred within the first two years of democracy. Also, the civilian government through the establishment of the Niger Delta Development Commission (NDDC) has continued with the intervention approach of the military to the development problem of the area. The only difference may be in the recent political solution to the off-shore/on-shore dichotomy which has seen the Federal Government abrogating the dichotomy in keeping with the desires of the oil producing ethnic minorities. It is still too early to conclusively make a claim on the effect of the abrogation of the dichotomy.

Conclusion

The argument so far is that resources distribution in Nigeria has been determined by both ethnic and political factors. While political considerations may influence resource distribution even in the most egalitarian modern society, Nigeria's situation is that these political factors are the direct products of the primordial orientation of those in authority. In this case, it has been argued that fiscal over-centralization in Nigeria was borne out of the fact that the oil wells from which Nigeria's wealth flow are located in a few southern – minority states with little political clout (Adebayo 1990; Naanen 1995).

Also, it is important to note that resources distribution or allocation invariably raises questions of social justice and fairness on the part of the state. In the case of Nigeria, the inability to establish efficient structures and formula for both the management and distribution of resources have led to the persistence of conflict especially among different ethnic groups in the country. Definitely, there is no gainsaying the fact that conflict on this scope poses great danger to the survival of the state building project in Nigeria. Conflict over resources and as a matter of fact any form of inter-group conflict should concern the Nigerian state. After all, historically states have been concerned with conflict management and security (Sesay 1998). This is informed largely by the realisation that the frequent occurrence of this sort of conflict militates against the solidarity needed for the state enterprise as well as wastes valuable resources that could have been channelled towards development efforts. The central place of security and peace particularly among social groups has been recognised by contemporary African leaders who accord it a high priority in the new attempts to achieve meaningful development in the continent. Such a recognition was typically shown in the high level priority given to issues of conflict prevention, peace and security in the NEPAD initiative (Omoweh 2002).

Hence the emergence of a Nigerian state built on the tripod of peace, fairness and development can only be possible when resources are prudently managed and allocated on the basis of objective criteria. Objectivity in this sense, should do away with the domination of the majority and engender the re-invention of meaningful derivation principle (or restructuring of the resource allocation system) that reasonably cushions the negative effects of oil exploitation in the minority areas and a total depoliticization of the context of resources distribution.

One way of achieving this could be in the adoption of an allocation process that gives a fair control of oil resources to the oil bearing minorities. This could be in the form of a 50–50 allocation formula. Definitely to ask for the national centre to hands-off entirely the oil resources would be tantamount to not recognising the fact that Nigeria belongs to all Nigerians and the resources in it should be enjoyed by all citizens. But a recognition that the oil producing communities bear the full brunt of the adverse consequences of oil exploitation demands a considerable modification of the present allocation process in their favour. Thus, I agree largely with the submission of Ejobowah (2000) that neither the national level nor the sub-national political group should have absolute ownership of the right to mineral resources rather they should share equally or near equally.

References

Adebayo, A.G, 1990, 'The 'Ibadan School' and the Handling of Federal Finance in Nigeria', *Journal of Modern African Studies*, 28, 2, pp. 245-267.

Adedeji, A., 1969, *Nigerian Federal Finance: Its development, problems and prospects*, London: Hutchinson.

Adedeji, A., 1999, 'Cleansing the Augean Stables', *Africa Today*, Vol. 5 (May), p. 32.

Adesina, O.C, 1998, 'Revenue Allocation Commissions and the Contradictions in Nigeria's Federalism', in K. Amuwo, R. Suberu, A. Agbaje and G Herault (eds) *Federalism and Political Restructuring in Nigeria*. Ibadan: Spectrum Books and IFRA

Aminu, J., 1994, 'Oil and the National Debate', in A. Mahadi; G Kwanshie and M. Yakubu (eds), *Nigeria:Tthe State of the Nation and the Way Forward.* Kaduna: Arewa House.

Anugwom, E., 1998, 'Oil Exploitation, Environmental Degradation and the Rights of Ethnic Minorities in Nigeria: The Ogoni debacle', Paper presented at the 8th PAAA/APA Annual Conference, Benin, Cotonou (17-21 July).

Anugwom, E., 2000, 'Ethnic Conflict and Democracy in Nigeria: The marginalization question', *Journal of Social Development in Africa*, Vol. 15; No. 1, pp. 61-78.

Anugwom, E., 2001, 'The Military, Ethnicity and Democracy in Nigeria', *Journal of Social Development in Africa*, Vol. 16, No. 2, pp. 93-114.

Anugwom, E., 2003, 'Federalism, Fiscal Centralism and the Realities of Democratization in Nigeria: The case of the Niger Delta', *Journal of Sociological Sciences*, Vol.1, No. 1, pp. 9-22

Awolalu, T., 2000, 'The Rape of the Niger Delta', *CDD News*, Vol. 1, No. 1 (July-Sept).

Barongo, Y. R., 1987, 'Ethnic Pluralism and Democratic Stability: The basis of conflict and consensus', in S. Oyovbaire (ed.) *Democratic Experiment in Nigeria: Interpretive Essays*. Benin City: Omega Pub.

Blondel, J., 1996, 'Government', in N. Mackenzie (ed.) *A Guide to the Social Science*. London: Weidenfield and Nicolson.

Castells, M., 1998, *The Information Age: economy, society and culture, Vol. III: end of Millennium*. Oxford: Blackwell.

Cohen, R., 1999, 'Inside Mobiland'. *Tempo*, Vol. 12, No.2 (Jan. 21), p. 22.

Constitution of the Federal Republic of Nigeria, 1999, Lagos: Federal Government Press.

Ejobowah, J.B., 2000, 'Who Owns the Oil? The politics of ethnicity in the Niger Delta of Nigeria', *Africa Today*, Vol. 47, No. 1, pp. 28-47.

Ekeh, P., 1990, 'Social Anthropology and Two Contrasting Uses of Tribalism in Africa', *Comparative Studies in Society and History*, 32 (4), pp. 660-700.

Ekeh, P., 1975, 'Colonialism and the Two Publics in Africa: A theoretical statement', *Comparative Studies in Society and History*, 17 (1), pp. 91-112.

Fadahunsi, Akin, 1997, 'Fiscal Federalism in Nigeria', *Tempo* (July 3), pp. 9 and 12.

Giddens, A., 1991, *Modernity and Self-Identify: Self and society in the late modern age*. Stanford: Stanford University Press.

Graf, W., 1983, 'African Elite Theories and the Nigerian Elite Consolidation: A political economy analysis', in Y. Barongo (ed.) *Political Science in Africa*, London: Zed.

Halisi, C.R.D; P. Kaiser and S. Ndegwa, 1998, 'Guest Editors Introduction: The multiple meanings of citizenship – rights, identity and social justice in Africa', *Africa Today*, 45 (3-4), pp. 337-349.

Ifeka, C., 2000, 'Conflict, Complicity and Confusion: Unravelling empowerment struggles in Nigeria after the return to democracy', *Review of African Political Economy*, No. 83.

Ifidon, A.E., 1996, 'Citizenship, Statehood and the Problem of Democratization in Nigeria', *Africa Development*, 4 (21), pp. 93-107.

Joseph, R., 1987, *Democracy and Prebendal Politics in Nigeria: The rise and fall of the second republic*. Cambridge: The University Press.

Joseph, R., 1999, 'Autocracy, Violence and Ethno-military Rule in Nigeria', in R. Joseph (ed.) *State, Conflict and Democracy in Africa*. Boulder, Colorado and U.K: Lynne Reiner Pub.

Lemarchand, R., 1994, *Burundi: Ethnocide as Discourse and Practice*. Washington, D.C.: Woodrow Wilson Centre Press.

Naanen, B., 1995, 'Oil-Producing Minorities and the Restructuring of Nigerian Federalism: The case of Ogoni people'. *Journal of Commonwealth and Comparative Politics*, Vol. 33, N° 1, pp. 46-78.

Ndegwa, S., 1995, 'Citizenship and Ethinicity: An examination of two transition movements in Kenyan politics', Paper presented at the Annual African Studies Association meeting, November.

Nnoli, O., 1978, *Ethnic Politics in Nigeria*, Enugu: Fourth Dimension Pub.

Nolutshungu, Sam, 1996, *Margins of Insecurity: Minorities and International Security*, New York: University of Rochester Press.

Obi, C.I., 1998, 'The Impact of Oil on Nigeria's Revenue Allocation System: problems and prospects for national reconstruction', in K. Amuwo, R. Suberu, A. Agbaje and G. Herault (eds.). op. cit.

Okilo, M., 1980, 'The Derivation Principle and National Unity', *Daily Times* (July, 19), p. 4.

Okpu, U., 1977, *Ethnic Minority Problems in Nigerian Politics*, 1960-1965, Uppsala: Almquist.

Olusoji, M.O. and N. Magbagbeola, 1997, 'Horizontal Revenue Allocation Among States in Nigeria: Lessons from experience', *Journal of Economic Management*, 4; 2, pp. 1-30.

Olukoju, A., 1997, 'Nigeria: A historical review', in F. Okafor (ed.) *New Strategies for Curbing Ethnic and Religious Conflicts in Nigeria*. Enugu: Fourth Dimension.

Omoweh, D.A., 2003, 'The New Partnership for African Development (NEPAD): Another false start?' *The Nigerian Social Scientist*, 6 (1), pp. 31-39.

Ottaway, M., 1999, 'Ethnic Politics in Africa: Change and continuity', in R. Joseph (ed.) op. cit.

Otite, O., 1990, *Ethnic Pluralism and Ethnicity in Nigeria*. Ibadan: C.I. Shaneson.

Phillips, A., 1971, 'Nigeria's Federal Financial Experience', *Journal of Modern African Studies*, 9, 3, pp. 389-408.

Phillips, A., 1997, 'Nigeria's Fiscal Policy'. *Monograph Series*, No. 17. Ibadan: Nigerian Institute of Social and Economic Research.

Rawls, J., 1971, *A Theory of Justice*. Cambridge: Harvard University Press.

Rothchild, D. and V. Olorunsola, 1983, 'Managing Competing State and Ethnic Claims', in D. Rothchild and V. Olorunsola (eds) *State Versus Ethnic Claims: African Policy Dilemmas*. Boulder: Westview Press.

Sanda, O.A. (ed.), 1976, *Ethnic Relations in Nigeria: Problems and prospects*. Ibadan: Zaxton Press.

Synder, J., 1993, 'Nationalism and the Crisis of Post-Soviet State', *Survival*, 35(1), pp. 1-12.

Tempo, 1999, 'Truce of a Kind'. Vol. 12, No. 2, p. 22.

The Guardian, 2002, April 17.

Ujomu, P.O., 2002, 'Social Conflicts, Resource Distribution and Social Justice in Nigeria', *Journal of Asian and African Studies*, No. 63, pp. 197-228.

Uroh, C., 1998, 'On the Ethics of Ethnic Balancing in Nigeria: Federal character reconsidered' in K. Amuwo, R. Suberu, A. Agbaje and G. Herault (eds). *Federalism and Political Restructuring in Nigeria,* Ibadan: Spectrum Books.

Usman, Y.B., 1987, *The Manipulation of Religion in Nigeria, 1979-1987*, Kaduna: Vanguard Pub.

Watson, T.J., 1995, *Sociology, Work and Industry*, London: Routledge.

Weiner, M., 1987, 'Political Change: Asia, Africa and the Middle East', in M. Weiner and S.P Huntington (eds) *Understanding Political Development.* Boston, M.A: Little Brown.

Young, I.M., 1990, *Justice and the Politics of Difference*, Princeton: Princeton University Press.

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Taxation, Migration and the Creation of a Working Class in Kenya

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Abstract

Various scholars have questioned the often-stated migrant labour–taxation causal nexus. They have rejected the overworked stereotype that Africans entered labour service to pay taxes, obtain more livestock and marry more wives. This paper argues that migration was a historical aspect of social change, because migrant labourers made deliberate economic choices on whether to pay taxes either by exploiting available resources or by migrating. Particular analysis is made of the extent to which taxation engendered the creation of a working class cadre. The case of the settler economies of South Africa, Rhodesia, Algeria and Kenya in particular revolved around the transition of the rural population from a pastoral and cultivator economy to a truncated working class in the Thompsonian paradigm. They were not merely, as Atieno-Odhiambo declares, 'cogs in the wheel of capitalism'. Among other reasons, Africans went out in search of paid work for the fact that force was used when their livestock were confiscated unless they left to perform wage labour. Many others went out in search of employment for the independence and self-sufficiency it gave them. The paper argues that a number of young people went out voluntarily to obtain money which they used to pay taxes but also to acquire certain material possessions such as livestock, blankets, clothes and other paraphernalia, and to become entrepreneurs. As a consequence of all these, we have the emergence of a working class cadre that has become an important life trajectory in Kenya.

Résumé

Plusieurs études ont remis en question le fameux lien causal régissant la taxation des travailleurs migrants. Ils ont rejeté le stéréotype usé selon lequel les Africains travaillaient pour payer des impôts, obtenir davantage de têtes de bétail

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et épouser toujours plus de femmes. Cette communication affirme que le phénomène de la migration constitue un aspect historique du changement social, car les travailleurs migrants font le choix économique délibéré de payer des taxes en exploitant les ressources disponibles, ou en migrant vers d'autres contrées. Il est fait une scrupuleuse analyse de la façon dont la taxation a contribué à la création d'un cadre de prolétariat. Les économies de migrants en Afrique du Sud, en Rhodésie, en Algérie et au Kenya, en particulier, étaient basées sur la transition des populations rurales d'une économie pastorale et agricole à un statut tronqué de classe ouvrière, selon le paradigme thomsonien. Ces derniers n'étaient pas que de simples «rouages dans la machine du capitalisme», comme l'affirmait Atieno-Odhiambo. Les Africains sont allés à la recherche d'un travail rémunéré pour une diversité de raisons, parmi lesquelles le fait que l'on faisait parfois usage de la force pour confisquer leur bétail, ce qui les contraignait à aller à la recherche d'un travail payé. D'autres partaient à la quête d'emploi pour acquérir une certaine indépendance et une certaine auto-suffisance. L'auteur affirme qu'un certain nombre de jeunes se sont volontairement exilés pour gagner de l'argent, qu'ils employaient ensuite pour payer diverses taxes, mais également pour acquérir certains biens matériels, tels que du bétail, des draps, des habits et autres, mais également pour devenir entrepreneurs. La conséquence en est l'émergence d'un cadre de prolétariat qui constitue un important trajectoire de vie, au Kenya.

Introduction

This paper examines how colonial African taxation led to the emergence of a working class cadre in Kenya. According to Issa Shivji, the working class in Tanzania have described themselves as the *watoa Jasho* (those who bleed sweat) (1996:xix). In Kenyan parlance, they would be equivalent to the *Jua Kali* (toiling in the hard sun). In other words, these are the 'petite bourgeoisie' that emerged as a result of social and economic change brought about by colonial capitalism.[1] E.P. Thompson (1968:12), in his seminal study of the English working class has challenged historians to rescue 'the casualties of history from the enormous condescension of posterity' and look at these ordinary people in societies around the world who daily laboured to produce wealth from which they rarely benefited.

Tiyambe Zeleza (1982), a leading authority in the study of labour and the emergence of the working class in Kenya, has correctly argued that violence and forced labour were important factors in the emergence of a working class cadre in Kenya. This paper goes a step further and examines how taxation that was enforced through violent means created a run-away working class. From a historical viewpoint, these working class identities comprised both white and blue-collar categories of labourers. Among these were the chiefs, clerks, teachers, interpreters, tax collectors, farm labourers, masons,

carpenters, house painters, barbers, cobblers, taxicab drivers, commercial sex workers, domestic workers, dock workers and nurses. In sum, they were the 'salariat', a small group of Africans who since the advent of colonial rule earned salaries, wages or fees for services rendered (Kitching 1987).[2] E.S. Atieno-Odhiambo (1974) has shown how these working class identities became powerful after 1922 when the peasantry declined and were overtaken in the world of *kazi* (work) by an emergent proletariat who by 1952 were in the category of urbanites who *Kula Raha* ('enjoyed leisure').[3]

The emergence of a working class

The creation of a working class in Kenya went through various stages (Wolff 1974; Stitchter 1975). The first stage from 1888 to 1895, saw coastal Arabs, Swahili and Kamba offer their services for wages and in particular to the Imperial British East Africa Company (IBEAC). In the second stage, 1895 to 1914, the colonial government decided to establish settler-dominated agriculture as the basis of Kenya's economy.[4] The sentiment was well captured by the then Governor Henry Belfield, who stated that:

> We consider that taxation is the only possible method of compelling the native to leave his reserve for the purpose of seeking work. Only in this way can the cost of living be increased for the native and it is on this that the supply of labour and the price of labour depend (*East African Standard* 8 February 1913).

Among the first commercial enterprises to demand for African labour came from the coastal region. The employers were Europeans, Asians and Arab landowners who grew crops like maize, beans and rubber. For example between 1907 and 1908, plantations based in Malindi required some 350 to 800 labourers.[5] Also in need of labour were the Public Works Department, the Mangrove Concession at Ngomeini and the maintenance of the railway line. Most of the labour that sought employment in these places came from among the Nyamwezi, Swahili, Kikuyu and the Kamba. At that time it was recorded that Malindi 'district provides none or few labourers'.[6] The average pay per month was Rs. 12 for the Nyamwezi and the Swahili who received no monthly rations, while the Kikuyu received Rs. 6 with rations of maize meal and beans. The longest serving were the Nyamwezi who worked for about 12 months, while the Kikuyu worked the least for only six to eight months. The tax rate was Rs. 3 per hut and it was widely acknowledged that the tax certainly aided the labour market especially during periods of drought.[7]

The third stage from 1914 to 1919 coincided with the mobilisation of the Carrier Corps for service during the First World War. The fourth stage 1919 to 1930, which continued up to 1939, saw the establishment of a regular

labour supply. Van Zwanenberg (1975) has however argued that wages at this stage were in general too low to be used as the primary incentive to induce men to migrate from their homes as wage labourers.

According to Sharon Stichter (1978) the next stage developed between 1939 and 1947. By then the size of the African work force had substantively increased due to the fact that there had been a shift from agricultural to industrial labour.[8] The colonial state, however, resisted most industrial developments in the colonies to protect their own industries back home. But this policy changed during the Second World War because Europeans in Kenya were unable to obtain provisions by sea from Britain. The result was the creation of the Kenya Industrial Management Board (KIMBO) which pioneered the manufacture of margarine and soap such as Lux, Sunlight, Lifebuoy and Omo. Accordingly, there was great shift from the rural areas to the urban centres in search of employment in the new industries particularly in Nairobi (Zwanenberg and King 1975; Swainson 1980).

The first step employed by the colonial administration to create a migrant wage labour class was the removal of land rights from the African people. Land as shown by C.K. Meek (1946) had something of a sacred character and rights over land were more jealously treasured than any other form of rights. Discussing land issues among the Kamba and the Kikuyu, Tignor (1976) argues that the manner in which land was alienated shaped many developments during the colonial period. Land deprivation was to be the genesis of a process that was to uniquely revolutionise and deconstruct the lives of the African people into a world of migrant wage labour, hitherto unfamiliar to them. Without adequate land and the emergence of a cash economy, a psychology of acquisitiveness began to consume the African public. People sought material possessions like better hoes, soap, sugar, salt, blankets and bicycles among other items that came with the capitalist penetration of African economies. This was made possible through the reinvigoration of the pre-colonial market system.

Taxation–migrant wage labour nexus

The application of taxation policies to compel Africans into a wage labour system has a long history in Africa. The case of the settler economies of South Africa, Zimbabwe (Rhodesia), Algeria and Kenya in particular revolves around the transition of the rural population from a pastoral and cultivator economy to a wage earner class.[9] In these settler economies, various approaches were adopted to obtain cheap labour for the colonial-capitalist enterprises. A major aspect of that process was the extent to which taxation engendered African participation in migrant wage labour and the emergence of a working class (Atkins 1993; Manchuelle 1997).

Various scholars in the literature have questioned the often-stated migrant labour-taxation cause-nexus. One good example is Keletso E. Atkins, *The Moon Is Dead! Give Us Our money!: The Cultural Origins of an African Work Ethic, Natal, South Africa, 1853–1900.* In this erudite book, she has rejected the overworked stereotype that Africans entered labour service for two reasons: to pay taxes and to obtain an increase in livestock, which translated into marrying more wives. In the case of Kenya, Sharon Stichter in *Migrant Labour in Kenya*, and Van Zwanenberg, in *Colonial Capitalism in Kenya*, have also cautioned about overstating the role of taxation in compelling the acceptance of migrant wage labour.[10]

Giovanni Arrighi (1970) has distinguished the 'discretionary' and 'necessary' factors for a migrant labour system. The argument he raises is that migration was a historical aspect of social change. Migrant labourers made deliberate economic choices on whether to pay taxes by exploiting available resources or to migrate. These migrants were adaptive and exploited available opportunities to better their economic well being and acquire certain material possessions that came in with the new colonial dispensation. Kanogo has shown that the squatters who migrated to the Rift Valley were not 'a passive or malleable appendage to the colonial system' (Kanogo 1985:1), but people who resisted coercion and subordination by establishing a socio-economic sub-system that operated within, and to some extent in competition with the settler economy (Ibid). In discussing the migratory patterns of peasants, Teodor Shanin has made an important observation that 'any analysis of labour migration must consider the processes of disintegration and change in rural economies and societies' (Shanin 1978:28).

The origin and manifestation of a tax regime

Direct tax collection in Kenya began in 1901 when Lord Landsdowne, the colonial secretary sanctioned the levying of a tax not exceeding two rupees upon every African dwelling (Tignor 1976). This was the first measure under the Hut Tax Regulations of 1901 to impose a flat rate of tax on Africans in Kenya. These regulations were then repealed by the Hut Tax Ordinance of 1903. By this ordinance, the Protectorate Commissioner was empowered to impose a tax on all huts and to vary it from time to time, provided that the rate imposed would not exceed three rupees per annum (Mungeam 1978).

Until 1910, the tax levied could be paid in kind, labour or cash. The latter was possible since the rupee had in 1901 been introduced as a medium of exchange. In 1910, through the Poll Tax Act, another direct tax was introduced to cover every male aged sixteen years and above. This tax was basically meant to place young men within the tax bracket. The hut tax, unlike the poll tax, was a form of property tax, being levied according to the number of huts

owned by the taxpayer. Incidentally, hut tax was akin to a wife tax since women were actually the ones who resided in individual huts in polygamous households. It was assumed that the number of huts a family owned were an indication of its wealth.

Migrant wage labour in Kenya to a large extent was a colonial creation. But the poor response by Africans to wage labour was partly because some of the communities had self-sufficient economies. Others though not self-sufficient due to factors like drought, famine and a harsh climate were not ready to work under arduous and strenuous conditions. Others were victims of deliberate colonial induced poverty that forced people to migrate in search of a means of survival. Thus, during the colonial period, Africans in Kenya were not docile victims who simply responded to the trumpet call to join migrant wage labour just to pay a tax. In fact the only reason most of them were discouraged from continuous employment was due to poor and unattractive working conditions such as low wages or even non-payment, mistreatment, poor accommodation, lack of food and medical facilities. As one European farmer bluntly stated, '... from the farmer's point of view, the ideal reserve is a recruiting ground for labour, a place from which the able-bodied go out to work, returning occasionally to rest and beget the next generation of labourers' (Harlow and Chilver 1965:246).

The problem of who was to work for the white settlers, however, persisted, as the dispossessed Africans were not inclined to leave their homes in search of wage labour. Where land forfeitures did not sufficiently push people into the labour market, taxation frequently did. Taxation that had its origin in the need to generate revenue to pay for the cost of administration, was exploited to compel reluctant Africans to seek wage labour. Those who ventured out did so because of the need to obtain the hut and poll tax, to appease the local chief or to purchase an item like a blanket or livestock (Kitching 1980). In this case, the Kikuyu people had a lot of its quality arable land alienated. But in spite of this loss, they were at first extremely reluctant to offer their labour, notwithstanding the fact that their region was among those that witnessed the first wave of European settlers. This reluctance was due to the fact that the men had no tradition of agricultural work for pay and in any case the warriors felt that it was below their dignity (Clough 1990). In addition, the Kikuyu as among other agricultural people, had their own pursuits to be followed of clearing, planting, weeding and harvesting. This went hand in hand with a clear division of labour. While the men cleared and burned virgin territory and looked after livestock, the women dug, planted, weeded, harvested and attended to the everyday household chores (Muriuki 1974; Tignor 1976). Incidentally, much of the colonial legislation that was drafted

was done under the erroneous assumption that there was idle male labour in the reserves to be exploited.

Conversely, the Kikuyu like other Kenyan people, the Kamba, the Luo, and the Luhyia, were among the first people to be coerced into migrant wage labour. They had many reasons for joining a trade they detested, foremost being loss of land, taxation, oppression by chiefs and the need for a cash income (Kanogo 1989). More importantly there was the emergence of the *ahoi* (tenant families attached as clients to a wealthy *Mbari*) class of individuals who from 1905 relied on labour to obtain taxes, dowry and even food. It is to this group of individuals that the colonial settler economy turned for its labour needs (Leys 1975).

Lord Delamere the doyen of the settlers had stated that 'land is no use without labour' (Ochieng 1985:106), thus setting in motion determined efforts by the colonial administration to make the African people provide the labour required. And so with a 'firm hand' the colonial administration attempted to meet the demands of the settlers for cheap labour, a demand that was made even more acute by the fact that the settlers had limited capital and rudimentary agricultural technology. As a result the settlers aimed at reaping a comparative advantage through the use of cheap labour. Here they obtained the support of the colonial government that was determined to ensure the success of the European settler farming.

But with most African people shunning wage labour, the colonial state continued to come under settler pressure to provide labour by all means. A first piece of legislation had been enacted called the Village Headman Ordinance of 1902, which gave powers to headmen to recruit labour for farms and estates. Nothing much came out of this. In 1906 the government passed the Masters and Servants Ordinance which introduced a thirty-day ticket system (Ochieng 1985). This was meant to protect employers from workers who broke the agreement to work for the number of days required. According to this system, at the end each day the ticket was marked to indicate whether the labourer had performed his daily task or not. Payment was only made at the completion of thirty working days, and was based on the record on the work ticket. In addition the Ordinance laid out a number of other working conditions.

Firstly, it permitted for the signing of contracts for up to three years and provided for a three-month's imprisonment for those in breach of the contract. Secondly, for any other serious and minor offences an employee could be fined up to one month's wage or sent to prison for one month. These included not starting the work contracted, absence without permission, intoxication or even the use of what was considered to be rude language. Thirdly, to protect employees, employers were subject to fines of up to one thousand rupees or

one month's imprisonment for withholding wages, detaining employees' stock and failing to supply food.[11]

The system was very unpopular with African labourers, since it was prone to misuse and abuse by the employers. For example, some employers deliberately failed to mark the ticket even when the labourer had performed his task. Sometimes the employer claimed that the work had not been satisfactorily carried out, and refused to mark the ticket. Furthermore, some employers tended to dismiss the labourers before the completion of the thirty days. Thus, such labourers ended up losing the wages for the days they had already worked.[12] Active state involvement in the procurement of labour was ended in 1908 leaving the chiefs and headmen to shoulder the responsibility of recruiting labour for professional recruiters that had emerged.

Naturally, unsatisfactory working conditions neither helped to keep employees for a long period time nor encouraged new recruits. Word about poor working conditions spread and this dissuaded other people from joining the labour force. In 1907 the colonial administration urged the chiefs through the newly created Native Affairs Department to do its best to supply labour for the settlers, planters and others.[13] But in 1908 this policy was discontinued by an order of the Colonial Secretary and replaced with that of 'encouragement'. According to the policy of 'encouragement', local administrators were only to advise professional labour recruiters on where to obtain labour. Chiefs and Headmen were not to take part in direct labour recruitment. However, this policy was not always adhered to because the local chiefs and headmen did not see any difference between the two policies (Stitchter 1978). This means that whenever the local chiefs and headmen received labour recruiters in their stations they thought it was their duty to ensure that they obtained labour for them.[14] In any case, a chief's efficiency and effectiveness was often judged from the number of labourers recruited and the taxes collected. Some chiefs therefore, became overzealous and predatory in their work. Such chiefs were ready to use all means at their disposal including force to recruit labour.[15]

By 1910 these attempts by the colonial administration to use recruiters, the chiefs and taxation legislation had not ensured a steady supply of labourers. This led to the repeal of the Masters and Servants Ordinance No. 4 of 1910. In this amended legislation employers were required to house their labour, provide food, blankets and medicines (Tignor 1976). Professional labour recruiters were also encouraged. These were people whom by themselves or through various agents or messengers recruited labourers for other employers.[16] These professional labour agents worked on commission for any employer and had to obtain a licence valid for twelve months from the District Commissioner.[17]

This 1910 legislation too did not satisfy settler requirements for a stable labour force. African labour was needed in road construction, in the military, within the administration itself and for the emergent settler farmers. It was during such high demand for labour that calls for increased taxation were made. The result was the setting up of the 1912-13 Native Labour Commission by the Governor Sir James Hayes Sadler to find a solution for the protracted labour problem. The Commission was mandated to inquire into the issue of the labour shortage, the introduction of the *Kipande* pass system and to make recommendations.[18] Mr. J.W. Barth who was a Judge of the High Court chaired the Commission. Other members of the Commission included C.C. Bowring, J. W. Arthur, B. G. Allen, G Brandsma, A. F. Church, Lord Delamere, F.G. Hamilton, G. Williams and M.H. Wessels. It was essentially a reaction to settler desperation for cheap labour and the government's determination to sort out the problem. The evidence obtained has been described as a 'mine of information' on prevailing labour practices and European views of African labour (Tignor 1976:108-109). Evidence was collected from settlers, government officials, missionaries, Indians and in the words of the historian George Bennett (1963:34) 'even natives'. It was indeed the first time that the African's voice was heard – but not listened to. The evidence and the report itself is a major historical document. In all there were 284 witnesses, of whom 205 were Europeans, 64 were Africans and 15 Indians. Settler after settler who came before the Commission demanded in the most precise terms that the 'natives' should be forced out of the 'reserves'. In addition they demanded that taxation and land alienation be applied to force them out to work for wages, and hence provide cheap labour. There was also a recommendation that a tax remission be awarded to those who proved that they had worked for wages. On the other hand the African witnesses enumerated many reasons why they sought wage labour and the problems they encountered while at work.

For example, Gatoro wa Mureithi from Dagoretti, told the Commission that, 'he first went out to work to earn money for a wife and to pay the tax for himself and his mother... but was paid nothing as his employer had gone away and had never returned' (Bennett 1963:233). The employers and particularly the settlers did not take most of these complaints into consideration. For them the only way forward to solve the labour problem was through increased taxation, reduced land, the use of corporal punishment and the introduction of a pass system akin to the one that was in use in South Africa. One of them, G. F. Perry, argued that 'in his opinion the tax should be much heavier, in order to make more of them come out and work, the poll tax should be increased to Rs. 15 or Rs. 20' (Ibid:141).

However, A.C. Hollis the Secretary for Native Affairs, argued that increased taxation would not increase the supply of labour and that if the Africans were heavily taxed, 'there would arise the possibility of a revolution' (Ibid). According to Hollis, all that the settlers demanded was that the colonial administration 'exploit the native for Europeans' which could have not have been easy considering the fact that it was not difficult for the African people to evade some of the colonial demands like taxation and wage labour.[19] John Ainsworth, the Provincial Commissioner of Nyanza, contended that so long as the African people were subjected to any form of uncongenial work outside their districts there was always the danger of desertion. Labour shortages he explained were the result of a variety of factors. These included, lack of proper food, poor and filthy accommodation, low wages, lack of medical facilities and ill treatment by the overseers. These discouraged many from seeking wage labour or working for a longer period of time. Dr. Norman Leys, a medical doctor and a prominent critic of the colonial administration, argued that 'the Kikuyu tribe believes that Government is here to enrich its servants by the tax, and its friends by labour on their farms'.[20]

This brings out the ambivalent relationship between the state, the African people and the settlers over the use of taxation. From the evidence given to the Commission the African people went out in search of labour for a variety of reasons. Among others was the fact that force was used when their livestock were forcefully confiscated unless they left for wage labour because it 'taught the young men that it was a good thing to work'.[21] Many others went out in search of employment for the independence and self-sufficiency it gave them from the authority of the elders. From the report most of the African witnesses stated that they went out to work to obtain money to pay for their taxes and generally to increase their wealth in terms of livestock. But the awful conditions of work due to low wages, poor accommodation and medical facilities discouraged many from working longer. But in a society that was slowly becoming monetarised the African people who gave evidence to the Labour Commission felt that the best way to obtain money to pay taxes and meet other responsibilities was through being employed whether by the government or by the white settlers.

The final report of the Commission made a number of recommendations, which had a bearing on the future taxation policies of the Protectorate. First, that the chiefs were to be assisted by retainers and headmen to supply labour. On the other hand, the report rejected any form of direct government participation in recruiting labourers as this would have amounted to compulsion.[22] This, however, failed to take into cognisance the fact that the chiefs were indeed agents and employees of the colonial administration and could lose their employment if they failed to supply labourers. Second, the

report recommended that attempts be made to improve the appalling conditions under which African labour worked. These involved the many hazards in the work place such as brutality, poor and monotonous food, filthy accommodation, sickness, death, hardships on journeys and transport and the dismal wages. Third, it recommended the introduction of a system of identification to deal with labour deserters. This was to become the *Kipande* (pass). To Ainsworth the *Kipande* was '... the pass, which could be carried in small tin case fastened to a cord to be worn round the neck', and it 'should be issued free of charge'.[23] Fourth, the commission called for the abolition of squatter farming, a phenomenon that had already become entrenched (Kanogo 1987). Fifth, the commissioners outlawed professional recruiters and instead called for the establishment of government labour camps in which District Officers would direct those seeking work.[24]

Equally important, there was a call for the establishment of a system of labour inspection to deal with the rampant cases of labour abuse by employers. Abuse took various forms such as refusal to pay wages, physical assault, poor diet, wretched living conditions and lack of medical facilities. In addition, the report recommended the expansion of technical and agricultural education for the benefit of the African people.[25] And finally, in what appeared to have been a setback to the settler demands, the final 'minority report' of the Kenya Labour Commission of 1912-13 held that '... taxation is unjustifiable as a means of increasing the labour supply'.[26] On that anti-climatic note, the settlers appeared to have lost the battle to press for the use of taxation to compel African labour.

With the outbreak of the First World War in 1914, all the resources, human and monetary, were channelled to the war effort. The settlers provided tangible support to the battle against the Germans as many volunteered to join combat. After the war this act of 'patriotism' strengthened settler bargaining power. The colonial administration had all along avoided bowing to settler demands for cheap African labour. Demand for labour had reached high proportions due to what Zeleza has described as 'demographic haemorrhage of able-bodied males' (1989:165), who perished as a consequence of the First World War. As a result and certainly in an act of desperation the colonial government in 1919 introduced the Northey circulars, which attempted to regularise the use of forced labour.

Forced labour, the *Kipande*, and the 'Northey Circulars'

As early as 1900 the use of forced labour had been a common feature of the nascent East Africa Protectorate. This was at first disguised as tribute labour (Zeleza 1989:164). Chiefs, Headmen, Liwalis and District Commissioners were pressurised to provide labour for the construction of roads, government

buildings, construction of dams, bridges and for the European settlers. Along the coast and particularly in Mombasa and Malindi forced labour was used in the construction of roads. They were paid in cash which they later used in the payment of the hut tax.[27]

Forced labour was also used as a form of penance for those who could not afford to pay their Hut Tax. This was a common feature along the coast where the policy was that 'the total amount of work done was equal to the amount of the tax due'.[28] In 1906 a settler farmer by the name of B. L. Besson of Mombasa wrote to the sub-commissioner complaining that his labourers had run away due to high taxes charged and that his 'work was completely spoiled'.[29]

In 1908, the use of forced labour had been legalised 'on the basis that the state was the agent of the civilising mission' (Zeleza 1989:164). This was, however, limited to 'essential public works' in the name of 'communal labour' organised around a particular village or location or village. The 1912 Native Authority Ordinance demanded that women and children be required to provide labour for government activities. This act authorised Headmen to issue orders to the Africans 'requiring the able-bodied men to work in the making and maintaining of any watercourse or other work constructed or to be constructed or maintained for the benefit of the community to which such able-bodied men belonged'. In addition, 'the Ordinance gave the headmen legal powers to regulate the movement of natives from the jurisdiction of one headman to another'(Oliver 1929:233). Not much was achieved because desertions 'were effective during the early decades of colonial rule precisely because the peasant sector was able to absorb the deserters' (Zeleza 1989:166).

Systematic exploitation of African labour was made easier by the Registration Ordinance, which was mooted in 1915 and implemented in 1920 due to settler pressure. The act had laid down that every African male above the age of 16 years should be registered and had to carry a certificate of identification. It was to be produced on demand by a Police Officer or any authorised person. One notable feature was that it bore the fingerprints of the bearer. When the Labour Commission of 1912-13 had heard various views, one of the strong recommendations that came out of the European witnesses was the demand for a form of identification to net labour deserters, tax defaulters and to control the movement of the African people. Considering the fact that most of the settlers were of South African origin, the concept of a pass system underpinned the strong influence of the South African settlers in the introduction of the *Kipande*. For instance back in 1908 Governor James Sadler stated that in South Africa, under the pass system, '... you get a disciplined native, you know where every native is, what his wages are and his employ-

ment' (quoted in Wolff 1974:105). The *Kipande* was to become a tool of domination and control. The *Kipande* meant different things to Africans, settlers and the state. For the Africans it was a reminder of the fact that their annual taxes had not been paid and that there was a possibility of being forcefully recruited to offer their labour in the settlers' farms or other colonial enterprises. Equally important, the *Kipande* had to be worn around the neck which to most people was a badge of slavery for it restricted the movement of African labour from one employer to another. In sum, the *Kipande* system, while helping to stabilise labour and wages for the settler economy, did so to the detriment of the African labourer (Somjee 1980). The *Kipande* registration system was the most concrete manifestation of a coercive labour control system. In the pass, the employer recorded the registration number, resident district or town, time worked, the nature of work, name of previous employer, the rate of pay, if the tax had been paid and general comments made on the suitability of the individual as an employee (Ibid:6).

By 1923 labour shortages had been minimised as Africans responded to market pressures. One of the most important changes that occurred was the fact that a wage-earning class had taken root (Ochieng 1985). It was a class that depended entirely on wage earning for everyday sustenance. This was brought about by the land, labour and taxation policies of the colonial state. It was also motivated by a growing taste of an African consumer class who had begun buying goods from Indian shops and emergent African entrepreneurs who had established businesses in most rural centres (Marais and Somerset 1973). The declining role of the Kenyan peasant and the emergence of a working class that no longer relied on land for survival made this possible.[30]

Conclusion

The emergence of a migrant wage labour force and a working class in Kenya was primarily a product of African resourcefulness, European white settlement and the colonial state. Unable to provide for their own labour and lacking in capital, the settlers sought cheap African labour. They, however, found a reluctant people who still lived by subsistence farming, herding livestock and practising barter trade and who had no desire to abandon their traditional way of life for a thankless existence in settler farms. But from 1903 this gradually changed with the arrival of the first white settlers and the introduction of a cash income. One of the first methods applied by the government to counter the reluctance of the African people to supply labour was the alienation of African land for European settlement and the enactment of harsh labour laws.

These measures were, however, not adequate to guarantee enough labour for the settler farms and public works. To counter these the government wielded the taxation weapon as a tool to compel people to leave their reserves in search of labour. In this, the settlers played a central role in pressurising government. The conflicting testimonies given by the colonial administrators, the settlers and the African people to the Labour Commission of 1912-13 show that taxation did not fully succeed in driving the African people into migrant wage labour. A number of young people went out voluntarily to get money that they used to pay taxes but also to acquire certain material possessions like livestock, blankets, clothes and other paraphernalia.

Notes

1 The emergence of class stratification in Kenya has been captured in, Gavin Kitching, *Class and Economic Change in Kenya: The Making of an African Petite Bourgeoisie*, 1905-1970 (Nairobi 1980).

2 As to whether prostitution can be considered a working class activity, see Luise White, 'Domestic Labor in a Colonial City: Prostitution in Nairobi, 1900-1952', Sharon Stichter and Jane Parpart (eds.) *Patriarchy and Class: African Women in the Home and the Workforce* (Boulder 1988), pp. 139-159.

3. See also E. S. Atieno-Odhiambo, 'Mugo's Prophecy', B. A. Ogot and W. R. Ochieng (eds.) *Kenya: The Making of a Nation, 1895-1995* (Maseno 2000), pp. 9-10. On working class and leisure in urban Nairobi, see his 'Kula Raha': Gendered Discourses and the Contours of Leisure in Nairobi, 1946-1963', Andrew Burton (ed.), *The Urban Experience in Eastern Africa, c. 1750-2000* (Nairobi 2002).

4. For literature on this categorisation, I have benefited from Peter Ndege, *Economic Change in Kasipul Kabondo, 1800-1962*, M.A thesis, University of Nairobi, 1987, pp. 184-185. See also, Richard Wolff, *Britain and Kenya, the Economics of Colonialism* (Nairobi, 1974), pp. 92-94.

5. KNA/PC/COAST/1/1/116, 1906, Special Report of Malindi, 1906-10.

6. Ibid.

7. Ibid.

8. Kenya had the first manufacturing industry in 1922, which produced 'Tusker' beer. By 1939 the country was producing her own cigarettes, soap, cement and canned fruit and vegetables.

9. A good account is found in Marian Lacey, *Working for Boroko: Origins of a Coercive Labour System in South Africa* (Johannesburg, 1981). See also Colin Bundy, *The Rise and Fall of the South African Peasantry*, p. 135. On migrant labour in Southern Rhodesia, see, C. van Onselen, *Chibaro: African Labour in Southern Rhodesia 1900-1933* (London 1977). van Onselen has argued that taxation alone, however, did not solve the mining labour problems, hence Chibaro or forced labour, pp. 95-101. In the case of Algeria see, David

Prochaska, *Making Algeria French: Colonialism in Bone, 1870-1920* (Cambridge 1989).

10. The best work on migrant labour in Kenya remains, Sharon Stichter, *Migrant Labour in Kenya: Capitalism and African Response, 1895-1975* (London 1982) and R.M.A. van Zwanenberg, *Colonialism and African Response, 1919-1939* (Nairobi 1975), pp. 76-103.
11. Masters and Servants Ordinance, 1906, May 8, 1906, Regulation, No.8, April 2, 1906, quoted in Tignor, *The Colonial Transformation of Kenya*, p. 102.
12. KNA/PC/NZA/3/20/21/, *Master and Servants Ordinance Circular*, No 12, 1906.
13. KNA/PC/NYA/1/2/3, Ainsworth Miscellaneous Record Book, 1908-1918. Ainsworth to the Secretary Native Affairs Department, on Hut and Poll Tax dated 4 May 1910: A Memo on taxation in E. A. Protectorate for the years 1905 to 1910 dated 5 May 1910.
14. KNA/NZA, /Nyanza Province Annual Report, 1903-1918.
15. KNA/DC/, Kisumu District Annual and Quarterly Report, 1908.
16. KNA/PC/NZA/3/20/2/1, Master and Servants Ordinance Circular No. 12 of 11 February 1910.
17. Ibid.
18. Government Printer, Native Labour Commission Evidence and Report, 1912-1913.
19. *Native Labour Commission Evidence and Report*, p. 119.
20. Ibid., p. 272. Dr. Norman Leys is the author of the book titled, Kenya (1924) which is critical of the colonial administration and its land, labour and tax policies among others.
21. Ibid., p. 217.
22. Ibid., p. 329.
23. Ibid., p. 137.
24. *Native Labour Commission Evidence and Report* , p. 328.
25. Ibid.
26. Ibid.
27. KNA/PC/COAST/1/1/116, Notes for Special Provincial Report, Rabai sub-district, 1905-1910.
28. KNA/COAST/1/1/193, German Book 1895-1905, vol. 2. Chapter 5, p. 290.
29. Ibid.
30. A fine analysis is found in Atieno-Odhiambo, 'The Rise and Decline of the Kenyan Peasant, 1888-1922'.

References

Arrighi, Giovanni, 1970, 'Labour Studies in Historical Perspective: A Study of the Proletarianization of the African Peasantry in Rhodesia', *Journal of Development Studies.* Vol. 6 No.3, April.

Atieno-Odhiambo, E. S., 1974, 'The Rise and Decline of the Kenya Peasant, 1888-1922', in *The Paradox of Collaboration and Other Essays,* Nairobi: East-African Literature Bureau, pp. 90-100.

Atieno-Odhiambo, E. S., 2000, 'Mugo's Prophecy', B. A. Ogot and W. R. Ochieng (eds.) *Kenya: The Making of a Nation, 1895-1995,* Maseno: Maseno University. pp. 9-10.

Atieno-Odhiambo, E. S., 2002, '"Kula Raha": Gendered Discourses and the Contours of Leisure in Nairobi, 1946-1963', Andrew Burton (ed.), *The Urban Experience in Eastern Africa, c. 1750-2000,* Nairobi: British Institute in Eastern Africa.

Atkins, Keletso E., 1993, *The Moon is dead! Give us our money!: The Cultural Origins of an African Work Ethic, Natal, South Africa, 1853-1900,* London: Heinemann. p. 29.

Belfield, Henry, 1913, *East African Standard,* 8 February 1913, quoted in Clayton, A., and Savage, D., *Government and Labour in Kenya, 1895-1963,* London: Frank Cass. p. 41.

Bennett, George, 1963, *Kenya: A Political History*, London: OUP p. 34.

Berman, Bruce, 1990, *Control and Crisis in Colonial Kenya: The Dialectic of Domination,* London: James Currey. pp. 55-57.

Bundy, Colin, 1979, *The Rise and Fall of the South African Peasantry,* Berkeley and London: Heinemann and University of California Press. p. 135

Clough, Marshall, 1990, *Fighting Two Sides: Kenyan Chiefs and Politicians, 1918-1940,* Boulder: University of Colorado.

Harlow, V. and Chilver, E.M., (eds.), 1965, *History of East Africa,* vol. ii, Oxford: OUP.

Kanogo, Tabitha, 1987, *Squatters and the Roots of Mau Mau*, Ohio: Ohio University Press.

Kitching, Gavin, 1980, *Class and Economic Change in Kenya: The Making of an African Petite Bourgeoisie, 1905-1970,* Princeton: Yale University Press.

Kitching, Gavin, 1987, *Land, Livestock and Leadership: The Rise of the African Petit-Bourgeois in Kenya, 1905-1918,* Nairobi: East African Literature Bureau.

Lacey, Marian, 1981, *Working for Boroko: Origins of a Coercive Labour System in South Africa,* Johannesburg: Ravan.

Leys, Colin, 1975, *Underdevelopment in Kenya: The Political Economy of Neo-Colonialism, 1964-1975,* London: Heinemann.

Manchuelle, François, 1997, *Willing Migrants: Soninke Labor Diasporas, 1848-1960,* London: James Currey.

Marris, Peter and Somerset, Anthony, 1973, *African Businessmen: A Study of Entrepreneurship and Development in Kenya*, London.

Meek, C. K., 1946, *Land, Law and Custom in the Colonies,* London, CUP.
Mungeam, G. M., 1978, Kenya: Select Documents 1884-1923, Nairobi.
Muriuki, Godfrey, 1974, *A History of the Kikuyu, 1500-1900,* Nairobi: Oxford University Press.
Ochieng, W. R., 1985, *A History of Kenya,* Nairobi: Macmillan.
Prochaska, David, 1989, *Making Algeria French: Colonialism in Bone, 1870-1920,* Cambridge: CUP.
Shivji, Issa, 1986, *Law, State and the Working Class in Tanzania,* London: James Currey.
Somjee, S. H., 1980, 'Kipande: The Symbol of Imperialism, 1914-1948: A Study in Material Culture', Staff Seminar Paper, Department of Literature, University of Nairobi,
Stichter, Sharon, 1982, *Migrant Labour in Kenya: Capitalism and African Response, 1895-1975,* London: Longman.
Stitchter, Sharon, 1975, 'The Formation of a Working Class in Kenya', Richard Sandbrook and Robin Cohen (eds.) *The Development of an African Working Class: Studies in Class Formation and Action,* London: Longman, pp. 22-48.
Teodor Shanin, 1978, 'The Peasants are Coming: Migrants Who Labor, Peasants Who Travel, and Marxists Who Write', *Race and Class,* vol. 19, p. 280.
Thompson, E. P., 1968, The Making of the English Working Class, New York: Vintage.
Tignor, R., 1976, *The Colonial Transformation of Kenya: The Kamba, Kikuyu and the Maasai, 1900-1939,* Princeton: Yale University Press.
van Onselen, C., 1977, Chibaro: African Labour in Southern Rhodesia 1900-1933, London: Pluto Press.
van Zwanenberg, R.M.A., 1975,*Colonialism and African Response, 1919-1939,* Nairobi: East African Literature Bureau, pp. 76-103.
van Zwanenberg, R.M.A.,1975, *Colonial Capitalism and Labour in Kenya, 1919-1939,* Nairobi: East African Literature Bureau.
White, Luise, 1988, 'Domestic Labor in a Colonial City: Prostitution in Nairobi, 1900-1952', Sharon Stichter and Jane Parpart (eds.) *Patriarchy and Class: African Women in the Home and the Workforce,* Boulder: Univ of Colorado. pp. 139-159.
Wolff, Richard, 1974, *The Economics of Colonialism: Britain and Kenya,* New Haven: Yale University Press.
Zeleza, Tiyambe, 1982, 'Dependent Capitalism and the Making of Kenyan Working Class during the Colonial Period', PhD thesis, Dalhousie University.
Zeleza, Tiyambe, 1992, 'The Colonial Labour System in Kenya', W. R. Ochieng and R. Maxon (eds.) *An Economic History of Kenya,* Nairobi: Heinemann and East African Educational Publishers.

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Land Tenure Reform under the Economic Liberalisation Regime: Observations from the Tanzanian Experience

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Abstract

The economic liberalisation of the 1990s hastened the growth of business interests in land and created new competition over natural resources. The World Bank, a promoter of liberalisation, has encouraged African governments to formulate new land policies and enact new land laws. The paper examines the process of new rush for legislating land acts, and clarify the main actors behind this move. This author utilises the observations obtained through several years of field studies undertaken in Kilimanjaro Region, as well as documentary sources, for this case study.

Résumé

La libéralisation économique des années 90 a accéléré la croissance des intérêts commerciaux fonciers et créé une nouvelle forme de compétition autour des ressources naturelles. La Banque mondiale, promotrice de la libéralisation, a encouragé les gouvernements africains à formuler de nouvelles politiques foncières et à promulguer de nouvelles lois relatives à la terre. Cette communication étudie cette ruée vers la promulgation de nouvelles lois foncières et indique les principaux acteurs à la base de ce mouvement. L'auteur utilise les observations obtenues à l'issue de plusieurs années de travaux sur le terrain entrepris dans la région du Kilimanjaro ; il se sert également de sources documentaires pour mener cette étude de cas.

Issues in the land tenure debate

There has been much debate regarding whether communal land tenure in Africa has seriously hindered agricultural development or not. The debate

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has also involved the actual situation of those people living under communal land tenure arrangements, and their access and security regarding land. Many special issues on land tenure by the leading international journals have been published, such as *Africa*, Vol. 63, No. 3, 1992. The debate is still going on while at the same time there is a strong pressure as a result of economic liberalisation that had led to the enactment of new land laws, bringing about radical reforms in land tenure systems in favour of individualisation and privatisation of land.

Land tenure systems are quite varied in Africa, reflecting the environmental differences which almost determined what kind of crops could be grown, as well as the past history which moulded the present social systems and the laws regarding land arose. The access and security once enjoyed by the holders of land under communal tenure have been greatly influenced by the rapid population increase, the introduction of cash crops or the commercialisation of food crops, and the government policies encouraging the commercialised crop farming or settled cattle herding. It is therefore very important that the debate count these ecological and social differences, and the existing political and economic configurations in which the problems arise.

The World Bank/IMF policy of economic liberalisation has exerted considerable influence in initiating land reform processes in many of the African countries in the 1990s. The liberalisation accelerated the growth of both domestic and international business investment in land. It has created new competition over natural resources, between large-scale farmers and small-holders, between pastoralists and cultivators, between forest keepers and lumber business interests and so on. Incidents of land-grabbing had been widely reported, and some of them caused social disturbances. The World Bank has encouraged African governments to hold workshops to help clarify problems on the issue, and to move the government to formulate new land tenure policies and possibly to enact new land laws. Similar workshops were planned in a number of countries, including Tanzania's 'Arusha Workshop on Land Policy', which was held on August 27–29, 1991.[1]

In the 1990s quite a number of African countries started to formulate national land policies and pass new land laws. Zambia enacted the Lands Act in 1995, Uganda in 1998, Tanzania's Land Act and the Village Land Act in 1999, and Malawi's National Land Policy in January 2002. This paper tries to examine some of the reasons for the emergence of new spates of legislation on land, and tries to show who were the main actors behind this move. The paper concentrates on the Tanzanian case, but the discussion is, I believe, applicable to many countries in Africa.

The World Bank's stance on land reforms

The World Bank's stance in encouraging African governments to embark on the formulation of new land policy and new land legislation is rather cautious. Many of its staff have advocated the introduction of private land tenure and land titling as a guarantee of tenure security for farmers, often qualifying it as a long term objective (See Keck, Sharma and Feder 1994). Some stressed that it might enable the farmers to use land as collateral for acquiring credit from financial institutions, and would encourage more investment in the land to achieve higher crop yields. The Bank may never have stated such objectives in its official statements, however, its actions of promoting free enterprise, especially of free entry of foreign capital, gave a strong impetus for African governments to deal with the land tenure issues.

In Tanzania, the encouragement of foreign investment led to the enactment of the National Investment (Promotion and Protection) Act, 1990, and the establishment of the Investment Promotion Centre (IPC) under the President. This government action spurred investors to lease land on a large scale. Already in 1982, Tanzanian government had formulated its National Agricultural Policy and radically reformed the existing policy, as it advocated various modes of production in the agriculture sector. It clearly recognized the positive role of large-scale private farming. This new policy spelled out that the land allocation for agricultural development 'should be on a longer term basis (with a minimum of 33 years) in order to provide for the security of private investors' (Kiondo 1999: 48). This new land policy can be seen as a part of a package that constituted the structural adjustment programmes that the World Bank has pressed the Tanzanian government to adopt.

On the other hand, the World Bank started to soften its stance so that pro-poor measures could be adopted. The change can be seen in the *World Development Report* 1990, which was a special issue devoted to the problem of 'poverty'. Dealing with the land tenure issues, it proposed the balancing of individual and common property. It says that the 'shift toward individual land rights tends to undermine the ability of traditional systems to ensure that all members of the extended family have access to land. This feature of their land systems has helped some countries in Africa to avoid the extremes of poverty and landlessness. In such cases, encouraging individual land registration and titling may be undesirable. Where traditional systems have failed to provide clear land rights, land titles and registration are useful, small farmers have sometimes been forced to sell their individual holdings. Common-property resources should receive greater attention. They need to be better protected and better managed' (World Bank 1990: 65).

It is clear that in advocating the adoption of completely free economies as the condition of financial assistance, the World Bank had come to face the dilemma that the policies might not help alleviate the plight of the poor. Thus it started to express concern that in the case of land tenure reform there also should be provision for an adequate social safety-net for the most vulnerable sections.

Government bureaucrats and the process of land tenure reform

At the beginning of the 1990s, government bureaucrats in many African countries faced various difficult questions concerning the workings of land tenure system. They had a backlog of anomalies accumulated during the prior two decades.[2] In Tanzania, the former policy of *Ujamaa* villages, and the later abandonment of its villagisation component, left the question of pre-villagisation customary landholding in a very ambiguous position. There were some attempts to conduct village land surveys, and in 1987 the Tanzanian government decided on the programme of surveying village boundaries, ascertaining land use in the villages, and registering the village land rights within a period of 5 years. However, even in June 1991, only 1,836 villages out of 8,471 villages on the Tanzania mainland (i.e. 22 percent) had completed the boundary survey, and only 183 villages had completed registration (i.e. 2 percent).[3]

Meanwhile, some villagers were allowed to return to their old plots, only to find that the land had been given to later immigrants (Chachage 1999). Some farmers whose land rights had been affected by the Village and Ujamaa Village Act of 1975 brought the case to court. In this confused situation, the Tanzanian government appointed the Presidential Commission of Inquiry into the Land Matters, headed by Professor I. Shivji, in 1991. The Commission's Report appeared in November 1992.

The Presidential Commission reported that there were too many government bodies dealing with the land matters, and that there was too much interference from different bodies. For instance there were two lines of land dispute settlement, one with the land tribunal and another with the ordinary local court. Double allocation of the same piece of land was rampant. The Commission advocated a separation of the body dealing with land cases from the executive arms, which would be answerable to the National Assembly. It also recommended that all land be divided into National Lands and Village Lands.

However, the Ministry of Lands, Housing and Urban Development at this time created a separate Committee to investigate the inconsistencies in the existing land law. It was instrumental in passing the Regulation of Land Tenure (Established Villages) Act, 1992. This Act nullified customary land

rights which were affected during villagisation. However, this law was declared unconstitutional by the High Court in 1994.

It is clear that the government bureaucracy was genuinely interested in correcting anomalies in land law brought about by the former villagisation policy. However, bureaucrats wanted to keep control of land matters under the executive arm. They could not accept the main part of the recommendation of the Presidential Commission, which argued against the intervention of the government in the alienation of land for development purposes or for investors who were approved by the Investment Promotion Centre. In this way, the government bureaucracy supported the position of the World Bank, and became the prime mover of the formulation of the National Land Policy published in 1995 (Chachage 1999).

It was also in the bureaucracy's interest that peri-urban village land could be alienated. Land markets in urban, peri-urban, and some rural areas had developed in recent years, mainly for wealthy bureaucrats and business people wishing to buy plots for residential purposes or farms (Kiondo 1999). The implementation of the land reform would not only serve the general purpose of economic development, but would also enable some officials to benefit by virtue of their positions in the state power from obtaining land for personal gain.

The National Land Policy of 1995 became the basis for the enactment of the Land Act 1999 and the Village Land Act 1999. The creation of the category of 'Village Land' was intended as a deterrent to the kind of illegal alienation of land belonging to the farmers and villagers which happened in the late 1980s. But the whole land tenure reform process has been engineered to meet the interests of the bureaucracy in alliance with politicians and indigenous business interests. Foreign business penetration was somewhat restricted by the lack of provision for freehold tenure in the Act, and by foreigners being required to obtain the approval of the village council and the Commissioner of Land when they want to acquire the leasehold of village land. However, the villagers may have weak bargaining powers, and the issue of secure land rights of the poor was not properly addressed.

Land in a North Pare Mountain village and emigration to new districts

This researcher has made many visits and observed social changes in a village in the North Pare mountains in Kilimanjaro Region of Tanzania since 1991. The purpose of the research was to understand the nature of the village community, its land use, and its farmers' organisations, especially in relation

to the traditional furrow irrigation that the inhabitants had long practised, and to investigate the actual state of communal land tenure.

Although in Tanzania all the land is supposed to belong to the state, most of it is held in a communal type of tenure, often called 'the deemed right of occupancy'. Traditional tenure however has undergone transformation as a result of the state policy of Ujamaa since the 1960s. The actual outcome of this policy is that every Tanzanian village has come to have the same administrative structure. The village chairmanship is an elected position, supported by a village executive officer who is a local civil servant, and controlled by the elected village council of 15 persons, who are responsible to the Village Assembly, whose membership includes all adults, male and female. Communal land tenure continued to exist, but was modified by the new system of making the village council allocate land, and making it responsible for the first stage of arbitration when a land dispute arises. Similar local administration reforms with a bearing on communal land tenure systems can be seen in many other African countries (e.g. Zambia), and are not unique to Tanzania.

It has been observed that the individualisation of land tenure has proceeded as a result of the introduction of cash crops, and of the increasing population pressure which made the traditional bush-fallow type of agriculture difficult to practice. A lack of fallow land led to the common practice of renting land, and to the sale of land in densely populated rural areas. Despite the continuous trend towards the individualisation of land in the above sense, national statutory land law in African countries had not adapted to the reality until the 1990s.

In the mountain village in the North Pare (Mwanga District) where I have been observing the land use, renting the land was practised by 11 households out of 20 households I examined. This practice enabled small farmers to cultivate irrigated land during the dry season even if they had no occupancy rights to such land. The rent is very low, usually a pot of local brew called 'dengelua', for one year. The monetary value in this case is far less than the value of economic gains by the borrower, and no doubt it is more by way of a present in recognition that the land belongs to someone else. This practice led me to conclude that in this area communal land tenure is a reality.

However, I must hasten to add that this state of affairs can exist only when alternative lands are available for the young people who cannot expect to acquire the new lands of their own in the home village. There is no more land for further allocation except in the dry low-lying ground which belongs to other villages. In the village on the mountain where rainfall is abundant in rainy seasons, the landholding per household is already very small and cannot

support a family if further subdivided. Almost every youngster, therefore, emigrates to other areas. Some of them go to urban areas, but not a insignificant number emigrate to other rural areas in Tanzania to take up farming there. It is only because of this emigration that makes it possible to maintain the communal land tenure system I observed in the mountain village.

In this particular village, many former inhabitants and youngsters have migrated to the Morogoro Region. I was told by the villagers that a lot of people went to Man'gula in the Kilombero valley area, where land is abundant, and the government has encouraged settlers to come as the Tanzania-Zambia Railway (TAZARA) passed through this area, and development along the line was needed. However, land tenure security for the new settlers is always precarious, as the old inhabitants in the area claim that the land belongs to them.[4] This kind of movement of the rural population seeking new land in Tanzania (rural-rural migration) is still widely practised. The new settlers are usually strong advocates of the new land policy, which might give them better security of tenure. They have been creating multi-ethnic villages, and have promoted the individualisation of land rights. They are quite willing to register their land holding under the village certificate of occupancy.

Gender issues

The relationship of women to land has been an important issue relating to land tenure reform. Under customary land tenure, women were invariably in an insecure position in comparison to men as far as land holding and land use rights were concerned. In communal systems when land is either clan land or lineage land, women are in a weak position should their husband die or if they are divorced. If this happens, the woman is usually excluded from inheriting the land she used to cultivate. It is only when she had purchased a parcel of land, or when there is no other person in the family to inherit the land, that the clan or lineage will allow her to hold onto the land. It is in this regard that the former president of Tanzania, Julius Nyerere, said that Tanzania should maintain the communal spirit of the people, but that the position of women should be changed to ensure equal rights with men (Nyerere 1970).

This new thinking has been gradually taking hold in court judgments regarding land tenure disputes, but the process has been very slow, and has depended very much on the personal views of the judges and the local villagers. In the Pare mountain area where I have been observing changes, there was one case in which a woman's appeal was accepted. In this case, a divorced woman who was denied the use of the cultivated land she used for 20 years appealed to a primary court. The husband said that this land was his borrowed land, and would like to return it to the real owner (this was later found to be a lie). She lost the case in the primary court, but later appealed to

the land tribunal. The tribunal reversed the decision, arguing that the land was borrowed but a house and farms were created on it, and the woman had worked there for 20 years. The value of the land was increased because her labour was put into it. Therefore, she was judged to have the right to occupy the land, and to keep using it.[5] In this case, the argument regarding the contribution of labour could lead to the reversal of the earlier judgment, but in the majority of cases the women's appeals were not likely to be heard. This kind of situation has made women strong advocates of a new land tenure law.

The new Land Act did strengthen the position of women, on paper at least. For instance, the co-ownership clause was formulated as 'family land protected by co-ownership in principle favouring both spouses'. Consent by married women in case of the disposition of land was also spelt out. Other clauses which strengthened the women's position were: 'a fair gender balance as to appointment to the National Land Advisory Council', 'prohibition of discrimination against women as regards determination of application for customary rights of occupancy', 'restriction on village councils to allow assignments that could undermine a right of a woman to occupy land under customary right of occupancy, 'to ensure that special needs of women for land are adequately met when village councils approve a disposition of a derivative right of a customary right of occupancy', 'offer first priority to wife when a husband surrender rights of occupancy', 'minimum presentation of women in the Village Adjudication Committee' and 'women's participation in dispute settlement machinery' (Havnevik and Hårsmar 1999: 101-2).

These are quite detailed protections for women's land rights, but of course the actual implementation depends on the compliance of the local population who might be support traditional male-domination. In this regard, the case of the Uganda Land Act could be mentioned. Despite the strong presentation of women's organisations to insert a co-ownership clause in the Land Act of 1998, it was not included in the final Act (Mugambwa 2002). This shows that while women might have been one of the driving forces behind new land laws, they have often been frustrated in the political arena.

Compromises among different forces at work

As was discussed above, in the 1990s, quite a number of African countries started to formulate national land policies and have actually passed new land laws. It is clear that the drastic changes brought about by economic liberalisation have been responsible for this new rush towards land tenure reform. However, on closer observation, several different factors seem responsible for the final outcome. These factors have not necessarily been sprung from the same roots, and to attribute this phenomenon to a single cause, such as

pressure from the World Bank and the IMF, may lead to a misunderstanding of the cross-currents regarding the present political economy of land issues. New land laws have been the product of different lines of motivation, especially concerning the reform of the communal land tenure.

(a) One influence has been the desire to make the land tenure system uniform throughout a country, or at least to lay down different categories of land tenure that can be uniformly administered by the state. Ruling elites have felt this necessity strongly in a situation where there has been considerable confusion over land rights in law. Where court cases arising out of previous land policy have proliferated, as in Tanzania as a result of the Ujamaa Villages Act of 1975, or the Land Reform Decree, 1975 in Uganda, these ruling elite have become strong promoters of new reforms. Double allocations of the same piece of land, which often occurred, were embarrassing to governments, and compelled them to clarify the principles of the law.

(b) A second major factor has been the wish to attract foreign investment for agricultural or agro-industrial development. This is of course the direct result of the free market regime of the present international economic formation. The main actors in this move have been the World Bank and the IMF and its supporters in the so-called donor countries. Indigenous business groups have likewise played a role in the same direction. The latter see opportunities for embarking on agricultural ventures, at times in partnership with foreign firms or foreign donors. Agricultural land is one of the few resources which can be utilised with a relatively small sum of money for large and immediate gains. Under the guise of the promotion of a liberalised economy, those persons who had the authority to administer the land tenure of a specific area, tended to connive at the practice of land-grabbing by businessmen, often in collusion with politicians and bureaucrats, even when such actions were in clear breach of customary practice.

(c) Another factor has been the desire of small farmers to emigrate and open up new lands for cultivation. They are often youngsters from areas of high population density, who find a new allocation within the home village impossible. Sometimes they migrated to areas where the government encouraged the establishment of new settlements. However, 'empty lands' are often subject to claims by their first occupants. Communal land tenure cannot give newcomers strong rights where ethnic consciousness on land has politicised in recent years. These migrants expected a new land law to give them security of land tenure rapidly in areas to which they migrated. Whether a new land law would actually give them such rights was another matter, which depended very much on the configuration of the power structure in the area.

(d) Finally, there has also been the effort to empower certain strata of the population who have been denied the right to hold land under customary practices, or who have been insecure. The most obvious case is that of women who were denied land security under many traditional land tenure systems. Thus new land laws were advocated by women's groups, and especially by women members of parliament, who proposed that there should be specific written clauses giving women stronger land rights. Their efforts enjoyed some success, but have often been frustrated on the ground.

These are some of the various cross-current which have been responsible for the final outcome of government land policies. Land reform is the product of compromise at a time of ongoing economic liberalisation in African countries.

Concluding remarks

The reasons behind the moves for land tenure reform leading to change in the law are many. However, there are also the forces which are opposed to change. The most obvious reason for such opposition is that communal land tenure may still provide an important safety net to poor people in the less populated areas of rural Africa. Any land reform which may be carried out must bear this important fact in mind, and must take care to preserve access to land by the rural poor as a safety net.

It is important to have a flexible approach as indigenous land tenure and traditional leaders in some communities are still legitimate. In some communities they receive much support from vulnerable groups such as women. In others traditional forms and authority may lack accountability to the community. Land sales by traditional authorities or elected councillors without consultation with villagers have been as widely documented as the lack of legitimacy of some leaders. For many women, even the traditional institutions may provide greater access, and they may be more understanding of their day-to-day problems concerning land rights than the new institutions which were supposed to be more protective. Very often, the new arrangements are slow in starting, often due to the lack of government funds. It is important that care is taken to protect the poorer sections of the community from losing the land rights they now possess.

Notes

1. Tanzania, Ministry of Land, Housing and Urban Development, *Proceedings of the Arusha Workshop on Land Policy*, August 27-29, 1991.
2. In Uganda, there was a question regarding the revival of customary land tenure, abolished by President Idi Amin through the Land Reform Decree, 1975, which vested all the land in Uganda in the State. This caused many disputes. See

Oyene, J.E., *Recent Trends in the Lango Land Tenure System*, Centre for Basic Research, Working Paper No. 36, Kampala, n.d.

3. Tanzania, *Report of the Presidential Commission of Inquiry into Land Matters* (often referred as the Shivji Report), Uppsala, Scandinavian Institute of African Studies, 1994. p. 49.
4. Such cases were reported in Morogoro Region. For instance, Izumi, K., *Economic Liberalisation and Land Question in Tanzania*, Ph.D. dissertation, Roskilde University, 1998 (Unpublished).
5. Information from a cartography technician in the Mwanga District office, August 1993.

References

Havnevik, K.J. and Hårsmar, M., 1999, *The Diversified Future: An Institutional Approach to Rural Development in Tanzania*, Department of Rural Development Studies, Swedish University of Agricultural Sciences, pp. 101-102.

World Bank, 1990, *World Development Report 1990*, Washington D.C.: World Bank, p. 65.

Keck, A., Sharma, N.P. and Feder, G., 1994, *Population Growth, Shifting Cultivation, and Unsustainable Agricultural Development: A Case Study in Madagascar*, World Bank Discussion Papers 234, Washington D.C.: World Bank, pp. 39-42.

Kiondo, A.S.Z., 1999, 'Structural Adjustment and Land Reform Policy in Tanzania: A Political Interpretation of the 1992 National Agricultural Policy', in Forster, P.G. and S. Maghimbi (eds.), *Agrarian Economy, State and Society in Contemporary Tanzania*, Aldershot, Ashgate, p. 48.

Mugambwa, J.T., 2002, *Source Book of Uganda's Land Law*, Kampala: Fountain Publishers, pp. 82- 95.

Nyerere, J.K., 1970, *Ujamaa: Essays on Socialism*, Dar es Salaam: Oxford University Press.

Chachage, C.S.L., 1999, 'Land Issues and Tanzania's Political Economy', in Forster, P.G. and S. Maghimbi (eds.), *Agrarian Economy, State and Society in Contemporary Tanzania*, Aldershot: Ashgate.

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Globalisation and Technology: Problems and Prospects for the Agricultural Sector in Africa

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Abstract

This paper examines the linkage between globalisation as a phenomenon and technology as the catalyst on the state of the agricultural sector in Africa. It is observed that though agriculture is the dominant economic sector in Africa, it is currently facing a food crisis of monumental dimensions. Figures pertaining to food production growth rates and the percentage share of agriculture in total labour force are presented to highlight the poor state of this sector. Apart from the impact of globalization on the sector, the paper sought to determine the link between technological capacity and the food crisis in Africa on the one hand, and the prospects for increased technological inputs in African agriculture on the other. Fundamentally, the paper argues that Africa cannot begin to benefit from global developments in trade, technology and therefore improving the welfare of its peoples until food security is reasonably attained. It recommends the use of science-based technology generation to ensure sustainable agricultural development. African governments are called upon to balance the vicissitudes of the multilateral framework on agriculture with their immediate national objectives. Finally, the author opines that a brighter future awaits those countries that can competently manage the impact of globalization on this sector, while infusing appropriate technologies to ensure food security.

Résumé

Cette communication étudie la relation existant entre le phénomène de la mondialisation et la technologie, en tant que catalyseur du secteur agricole en Afrique. En effet, bien que l'agriculture soit un secteur économique dominant en Afrique, elle traverse cependant une crise alimentaire sans précédent. Les

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statistiques relatives aux taux de croissance de la production alimentaire ainsi qu'au pourcentage de l'agriculture au niveau de la main-d'œuvre sont mis ici en exergue, afin de mieux présenter l'état de déréliction de ce secteur. Outre l'impact de la mondialisation sur ce secteur, cette communication cherche également à déterminer le lien existant entre la capacité technologique et la crise alimentaire en Afrique, d'une part, et les perspectives d'une meilleure intégration de la technologie dans l'agriculture africaine, d'autre part. Cette présentation soutient que l'Afrique ne pourra goûter aux joies du développement commercial ou technologique, au niveau mondial, et ainsi améliorer le bien-être de ses populations, tant qu'elle n'aura pas assuré un niveau raisonnable de sécurité alimentaire. L'auteur recommande l'usage d'une technologie basée sur la science afin de garantir un développement agricole durable. Il en appelle aux gouvernements africains afin que ceux-ci procèdent à un équilibrage entre les vicissitudes du cadre multilatéral relatif à l'agriculture, et leurs objectifs nationaux immédiats. L'auteur conclut en affirmant que l'avenir appartient aux pays qui parviendront à gérer l'impact de la mondialisation dans le milieu agricole, tout en apportant des technologies adaptées, permettant d'assurer la sécurité alimentaire.

Background

Africa, the continent of expectations, still struggles to scrape together the basic existential necessities of food, shelter and clothing. It is alarming in this day and age that Africa's food crisis has assumed monumental proportions occasioned by a multiplicity of factors such as poor leadership, wars, and poor planning and implementation of development policies. Many have argued that Africa's crisis of development is significantly traceable to its incapacity technologically to cater for the welfare of African masses (Bhagaran 1990; Adubifa 1990; Aju 1994; Agbu 2002). As if this was not enough, reinforcing this handicap is the ubiquitous impact of what is now generally referred to as 'globalisation' on poor countries of the world. It is essentially the thrust of this paper to examine the linkage between globalisation as a phenomenon and technology as a catalyst, and their combined impact on the agricultural sector in Africa. Food is one element in human existence that is fundamental, and which to all intents and purposes, should be abundant, but ironically what we have in Africa is a food crisis.

Of course, this situation has led many countries in Africa to resort to food importation to bridge the shortfall in production. For instance, between 1997 and 1999, food imports as a share of total merchandise for Mauritania was 70 percent, Sierra Leone 83 percent, Gambia 38 percent, Ethiopia 10 percent, Mozambique 19 percent, Sudan 16 percent, while others have a total percentage food import of 5 percent (UNCTAD 2002).

The emphasis on agriculture is clearly justified when one considers the fact that it is the dominant economic sector in most developing countries.

This sector contributes about 76 percent of Gross Domestic Product (GDP) while employing nearly three-quarters of the total labour force (Alamgir and Arora 1991:2; Grobbelaar 1998:210). Alarmingly, the United Nations believes that there are about 200 million 'hard core hungry' people in Africa, out of a total population of about 640 million in the continent. The UN stated that Africa needed at least $4.6 billion annually to tackle increasing hunger amongst its people. It also observed that war had drained an estimated $52 billion in agricultural output in Africa between 1970 and 1997 (*The Guardian* 2002:1).

Generally, the record of African agriculture since the independence period has been that of denying food issues the attention they should have been accorded. This has been as a result of poor planning and implementation of policies, and often bad advice from external sources. Today, Africa is almost a laughing stock, and this is in a fast changing world in which food and its related aspects are taken for granted by citizens of the developed world.

Table 1: Food Production, Total and Per Capita – Annual Average Growth Rates (Percentages)

	Total Food Production			Per Capita Food Production		
Country	1997	1998	1999	1997	1998	1999
Angola	0.4	15.0	-4.6	-2.9	11.4	-7.5
Benin	12.5	-1.7	0.9	9.5	-4.2	-1.7
Burundi	-0.5	-5.8	0.1	-2.1	-7.1	-1.6
Central African Rep.	-2.9	3.4	1.7	-4.8	1.5	-0.2
Ethiopia	1.1	-7.9	6.2	-1.3	-10.1	3.7
Gambia	31.4	-1.9	43.1	27.1	-5.1	38.8
Madagascar	2.0	-0.8	3.2	-0.9	-3.7	0.2
Malawi	-4.2	23.9	11.5	-6.4	20.6	8.5
Mozambique	6.2	6.5	1.6	3.3	4.1	-0.6
Niger	-19.3	51.5	-4.1	-21.8	46.8	-7.1
Senegal	-5.9	-0.9	20.0	-8.3	-3.4	17.0
Somalia	4.2	6.0	-2.5	0.1	-10.2	-7.0
Sudan	1.4	2.0	-0.9	-0.7	0.0	-3.0
Uganda	2.7	7.7	2.4	0.0	4.8	-0.5
Zambia	-13.3	-5.3	13.4	-15.2	-7.5	10.9

Source: UNCTAD Secretariat Calculations, based on data from FAO.

Table 1 shows percentages of annual average growth rates of food production, totals and per capita in 15 African countries. The total food production growth rate fluctuated between the period 1997 and 1999. Growth rates differed widely from country to country. While Gambia was recording a recov-

ery in food production from -1.9 percent to 43.1 percent between this period, Niger succumbed to negative growth from a previously positive growth percentage of 51.5 percent to -40.1 percent food production, and from 46.8 percent per capita food production to -7.1. However, the point is that developing countries showed a low percentage growth rate of about 1.1 percent in 1997, 3.4 percent in 1998 and 4.8 percent in 1999. And for the same period, the per capita food production was 1.5 percent for 1997, 1.6 percent in 1998 and 1.8 percent in 1999. These growth rates were indeed very low and clearly indicated that there was something wrong with the way agriculture was being managed in these countries.

Indeed, in the past three decades African policy makers have been bombarded by often-conflicting ideas on agricultural development strategies from an array of diverse international development agencies. One such development strategy, from 1980 onwards, was the Structural Adjustment Programme (SAP). During this period, the role of the state in agriculture was down-played and local agricultural specialists and institutions were largely ignored (Grobbelaar 1998:210). The failure of this strategy is today evident in the persisting crisis of development in Africa, including the agricultural sector. Problems often identified with Africa's agriculture include inadequate funding and/or access to credit, poor research and development as this relates to inputs (chemicals, machinery and seedlings), and the often-unpredictable weather conditions. It was observed that African governments as a whole spent less than 2-5 percent of their GDP on agriculture (*National Concord* 1992). Now, this is grossly inadequate for societies whose economic history and culture revolve around agriculture.

Also, see below, figures relating to percentage annual average growth rates in agricultural production, total and per capita for the period 1997-1999, including the percentage share of agriculture of the labour force in 15 African countries.

From Table 2, it is evident that agriculture constitutes a sizeable proportion of people engaged in the labour force in these countries, ranging from 56 percent for the Republic of Benin to 91 percent for Burundi. However, the annual average growth rates in total agricultural production and per capita agricultural production have been significantly low and in some cases, tended towards negative. Perhaps, this explains the necessity for food imports for many of these countries as a result of what has become a general food crisis in the continent.

Table 2: Agricultural Production, Total and Per Capita: Annual Average Growth Rates

	Percentage share of Agriculture in:		Annual average growth rates (%)					
	Total Labour Force	GDP	Total agricultural production			Per Capita Agricultural production		
Country	1999 *	1999 *	1997	1998	1999	1997	1998	1999
Angola	72	7	0.5	14.7	-5.0	-2.7	11.2	-7.9
Benin	56	38	7.7	-1.9	0.7	4.9	-4.5	-2.0
Burundi	91	52	-1.8	-5.2	2.1	-3.3	-6.6	0.5
CAR	74	55	-2.1	1.2	-1.2	-4.0	-0.8	-3.0
Chad	77	36	8.3	21.1	-12.2	5.2	18.1	-14.5
Ethiopia	83	52	1.1	-7.3	5.9	-1.4	-9.5	3.3
Gambia	80	31	30.4	-2.3	43.1	26.0	-5.4	38.5
Malawi	84	38	-1.0	10.7	7.6	-3.3	7.7	4.6
Mozambique	81	33	6.9	7.1	1.5	4.0	4.5	0.6
Niger	88	41	-19.3	51.0	-3.9	-21.8	46.2	-6.9
Senegal	77	18	-5.2	-1.3	18.9	-7.6	-3.9	15.9
Somalia	75	65i	4.3	-6.0	-2.5	0.2	-10.3	-6.9
Sudan	63	40	0.7	1.6	-1.0	-1.4	-0.4	-3.1
Uganda	81	44	-0.3	7.0	3.4	-2.9	4.1	0.5
Zambia	71	25	-10.9	-5.1	12.9	-12.9	-7.2	10.6

Source: Culled from UNCTAD Secretariat Calculations based on data from FAO. See *The Least Developed Countries Report* (2002) Geneva; and *The Economic Commission for Africa*; the World Bank; UNDP and others. * Or latest year available, [1]1990.

It is therefore against this background that we seek to interrogate the state of agriculture in Africa in the context of globalisation that is clearly propelled by technological innovations. For instance, how does the on-going globalisation process affect agriculture in Africa? Secondly, is there any link between technological capacity and the food crisis in Africa? And, thirdly, what are the prospects for Africa's agriculture through the use of modern technological developments?

It is quite right to argue that Africa cannot begin to benefit from global developments in trade, technology and in improving the welfare of its people until it is capable of ensuring a reasonable level of food security for its people.

Globalisation and technology: Conceptual linkage

It appears that the phenomenon known as globalisation has two very visible categories – trade on the one hand and technology on the other, especially

information technology. This is not to say that globalisation or the activities of transnational companies (TNCs), are recent phenomena. Rather, today, their activities (the TNCs) are made much easier by the application of micro-electronics in the form of information technology. Everyone is closer to each other now, and it appears that there is no hiding place anymore. Again, markets are now inter-linked and even inputs are all standardised and may have to eventually be purchased from the same source.

Generally, globalisation is associated in the minds of many people with the fear of unemployment and growing inequality, both nationally and internationally. On the other hand, it is also regarded as an opportunity to bring the benefits of progress to the entire world (Hemmer et al. 2000). Although the definition of globalisation is subject to various perspectives, it is generally agreed that it is an economic phenomenon with far-ranging consequences, economic and otherwise. There is also, a general agreement that globalisation entails the extreme internationalisation of the economic process.

However, a comprehensive definition of globalisation conceives of it as the worldwide division of labour, steadily penetrating everywhere, ultimately leading to the fragmentation of multi-stage production processes between different locations. Among the most important consequences of this are the rapid growth of the international trade in goods, and of foreign direct investment as well as the integration of capital markets, all contributing towards increasing the inter-dependence of markets and production processes in different countries (Nunnenkamp et al. 1994:3).

It is important to note that the increasing flows of goods and resources across national borders and the emergence of a contemporary set of organisational structures to manage these flows is tightening the international poverty trap of commodity-dependent LDCs and intensifying the vulnerabilities of LDCs which have managed to diversify out of primary commodity exports into the export of manufactures and/or services (World Bank 2002:VIII).

Again, while the full effects of changes occurring in the global environment are not yet well known, there is a danger of the increasing exclusion of LDC producers from global markets as buyers within commodity chains upgrade their volume, reliability and quality criteria for purchasing, and as more stringent market requirements call for ever increasing larger investments to meet buyers' requirements and specifications (World Bank 2002:VIII).

However, of more importance to us is the fact that one of the fundamental conditions on which the emergence of a global economic network depends is the development of technologies, which have served to overcome the restrictions imposed on human mobility by space and time. It is clear that

globalisation in its present form is largely predicated on new technologies of transport and communication. (Hemmer et al. 2000:3). With the end of the Second World War (1939–1945), modern transport technology attained an entirely new level of efficiency (inter-continental air travel, bulk freights, container technology etc.), building upon the first great leap in transportation in railways and steamships from the last century. Hence, the mobility of persons and goods has been considerably enhanced through the efficient shortening of geographical distances and cost of transportation.

In addition, progress in communication technology has also been dramatic in the last three decades especially through the micro-electronic revolution. Technologies of telecommunication and data processing are now easily accessible, whilst the cost of transaction and communication has been drastically reduced. Through the Internet super highway and/or corporate Internet systems, data can now be transmitted virtually in zero time. This has greatly facilitated communication among trade partners and considerably improved management efficiency in international groups.

The implications of the foregoing are that technological progress in this age has served to enhance the mobility of most production factors, so that they are no longer restricted to any particular location. Hence, the cheaper it is to move semi-finished products or production factors over large distances, the more the competition between geographically distant locations will intensify (Straubhaar 1996:223).

There is therefore little doubt that new technologies go hand in hand with globalisation and this has grave implications for the developing world. Since it is common knowledge that many countries of the developing world, especially in Africa are technologically backward, it implies that their ability to participate or compete in the present globalising world is severely constrained. How for instance, can such African countries compete effectively in exporting their agricultural produce or even determining the price at which it can be sold? This has grave ramifications for the agricultural industry in the continent.

An overview of the agricultural sector in Africa

Just as the other sectors in Africa are undergoing crises of various dimensions, the agricultural sector generally understood as a key sector in any effort at poverty alleviation in the continent is undergoing severe problems, sometimes generated by the global environment. Some of the problems include the use of poor technologies, inappropriate land policies, the issue of subsidies and global agricultural pricing mechanisms, and poor agricultural strategies.

In Africa, it is said that 50–80 percent of the population live in the rural areas, and this rural population is predominantly made up of peasant farmers. Generally, agriculture accounts for over 40 percent of GDP, 30 percent of exports, and about 75 percent of employment (Ake 1996:45). Unfortunately, as the World Bank has admitted, at least 50 percent of its agricultural projects in Africa have failed, its highest failure rate in the world (Ake 1996:43).

Suffice it to say that the performance of the agricultural sector has been dismal in the past three decades. The disruptions caused by wars and civil strife, drought, pattern of land use, the marginalisation of women, the refusal to take poor people seriously, undue external control and rapid population growth are some of the constraints affecting agriculture in Africa (World Bank 1981:142). Again, the large and inefficient subsistence sector presents special obstacles to the development of agriculture in the continent. There is generally very little knowledge about new methods of crop rotation and seed protection. In addition, research and experimentation are generally low or lacking. The absence of knowledge about rainfall and soil quality, and pattern of land use presents unusually serious obstacles to effective agricultural development in many African countries.

In Africa, the use of fertilizer is very low, about 7kg per hectare, as compared to European countries which utilise about 251kg per hectare. This is important, because there is a positive correlation between the use of fertilizers and high yields. In Senegal, research on their rice scheme showed that for every additional kg of nitrogen, the additional yield of paddy was 20kg per hectare. Hence, the need for African farmers to utilise modern chemical inputs in their farming practices cannot be over-emphasised. However, the big question is how these farmers, who often are peasant smallholders, can áfford to purchase the required chemical inputs and necessary farm machinery. As against this, it has been suggested that African farmers should rather make more use of animal manure and animal power in the cultivation of farmland.

However, the point remains that adequate attention has not been paid to the necessity for the mechanisation of agriculture in Africa as a way of quickly improving agricultural productivity. This it appears, is in line with the general neglect of technology and matters relating to it, and the reversal of this situation is the sine qua non for Africa's development. Let us just take a look at the use of one item of agricultural machinery, tractors.

Table 3 shows the use of tractors as an input into agriculture in some countries, and also the figures on agricultural value added per worker (1995 $) in terms of agricultural productivity.

Table 3: Agricultural Inputs: Use of Tractors (1997–1999)

Countries	Per 1000 Agricultural Workers	Per 100 sq. km. of Land
Botswana	19	175
Cameroon	0	1
Côte d'Ivoire	1	13
Egypt	10	303
Ethiopia	0	3
Ghana	1	10
Kenya	1	36
Madagascar	1	14
Mozambique	1	18
Nigeria	2	11
Somalia	1	18
South Africa	53	59
Sudan	2	6
Uganda	1	9
Zimbabwe	7	72

Source: Culled from World Bank, *World Development Indicators*, Washington, 2002. Note: The data are varied over three years.

The level of mechanisation of agricultural inputs such as tractors is extremely low in Africa and this therefore affects the overall output. Apart from Botswana and South Africa, it is clear that the very low use of tractors in agriculture is a major impediment to food production. With low output there is of course, an inadequate food supply and hence few possibility of amassing a surplus for the export market, a market that is also qaulity conscious.

Among the major inputs to agricultural productivity generally are land, fertilizers, and agricultural machinery. There is no single correct mix of inputs – appropriate levels and application rates vary by country and over time, depending on the type of crops, the climate and soils, and the production process used (World Bank 2002:141). However, Africa has long faced the problem of being able to deploy the correct mix of inputs to improve agriculture.

Table 4: Agricultural Output and Productivity: Agriculture Value added per Worker (1995$)

Country	1979–1981	1998–2000
Botswana	630	688
Cameroon	834	1,104
Côte d'Ivoire	1,074	1,136
Egypt	1,206	1,773
Ethiopia	-	138
Ghana	670	558
Madagascar	197	181
Mozambique	-	134
Nigeria	414	672
Somalia	-	-
South Africa	2,899	3,866
Sudan	-	-
Uganda	-	353
Zimbabwe	307	366

From table 4, in contrast to the situation amongst African countries in which South Africa posts the highest figures of value added per worker of $2,899 for (1979–81) and $3,866 for (1998–2000); Australia recorded $20,354 and $33,765 respectively, Belgium $21,868 and $55,874 respectively, and United Kingdom $20,326 and $34,938 respectively within the period under review. From the World Bank perspective, agricultural productivity here generally refers to the ratio of agriculture value-added measured in constant 1995 US dollars to the number of workers in agriculture. The agriculture value-added here also includes that from forestry and fishing.

A cursory glance at the state of agriculture in places like Nigeria, the Southern African region, and the East and Central Africa region reveals the contradictions in the political economy of agricultural production in Africa.

Nigeria for example, has a total land area of about 92. 4 million hectares, out of which about 83 million hectares are arable. This is indeed a relatively large proportion of earth's finite total arable land. Yet Nigeria is staring a food crisis in the face. This is also notwithstanding the fact that about 60-70 percent of the labour force is employed in the agricultural sector. Despite the growth in food output between 1990 and 1997, there had been an increase in food imports, from 8.2 percent to 20.5 percent of the total food requirement over the period (NES 2000). In fact, Nigeria imports about N180 billion worth of food items yearly. In spite of the large food imports, the agricultural sector in Nigeria received only N3.87 billion in the 2002 budget, which was

subsequently reviewed upwards after an agricultural summit made representations to the government, to N12.3 billion (*The Guardian* 2002:6).

Nigeria has now adopted a new agricultural policy after recognising that there is a limit to which it can liberalise and open its doors to international competition. Considering the unpredictability of the oil sector from which the country derives the bulk of its foreign exchange, the government is presently paying more attention to the agricultural sector. To this end, it is now making available fertilizers and farm chemicals at a 25 percent subsidy, with subsidies on farm tractors and other farming implements. The new policy will also see to the provision of improved seedlings, fingerlings and day-old chicks as well as drugs and vaccines. The government is also to provide for improved storage facilities, credit facilities for farmers at the right time, and will also serve as the buyer of last resort to avoid a crash in prices which may lead to losses by farmers.

In addition, inventors are being encouraged to take patents for agricultural implements fabricated for medium and small scale processing of agricultural produce which is dearly required in order to avoid wastage. All these of course, are in recognition of the fact that the state has to assist in ensuring food security in the country. This approach had been used by many countries in Europe, who in spite of the numerous protestations at various multilateral negotiations still maintain subsidies on many of their products. Africa on its side cannot do otherwise.

Nigeria is also taking advantage of its bilateral relations in addressing its problems in the agricultural sector. It invited 500 Chinese experts, facilitated by the Food and Agricultural Organisation (FAO), to assist it in the establishment of rural earth dams to ensure better water management for year-round farming. It has been observed that Nigeria is blessed with abundant arable land in the north of the country, but food production is limited by the unavailability of water for all year farming. If this can be done, then the country may significantly improve its output of food crops.

The point must therefore be made that with respect to new technologies and pricing for primary products and farm produce, there is very little that disadvantaged developing countries can do, short of planning their own agricultural strategies using local technology for ensuring subsistence. The question of exporting products, which implies competing effectively with other producers from around the world, is largely untenable at this period in time. Therefore, there is still a lot that the state can do in assisting smallholder peasant farmers, who constitute the bulk of agricultural producers in Africa, to improve on their output.

In the case of the Southern African region, statistics as at 1994 indicated that as in several other parts of Africa, that majority of the people still reside

in the rural areas – 70 per cent in Botswana, 87 percent in Malawi, 50 per cent in South Africa, 69 per cent in Zimbabwe and 64 percent in Namibia (Rukuni 1995). This has implications for the agricultural sector in the region, in terms of the problem of unemployment and of access to land.

It is estimated that about 140 million people live in the Southern African region. In most of the countries in this region the rural people are poor, and resource base is relatively poor or underdeveloped, whilst the climate is relatively unstable. In the recent past, state intervention in agriculture in virtually all of the countries in the region largely favoured large-scale commercial farmers and had resulted in dualistic (developed/underdeveloped) and bimodal production systems. In addition, there has been a range of political influences that had been impacted negatively on farming and regional trade in farm products. Civil wars contributed to reducing the capacity of agriculture. Indeed, the share of agriculture in GDP is decreasing for all the states in Southern Africa except maybe Angola, Mozambique and Zambia.

For South Africa in particular, it appears that there are some lessons to be learnt from their experience. Because of its isolation from the world during the apartheid years, it was not affected by the global changes in agriculture or the Structural Adjustment Programme. This notwithstanding, the small farmers faced constraints as a result of a number of South African policies (Grobbelaar 1998:212). Agricultural development in South Africa had been characterised by greatly differing approaches to white and black agriculture. The contradictions in this society still largely reflect in the state of black agriculture in this country. White agriculture and commercial farming received high priority in South Africa's development policies. State intervention and support strongly influenced the pattern of agricultural development which placed more emphasis on large-scale mechanised agriculture. The support given to the commercial farmers included controlled marketing to reduce price and marketing risks, state run research and extension services, and agricultural credit measures (Vink and Kassier 1990). Overall, the result was quite satisfactory. In fact, for the period 1980-1989, South Africa was self sufficient in all major agricultural commodities, having achieved an overall self-sufficiency index of 130 (Van Rooyen and Van Zyl 1990). It is these same strategies that many countries in the developing world, including Nigeria, are now trying to implement.

On the other hand, farming by black Africans in South Africa developed almost entirely as a separate mode of agriculture. In contrast to white commercial farmers, African small holder farmers usually operated at low input levels. Generally, they faced several problems having to do with the political system of apartheid, in terms of land, inputs and marketing access.

Today, the situation is gradually changing as the South African government continues with its incremental land distribution programme. It is expected that agricultural development and land reform should be addressed through optimising the contribution of the agricultural sector to economic empowerment of vulnerable groups, and designing successful agricultural settlements as part of the land reform and redistribution programme (Grobbelaar 1998:218).

With respect to the Eastern and Central African countries, their governments made large investments in agriculture, especially in agricultural research. External donors also provided considerable assistance to these government to facilitate agricultural technology generation and transfer. However, the rate of technology development and adoption has failed to cope with the demands of rapidly increasing populations, a deteriorating natural environment, and overall economic development. New technology either does not reach the farmer or is not viable under current conditions.

In Ethiopia for example, agriculture is also the most dominant economic activity as in many other countries of Africa. The sector contributes about 43 percent of the GDP, employs about 74 per cent of the population, and accounts for more than 90 per cent of the country's exports. However, the sector is yet to attain its full potential as a result of what was referred to as 'inappropriate agricultural policies', and current reform policies are being reinforced by the application of new agricultural technology. To what extend this has improved Ethiopian agriculture is yet to be ascertained.

Kenya has a land area of 567,000 square kilometers and a population of about 24.9 million growing at about 3.8 per cent per annum and GDP per capita of about $380 in 1990. The high rate of population growth and the resultant pressure on land have resulted in the fragmentation of small holdings, increasing landlessness and migration into marginal areas. Kenya basically has an agricultural economy with agriculture providing 31 percent of GDP, about 76.5 per cent of the populations are rural and about 60 percent of the export earnings are derived from the sectors. However, a major problem in Kenya, as in many other countries that rely substantially on agriculture for export earnings, is the emphasis on cash crops like coffee, tea and cotton as opposed to food crops like maize, wheat, rice etc. At this juncture in Africa's development, it is sometimes important to ask the question: to what extent should governments focus attention on cash crops as opposed to food crops?

Just as in Ethiopia and Kenya, agriculture is also the most important sector in Tanzania, accounting for 50 per cent of the country's GDP. The sector also generates more than 80 per cent of its rural employment. During the 1980s, the agricultural sector had a positive growth as a result of government policy. Again, the problem of production of cash crops as opposed to food crops

became an issue. In terms of agricultural inputs, the trend is for more input to be provided for cash crops than food crops. Again, it is time to interrogate this trend if countries like Tanzania and indeed Africa is to come to grips with its food shortages. For a country that has great potential in the production of maize, cassava, rice, sorghum, millet, grain legumes, banana, wheat and sweet and European potatoes, food problems in terms of inadequacy should normally not be at the forefront of its development discourse.

In the final analysis, many countries in Africa are facing persistent low agricultural productivity. What is fairly well agreed therefore, is that the continent requires to develop and adopt improved farming technologies if it is to begin to reverse its food crisis. There is therefore a sense in which science-based technology generation should be at the forefront of sustainable agricultural development.

A critical observation of the agricultural scene in Africa reveals that except maybe for South Africa, many governments have been intervening at all stages of production, consumption and distribution without much improvement. The question is, why is this so? Some of the policies have resulted in discrimination against agriculture by shifting resources out of the sector. Although there has also been experimentation with large-scale farms and the mechanisation of agriculture, experience has shown that very little was achieved as a result of a mixture of problems of overstaffing, mismanagement, and under-utilisation of machinery. Also, inadvertent importation of food items like wheat and rice, and the raising of producers' prices of export items have all contributed to the fall in production of food (Singh 2000:9).

However, it is a good sign that the marketing boards abolished in most African countries are now being resuscitated as was done recently in Nigeria. Many of these boards were abolished during the SAP years, and subsequently created problems as the private sector was generally unable to take up the functions previously rendered by the public sector marketing boards.

African agriculture in the global economy

One of the major questions facing many African governments is the fate of agriculture in a global environment characterised by inequality of access to influence and technology. Africa, formerly a net exporter of food, is today heavily dependent on food aid and imports. Increasingly, the issue of food security at individual, sub-national and national level is becoming a very crucial matter. Because of decreasing agricultural productivity, and the input and market constraints facing developing countries, discussions are now underway at the international level to develop a more rational trade regime which would require agricultural policy changes in the industrialised countries. However, negotiations on this had often been deadlocked.

At the WTO meeting in Doha in November 2001, negotiations on agricultural subsidies remained highly contentious. The key concern was what to do with export subsidies which practically pitted the EU against the entire WTO membership. The EU would not accept any draft language that contemplated the 'phasing out' of export subsidies. While Doha managed to retain the phrase, it was included with the qualification that talks must be conducted 'without prejudging the outcome of the negotiations' (Garth Le Pere 2002).

Generally, external factors which affect African agriculture in the context of the global economy include the globalisation of agricultural inputs and products markets, the WTO emphasis on trade liberalisation, lowering of import and export tariffs and the removal or drastic reduction of agricultural subsidies (Olayemi and Okunmadewa 1999). Others include the arrival of new agricultural technologies, associated developments in Intellectual Property Rights (IPR) and advances in information technology.

Since there are many smallholder farmers in Africa, a major question revolves around the potential impact of the above scenario on them. It is therefore necessary for African countries to understand the technological and institutional pre-requisites for their participation in a globalised economy (Kydd 2002). Let us note for example, that the increase in the role of the globalised market and its associated pricing regime generally led to agriculture becoming more closely integrated into the international division of labour. The fact remains that beyond the sectoral crisis of agriculture is the need to thoroughly examine the validity of accumulation strategies based on expanding the export sector (whether agricultural, mining or energy) and the effects of the process of accumulation and the development dynamic (Amara & Founou-Tchuigoua 1990:14).

There is little doubt that the agricultural sectors of many developing countries are under severe pressure from the modern agrifood system (Goodman and Reddift 1991; McMichael 1996), especially since the dominant developmental ideology for many years was 'accelerated industrialization' and 'modernization' which were largely based on support for manufacturing and mechanised agriculture. Hence cheap food was required to maintain a cheap wage labour force that could attract foreign investment and capital accumulation. More often than not, mechanised agriculture was initiated by state farms or by capitalist farmers in close alliance with the state. These developments created important markets for the rapidly growing sectors of the post-war economy - surplus food production, capital goods or machinery and agricultural input supplies (Amanor 1999:29).

Beginning from 1940, the globalisation of an agrifood technology complex was given added impetus by the Rockefeller and Ford Foundations. Subsequently, many international agricultural research institutes were founded. These include the International Rice Research Institute (IRRI) in the Philippines in 1959, The International Maize and Wheat Improvement Center (CIMMYT) in Mexico in 1963, the International Institute for Tropical Agriculture (IITA) in Nigeria in 1967, the International Potato Center (CIP) in Peru in 1972, the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) in India in 1972, and the International Livestock Centre for Africa (ILCA) in 1974. It was however, in 1971 that the International Agricultural Centres were unified into the Consultative Group for International Agricultural Research (CGIAR), an advisory group for developing nations coordinated by the World Bank. The point which is being made here is that agriculture and its related architecture have been globalised, and that this globalisation did not occur in the immediate past, but is the result of many years of evolution of the international system, especially after the Second World War.

For African agriculture to be able to achieve its objectives, which includes ensuring food security for the African peoples, the role of the state is still required just as was the case in Europe and in the United States. African governments just have to learn now to walk the tight rope of balancing the vicissitudes of the multilateral framework on agriculture and their immediate national objectives. Again it is germane to note that any improvement in the agricultural sector necessarily requires a certain level of preparedness by African governments to effectively join the globalisation process. Hence, the problem is not just a sectoral one when we think in terms of the global economy, but a composite one, which requires a multidisciplinary approach in seeking solutions.

What prospects for the agricultural sector?

The changes taking place globally pose threats as well as opportunities. What Africa has to do is to look out for the opportunities, in this case, in the agricultural sector. Several emerging markets hold enormous promise for growth in the agricultural business. However, we must not underestimate the tumultuous character of the transition taking place in the global environment.

In terms of the requirements for agricultural growth in Africa, it is on average, satisfactorily endowed. It has abundant agricultural land and a huge potential for irrigation, while the climate enables its inhabitants to produce almost every kind of crop (World Bank 1990:99). Generally, what agricultural planners require to ensure in the policies, even in the face of the jigsaw called globalisation, is that the necessary inputs into the agricultural sector

are provided: relevant technologies, experienced hands, land, credit, seeds and fertilizers. In addition, there should be a minimal provision of transport infrastructure, adequacy of marketing and farm service centres for input delivery, and output marketing. Also, there should be adequate storage and processing facilities and the dissemination of market intelligence and information.

Achieving what is akin to an agricultural revolution on the continent should therefore constitute the primary target for the next decade or so. Since agriculture employs the bulk of African peoples and keeps people busy and fulfilled, it should as a matter of priority be considered a key sector in all African countries. Attention to this sector, and investment in it, will not only check the present surge of rural-urban migration with its attendant social ills, but also ensure food security for all. Indeed, what man or woman is taken seriously who cannot feed himself or herself! The same goes for countries. Therefore, any country that is capable of fulfilling the basic need of being able to feed its population invariably earns the respect of members of the international community. Yes, man does not live by bread alone, but physiologically; he requires the bread to be able to do other things, both for himself and his community and country.

It is however, recognised that this project of being able to provide food for all is not an easy one. It is a complex project and requires a multi-dimensional approach. The right technological choices also have to be made. And this implies the design of adequate supportive economic policies - of price and income systems and ensuring the rationality of the choices they induce, of the supportive industrialisation priorities and pattern of financing among others (Amara and Founou-Tchuigoua 1990:4).

Overall, there is a great prospect for African agriculture especially in terms of being able to feed Africans without having to beg for food aid. Again, export of produce is possible, but will require a concerted and coordinated effort on a regional basis amongst the various countries as climatic conditions differ. The engagement between Nigeria and South Africa and the fast-trade approach to development between Nigeria and Ghana can also be extended to the agricultural sector. So many permutations are possible, both in terms of inputs into the sector and utilisation of the surplus. These possibilities need to be explored.

On the whole, improved productivity in agriculture can be assured with the introduction of new and relevant technologies, including the use of machines, improved plant and animal stock or varieties, better crops as previously mentioned and more effort on post-harvest care. It is also important

to ensure adequate investment and access to water for the farmers in addition to subsidies.

Conclusion

Considering the linkage between globalisation, technology and the crisis in African agriculture, it is urgent that individual African states assess their internal situation and revise their policies in order to ensure their food security. More in-depth assessment and measures are required to enhance the exportation of the surplus produce.

Although the success of price-stabilisation commodity agreements has at best been mixed, the need to address the specific problems faced by commodity-exporting countries cannot be stressed the more. This notwithstanding, globalisation has displayed the tendency to reduce the activities of middlemen in the agricultural sector, which characterises agricultural marketing on the continent. This implies the possibility of reducing the selling price of agricultural products. This notwithstanding, globalisation also tends to widen the market for agricultural products and it is important for African countries to exploit this opening.

If we are to improve agricultural productivity in Africa, and avoid incessant food crises, it is important to explore what globalisation can bring about with respect to the utilisation of appropriate technologies in enhancing the fertility of land, improving seedlings and predicting the climate and harvest potentials. Just as in the agricultural sector, Africa cannot expect to be respected unless and until it recognises that technology is the key in the growth of human societies, and also the instrument for ensuring its survival. In pursuing this goal, the role of the state cannot as of necessity be overemphasised.

Just as the state still has an important role to play in revitalising the agricultural sector, there is the necessity for private sector engagement in research and development and marketing for small farmers, who are numerically predominant in Africa. Subsidies are still necessary, but should not only be targeted on the issue of market failure, but also for the entire gamut of variables affecting smallholder agriculture.

The future in terms in ensuring national food security belongs to those countries that are able to competently manage the impact of globalisation on the agricultural sector on the one hand, while at the same time are able to infuse appropriate technologies in their agricultural processes and practices. The crisis in African agriculture is generally a reflection of Africa's crisis of development, and at this period in time, should be addressed radically and comprehensively.

References

Adubifa, A., 1990, *Technology Policy in Nigeria*, Ibadan, NISER.

Agbu, A., 2001, 'The Technological Dimension of Africa's Crisis of Development: An Agenda for the 21st Century', Paper presented at the 13th Biennial Congress of the African Association of Political Science (AAPS), Yaounde, Cameroon, June 19-22.

Ajayi, I., 1992, 'Inadequate Funding: Bane of Agriculture in Africa', *National Concord* (Nigeria), October 9.

Aju, A., 1994, *Industrialization and Technological Innovation in an African Economy*, Akoka, RECTEM.

Ake, C., 1996, *Democracy and Development in Africa*, Ibadan, Spectrum Books.

Alamgir, M. & Arora, P., 1991, *Providing Food Security for All*, London, IFAD.

Amanor, K.S., 1999, *Global Restructuring and Land Rights in Ghana*, Research Report no. 108, Uppsala, Nordiska Afrikainstitutet.

Amara, H.A. and Founou-Tchuigoua, B., 1990, *African Agriculture: The Critical Issues*, United Nations, Tokyo University Press.

Bhagavan, M.R., 1990, *Technological Advance in the Third World: Strategies and Prospects*, London, Zed Press.

Goodman, D. and M. Redclift, 1991, *Refashioning Nature: Food, ecology and culture*, London and New York, Routledge.

Grobbelaar, J., 1998, 'Some Perspectives on Small Scale Farming in South Africa', JICA - FASID, *Microeconomies and Structural Adjustment in Africa*, Tokyo.

The Guardian (Nigeria), 6 June, 2002.

Harjinder Singh, 2000, 'African Economic Recovery: Myth or Reality', *Indian Journal of African States*, vol. XI, April & October.

Hemmer, H-R. et al., 2000, *Developing Countries: Victims or Beneficiaries of Globalisation*, Justus-Liebig, Universitat GieBen.

Kydd, J., 2002, 'Is Globalisation Opening or Blocking Paths out of Rural Poverty?', Agricultural Research and Extension Network, Network Paper no. 121, January.

Le Pere, G., 2002, 'The WTO and the Post-Doha Agenda', *Global Insight,* Issue no. 20, July.

McMichael, P., 1996, *Development and Chance: A Global Perspective*, Thousand Oaks, CA; Pine Forge Press.

Nunnenkamp, P. et al., 1994, *Globalisation of Production and Markets*, Tubingen, Kieler Studien 262.

Olayemi, J.K. and Okunmadawa, F., 1999, *Nigeria: Globalisation, Policy Changes and Agricultural Research and Development*, Department of Agricultural Economics, University of Ibadan.

Onwubiko, E., 2002, 'UN Scores Nigeria high on Agriculture', *The Guardian* (Nigeria), 29 October.

Report on the Seventh Nigerian Economic Summit (2000), 5-17 October, Ibadan, Spectrum Books.

Rukuni, M., 1995, 'Getting Agriculture Moving in Eastern and Southern Africa and Framework of Action', in O. Badiane & C. L. Delgado (eds.), *A 2020 Vision for Food, Agriculture and the Environment in Sub-Saharan Africa,* Washington D.C.: IFPRI.

Straubhaar, T., 1996, 'Locational Conditions in Global Competition', in Biskup R. (ed.), *Globalisierung und WettbeWerb*, 2nd unchanged impression, Bem/ Stuttgart/Wien.

Van Rooyen, C.J. and J. Van Zyl, 1990, 'Agricultural Restructuring in South Africa: Changes in the Production Structure and Some Considerations on the Food Question', *Proceedings of the Inter-Conference Symposium on Agricultural Restructuring in Southern Africa.*

Vink, N. & W. E. Kassier, 1990, *Agricultural Policy and the South African State*, IDASA Rural Land Workshop, Houwhoek Inn.

UNCTAD, 2002, *The Least Developed Countries Report 2002: Escaping the Poverty Trap*, Geneva, Switzerland. Http://www.unctad.org.

Weijenberg, J. et al., 1995, *Strengthening National Agricultural Research Systems in Eastern and Central Africa: A Framework for Action*, World Bank Technical Paper Number 290, Washington D. C.

World Bank, 1981, *Accelerated Development in Sub-Saharan Africa*, Washington, D.C. World Bank.

World Bank, 1990, *The Long-term Perspective Study of Sub-Saharan African vol. I, Country Perspectives*, Washington D.C.: World Bank.

World Bank, 2002, *World Development Indicators*, Washington, D.C.: World Bank.

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Demise or Resilience, Customary Law and the Changing Order in Africa: The Case of Chieftaincy in Botswana

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Abstract

This paper reviews customary law and how it relates to the institution of Chieftainship in Botswana from the pre-colonial to the post colonial period. It accedes to the widely held view that in Botswana, as in many other African countries where the institution of chieftainship was undermined by colonial rule, chiefs have survived and continues to play a pivotal role in evolving African societies. In Botswana, customary laws governing the institution of the chieftainship, particularly the succession rules, have enabled the chieftainship to surmount the hurdles placed against chiefs by the colonial government. The colonial government onslaught on chieftainship only weakened some chiefs, but not the institution. Since 1966 the post-colonial liberal democratic government of Botswana has continued to enact laws which whittled down the powers of the chiefs considerably, but the institution has adapted and chiefs have also managed to manipulate the political situation to their advantage. Today, due to the dynamism of customary law, chiefs play a pivotal role in the socio-economic, political and administrative systems of Botswana.

Résumé

Cet article examine la loi coutumière et indique ses relations avec l'institution de la chefferie au Botswana de la période coloniale à la période postcoloniale. Il s'accorde avec la thèse répandue, comme dans beaucoup d'autre pays africaines, où la chefferie a été amoindrie durant la période coloniale, mais ou les chefs ont pu survivre et jouer un rôle important dans les sociétés africaines en voie d'évolution. Au Botswana, les lois coutumières reconnues dans les institutions

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de la chefferie traditionnelle, notamment dans les règles de succession, ont permis à la chefferie de surmonter les obstacles entre les chefs et le régime colonial. La pression de régime colonial sur les chefs traditionnels a seulement amoindri certaines chefs, mais non pas l'institution. Depuis 1966, le gouvernement libéral, démocratique, postcolonial du Botswana a institué des lois qui affaiblissent les pouvoirs des chefs considérablement, mais l'institution de la chefferie s'adapte et les chefs ont eu à exercer un pouvoir politique à leur avantage. Actuellement, à cause du dynamisme de la loi coutumière, les chefs jouent un rôle important sur les plans socio-économique, politique et administratif au Botswana.

Introduction

> What Rey's colonial administration in the 1930s had failed to accomplish, the post-independence government had managed to achieve. They removed the powers of the *dikgosi* by creating new administrative institutions, to do some of the work done by *dikgosi* previously' (Tlou and Campbell 1997:336).
>
> The capacity of Chiefs to open up to non-royal advice will determine in a large measure their responsiveness to modern trends. The survival of the institution of chieftainship will depend on the dynamism and responsiveness it displays in the face of changing realities in the society (Linchwe 1994:396).

These statements capture the main concerns of the present work. These are the erosion of the powers of *dikgosi* during the colonial era, the scrapping of much of what was left of those powers by the new government after independence, and the resilience and survival of *dikgosi* and the institution of *bogosi* to the present, albeit in a highly transformed manner. Unlike in some African countries, the institution of chieftaincy in Botswana was not invented by the colonialists, or post colonial state. In fact, it predates colonialism.

Although there is no single universal definition to the concept of customary law, there are certain core features which are discernible from many of them as the few examples here indicate. For his part, Hamnett defines customary law as 'a set of norms which the actors in a social situation abstract from practice and which they invest with binding authority'. He emphasises the fact that a critical factor of most customary law is that it is unwritten. There are no written records in customary law and this means the idea of precedent is difficult to utilise. This aspect allows customary norms to be flexible and adaptable and to function as 'instruments for legal change rather than the fossilised remnants of a dead past' (Hamnett 1975:16). Another analyst accords with Hamnett's view by maintaining that customary law is not prescriptive by nature since it is evolutionary. Thus, he also emphasises the dynamic aspect of customary law in his study. This law grows with specific people to whom it relates and these people give it content (Yakubu 2002:17). Presenting

a paper on customary law in Botswana, Athalia Molokomme provided a comprehensive and embracing definition of the concept of customary law. She contends that 'Customary law means different things to different people, at different points in time'. In whatever manner it is used, 'customary law should be understood in its social, cultural, political and economic context'. In the case of Botswana, Molokomme provides various meanings of the term customary law. There is what she terms 'Traditionalists Customary Law'. This encompasses the 'values', 'traditional norms', habits and other principles which have been linked with different Batswana ethnic groups before contact with Europeans. Used in this context, customary law is equated with traditional and cultural values as shown in the setswana phrases *ngwao ya setswana* (setswana culture), and *mekgwa le melao ya setswana* (ways and laws of setswana). This type of law is regarded as legitimate and is often employed by traditionalists in efforts to resist the coming of new laws and policies (Molokomme 1994:348-349). Today very little is known about 'pure' customary law because it was practised about two centuries ago and it was not written. What exists is what has been passed on from generation to generation orally, and some of this has been lost or changed by the socio-economic and political transformations which have since occurred over the long period (ibid.).

According to Molokomme (1994:350), the second kind of customary law is the 'Living Customary Law'. This, 'describes a way of life based upon certain norms of behaviour which are based, in varying degrees, on tradition'. This 'living' or 'contemporary' customary law is shown by the way of life of many people in both rural and urban Botswana. This law is not static, because it is dynamic, negotiable, flexible, fluid and is a reflection of the people's adaptation to socio-economic changes occurring in Botswana society. Although viewed by traditionalists as contaminated by modernisation and other western ways, this customary law is often closer to the real lives of ordinary people. These definitions of customary law are not exhaustive or water-tight compartments. Most authors emphasise the fact that customary law is not written, and for Botswana, this aspect of customary law has also been noted by Isaac Schapera, who further maintained that many Tswana practices, traditions, values and norms are inherent in the social system, and they have been developed, used and accepted over time (Schapera 1938:87). Almost all these definitions emphasise key aspects of customary law such as its unwritten nature, dynamism or flexibility, and that it is given meaning by a specific people to whom it applies. In this study, we shall utilise these characteristics of the law as they relate to chiefship in the past, the present and prospects for the future.

The paper analyses selected aspects of customary law in Botswana, and the manner in which they relate to the institution of *bogosi*. Botswana is a multi-ethnic country, consisting of setswana language speakers and non-setswana speakers, but the name Batswana is an all embracing term used to refer to all citizens of the country. The setswana groups belong to the Sotho-Tswana language cluster, while non-setswana speaking groups such as Basarwa, Basubiya, Babirwa and Bakalanga have different origins. In this study, the customary law on *bogosi* to be presented is largely concerned with the setswana-speaking groups. Owing to their origin, setswana-speaking groups share similar customs, norms and traditions.

The concept of chiefship, its nature and viability has attracted the attention of scholars from the mid-twentieth century to the present. In the 1950s and 1960s, modernisation theorists posited that chiefship was on its deathbed and would be replaced by bureaucratic systems. Similarly, proponents of the dependency and underdevelopment theories argued that the institution was facing extinction in the near future (Nyamnjoh 2002:3 quoting Warnier 1993:318 and Harneit Sievers 1998:57). In Botswana, the nature of *bogosi* among setswana-speakers in the pre-colonial, colonial and post colonial periods has attracted massive scholarship since the pioneering works of Isaac Schapera in the 1930s. Many of the works on this subject concentrate on the nature, powers, duties and privileges of *dikgosi* and they document the concerted efforts by the colonial and post colonial state to undermine *dikgosi* and *bogosi*. Among some of these scholars are Schapera (1938, 1970), Proctor (1965), Sekgoma (1995), Mgadla (1989, 1998), Lekorwe and Somolekae (1998), Seretse et al. (1983), and Ngcongco (1989). A few of these recent works express scepticism about the future viability of the institution and argue that it can only survive at the whim of the government (Sekgoma; Seretse). A diametrically opposed view has been provided by the insightful work of Francis Nyamnjoh, which has offered a new dimension on the adaptability and survivability of the institution of *bogosi* in spite of all the major changes after independence in 1966 (Nyamnjoh 2002).

In order for us to demonstrate how customary law or *bogosi* has been undermined or enhanced throughout decades of changes, it is imperative to re-state some of the issues and conclusions that have been visited and re-visited by earlier studies. The paper discusses the powers, duties and privileges of *dikgosi* as understood under customary law, and the changes that have occurred in the institution of *bogosi* from 1885 to 1965 (colonial period), and from then on to the present independent Botswana. The study endorses the position adopted by numerous previous works that the colonial state reduced and undermined the powers of *dikgosi*, and the institution of *bogosi*

as understood under customary law. It also accedes to the conclusions that the post-colonial state further eroded and diminished the powers of *dikgosi* and undermined the institution. However, a departure from some of the previous studies is in the argument against the conclusion that the institution is bound to die a natural death, or collapse under the weight of state legislation. We argue that although changes in the colonial period weakened the institution of *bogosi*, Batswana upheld and clung to it, and the indirect rule government realised the crucial administrative link, indispensability and vitality of *dikgosi* in the success of governance. Despite its somewhat weakened status in modern Botswana, *bogosi*, backed by the flexibility of customary law which enables it to adapt to new roles, continues to enjoy sizeable support, especially in the rural areas. It argues that society at large has accepted the new roles of the *dikgosi* as 'prescribed' by the government but, as Nyamnjoh noted, *dikgosi* have continued to negotiate and re-negotiate their positions (Nyamnjoh 2002:5) and have succeeded in their quest to play a crucial political and administrative role in the country, reaping substantial benefits and concessions from the state which relies on them for political and administrative expediency.

The pre-colonial setting

In many pre-colonial African societies, one could assume leadership of a society because of various reasons. An individual could save his kinsmen from disaster such as war or drought, or could accumulate wealth and gain support in that way. On the other hand, one could excel in hunting or perform a memorable feat, and hence be accorded a leadership role by society. Ascendancy to the throne was also hereditary, with those belonging to the royal house or closely related to it ascending in the event that the position fell vacant.

The pre-colonial Tswana states were autonomous or independent political entities. Each *Kgosikgolo* (paramount chief) was the head of his own tribe and did not owe allegiance to any other superior authority. In setswana customary law, a *kgosi* was (and still is to a large extent) born. *Bogosi* was hereditary in the male line, passing normally from father to son, hence Schapera's saying that, 'A chief is never selected' (Schapera 1938:42). Upon the death of a *kgosi*, or incapacitation, his eldest son would automatically accede to the throne. This rule appears to have been largely upheld during the pre-colonial period although there were a few cases where *bogosi* was acquired through some unconventional methods such as trickery or force.

> If the eldest son was still too young to assume the reigns of power, his uncle would rule as a *Motshwareledi* (regent). No woman could assume the position of *Kgosi*. The installation of a setswana *kgosi* was conducted by his people

> in a *kgotla* (village assembly), where his uncle drabbed him with a leopard skin (Schapera 1938:62).

Setswana customary law conferred immense powers and privileges on a *kgosi*. According to Schapera:

> The Chief, as head of the tribe occupies a position of unique privilege and authority. He is a symbol of tribal unity, the central figure round which the tribal life revolves. He is at once ruler, judge, maker and guardian of the law, repository of wealth, dispenser of gifts, leader in war, priest and magician of the people (Schapera 1938:62).

However, although the *Kgosi* had great powers and commanded immense wealth, he had some duties and obligations to his subjects. In times of stress, such as drought, he would redistribute cattle or grain to his subjects, and he had an obligation to protect his people, take care of the needy in society and be hospitable to visitors. He was supposed to be generous in return for the privileges accorded him, and use his wealth for the general welfare of the community (Lekorwe et al. 1999:188). The immense powers, prestige and superior status of the *kgosi* did not mean that he was an autocrat who was above the law. There was a council of advisors, normally drawn from the *kgosi*'s senior relatives such as his uncles which limited the manner in which the *kgosi* exercised his powers, and it acted as checks and balances on the way in which he conducted tribal matters. A *kgosi* was obliged to cooperate with his subjects as this would make him a real chief as symbolized by the setswana saying, '*Kgosi* ke *Kgosi* ka *Morafe*' ('A chief is a chief by the grace of his tribe'). He was thus obliged to cooperate with his subjects and advisors (Schapera 1938:84). There were also some tribal mechanisms in place designed to act as checks on those leaders who tended to deviate from the norm.

All matters of public domain were dealt with before the general tribal assembly attended by men in the *kgotla*. (Women and people known as *Malata* 'serfs', usually from a tribe regarded as inferior such as Basarwa – derogatively called 'Bushmen' – could not attend). All men could express their opinions on any matter at the *kgotla* and the ultimate decisions taken by the *kgosi* would be highly influenced by these deliberations. In addition to being a public meeting place for discussing crucial issues in the village, and being a place where laws were made, the *kgotla* was also a court where civilian and criminal cases brought before the *kgosi* were adjudicated (Schapera 1938:80-81; Ngcongco 1989:46; Mgadla 1989:48). The pre-colonial situation briefly outlined above epitomised setswana customary law regarding the institution of *bogosi* and *dikgosi*. This was the situation on the eve of colonialism, although some of these features had been affected by contact between

Batswana societies and outside forces such as missionaries, traders and travellers since the beginning of the nineteenth century.

Colonialism and *Bogosi* 1885-1927: The initial phase of undermining the institution

Botswana became a British Protectorate in 1885 after the infamous Berlin Conference where European powers partitioned the African continent. Britain declared a Protectorate over the autonomous Tswana states reluctantly. The declaration came about only as a result of the imperial contest between the Germans, the Portuguese and the Boers during the scramble for Africa. Britain dreaded the spectre of Botswana falling under any of her rivals because that would seal off the 'road to the north' (the present path through which the railway line and the main road run, linking north and southern Botswana), which was a gateway to the 'riches' of central Africa and beyond. We shall not belabour the details of how the exercise was implemented and the reaction of Batswana, suffice it to mention that some Batswana *dikgosi* initially opposed the declaration of a protectorate because they felt that there were no external threats to their independence. In the end however, they reluctantly accepted British 'protection'.

After securing her three protectorates in Southern Africa (Botswana, Lesotho and Swaziland) Britain placed them under a High Commissioner stationed in South Africa. In the case of Botswana, there was also a Resident Commissioner also based in South Africa. This officer was responsible for the daily administration of the country and he reported directly to the High Commissioner. The British did not want to carry the burden of administering poor Botswana, hence the adoption of the 'indirect rule' system in which the *dikgosi* were to be used to govern their own people as they had before. With a skeletal administration of a few Resident Magistrates (District Commissioners after 1932), the Border Police and other minor officials in Botswana, Britain started introducing laws (proclamations) and orders some of which eroded the powers of *dikgosi*, contravening and undermining existing Tswana laws and customs in the process.

The Bechuanaland Protectorate, as Botswana was known during the colonial period, was established by an Order-in-Council of 1885. This piece of legislation conferred upon the High Commissioner powers to legislate for the country, but in the execution of that duty, he had to respect the 'Native Laws and Customs' of Batswana. From 1885, the system of indirect rule employed Roman Dutch law in Botswana, and this existed alongside an African administration that was still administering setswana laws and customs (Mgadla 1994:50).

The first and real significant move in the assertion of colonial power, a move which hived off some major powers of *dikgosi* came through the Order-in-Council of May 9, 1891. This legislation '...empowered the High Commissioner on the advice of administration officials, to suspend, fine and dispose uncooperative or troublesome *dikgosi* and to draw boundaries between the various Tswana nations' (Mgadla 1994:50). Prior to this measure, the *dikgosi* had, even under British protection, continued to exercise their roles, functions and powers over their subjects in the usual manner, employing setswana laws and customs in the *kgotla*.

The Order-in-Council had far reaching implications on the institution of *bogosi*. This legislation was the first step in the beginning of the gradual erosion of the legislative, judicial and administrative powers of *dikgosi*. With this legislation, the High Commissioner needed only to respect setswana law and customs if they were compatible with British laws, interests and policies. The Order meant, '...that chiefs were now responsible to the British and not to their subjects' (Lekorwe and Somolekae 1998:189). The 1891 Order-in-Council gave the High Commissioner powers to make laws for the Protectorate, appoint government officials and interfere in tribal affairs. Elsewhere in Africa, indirect rule also preserved indigenous laws and institutions, but dictated that they could only apply in instances where they were not incompatible with '...English ideas and institutions' (Yakubu 2002:5). In Botswana, Gilbert Sekgoma argues that in cases where there was conflict between British and setswana interests and laws, Her Majesty's position took precedence, and that this was an indication of who wielded real power (Sekgoma 1998:2). It can be observed that this legislation was a direct affront to customary law regarding *bogosi*. Batswana *dikgosi* and their advisers made laws in the *kgotla*, and they were promised that they would continue to govern as they had done in the past. If the High Commissioner was now empowered to make laws and interfere in tribal affairs, this meant that *dikgosi* no longer possessed supreme powers because those customary laws that were adjudged to be in conflict with British interests faced nullification. However, at this juncture it would appear that the colonial power was not so firmly entrenched to be able to tamper with well established practices such as the designation, suspension or removal of *dikgosi*, hence it adopted a cautious approach.

Some Batswana *dikgosi* realised the impending threat to their authority and contested the new measures, arguing that British actions amounted to interference in the affairs of their merafe. *Kgosi* Sebele II of Bakwena ignored British orders, and as punishment, a fine of 10 head of cattle was imposed on him. The colonial administration even considered deposing him for his

uncooperative behaviour in favour of his brother. This step was abandoned after the realisation that Sebele commanded greater support than his brother (Mgadla 1994:50). In this case, the British were swayed by the atmosphere prevailing in the society. They were not prepared to face the consequences of a possible revolt, which would have been expensive to quell, and hence they did not trample on the customary law regarding the remedy to be applied by the Tswana to an unsuitable *kgosi* – deposition by his subjects in a *kgotla*.

The colonial administration was adept at gauging the general opinion of society in matters regarding *bogosi*, and hence some of their policies and actions were based on the general concerns of the public. This is exemplified by the 1893 debacle between *Kgosi* Sekgoma Letsholathebe of Batawana and the colonial authorities. Letsholathebe had opposed British laws and missionary activities on numerous occasions. As a form of punishment, the Resident Commissioner deposed him and replaced him with Mathiba Moremi (also from the royal house). The Batawana *morafe* was divided on the conduct of their *Kgosi* (Mgadla 1994:50), and the administration realised that its drastic measures would not be met with stiff resistance. Commenting on the role of Batswana in determining colonial actions at this juncture, Mgadla maintains that 'Even if the *kgosi* did challenge colonial policy, the administration was hesitant to remove the chief unless there was clear support in the *Kgotla* for such a decision' (Mgadla 1994:51). On the Batawana incident, the *morafe*, or a large section of it, was not prepared to confront the British on the issue, probably feeling that the action taken against their *Kgosi* was appropriate. However, the might and resilience of the institution are borne out by the fact that the British 'installed' another royal who had some legitimacy to the throne, and not an outsider, an action that did not run directly counter to tradition and custom.

During the early phase of colonialism, some *dikgosi* started taking advantage of colonialism to enhance their authority and positions even by indulging in some activities which were not necessarily customary. On the other hand, Batswana were also becoming increasingly aware of their influence on colonial actions, as well as exploitative designs by some of their *dikgosi* which were not sanctioned by customary laws. This atmosphere came to the surface with the Native Labour Proclamation of 1907. The proclamation, 'made it illegal for *dikgosi* to bind themselves by contract to the provision of labour'. Batswana *dikgosi* had wanted to raise funds for development and the payment of taxes by sending young able bodied men to South African mines. This was largely opposed by Batswana merafe who regarded these measures as exploitative and unnecessary. The intervention of the colonial government by preventing *dikgosi* sending Batswana to the

mines meant the powers of *dikgosi* in this area were curtailed and the welfare of the larger society enhanced. In this case, the administration had 'restricted the *dikgosi* because of popular demand' (Mgadla 1994:51). Sending more Batswana men to the mines enabled them to pay tax, and this meant increased revenue for chiefs who pocketed 10 percent of the tax collected. Thus, with British protection behind them, the *dikgosi* imposed additional exactions on the peasantry for personal gain, a feature of indirect rule observed elsewhere in Africa (Mamdani 1996:46). In Botswana, again as in other parts of the continent under indirect rule, these situations would be abused by some *dikgosi*.

In the early decades of indirect rule, that is before 1920, the *dikgosi* were gradually being incorporated into the colonial central government system. However, during this phase of indirect rule, the colonial state did not interfere much in the customary laws and institution of *bogosi* (Mgadla 1994:51; Molokomme 1994:352). The colonial administration was content with their use of *dikgosi* as agents or emissaries to the general populace. In order to ensure that *dikgosi* become an effective link between the administration and Batswana, a Native Advisory Council later (African Advisory Council) was set up in 1919 supposedly as a forum through which Africans could air their views to the administration, but, as Mamdani rightly observed, this body largely became a forum where the Resident Commissioner delivered his proclamations and little debate took place. This had the effect of weakening *dikgosi* vis-à-vis the British administration (Mamdani 1996:46). The council, which was chaired by the Resident Commissioner comprised of *dikgosi* and some headmen who were chosen in the *kgotla* as members. The council '...lacked any sense of popular representation in that the elected councillors were chosen by *dikgosi* without adequate consultation with their people in the *kgotla*'. One of the elders who was interviewed on the nature of representation of the council lamented its lack of contact with the society at large:

> Deliberations and resolutions made at council were rarely, if ever, discussed in *dikgotla* prior to the meetings. Once resolutions had been approved by the resident commissioner and *dikgosi*, the latter announced them in *dikgotla* and the public had little to say in deliberating over them, contrary to the democratic practice of di*kgotla* (Mgadla 1994:53, interview with Masimega Tshosa ward, Molepolole, 18 Nov, 1987).

In this instance, it would appear *dikgosi* were interested in promoting their own interests and serving the interests of the British rather than those of their subjects. The British colonisers were undermining the deliberative process of the *kgotla* and this was likely to alienate *dikgosi* from their people because

they had departed from the traditional practice of consultation popularly known in setswana as *Therisanyo*. These practices demeaned *dikgosi* in the eyes of the society, and when the colonial administration flexed its muscles in the not too distant future, and further eroded the powers of *dikgosi*, they were to have little sympathy from their subjects. This was the situation in 1926 and 1927 when legislation was passed 'removing civil marriages and *boloi* (witchcraft) from *dikgosi*'s jurisdiction' (Mgadla 1994:53), and more of such measures would be undertaken during the highly confrontational years of 1934 to 1943. It is however, worthy to note that the disregard for the due process of consultation by some *dikgosi* would have demeaned the positions of individual *dikgosi*, but not the institution per se.

The phase of heightened confrontation, 1934-1943

In the late 1920s and early 1930s, some *dikgosi* became more autocratic in dealing with their subjects, despite the introduction of legislation by the colonial administration aimed at reducing their powers. This could have been due to the realisation of their weaknesses vis-à-vis the administration and hence the need to portray themselves as powerful by being autocratic (Lekorwe and Somolekae 1998:189). Two leading *dikgosi* in the protectorate were accused by their subjects of autocratic tendencies in a letter sent to the Resident Commissioner in Mafeking. The residents alleged that *kgosi* Bathoen II of Bangwaketse '...made his people work without food', and that his orders, 'cannot be questioned'. In the same letter, residents described *kgosi* Tshekedi Khama of Bangwato as, 'the most absolute tyrant that ever sat upon the Bangwato chieftainship' (Ibid). However, it should be noted that the colonial government was partly responsible for some of the dictatorial tendencies displayed by some *dikgosi*. In most colonial situations, indirect rule tended to provide its 'functionaries (chiefs) with powers which were bound to be abused'. The benefits that accrued to chiefs such as dues and shares from taxation for their service were later abused by increasing personal exactions on the peasantry (Mamdani 1996:54). In Botswana, Resident Commissioner Charles Rey noted some of this abuse in the late 1920s and 1930s and this prompted him to institute the controversial 1934 proclamations reducing the powers of *dikgosi*. On the other hand, Batswana were also becoming distrustful of the behaviour of some *dikgosi*. The unbecoming behaviour of the *dikgosi* and the reaction of some sections of the merafe has been described succinctly by Schapera thus:

> Freed by the support of the administration from tribal sanctions formerly restraining him (*kgosi*) he often tended to care more about asserting the rights that remained to him than about his corresponding duties and obligations.

> He became more autocratic and exacting and less willing to consider the welfare of the tribe or to use his wealth for its benefit. All this the people began to resent, a tendency reinforced by educational advancement and the possibilities of escape opened up by labour migration (Schapera 1938:86).

Schapera reiterates that while civilisation may not have 'destroyed fidelity' to the *kgosi*, it made Batswana to be more critical of the conduct of *dikgosi*. As already stated, this occurred at a time when the colonial administration had removed the mechanisms and remedies that society used to employ against oppression and abuse. This could also be another reason why Batswana did not react strongly to the introduction of legislation reducing powers of *dikgosi*, although it ran counter to their customs and traditions. In spite of the changes noted by Schapera, Batswana still largely held the institution in high esteem. The reaction of Batswana to the conduct of some *dikgosi* should be viewed not against the institution, but as against the conduct of individual *dikgosi*.

The years 1934 to 1943 witnessed the beginning of increased colonial intervention in Batswana's legal and political affairs. This was after Colonel Charles Rey was appointed Resident Commissioner in 1927. Rey attributed the lack of development in Botswana to what he saw as the dictatorial powers of *dikgosi*, and hence he enacted two draconian proclamations, namely the Native Administration Proclamation No. 74 of 1934 and the Native Tribunal Proclamation No. 75 of 1934 to 'tame' *dikgosi* (Steenkamp 1994:296-97). During this period, the colonial administration felt entrenched enough to institute measures which would further reduce the powers, privileges and functions of *dikgosi* (Sekgoma 1998:3), hence further undermining some of the customary laws governing *bogosi*. These proclamations have been discussed at length elsewhere (Sekgoma 1998; Mgadla 1994; Lekorwe et al. 1998) and we shall only briefly summarise them here. The Native Administration Proclamation provided for the recognition, approval, dismissal and suspension of *dikgosi* by the High Commissioner. Furthermore, 'the High commissioner was also given the power to refuse to recognize and approve newly appointed chiefs, despite the support those chiefs might command from their people', in the interests of public good and good government. The proclamation also introduced Native Councils to assist *dikgosi* in administering their tribes. This seriously eroded the independence and power of *bogosi* because henceforth *dikgosi* were no longer able to rule as they saw fit, but were subjected to the advice of tribal councils (ibid). The Native Administration Proclamation whittled down the powers of *dikgosi* and changed Tswana law and customs regarding the institution. The new measures stipulated that a successor to a *kgosi* should be appointed by the tribe at the *kgotla*, and the new *kgosi* had to obtain the recognition of the High

Commissioner. The proclamation ordered that the name of the newly appointed *kgosi* should be submitted to the Resident Commissioner for consideration. This, according to Lekorwe and Somolekae, 'constituted a major deviation from the Tswana law of succession. It obviously weakened the position of the chief within the community' (1998:189). Considering the manner in which some *dikgosi* behaved in relation to their subjects during this period, it would appear the general population somehow maintained a low profile in the saga, including the court battle which followed the introduction of the proclamations.

The proclamation had the effect of rendering *dikgosi* mere civil servants of the government as they were now bound to promote colonial interests and ignore those of their subjects. Lekorwe further emphasises the predicament that *dikgosi* found themselves in, by stating that for one to become *kgosi*, they needed British recognition, and the colonial government could withhold recognition of a *kgosi* who was regarded as being anti-colonial. They could even proceed to take the drastic action of appointing their puppet to the position of *kgosi* (Lekorwe and Somolekae 1998:189). However, in practice, customary laws on *bogosi* remained resilient because in instances where the British fell out with a *kgosi*, they would install a royal who had some semblance of recognition and legitimacy from the *morafe*, and would not appoint a commoner, or an outsider with no royal connection. Furthermore, the Native Councils which had to be consulted by *dikgosi* under the new dispensation were not a radical departure from the traditional Tswana consultative bodies, although they could have been transformed in this instance. In the main, the indirect rulers still recognised the vitality of the institution – that it was the main link between it and the populace.

The native proclamation reaffirmed the dictates of the 1891 law which deprived the *dikgosi* of the powers to try serious cases such as those involving murder, rape and treason, and transferred these powers to the magistrate's court and the high court. These laws affected the position of *dikgosi* adversely because they could only deal with relatively minor cases and those involving customary law and customs. Sekgoma argues that the colonial administration viewed these measures as 'desirable reforms aimed at modernizing outmoded and autocratic institutions and thus making them amendable to modern forms of administration' (Sekgoma 1998:4). This was the view of the British, while the majority of Batswana continued to admire and utilise their institutions. For Batswana, *bogosi* remained a viable body which still plays a crucial role in modern Botswana as we shall observe shortly.

Batswana *dikgosi*, namely Tshekedi Khama of Bangwato and Bathoen II of Bangwaketse, took the colonial administration to court for what they

regarded as an affront to their powers. They argued that this was a breach of a promise of non-interference in the affairs of merafe made by the British when declaring the protectorate. They protested that the Order-in-Council of 1891 had not altered their powers (Mgadla 1994:54). However, they lost the legal suit. A decade later in 1943, the administration issued a series of other proclamations to placate *dikgosi* and neutralise the effects of the 1934 proclamations. Proclamation No. 32 of 1943 was designed to repeal the earlier Native Administration Proclamation. However, it did not change the essence and effect of the 1934 proclamation because it still provided the High Commissioner with powers to recognise, suspend or dismiss a *kgosi* or *kgosana* (headmen), whose actions were considered a 'threat to good order, public peace and good government' (Sekgoma 1998:4). The mere dilution of the former stringent measures were a result of pressure from dissatisfied *dikgosi*, and British realisation that the latter could render indirect rule unfeasible through non-compliance. Thus the winning of some concessions, however minor, is an indication that *dikgosi* could deploy their might to their advantage.

The 1943 proclamation introduced a new phenomenon, that of the native authority. This was a new concept in tribal administration. The new authority took over the function of *dikgosi* which had been vested in the native councils by proclamation No. 74 of 1934. Under the new proclamation, a *kgosi* was now required to work with members of the native authority and decisions were to be arrived at through consensus or majority vote. On the effects of this proclamation, Sekgoma observes that 'This requirement had the net effect of reducing the Chief's power in his *kgotla* and seriously constrained his freedom of action on matters which affected his constituency' (Sekgoma 1998:5).

Through this action, the British gave more authority to the community. This change was accepted by the society as it would counter the dictatorial tendencies displayed by some *dikgosi* earlier on. As noted, the setswana administrative system was buttressed by consultation on crucial issues in the *kgotla*, and, although the chief would state the final decision on any issue, the decision would be based on the deliberations of the *kgotla*. It was indirect rule that tended to arm *dikgosi* with 'uncustomary' powers, such as disregard for the traditional consultative process. The 1943 proclamation only brought back some minor powers previously held by *dikgosi*. The *kgosi* could now make some laws in conjunction with the *morafe*. The crucial issue was that the *kgosi* had first to consult with the *morafe* at the *kgotla*. The *kgotla* on this occasion again assumed its critical role in Batswana affairs because the *kgosi* had to consult it, and not the tribal elders alone (Mgadla 1994:55). Batswana

wanted to participate in decision making in the *kgotla*, and instances of challenges to the undue authority of *dikgosi* by educated Batswana like Simon Ratshosa is evidence that society was against a 'created chieftship' with powers previously unknown and not sanctioned by tradition.

Dawn of a new era: Independence, onslaught, adaptation and resilience

If *dikgosi* had entertained any hopes that their powers would be restored after independence by an African government, then those were dashed even during the transition period. The struggle between the young and educated politicians who led the country to independence and *dikgosi* started during the constitutional talks in 1963 (Tlou 1997:335). At stake was the issue of the amount of powers to be wielded by *dikgosi* in the new dispensation. Ultimately, whilst the new government accorded *dikgosi* some recognition, it further reduced their powers. The new democratically elected government of Botswana was determined to shut out *dikgosi* from wielding significant political power. Contrary to what transpired at independence in some African countries where chiefship was regarded as irrelevant (Lekorwe and Somolekae 1998:190), *bogosi* was not abolished in Botswana. Here, the government introduced a series of legislation which, as some analysts have observed, further reduced the powers of *dikgosi* and rendered the institution almost meaningless (Sekgoma 1998:15). The party which emerged victorious from the first general elections – the Botswana Democratic Party (BDP) – was led by a traditional chief and had amassed wide support from the rural areas where chiefship had massive appeal. Unlike the radical Botswana Peoples Party (BPP), the BDP had realised the influence and grasp of *bogosi* on Batswana and hence its utility as a 'vote bank'. This party has since treaded delicately on issues of *bogosi*, hiving off some crucial powers from *dikgosi* whilst also acceding *dikgosi* some crucial benefits because of their strategic position in society and the influence they wielded.

At independence in 1966, Botswana adopted a 'liberal democratic' system of government modelled on the Westminster system. The new constitution that was adopted entailed separation of powers, with legislative powers being the preserve of parliament, policy making powers falling under the executive and judicial powers coming under the judiciary. The new system of government differed with the pre-colonial setswana government where judicial, executive and legislative powers were vested in the *kgosi* (Lekorwe and Somolekae 1998:190). But this superstructure operated alongside or above a tribal setswana system, which in fact continued to be the main judicial and

administrative system at grassroots level in the rural areas where the majority of Batswana lived.

From its inception, the post-colonial state cherished the establishment of a plural democratic government based on the rule of law and a free enterprise economic system. These values could not be accomplished without some radical reforms of the traditional Tswana political system (Sekgoma 1998:14). These radical reforms have been instituted and the chieftaincy has proved itself capable of adapting to new circumstances because the capitalist economic enterprise was not a new phenomenon, but rather it adopted a higher gear with independence. In addition to parliament, the constitution also provided for a house of chiefs. The function of the house of chiefs was to advise the government on matters concerning customary laws and tradition. The house could also call on a minister to answer questions and clarify matters. This institution had no legislative powers and its opinions and advice were not binding on government (Proctor 1968:22). *Dikgosi*, as would be expected, disapproved of this aspect of the house's powers. The nature of the house of chiefs – its deprivation of any significant powers – signalled the intention of the new government. Notwithstanding, the mere existence of the house and the fact that its members have on several occasions made significant contributions on national issues and legislation points to the ability of *dikgosi* to maintain some of their rights.

The first piece of legislation which indicated that the new government was intent on wresting some of the remaining powers from *dikgosi* and enhancing the earlier colonial legislation was the Chieftainship Act of 1965. The Act recognised the institution of *bogosi*, but it explained the position of *dikgosi* in relation to the government by stating that:

> ... no person shall hold or assume chieftainship of any tribe or exercise or perform any of the powers of a chief unless he has been recognised as chief of such a tribe under this Act. Such person shall have to be designated by a tribe assembled at a *kgotla* in the customary manner, and his name shall be sent to the president ...The president shall by notice in the *Gazette*, recognise the person so designated as chief of such tribe (Lekorwe and Somolekae 1998:190).

Lekorwe and Somolekae have candidly assessed the effect of this piece of legislation on *bogosi*. They argue that this provision of the Chieftainship Act in effect means the President can choose not to recognise a *kgosi* for any reason known to him. They further argued that the President's reason for choosing to recognise a *kgosi* was similar to that of the colonial government where a *kgosi* had to be loyal and subordinate to the central government. In this regard, a *kgosi* was recognised for political reasons (ibid). With respect

to the setswana-speaking groups, the government has not, at any time refused to recognise a chief who has been designated by the particular group to ascend to the throne. It has only been in recent times that the government or politicians have intervened in favour of their candidate in villages composed of multi-ethnic groups, and where the true holders of the throne are not easy to discern such as in the Tati Siding village of north-eastern Botswana.

The Act of 1965 was further strengthened by the Chieftainship Amendment Act of 1970, which placed *dikgosi* under more close control by the government. The amended Act accorded the president powers to unseat a *kgosi* without waiting first to receive complaints from his subjects. After consulting the *morafe*, the President could appoint a regent to rule a *morafe* if the rightful heir was not ready to assume office. This Act meant that, 'in Botswana the decision to recognise the appointment of a Chief is the prerogative of the President'. The Chieftainship Act of 1965 had almost the same impact as the 1934 Act in that it denied *dikgosi* some of their most cherished powers. Thus, 'the subjection of succession to presidential recognition was a practice that was inherited from the colonial administration' (Sekgoma 1998:8). Although the state had armed itself with drastic powers such as the suspension or removal of a paramount chief, in practice such powers have been rarely revoked, and in instances where they have, the government has suffered political setbacks such as the loss of votes at elections and non cooperation from the chief's subjects.

Notwithstanding these developments, the Botswana government has continued its further erosion of the powers of *dikgosi* in the past three and a half decades. The Chieftainship Amendment Act of 1987 was one of the laws which progressively subordinated the *dikgosi* to the government. This Act placed *dikgosi* under the Minister of Local Government, Lands and Housing. The Act maintained that, 'the Chief can be designated as such in accordance with customary law by his tribe in the traditional assembly, but that he has to be recognised as such by the minister' (Lekorwe and Somolekae 1998:191). In line with this, it has been noted elsewhere that in independent Botswana, succession to *bogosi* is not based on the dictates of customary procedure in selecting the rightful heir, but it depends on whether the selected heir is acceptable to government (Sekgoma 1998:8). The Act empowers the minister to suspend a *kgosi* if he/she has valid reasons to believe that the *kgosi* of any *morafe* has abused his powers or is not capable of exercising them. After this suspension, the minister can order an enquiry and consider representations from the chief's side. Following this enquiry, the Minister can depose a *kgosi* from *bogosi* for a period of not more than five years. 'The Act has, therefore, continued to elevate the status of politicians at the expense

of chiefs'. The intention of this Act was to obtain cooperation from *dikgosi*, denigrate their political influence and restrict their ability to act freely. Exercising her/his powers under the Act, the Minister of Local Government can simply remove a *kgosi* from office just like a civil servant, although a *kgosi* comes from a royal house (Sekgoma 1998:8) These measures have prompted some of the *dikgosi* to voice their concerns, with the paramount *kgosi* of Batawana complaining that 'The contemporary chieftainship institution is not the same as chieftainship in the ancient days because government has relegated it to the status of a lower profile civil service' (Lekorwe and Somolekae 1998:192). Powers conferred on a minister to remove a *kgosi* should not be viewed as indicative of the demise of *bogosi*. In reality it has proved difficult for ministers to exercise such powers, especially in instances where the *morafe* stood behind their chief. The massive support enjoyed by *dikgosi tse dikgolo* renders the exercise of draconian powers difficult as such action could be politically suicidal. The mere removal of a *kgosikgolo* by a minister does not appear to be as simple as Sekgoma seems to imply. It is an action that calls for full and unflinching tribal backing.

In some rare instances, the government has indeed invoked its powers under this Act. Testimony to this was the government versus Bangwaketse debacle of 1994. In that year, the Minister of Local Government suspended *kgosi* Seepapitso for allegedly failing to cooperate with the government during a visit by the Zambian President to the Bangwaketse capital of Kanye. The Minister proceeded to appoint Seepapitso's son to act as *kgosi* of Bangwaketse. This matter was contested in the courts by the *morafe* and their *kgosi* against the government, and it ended up at the Court of Appeal which ruled that the suspension was lawful, but that the minister had made an error by not consulting the tribe before appointing the son. *Kgosi* Seepapitso was reinstated following this judgement (Lekorwe and Somolekae 1998:192-3). Following this saga, the ruling party lost the Kanye parliamentary seat to the opposition in the 1999 general elections. Although Kanye had been an opposition stronghold since the resignation of *kgosi* Bathoen II to join the opposition Botswana National Front (BNF) hence attracting a lot of support from his subjects, some residents have argued that, in this instance, Bangwaketse wanted to punish the ruling party for suspending their *kgosi*. The government later appointed *Kgosi* Seepapitso as Botswana's ambassador to the United States. While this appointment has rightly been interpreted as a move aimed at removing an errant chief from the scene (Nyamnjoh 2002:7), elsewhere it has been seen as an attempt to placate the *kgosi* and his *morafe* and thus gain political mileage (Personal communication with five Bangwaketse elders aged 50 to 78 years, 21/10/2002). The appointment of a *kgosi* to a diplomatic

position ahead of career diplomats, has also been seen by observers and the opposition as a political move designed to boost the image and revive the political fortunes of the ruling party in Ga-Ngwaketse.

Another move to reduce the powers of *dikgosi* was the setting up of district councils in 1966. The councils were, among others later accorded the responsibility of taking control of stray cattle (*matimela*) in accordance with the Matimela Act of 1968. This Act, empowered the councils to collect and dispose of stray cattle, taking away this responsibility from *dikgosi*. Stray cattle not collected after a stipulated period could be sold and the money used by councils. This Act impacted heavily on *dikgosi*'s key source of wealth. Presently, they are not involved in matters of taxation, and they no longer receive the 10 percent tax commission that was earlier paid by the British administration. The *morafe* does not plough for *dikgosi* or provide them with tribute anymore. Because these traditional requirements are no longer in practice, this has seriously diminished *dikgosi*'s wealth, power, status and prestige. This is because '...chiefs have now been reduced to the status of civil servants and have to depend on a salary like all other government employees'. Cattle have been a major source of wealth and prestige in traditional Tswana society. Although this is still the case to some extent, other economic activities in modern Botswana such as the ownership of bottle stores, bars, and restaurants have become important sources of wealth in which commoners can invest (Lekorwe and Somolekae 1998:194). The opening up of such opportunities to commoners can be viewed as another reason why Batswana have not reacted strongly to the government's onslaught on *dikgosi*'s powers, especially powers that would have hindered commoners access to economic and political opportunities. Some Batswana maintain that in the past some *dikgosi* were oppressive and unnecessarily restrictive in what their subjects wanted to pursue. They mention a *kgosikgolo* among the Bangwaketse in the colonial days who did not allow his subjects to own certain items like cars and build houses of brick and corrugated iron, because he was the only one supposed to have those (Personal communication with Montsho Seditse 73, Keto Matlhare 80 and John Baruti 67 at Kanye, 21/10/2002).

Despite the loss of their traditional sources of wealth, *dikgosi* have re-negotiated their position in the new system and have won sizeable benefits. Paramount chiefs are paid a relatively attractive salary and enjoy an enhanced status (as evidenced by three professionals who left their careers and became chiefs, namely *Kgosi* Tawana II of Batawana and *Kgosi* Letlamoreng II of Barolong, both lawyers, and *Kgosi* Kgari of Bakwena, a teacher). In addition, they enjoy the privilege and status of occupying the prestigious flats at the

parliamentary village. They are accorded the privileges of buying cars at half the price, with the government paying a 50 per cent subsidy and have, on numerous occasions accompanied the President on state visits. These are privileges enjoyed by the country's legislators (members of parliament), and the extension of these to *dikgosi* shows the importance attached to these positions and the *dikgosi*'s right to privileges. This is not a situation peculiar to Botswana. Elsewhere in Africa, the might and elevated status of the institution has been shown by the fact that highly educated personalities with doctoral degrees from European Universities have settled for chiefship and they also enjoy numerous benefits and privileges from the state (Nyamnjoh 2002:14-15).

A major blow was dealt *dikgosi* and Tswana customary law when the Tribal Land Act was promulgated in 1968. This Act provided for the establishment of land boards which wrested the powers of custody and allocation of land from *dikgosi* and vested them with the new land boards, turning *dikgosi* into ex-officio members of these boards, and rendering them mere bystanders in the process of land allocation (Sekgoma 1984:11). As noted earlier, *dikgosi* were responsible for allocation of gazing, residential and cultivation land. Although they lost some of these powers such as allocation of land to concessionaires during the colonial period, they continued to allocate land in their respective reserves. After independence, the government realised that *dikgosi* did not have the resources and capacity to allocate land effectively. Since land is a sensitive issue, and the *dikgosi* had enjoyed the privilege of first priority to the best lands in terms of residence and cultivation, it was clear that the continuation of this practice would cause strife and hence the government intervened. However, it should be noted that Batswana still regard the *dikgosi* as custodians of their land as shown by the recent resistance to give land boards tribally neutral names (for example, the change from Bangwato Land Board to Central District Land Board). The attachment of *dikgosi* to land was also emphasised in the Balopi commission when setswana-speaking groups argued that subject tribes cannot have a paramount chief because they do not have land (*Botswana Guardian,* 22 March 2002; *Botswana Gazette,* 24 October 2001). In Gammangwato, subject tribes such as Batswapong, Bakalanga and Babirwa are held to be occupying Khama's land and hence the opposition by Bangwato for the installation of paramount chiefs by the former. In fact, most Batswana believe that the land boards are meant for the efficient allocation of land since they have the resources, but that in actual fact the land belongs to different *merafe* with the chief being the custodian.

In the judicial sphere, it was the Customary Court Act of 1966, which further whittled down the remaining judicial powers of *dikgosi*. In the pre-colonial period *dikgosi* possessed unlimited jurisdiction, tried all types of cases, and determined the sentences. The Customary Court Act placed further limits on the powers of *dikgosi*. These limits were first introduced in the colonial period and have been continued by the independent government. The Roman Dutch law introduced in the country in 1891 had removed some of the privileges and powers of the *dikgosi*. The District Commissioner and the Magistrate have since then been armed with powers to revoke decisions of customary courts. In present day Botswana, one can decide whether to be tried by a magistrate or by a customary court. This was a new development which undermined the role of *dikgosi* in today's legal system. *Dikgosi* were dissatisfied with this development and one of the outspoken *dikgosi*, Bathoen II of Bangwaketse resigned from *bogosi* and joined opposition politics. He stood on the opposition ticket for the parliamentary seat of Kanye in the 1969 general elections where he defeated the then Vice President Ketumile Masire. This was an indication of the fact that Batswana, especially those in the rural areas, still followed their *dikgosi* and were prepared to offer them substantial support. However, this did not deter the new government which continued its relentless drive to deprive *dikgosi* of much of their powers and privileges. But, in the process, it accorded new roles and privileges that, while serving government's interests, they also enhanced the positions of *dikgosi* and bolstered the resilience of the institution.

Demise or resilience: Customary law and the future of chieftainship in Botswana

In trying to grapple with the issue of whether the institution of *bogosi* is on its deathbed in Botswana, we shall begin by discussing the concept of succession, a concept that Batswana, especially those from the Tswana speakers who have a strong tradition of paramount *dikgosi*, have stuck to tenaciously. As noted at the beginning, succession to the office of *kgosi* among Batswana was hereditary in the male line, with the *kgosi*'s eldest son ascending to the throne if the office fell vacant. In case of his minority, his uncle would act as regent or if a *kgosi* died without male issue, then his next brother would take over. We also noted that no women could be *kgosi*, the exception having been the regents Ntebogang of the Bangwaketse *morafe* from 1924 to 1928, and Mmamoremi who became regent for her son among the Batawana. These were the only rare cases during the colonial peiod (Ngcongco et al. 1987:19-22; Tlou 1998:22). Despite their paucity, the cases point to the dynamism of the institution and the fact that chiefship has long been amenable to reform.

Mention has also been made of the fact that according to customary law and tradition, a *kgosi* was born, and not elected, hence the setswana saying *kgosi* ke *kgosi* ka tsalo (a chief is a chief by virtue of birth).

Throughout the colonial period, the eldest male sons of *dikgosi* in the Tswana groups have ascended to the throne. In the case of a minority, a regent would take office as exemplified by the case of *Kgosi* Tshekedi of Bangwato who became regent in 1925 upon the death of *Kgosi* Khama III. The heir, Seretse Khama was by then only four years old. In other instances, a royal would become *kgosi* if for some reason, the *kgosi*'s direct descendant was not available. Hardly any commoner, or person outside royalty, ascended to the throne as *Kgosikgolo* during the colonial period, and this tradition persists today. The same applies to the election of a *kgosi*. Among the Bakwena, Bakgatla, Barolong, Balete, Bangwato, Batawana, Bangwaketse and Batlokwa, a paramount *kgosi* has never been elected and even today they insist that a *kgosi* should be born in the traditional line. The persistence and strength of this practice and tradition has been highlighted by the Balopi commission where the aforementioned groups adamantly castigated the idea of a paramount chief being elected, whilst maintaining that they were not against the election of sub-chiefs from the minor merafe. However, the ability of *bogosi* to lend itself to reform was exemplified by the recent ascendancy of a woman to paramountcy in one of the main setswana-speaking tribes . After the death of the Balete *kgosi* Kelemogile Mokgosi, Mosadi Seboko presented herself as a suitable and legitimate candidate to claim the throne amongst the royals. After some minor resistance from some royal males, the Balete finally accepted Seboko to be their *kgosikgolo*. This further buttresses the fact that chiefship has been successful at adapting to social and political changes in Botswana (Nyamnjoh 2002:12).

This paper maintains that the institution of *bogosi* shall continue to exist, and that if its ability to adapt to the changing circumstances is anything to go by, then it shall live for sometime to come. While it is true that some of the functions, powers and privileges of *dikgosi* have continued to diminish in relation to those of politicians and top civil servants, the fact is that on the other hand, *dikgosi* have become a core pillar in the administrative and judicial spheres of this country. *Dikgosi* have already taken up new roles that do not necessarily accord with the traditionalist and ideal form of *bogosi*, as was the case in the pre-colonial period, and the diluted *bogosi* of the colonial period, but these roles have so far proved to be in accordance with the existing social and political realities. Indeed, the functions of *dikgosi* have been essential in the orderly functioning of Botswana' society.

The changing order in Africa, and the world generally, means that the institution of *bogosi* should adapt to the times if it is to be of any relevance. In Botswana, *bogosi* has demonstrated its resilience by adapting and accepting its new role and status in society. Batswana have also accepted new developments and appear content with the new roles of the *dikgosi*, although these roles may be regarded as subservient to the new order. The paramount *dikgosi* of some Batswana groups have personally accepted the fact that tradition has changed, and that *dikgosi* ought to adapt if they are to remain relevant. Presenting a paper entitled 'Does Customary Law Have a Future in Botswana', *Kgosi* Seepapitso IV of Bangwaketse emphasised this position in his statement that 'our traditional pattern of life has indeed changed and this could be made positive by us accepting the change and by introducing certain concepts that would ameliorate the trauma of change' (Seepapitso 1994:343).

The role of *dikgosi* and *bogosi* in Botswana in the colonial and post-colonial period has changed in response to the demands and dictates of existing realities. As already noted, *dikgosi* were turned into civil servants by the colonial administration. *Dikgosi* became intermediaries between the colonial administration and the society, and although they were denied the tribute and other forms of levy, which were their sources of wealth from their people, they accepted the 10 percent tax commission that they were paid. Having lost the power to levy tribute and other dues from their constituents, *dikgosi* had to adapt to the new order and the salaries and other benefits that accrue to the *dikgosi* should be viewed as payment for their new roles in society. In order to grasp the economic power held earlier on by *dikgosi* and its relation to their subjects, it is worth noting the statement by the paramount *kgosi* of Bakgatla, Linchwe II that:

> In appreciation of his role in the society, the tribe paid tribute in the form of cattle, ivory, skins, corn etc. Tribute was also paid in the form of labour to plough the chief's fields. The social security systems of the tribe hinged on the chieftaincy and the wealth that surrounded the institution as a result of tribute, on claimed cattle and cattle captured at war (Linchwe 1994:397).

In times of need, the *kgosi* would redistribute such cattle and grain among his subjects. Today, *dikgosi* do not have access to resources from their subject, and the obligations mentioned above no longer apply. This scenario has, in a way, made them dependent on government. The dependence (mainly salaries and other benefits) does not mean that *dikgosi* have lost all power, influence and support among Batswana. This dependence has not been one-sided because although politicians and top civil servants have reaped immense benefits by utilising *dikgosi*, they have also accorded *dikgosi* considerable

benefits and privileges in terms of status and influence which makes the latter dependent on *dikgosi*. The present position of *dikgosi* has been well relayed by Nyamnjoh in his contention that they are part of an elite that manipulates whilst also being manipulated (Nyamnjoh 2002:10).

As already stated in the previous sections, the colonial and post colonial state introduced measures which undermined traditional Setswana di*kgotla* (courts) and the manner in which they used to dispense justice. The introduction and superimposition of the District Commissioner and magistrate courts over customary courts clearly show the diminution of customary law. However, the majority of Batswana live in the rural areas, and even those who stay in towns cannot afford the exorbitant fees and services of attorneys. Customary courts have been introduced in towns, and despite the transformations that have taken place, it is quite evident that many Batswana still seek, and will continue to seek, recourse in the customary courts of the country. The vitality of customary law in Botswana's society has been highlighted by *Kgosi* Linchwe when he stated that 'There is growing recognition that customary law is here to stay. However, it is being called upon to be more innovative than has hitherto been the case' (Linchwe 1994:400). Customary law has demonstrated its innovativeness because there is 'living customary law' which does not depend on precedent as many of the judgements on cases, rules and norms in the long past have been forgotten. This law is based on the prevailing circumstances, and this is the customary law used in some of the customary courts in towns (Molokomme 1994:350). This demonstrates that customary law is flexible and hence its resilience.

Bogosi plays a vital role in Batswana's judicial system, and the government has realised the important role of *dikgosi* in it. The importance that government attaches to customary law and the resilient nature of *bogosi* has been well stated by Tlou and Campbell (1997:337) in their assertion that:

> Notwithstanding its loss of power since independence, *bogosi* has proved to be resilient, especially in applying customary laws and custom in the settlement of disputes. The government has recognised the importance of customary law by establishing the customary court of appeal. It is interesting that so far the government has appointed royals to be presidents of the court.

This indicates that customary law still commands respect from important quarters in Botswana, and that the *dikgosi* are still regarded as custodians of customary law. Although appeals from the customary court proceed to the customary court of appeal which was established in 1986, and, matters can be appealed to the high court and finally the court of appeal, customary law and *dikgosi* would have played their role. With the increase in criminal and civil cases, the role of the customary court in the future cannot be over-

emphasised. Although some of those who preside over some customary courts, especially urban customary courts and customary courts of appeal, should not necessarily be *dikgosi*, they are expected to apply customary law in their courts.

In this changing world, the institution of *bogosi* and customary law should adapt and realign with the existing realities and be relevant to today's situation. *Bogosi* has assumed new roles during the colonial period when it was used by the colonial government to mobilise people and act as an intermediary between the government and society. The adaptability or the ability to adapt to changing circumstances has been revealed by what transpired after independence to the present day. The state in Botswana has whittled away much of what the chiefs retained from the colonial state. On the other hand, it has utilised and had been utilised by *dikgosi* in different ways to serve different interests. Although the *dikgosi* have not gone along with the diminution of their powers quietly, they have accepted their new roles, whilst staking their claims by using their traditional power base to wring some benefits from the government. For its part, the Government of Botswana has managed to manipulate *dikgosi* and use them effectively to link with the populace. *Kgosi* Linchwe has rightly observed this development by noting that 'Chiefs are therefore amongst the best placed individuals for social mobilisation' (Linchwe 1994:395).

The institution of *bogosi* has been used by the post-colonial government as its agent in performing the functions of the maintenance of law and order in the villages. In the new dispensation, 'it has also been mobilising the rural population to ensure both the economic and political reproduction of a plural democratic state' (Sekgoma 1998:12). *Dikgosi* have been used in social activities like village cleanliness campaigns to encourage people to participate in anti-litter campaigns and environmental programmes, preventing tree cutting and veld burning, and also mobilising people in building dams for rural development (Sanders 1983:373). The post-colonial situation in Botswana has some resemblance to that in her neighbour Zimbabwe. Here too, chiefs have been utilised by government to ensure successful governance in the rural areas and also for political campaigns and, conversely, it has been politically prudent for government to accede concessions to the chiefs (Mate 2002:19).

It seems Botswana society has come to accept and expect the new roles and status of *dikgosi*, and this would accord well with Molokomme's concept of the living customary law whereby new rules and practices which are not necessarily customary in the traditionalist sense, come to be accepted as customary. These new roles should not be viewed simply as insignificant. In fact they indicate that *dikgosi* play a vital role in national security and social

mobilisation for national development. Without the general mobilisation performed by *dikgosi*, it would be difficult for politicians and government to carry out their agendas and programmes. In the rural areas *dikgosi* have effectively mobilised people against the rising crime as the case of Molepolole mephato mobilised by regent Kgosikwena Sebele shows. Bakwena responded positively to the *kgosi*'s call for mephato to be deployed against criminals, and their success irked a powerful cabinet minister because Sebele was his former political opponent, and it was feared he would reap political benefits from the exercise.

The Botswana state has utilised *dikgosi* to enhance its position politically by emphasising the fact that *dikgosi* were custodians of tradition. The government has employed the traditionalist ideology to gain political capital from the rural people, using *bogosi* as an embodiment of Tswana tradition and culture. *Bogosi* has also been used to gain cooperation of the majority of the rural inhabitants in supporting the democratic state and its capitalist economy (Sekgoma 1998:13). Whilst one would concur with this well articulated position, one would also hasten to add that this acquiescence or the fact that *dikgosi* have taken up these new roles smoothly, and are performing well is the very source of their survival and strength in a changed situation in which they cannot afford to contest or openly oppose the government. Sekgoma captures the situation concerning the admission of weakness by *dikgosi* and the reasons for that by noting that 'They (*dikgosi*) have also shied away from opposing the government of the day. In recognition of this support, the government has assured them life positions in office, satisfactory salaries, and services of secretaries and local police officers in their courts' (Sekgoma 1998:15).

Dikgosi no longer receive any material support form their subjects, and society is content that the responsibility has now fallen to the government. In this regard, it should suffice to add that not all has been lost by *dikgosi*. The acquiescence of *dikgosi* to government has been well reciprocated because the government has taken over the responsibility of providing for the traditional dues they used to receive from their subjects.

Nowadays *dikgosi* maintain law and order and perform other ceremonial duties such as welcoming visitors at public meetings in their *kgotla*. Although Sekgoma argues to a certain extent rightly that critical power lies with the state, and that in such a situation the future of *bogosi* in Botswana was hanging in the balance and its survival unpredictable (ibid), it is evident that *dikgosi* have a vital role to play in today's society and that it will not be easy to forego the institution. Members of parliament, ministers and civil servants understand that the success or failure of the *kgotla* meetings and their agendas

to a large extent depend on the importance to which a *kgosi* attaches to such visits, and the vigour with which he mobilises the general populace.

Although the survival of *bogosi* seems assured, it is apparent that there are certain requirements that the *dikgosi* and the institution of *bogosi* should do to ensure that survival. *Dikgosi* are aware of this need to adapt and fulfil the requirements as evidenced by *Kgosi* Linchwe's assertion that:

> Given new emerging realities and demands of a changing society, however, it is clear that royal families cannot offer adequate leadership and guidance on their own. It is necessary for chieftainship to welcome new skills and ideas, and incorporate the contributions of individuals and groups with diverse professional, occupational and other backgrounds from outside the bounds of heredity and royalty (Linchwe 1994:395).

Kgosi Linchwe continues to maintain and reiterate the requirements for *bogosi* to survive by stating that:

> The capacity of chiefs to open up to non-royal advice will determine in a large measure their responsiveness to modern trends. The survival of the institution of chieftainship will depend on the dynamism and responsiveness it displays in the face of changing realities in society (Linchwe 1994:396).

Dikgosi in the modern era need to be literate if they are to handle the complexities and intricacies of modern administration. This requirement has been well summarised by *Kgosi* Linchwe in his assertion that 'Chiefs can remain relevant by constantly relating to the changing needs and experiences of their people, and by avoiding the stigma of being labelled a relic of a conservative past with little relevance to the present' (ibid.).

These observations testify that customary laws relating to the duties, powers and privileges of chieftaincy are not static, but dynamic. Some aspects of customary law have changed to align with new trends, and this has been the case of Botswana under indirect rule and the independent state. The position concerning the relevance and adaptability of chiefship in Botswana has been well captured by Francis Nyamnjoh when he averred that 'chieftaincy remains ... part of the cultural and political landscapes, but is constantly negotiating and renegotiating with new encounters and changing material realities' (Nyamnjoh 2002:8).

Conclusion

Customary law with its different meanings to different people is a long established aspect of African societies. The fact that it was not written but largely passed on orally from generation to generation over centuries means that much of its 'pure' form has been lost. The law has been affected by changes brought about by contacts between Africans and outsiders, espe-

cially Europeans. In Botswana, colonialism facilitated changes as western education and influence gained ground. Whilst the colonial government laboured to undermine customary setswana customs and norms by reducing the powers of *dikgosi*, the latter, on the other hand tried to use the protection provided by the government and extend some of their powers. The government that took power at independence has transformed *bogosi* by sweeping away some of the remaining powers of *dikgosi*, but *dikgosi* have also gained immensely and they continue to wield great influence in the country. With the approach of the 2004 general elections there is talk of some paramount chiefs entering the political fray as parliamentary candidates, while not relinquishing the paramountcy. The precedence has already been set by the current Vice President who still remains paramount chief of Bangwato. *Dikgosi* therefore, can manoeuvre the situation and benefit from both worlds – the traditional and the modern. Hence one can hazard to conclude that the institution is destined to make its historic mark even in the future.

References

Colclough, C. and McCarthy C., 1980, *The Political Economy of Botswana: A Study of Growth and Distribution*, Oxford: Oxford University Press.

Hamnett, I., 1975, *Chieftainship and Legitimacy: An Anthropological Study of Executive Law in Lesotho*, Boston: Routledge and Kegan Paul.

Linchwe II, 1994, 'Chieftainship in the 21st Century', in *Botswana in the 21st Century* (Proceedings of a Symposium organised by the Botswana Society, Gaborone, 1994), pp. 395-401.

Lekorwe, M.H, and Somolekae, G., 1998, 'The Chieftaincy System and Politics in Botswana, 1966-1995', in Edge W.A. and Lekorwe, M.H. (eds.), *Botswana: Politics and Society*, Johannesburg: J.L. van Schaik, pp. 186-198.

Mamdani, M., 1996, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, London: James Currey.

Mate, R., 2002, 'Creating and Celebrating Africanness: Juggling with Men and Women Interests in Family Life. The Status of Customary Law as a Measure of Political Commitment to Gender Equality in Zimbabwe', Paper presented at the 10th General Assembly of the Council for the Development of Social Science Research in Africa on 'Africa in the New Millennium', Kampala, Uganda, 8-12 December 2002).

Mgadla, P.T. and Campbell, A., 1989, '*Dikgotla*, *Dikgosi* and the Protectorate Administration', in Molutsi, P., and Holm, J., (eds.) *Democracy in Botswana*, Gaborone: Macmillan, pp. 48-56.

Mgadla, P.T., 1998, 'The *Kgotla* in a Traditional Tswana Setting' in Edge, W.A. and Lekorwe M. (eds.), *Botswana: Politics and Society*, Johannesburg: J.L van Schaik, pp. 3-10.

Molokomme, A., 1994, 'Customary Law in Botswana: Past, Present and Future', in Botswana in the 21st Century (Proceedings of a Symposium organised by the Botswana Society, Gaborone, 1994) pp. 347-369.

Ngcongco, L.D, 1989, 'Tswana Political Tradition: How Democratic?' In Molutsi P. and Holm, J., (eds.) *Democracy in Botswana*, Gaborone: Macmillan, pp. 42-47.

Ngcongco, L.D. et al., 1987, 'The Modernists: Seepapitso, Ntebogang and Isang', in F. Morton, and J. Ramsay, eds., *The Birth of Botswana: A History of the Bechuanaland Protectorate from 1910 to 1966*, Gaborone: Longman, pp. 11-29.

Nyamnjoh, F., 2002, 'Myth and Right: Chieftaincy and Democracy in Cameroon and Botswana', (Paper presented at the 10th General Assembly of the Council of Social Science Research in Africa on 'Africa in the New Millennium', Kampala, Uganda, 8-12 December 2002).

Parsons, J., 1984, *Botswana: Liberal Democracy and the Labour Reserve in Southern Africa*, Boulder, Colorado: Westview Press.

Picard, L., 1987, *The Politics of Development in Botswana: A Model of Success?*, Boulder, Colorado: Lynne Reinner Publishers.

Proctor, J.H., 1968, 'The House of Chiefs and the Political Development of Botswana', in *Journal of Modern African Studies*, 6, pp. 59-79.

Ramsay, J. and Morton, F., 1987, *The Birth of Botswana: The Political History of the Bechuanaland Protectorate from 1910-1966*, Gaborone: Longman.

Ramsay, J., 1998, 'The Establishment and Consolidation of the Bechuanaland Protectorate, 1870-1910', in Edge W.A., and Lekorwe, M. (eds.) *Botswana: Politics and Society*, Johannesburg, J.L. van Schaik, pp. 62-100.

Schapera, I., 1984, *A Handbook of Tswana Law and Custom*, London: Cass.

Schapera, I., 1970, *Tribal Innovators: Tswana Chiefs and Social Change*, London: Athlone Press.

Sekgoma, G.A, 1998, 'The Nature, Structure and Functions of Chieftainship in Contemporary Botswana: Possibilities for Democratisation', June.

Seretse D..N., et al, 1983, 'Chieftainship in Botswana: Precolonial, Colonial and Independence', Unpublished research project, University of Botswana.

Sillery, A., 1952, *The Bechuanaland Protectorate*, London: Oxford Univ. Press.

Steenkamp, P. Jr., 1991, 'Cinderella of the Empire? Development Policy in Bechuanaland in the 1930s', in *Journal of Southern African Studies*, 17, 2, pp. 291-308.

Tlou, T. and Campbell, A., 1997, *A History of Botswana*, Gaborone: Macmillan.

Tlou, T., 1998, 'The Nature of Batswana States: Towards a Theory of Batswana Traditional Government – The Case of Batawana', in Edge, W.A. and Lekorwe, M.H. (eds.) *Botswana: Politics and Society*, Johannesburg: J.L. van Schaik, pp. 11-31.

Wylie, D., 1990, *A Little God: The Twilight of a Patriarchy in a Southern African Chiefdom*, Hanover and London: Wesleyan University Press.

Yakubu, John, 2002, 'Colonialism, Customary Law and the Post Colonial State in Africa', Paper presented at the 10th General Assembly of the Council for

the Development of Social Science Research in Africa on 'Africa in the New Millennium', Kampala, Uganda, 8-12 December 2002.)

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Colonialism, Customary Law and the Post-Colonial State in Africa: The Case of Nigeria

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Abstract

Colonialism became a fact of life in many African countries. An effect of colonialism especially in the former British colonized countries was the transplantation of the British legal system, which led to recognition of both systems and the gradual relegation of the indigenous system otherwise called customary law. The use and effect of these customary laws became dependent on the permissive extent of the general law. In its regulated state, its operation became dependent on the satisfaction of the rules of common law equity and good conscience. Other rules as to the amenability of customary law and proof became established. Notwithstanding the relegation of the rules of customary law vis-à-vis the general law, these rules have survived to date. Islamic law which was usually regarded as a variant of customary law is beginning to have its separate status. This article shall examine the impact of colonialism on customary law especially in the post colonial Nigerian state.

Résumé

Dans bon nombre de pays africains, le colonialisme a fini par devenir un état de fait. Une des conséquences de ce dernier, particulièrement dans les anciennes colonies britanniques, a été le greffage du système judiciaire britannique au système local, suivi de la reconnaissance de ces deux systèmes local et britannique, et enfin, la relégation progressive du système indigène communément appelé droit coutumier. L'usage et l'effet de ce droit coutumier ont fini par être liées à l'interprétation autorisée de la loi-cadre. Son application dépendait du respect des règles d'équité et de bonne conscience de la loi-cadre. D'autres règles relatives à l'étendue de pouvoir du droit coutumier ont également été établies par la suite. En dépit de la marginalisation des règles du droit coutumier en

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faveur de la loi-cadre, celles-ci continuent d'être observées aujourd'hui. La loi islamique, qui était considérée comme une variante du droit coutumier est en train de bénéficier d'un statut spécifique. Cette communication se penche sur l'impact du colonialisme sur le droit coutumier, particulièrement dans l'État nigérian post-colonial.

The colonisation of Nigeria

Nigeria as we know it today is a by-product of British colonialism. Prior to the advent of the British, the geographical expression now known as Nigeria was made up of several settlements, each with its own distinct identity, administrative techniques, and methods of governance. The British became the colonial overlord of what ultimately became known as Nigeria following its colonisation. The British Germans, French, Portuguese and Italians made it their business to subjugate various African territories then inhabited by the progenitors of today's Africans.

The presence of the British in the various territories now known as Nigeria started in phases. The contact of the British with the coastal areas was made possible by trade with the indigenous people. The trading areas included Lagos, Benin, Bonny, Brass, New Calabar (now Degema) and Old Calabar (now Calabar). Consuls were appointed by the British for the purpose of regulating trade between themselves and the indigenous merchants. The British appointed the first consul in 1849. Consular courts were thus established. The jurisdiction of the consular courts extended to then Dahomey, now Benin Republic to the Cameroons.[1] It thus covered the whole of the coastal area of modern Nigeria.

With the cession of Lagos to the British in 1861, Britain established its authority over Lagos.[2] Lagos became a British colony. English law was introduced to Lagos in 1863 with effect from March 4, 1863. By virtue of the Supreme Court Ordinance No 11 of 1863, the first Supreme Court of the Colony was established. The court was conferred with civil and criminal jurisdiction. In 1866, the British placed under one government, then known as the Government of the West African, the settlements which consisted of Lagos, the Gold Coast, Sierra Leone and Gambia.[3] Appeals from the courts established for Lagos lay to the West Africa Court of Appeal[4] from where appeal lay to the Judicial Committee of the Privy Council.

The Gold Coast Colony which consisted of the settlements of Lagos and Gold Coast was established in 1874 as a separate and single government.[5] The Supreme Court of Lagos was established in 1876 as a Supreme Court of Record by virtue of the Supreme Court Ordinance, No 4 of 1876 with jurisdiction and powers similar to those of Her Majesty's High Court of Justice in England. This court was to have jurisdiction in the Colony of Lagos and

other neighbouring territories over which the British Government wielded power. The court was empowered to administer the common law, the doctrines of equity and statutes of general application in force in England as at July 24, 1874.[6] With respect to customary law, the Ordinance provided that nothing should deprive any person of the benefit of any law or custom existing within the jurisdiction on the condition that such law or custom was not repugnant to natural justice, equity and good conscience nor incompartible with any local statutory provision.

It can be seen from this provision that the British did not do away with the established or existing local or customary laws. These laws were only required to pass the test of repugnancy. Thus, it was a case of the indigenous people submitting to the rule of the British and the English legal system. The British in turn made provision for the continuance of these indigenous laws and institutions to the extent permitted by English ideas and institutions.

In 1886 a separate government was established for the colony of Lagos and a new Supreme Court Ordinance, similar to that of 1876 was put in place. This Ordinance regulated British authority over what was then known as the Colony and protectorate of Lagos. The Oil Rivers protectorate which was established in 1885, which consisted of Benin, Brass, Bonny, Old Calabar, New Calabar and Opobo, was formally inaugurated in 1891.[7] It was extended and renamed the 'Niger Coast Protectorate' in 1893. This area was previously administered by Consuls through the Order in Council of 1872, the purport of which was to ensure peace between the British government, the local chiefs and the British subjects who included 'all persons, natives and others, properly enjoying Her Majesty's (the Queen of England's) protection in the specified territories'.[8] In 1899, by virtue of Order in Council 1899, a Consul-General was appointed for this area. The decisions of the consular courts were subject to appeal to the Supreme Court of the Colony of Lagos.

In 1899, by virtue of the Southern Nigerian Order in Council 1899, the Niger Coast Protectorate and the territories of the Royal Niger Company South of Idah were amalgamated. Both became known as the 'Protectorate of Southern Nigeria' with effect from 1 January, 1900. The High Commissioner established a Supreme Court by virtue of the Supreme Court Proclamation No 8 of 1900. The jurisdiction of this court was akin to that of the Supreme Court established by the Supreme Court Ordinance 1876 except that the English statutes which were made applicable to Nigeria were those in operation as at 1 January, 1900 instead of 24 July, 1874. The date 1 January, 1900 has been of historical importance to this day.

The establishment of the Protectorate of Southern Nigeria had one implication with respect to native courts. The native courts that were in

existence, even in the Colony and Protectorate of Lagos, were basically indigenous courts not established by any statute. By virtue of the Native Courts Proclamation No 9 of 1900, native courts were statutorily established. The Native Courts Proclamation No 25 of 1901 replaced it and stipulated the civil and criminal jurisdiction of the established statutory native court in a district, the jurisdiction of which was exclusive of any other court established by traditional authority. Ultimately, the erstwhile indigenous native courts established by traditional authority gave way to those established by statute.[9]

The colony and protectorate of Lagos and the Protectorate of Southern Nigeria were amalgamated in 1906 to become the Colony and Protectorate of Southern Nigeria. With respect to native courts, the Native Courts Proclamation No 7 of 1906 came into being with provisions similar to those of the Native Courts Proclamation 1901.

With respect to the Northern part of Nigeria, some British firms traded along the banks of River Niger. They later formed a coalition and received a Royal Charter called 'The National African Company'. This was in 1886. The company was later renamed 'The Royal Niger Company. The effect of this Charter was to give the company the power to administer justice in the territories of its operation. The Charter enjoined the company to observe the 'customs and laws of the class or tribe or nation' of domicile with respect to dispensation of justice. The company was in existence until its charter was revoked in 1899.

With the revocation of the Charter of the Royal Niger Company in 1899, the British established the Northern Nigeria Order in Council 1899 with effect from 1 January, 1900. The protectorate of Northern Nigeria was thus established. This comprised the territories where the Royal Niger Company had authority and influence north of Ida. The British established a High Commissioner for the purpose of administering this area. The High Commissioner issued the Protectorate Courts Proclamation 1900. By this Proclamation, a Supreme Court, provincial courts and cantonment courts were established. The Supreme Court was empowered to hear and determine civil and criminal cases. The court had power to administer the common law of England, the doctrines of equity and the statutes of general application, which were in force in England on 1 January, 1900. It also had power to administer customary law. Native Courts were established by the Native Courts Proclamation 1900.[10]

On 1 January, 1914, the Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria were amalgamated. With this development, Nigeria as a nation came into existence. The Supreme Court Ordinance No 6 of 1914 was issued with jurisdiction akin to those of the

amalgamated sub-divisions. The court was empowered to observe and enforce rules of common law of England, equity and statutes of general application which were in force in England on 1 January, 1900. The courts which were established were the Supreme Court, the Provincial Courts and the native courts.

The application of customary law

Prior to the emergence of British control in the various parts of what is now known as Nigeria, indigenous methods of governance and administration of justice prevailed. The British officials were not oblivious to these customary laws and institutions. For example, with respect to the coastal areas, notwithstanding the establishment of the Consular courts and the courts of equity before the British took over the administration of the area in 1872, indigenous courts were allowed to operate in the administration of justice in this area between the indigenous people. Even with the take-over of the British with respect to the administration of this area in 1872, the British allowed indigenous courts to operate. The same can be said of Lagos even after it was ceded to the British. The Supreme Court Ordinance No 11 of 1863 allowed the customary laws to operate subject to the satisfaction of the rules of natural justice, equity and good conscience and compatibility with the law for the time being in force. Subsequent Supreme Court Ordinances did not change this position. Indeed, when the Royal Niger Company was to be given its Charter, the company was enjoined to pay regard to the 'customs and laws of the class or tribe or nation' of its domicile.

While it may be maintained that with respect to the Protectorate of Southern Nigeria by virtue of the Native Courts Proclamation No 9 of 1900 and the Native Courts Proclamation No 25 of 1901 which replaced that of 1900, the hitherto indigenous courts established by traditional authority were abrogated and replaced by Native Courts established by statute. This step was taken for the purpose of regulating the courts that could be established and the composition of those courts. These laws did not change the tenor of customary law or the permissive expression given to customary law which from the beginning had to satisfy the tests of repugnancy.

With the emergence of Nigeria as a nation in 1914 following the amalgamation of the Colony and Protectorate of Southern Nigeria with the Northern Protectorate, and the appointment of Lord Lugard as the Governor General, it became necessary for the British to determine the type of administrative technique it wanted to adopt. The adoption of the indirect rule system gave credence to the recognition and application of customary law and established indigenous institutions. Lord Lugard, the first Governor General of Nigeria, stated British policy in this regard thus:

> Institutions and methods, in order to command success and promote the happiness and welfare of the people, must be deep rooted in their tradition and prejudice.[11]

With this attitude, the place of customary law in the operation of laws in Nigeria was assured. It should however not be forgotten that the Supreme Court Ordinance No 6 of 1914 allowed the operation of customary law only where the rule of customary law to be enforced was not repugnant to natural justice, equity and good conscience and was compatible with the law for the time being in force.

At the point of amalgamation in 1914, three courts had clearly emerged. These courts were the Supreme Court, Provincial Courts and the Native Courts. The Supreme Court had original and appellate jurisdiction with respect to civil and criminal cases. By virtue of the Provincial Courts Ordinance No 7 of 1914 there were established provincial courts similar to those in existence in the Protectorate of Northern Nigeria. The Native Courts Ordinance of 1916 graded the native courts into four. The four grades were A, B, C and D. The Native Courts Ordinance No 5 of 1918 established native courts in the Protectorates by warrant. The Native Courts Ordinance of 1933 increased the civil jurisdiction of the native courts.[12] With respect to the Colony of Lagos, the Native Courts (Colony) Ordinance No 7 of 1937 established native courts. These courts were to be established by warrant in the Colony outside the township of Lagos. The Native Courts had civil and criminal jurisdiction. Appeals from the native courts lay to the magistrates' courts. The Native Courts (Colony) Ordinance 1943 amended the Native Courts (Colony) Ordinance 1933.

By virtue of the Nigeria (Constitution) Order in Council 1954, Nigeria became a Federation with a Federal Constitution with effect from October 1, 1954. The new Federation consisted of three regions, Western, Eastern and Northern, and a Federal territory, Lagos. The Western and Eastern Regions established 'Customary Courts' while the Northern Region established Native Courts. The Moslem Court of Appeal which was established by the Northern Region in 1956 was replaced by the Moslem Court of Appeal with respect to appeals in civil and criminal cases governed by Moslem law.[13] On 30 September, 1960, the Sharia Court of Appeal was established to replace the Moslem Court of Appeal. Following the promulgation of the Penal Code Law in 1959, the criminal jurisdiction of the native courts was abrogated.

From the above, it can be asserted that customary law was a system of law recognised by the British throughout the period of colonialism.

The post-colonial status of customary law

The subjection of customary law to the tests of repugnancy continued throughout the period of colonialism. This position also continued after independence. Each region had been empowered to administer customary law. The Evidence Act, Cap. 62, Laws of Federation of Nigeria, also gave effect to this provision. The High Court Laws also recognised customary law. For example, the High Court Law of Northern Region 1963 which was applicable to the whole of Northern Region provided in section 34 thus:

> 34(1) The High Court shall observe, and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit or any such native law or custom. Such laws and customs shall be deemed applicable in causes and matters between natives and non-natives where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.
>
> No party shall be entitled to claim the benefit of any native law or custom, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connection with such transactions should be regulated exclusively by English law or that such transactions are transactions unknown to native law or custom.
>
> In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience.[14]

With respect to Western Region of Nigeria, Section 12 of the Laws of Western Region of Nigeria 1959 provided thus:

> 12(1) The High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity and good conscience, nor incompartible either directly or by implication with any written law for the time being in force, and nothing in this Law shall deprive any person of the benefit of any such customary law.
>
> Any customary law shall be deemed applicable in causes and matters where the parties thereto are Nigerians and also in causes and matters between Nigerians and non-Nigerians where it may appear to the court that substantial injustice would be done to either party by a strict adherence to any rules of law which would otherwise be applicable.
>
> No party shall be entitled to claim the benefit of any customary law, if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his obligations in connection with such transactions should be exclusively

> regulated otherwise than by customary law or that such transactions are transactions unknown to customary law.
>
> Where the High Court determines that customary law is applicable in any cause or matter, it shall apply the particular customary law which is appropriate in that cause or matter having regard to the provisions of section 21 of the Customary Courts Law.[15]

The provisions of these regional courts are now contained in the appropriate High Courts Laws of the various states carved out of these Regions[16] including the Eastern Region.

One other issue that is pertinent to the consideration of customary law is the method of proof of customary law in our various courts. In this regard, it is necessary to have recourse to the Evidence Act. The Evidence Act, now Cap. 112 Laws of Federation of Nigeria,[17] provides in Section 14 thus:

> 14(1) A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence; the burden of proving a custom shall lie upon the person alleging its existence.
>
> A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration.
>
> Where a custom cannot be established as one judicially noticed it may be established and adopted as part of the law governing particular circumstances by calling evidence to show that persons or the class of persons concerned in the particular area regard the alleged custom as binding upon them:
>
> Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.

The application of customary law in post-colonial Nigeria may be considered from these provisions. Some of the assertions that would be made with respect to these issues and cases decided on them have endured over time both before and after colonialism. It therefore shows that some of the issues that would be herein discussed with respect to customary law have endured in perception, application and effect, thus covering both the colonial and post-colonial periods.

From a consideration of the above, certain issues stand out clearly and they may now be considered for the purpose of giving focus to customary law in Nigeria.

(1) Meaning and characteristics of customary law

The Supreme Court in Ohai v. Akpoemonye[18] approved its decision in Zaiden v. Mohssen[19] when it defined customary law as:

> any system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sway.

From this definition, it is clear that customary law is not a prescriptive system of law. It is evolutionary. It grows with the people. The people to whom a particular customary law relates give it shape and determine its content. Customary law is not static, it may therefore change. This is what gives it dynamism. It is not a set of rules of by-gone days but it reflects the rules of conduct accepted by a set of people in the regulation of their affairs within the permissive extent of the law. As the court rightly pointed out in Owonyin v. Omotosho[20], 'it is a mirror of accepted usage'[21]. Osborne CJ also gave focus to customary law when he held in Lewis v. Bankole[22] thus:

> One of the most striking features of West African native custom... is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character.[23]

(2) Meaning of the repugnancy doctrine

One effect of colonialism regarding indigenous or customary law was the subjugation of customary law. Customary law right from 1863 when the first Supreme Court Ordinance was put in place has always been relevant subject to the permissive extent of 'the common law, doctrines of equity and statutes of general application' in force at different periods. The determination of this expression, usually referred to as the repugnancy test, has not been without difficulty. The issue whether each of the key phrases in this expression should be interpreted disjunctively or conjunctively has been recurrent.[24] However, the view of Daniel may be accepted as representing a functional approach. He said:

> When we look for the meaning of equity in the broad sense we are told that it is equivalent to natural justice. When we try to ascertain the meaning of natural justice we are told that it is practically equivalent to equity in the popular sense. Then both are said to mean natural law. At this juncture we re-enter the realm of uncertainties, but one thing is being made clear: it is that the theory of assigning specific meanings to each of the phrases in the content is untenable. Even though equity is not synonymous with good conscience...yet it can be said that the meaning of equity in the broad sense embraces almost all, if not, all, the 'concept of good conscience'. Therefore

> in the phrase 'equity and good conscience' the words 'good conscience' can be regarded as superfluous.[25]

Whatever may be the argument with respect to the meaning of the repugnancy doctrine, cases have given clarity to this expression. For example, in Edet v. Essien,[26] a case decided before Nigeria became independent, Essien had paid dowry on Inyang when Inyang was a child. Some years later, Edet having obtained her parent's consent to marry her, also paid dowry on her. After their purported marriage, they had two children. Essien claimed the children as his on the grounds that since his dowry had not be refunded, he was still married to Inyang and entitled to her children. The court held the claim valid under customary law but the Supreme Court in the exercise of its equitable jurisdiction held that this rule was against natural justice, equity and good conscience having regard to the facts of this case. In Mariyama v. Sadiku Ejo,[27] the issue before the court was the interpretation and operation of the Igbirra native law and custom to the effect that a child born within ten months of the divorce was the former husband's child. In the instant case, the wife having been separated from her husband for several months prior to the divorce had a child ten months later by her new husband. The Igbirra Central Court awarded the child to the former husband. On appeal, the High Court held that this rule was repugnant and thus restored the child to its natural father although the court did not strike down this customary law. It merely failed to apply the customary law having regard to the facts of this case. Furthermore, in Ejanor v Okenome,[28] the plaintiff/respondent sued in the Ubiaja Magistrate's Court of then Bendel state of Nigeria seeking a declaration of paternity and the return of a child who was in the custody of the defendant/appellant. The defendant/appellant was married to the plaintiff/respondent according to Ishan customary law. She later deserted him to live with her father. While living with her father, she became pregnant by another man although her marriage had not been legally dissolved. The plaintiff/respondent at no time visited the wife throughout the period of desertion. There was evidence that as the marriage was still subsisting at the time the child was born, the plaintiff/respondent was the father of the child according to Ishan customary law. The trial Magistrate accepted the customary law and held that the plaintiff/respondent was to be deemed in law to be the father of the child as against the natural father. On appeal, the defendant/appellant contended that the magistrate was wrong in concluding that the plaintiff/respondent was deemed in law to be the father of the child as there was no evidence that he was the biological father. The court held thus:

> that according to Ishan customary law, the paternity of a child born by a wife at a time when the customary marriage had not been dissolved by the refund

> of dowry paid belonged to the husband even though he was not the biological father;
>
> that the court should not declare as repugnant to natural justice, equity and good conscience a particular customary law accepted by the members of a community as regulating their lives.

In The Estate of Agboruja[29] the court had to determine whether the system of leviratic marriage under customary law by which the wife of a deceased member of the family could be given or married by another member of the family should be allowed or whether it was against natural justice, equity or good conscience. The court, in the case, approved the system of leviratic marriage as stated above notwithstanding the fact that the system had to do with the personal status of a woman. Ames P. upholding the system held thus:

> ... the custom by which a man's heir is his next male relative, whether brother, son, uncle or even cousin, is widespread throughout Nigeria. When there are minor children it means that the father's heir becomes their new father. This is a real relationship and the new fathers regard the children as their own children. Whenever this custom prevails, native courts follow it, and no doubt somewhere or in this large country this is being done everyday.

The court held further:

> ... there can be nothing intrinsically unfair or inequitable even in the inheritance of widows, where those who follow the custom are pagans and not Mohammedans or Christians. The custom is based on what might be called the economics of one kind of African social system, in which the family is regarded as a composite unit.

The determination of whether a particular customary law is repugnant or not should not be based on the comparison of the English or Western system with the indigenous system or social value. A customary law can only be justifiably disallowed from being applied where its effect or its content will be an affront to reason, patently immoral or basically unjustifiable. The Privy Council had to contend with this issue in Eshugbayi Eleko v. Officer Administering the Government of Nigeria & Anor[30] when it held thus:

> Their Lordships entertain no doubt that the more barbarous customs of earlier days may be under the influences of civilisation become milder without losing their essential character of custom. It would, however, appear to be necessary to show that in their milder form, they are still recognised in the native community as custom, so that in that form to regulate the relations of the native community inter se. In other words, the court cannot itself transform a barbarous custom into a milder one. If it still stands in its barbarous character, it must be rejected as repugnant to 'natural justice, equity and good

> conscience'. It is the assent of the native community that gives a custom its validity, and therefore, barbarous or mild, it must be shown to be recognised by the native community whose conduct it is supposed to regulate.[31]

With respect to the quoted portion of the decision of the Privy Council, some comments need be made. There is no problem with the portion of the quotation to the effect that 'a barbarous custom of earlier days may become milder and still retain its essential character of custom; in the milder form, such customary law must still be recognised by the native community as their custom'. The other points made by the court may be questioned. If the court cannot transform a barbarous custom into a milder one, who determines whether a particular customary law is repugnant to natural justice, equity and good conscience? If the answer is that the court determines the particular customary law that is repugnant to natural justice, equity and good conscience, then the last conclusion – that it is the assent of the people that gives a custom its validity – must be qualified with the caveat, that is, subject to satisfying the requirement of 'natural justice, equity and good conscience'.

(3) Who is amenable to the rules of customary law

The definition of customary law shows that it is a personal system of law. It applies to whoever wishes that his affairs be regulated by the particular customary law in issue. The determination of when and those to whom customary law applies has been controversial. Some issues however appear to be settled.

With respect to a transaction or status that takes its source, use and effect from customary law and between persons who are indigenes or natives of a particular geographical expression to which the customary law relates, there is no problem with respect to the application of the relevant customary law subject to the satisfaction of the repugnancy test. Where a transaction is wholly unknown to customary law and a different system of law has been chosen, there is no problem. Ex facie customary law will not apply. The same goes for a transaction between foreigners especially where a different system of law, like the general law, has been chosen.

However, in respect of a transaction between a foreigner and an indigene of a particular place, where there is evidence that the parties have agreed that customary law should regulate their relationship, the particular customary law of choice should be respected especially if the transaction or status is known to customary law for the following reasons:

- The 1999 Constitution of Nigeria provides that nobody should be discriminated against by reason of circumstances of his birth.

- Most of the High Court Laws provide that nothing in their respective laws should deprive any person of the benefit of any such native law and custom.
- Just as a foreigner can make use of a particular customary law thereby leaving aside his own law for that purpose, a person who belongs to a particular community may also decide to adopt another system other than that which his indigenous law regulates notwithstanding the recognition of such a status by his indigenous law. As the court pointed out in Coleman v. Shang[32]: 'We are of the opinion that a person subject to customary law who marries under the Marriage Ordinance does not thereby cease to be a native subject to customary law by reason only of his contracting that marriage. The customary law will be applied to him in all matters save and except those specially excluded by statute and any other matters which are the necessary consequences of marriage under the Ordinance'.[33]

(4) Exclusion of application of customary law

A person has the right to exclude the application of a particular customary law which ordinarily should apply to him as his personal law by reason of choice of another system of law even if wholly opposed to the system of law which otherwise would have applied to him. In Apatira v. Akanke[34], the testator was a native of Nigeria. He lived and died a Moslem. He made a will in English form but the will did not comply with the requirements of the Wills Act with respect to signature and attestation. It was argued on behalf of the plaintiffs that the will should nevertheless be admitted to probate as a will under Moslem law since it was sufficiently attested under the Moslem law. The court held that the will was intended to be a will according to the general law notwithstanding that the deceased was a Nigerian and a Moslem. The will was thus held invalid as it did not comply with the Wills Act.

(5) Change of a person's customary law

Customary law being a personal system of law is a system of law of choice. Usually, customary law attaches to a person by reason of one's birth. Thus, the customary law of a place to which one is biologically attached is regarded as one's customary law. It is like what is regarded as 'domicile of origin' in conflict of laws. It is very enduring. It attaches to one wherever one is. Unlike in the case of conflict of laws, where by reason of choice with requisite capacity, animus manendi and physical presence, one can change one's domicile of origin, in the case of one's customary law or customary law of origin this cannot be changed easily. However, an incident in Benin, now in Edo state of the Southern part of Nigeria, has introduced a new ele-

ment to the idea of customary law in Nigeria. This was in the case of Olowu v Olowu.[35] In this case, the issue before the court was the proper customary law or personal law of the deceased - Ayinde Olowu, at the time of his death. The estate of the deceased was the subject matter of litigation between the parties. The deceased was a Yoruba of Ijesha origin by birth. He married Benin women, settled and established a home in Benin City. During his lifetime, the deceased applied to the Oba of Benin to be 'naturalised' as a Bini, that is, to be conferred with Bini status under the Benin native law and custom which permitted the conferment of such status. The Oba gave his assent to the request and the deceased became a Bini subject by reason of which he was subject to all the rights enjoyed by and obligations imposed on an indigene of Bini under the Benin native law and custom. As a result of the change in his status, the deceased was able to acquire a lot of landed property in Benin City. On account of the above facts, the trial judge held that the deceased had voluntarily relinquished his cultural heritage as a Yoruba man and had become a Bini by 'naturalisation'. The trial court further held that the Benin native law and custom were the proper personal law of the deceased at the time of his death and accordingly that the Benin native law was the proper law for the distribution of his estate consequent upon his death intestate. The Court of Appeal dismissed the appellant's petition upon which there was a further appeal to the Supreme Court. Bello JSC, who gave the lead judgment held inter alia:

> The word 'naturalisation' which takes place when a person becomes the subject of a state to which he was before an alien, is a legal term with precise meaning. Its concept and content in domestic and international law have been well defined. To extend this scope so as to include a change of status, which takes place under native law and custom, when a person becomes a member of a community to which he was before a stranger, may create confusion. I would prefer to describe a change of status under customary law as culturalisation with its attendant change of personal law which may take place by assimilation or by choice.[36]

In the earlier case of Rasaki Yinusa v T. T. Adebusokan,[37] Bello J. (as he then was) held:

> Subject to any statutory provision to the contrary, it appears from both cases that mere settlement in a place, unless it has been for such a long time that the settler and his descendants have merged with the natives of the place of settlement and have adopted their ways of life and custom of the place of settlement and have adopted their ways of life and customs, would not render the settler or his descendants subject to the native law and custom of the place of settlement. It has not been shown in this case that the parents of the

> testator and the testator himself had settled for such a long time in Lagos and have adopted the Yoruba ways of life and if he had died intestate his estate would have been subject to 'Idi-Igi' distribution. On the contrary, the evidence of an old friend and compatriot of the testator shows that the latter had always regarded himself as a native of Omu-aran... therefore the testator was a native of Omu-aran subject to the native law and custom of Omu-aran in the Kwara state.

From this judgment, it could be asserted that what is required to change one's personal law – customary law – is settlement in the new place and adoption of the ways of life of the people in the new place of settlement. In this regard, such a person must not regard himself as a stranger but must integrate himself and regard himself as one of the people in his new place of abode. The requirements that could make this possible were satisfied in the case of Olowu v. Olowu as he married Bini women, gave Bini names to his children, owned landed property in Benin and also applied to the Oba of Benin to be accepted as one of his subjects.

(6) Proof in customary law

Section 14 of the Evidence Act38 deals with the evidential requirement of customary law. From the provision of Section 14 of the Evidence Act, the following issues could be deemed established:

- Customary law could be used as a basis for the establishment of a particular set of circumstances. For a customary law to be used as such, it may either be noticed judicially or proved to exist by evidence.
- The burden of proving a custom lies on the party alleging its existence.
- For a custom to be judicially established it must have been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon it as binding in relation to circumstances similar to those under consideration.
- Where the last point cannot be established, evidence has to be called to establish that the particular custom forms part of the law governing particular circumstances and that persons or the class of persons concerned in the particular area regard the alleged custom as binding upon them.
- The custom that is being asserted must not be contrary to public policy, natural justice, equity and good conscience.

From the above, it could be stated that customary law must either be proved or judicially noticed.

(7) Methods of proof in customary law

Where a particular customary law has not been judicially noticed, it has to be proved. Sections 57 and 59 of the Evidence Act of Nigeria are relevant in this respect. Section 57 of the Evidence Act provides thus:

> 57(1) When the court has to form an opinion upon a point of foreign law, native law and custom, or science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, native law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. (2) Such persons are called experts.

Section 59 of the Evidence Act further provides that:

> In deciding questions of native law and custom the opinions of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognised by natives as a legal authority are relevant.

Thus, where customary law has to be proved, it then becomes a matter of fact to be proved by evidence or to be proved by experts. Section 59 of the evidence Act gives a clue with respect to those who may be regarded as experts. These persons include native chiefs, or other persons having special knowledge of native law and custom (assessors) and any book or manuscript recognised by natives as a legal authority.

Judicial decisions have helped in further explaining the position. In Ifabiyi v. Adeniyi[39] the Supreme Court had to consider the use of proof in this case. It held thus:

> Customary law or native law and custom... is a matter of evidence to be decided on the facts presented before the court in each case. Indeed, customary law is a question of fact which must be proved by evidence if judicial notice is not available through decided cases of the superior courts.[40]

The Supreme Court in reaching its decision in this case held inter alia:

> ...As the only piece of evidence led in support of the claim put forward by the respondent was only that of lone witness where no evidence of custom was established, there was no credible evidence upon which to base the decision.[41]

In Angu v Attah[42], the Judicial Committee of the Privy Council stated the position of things correctly in a statement that has remained a locus classicus. The Judicial Committee of the Privy Council held thus:

> As in the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with the native law and customs until the particular customs by frequent proof in the courts have become so notorious that the courts will take judicial notice of them.

The decision of the Supreme Court in Ifabiyi v. Adeniyi[43] on the rejection of a lone witness accords with that of Ademola CJF in R v Chief Ideliaguaham Ozogula II.[44] In that case, the court held thus:

> It was of the greatest importance that the native law and custom be strictly proved. It is correct that a custom is not proved by the number of witnesses called, but it is not enough that one who asserts the custom should be the only witness.

It should be pointed out that in as much as customary law is a matter of fact to be proved by evidence, where a customary court is presided over by a chief or where the members of a court are knowledgeable in the customary law of a particular area, it is not necessary to prove the relevant customary law before them. In Ababio v Nsemfoo,[45] the court, while it paid regard to the rule stated in Angu v Attah maintained that:

> ...although there is nothing to prevent a party from calling witnesses to prove an alleged custom, if the members of a native court are familiar with a custom it is certainly not obligatory upon them to require the custom to be proved through witnesses.

This point had earlier been made in the Rhodesian case of Chitambala v R.[46] In this case, Somerhough J. held thus:

> Now it seems clear to me that a native court whether of the first instance or of appeal may be presumed to know the native law and custom prevailing in the area of its jurisdiction in the same manner that the judges of the High Court are presumed to know the common law.

In Onyejekwe v. Onyejekwe,[47] the Supreme Court of Nigeria held that where a particular native law and custom 'has been so frequently followed by the courts... judicial notice would be taken of it without evidence required in proof'.

It should also be noted that the Evidence Act permits that for the purpose of establishing a particular customary law, the following are also relevant: the opinion of assessors, and books or manuscripts recognised by natives as expressing the requisite customary law.

These are persuasive sources

(8) Developments with respect to Islamic law in Nigeria

Hitherto, Islamic law was regarded as part of customary law. For example, section 2 of the Katsina State High Court Law 1991[48] provides that 'customary law' includes Islamic Law. However with the promulgation of the various Shariah Penal Code Laws in some states in the Northern part of Nigeria, Shariah or Islamic Law can no longer be regarded as part of customary law. For example, section 29(3) of the Kano State Shariah Penal Code Law 2000[49]

provides that 'Islamic and Muslim laws shall be deemed to be statutory laws in all existing laws in the state'.

Section 29(4) of the Kano State Shariah Penal Code Law 2000 further provides that 'The provisions of existing laws in the state which define customary law to include Islamic or Muslim law are hereby accordingly amended and such provisions shall be deemed statutory laws wherever they occur'.

It could therefore be said that to the extent that the various Sharia Penal Code Laws now regard Shariah or Islamic law as statutory laws, they cannot now be regarded as part of customary law[50] as previously defined, at least in the states of Nigeria that have promulgated the various Shariah Penal Code Laws.

Conclusion

The established indigenous laws and institutions were relegated to a lower status following colonialism. Although it cannot be denied that right from the period the British government registered itself as the colonial overlord of what came to be known as Nigeria, it did not deny the existence of various indigenous laws and institutions, yet it should be asserted that the British as Nigeria's colonial overlord did not hide the improbability of allowing the indigenous systems and institutions to take the pride of place in the hierarchy of laws. Following the colonisation of Nigeria by the British, the British legal system and culture including method of governance became established. The transplantation of the British legal system became a fact of life. Even when the British recognised the need to allow 'the natives to govern themselves by their own laws', such permissive expression was halted or at least demarcated by the level of tolerance of the transplanted legal system, value and method of governance. The repugnancy test which the British put in place for the purpose of determining when the application of a rule of customary law was to be halted was an expression of indeterminable phrases. No one knew beforehand when the application of a customary law could be halted. To say that without more ado however is to look at just one side of the coin. The introduction of various English laws brought about progress and development. Hitherto obnoxious laws and rulers were made to see the light of progress. When Nigeria ultimately obtained her independence, the English legal system had become entrenched to the extent that it became difficult to uproot it from Nigerian soil. Indeed, instead of uprooting the English system, it became adopted, watered and tended. Developments a few years after independence showed the unsuitability of the political system under which Nigerian leaders operated. It later gave way to another system of democracy known as the presidential system of government. The English legal system

has however endured till today as the general law. The customary law which became relegated since 1863 has not been able to assert itself beyond the permissive extent of the repugnancy test. Some of the Muslim states of the north are reclaiming the prior status of their Muslim law. Its status as a variant of customary law is being given its quietus through the various Shariah Penal Code Laws. For the supporters and advocates of customary law as the basic law which ought to be observed and given pre-eminence, it has been a notable experience.

Notes

1. A. O. Obilade, The Nigerian Legal System, Sweet & Maxwell, Second Impression 1981, pg. 18.
2. The British concluded the Treaty of Cession with King Dosumu (Docemo) in 1861. This had the effect of ceding Lagos to the British Crown.
3. A. O. Obilade, Ibid.
4. With respect to the West Africa Court of Appeal of this period, the judges were those of the Supreme Court of Sierra Leone.
5. WACA was no longer a court of the settlements of Lagos and Gold Coast as a result of the development in 1874.
6. Obilade, Ibid. See also Agbede I. O. Legal Pluralism, Shaneson, 1991 pg. 2.
7. Obilade, Ibid.
8. Obilade, Ibid.
9. Obilade, Ibid.
10. Obilade, Ibid.
11. Sir Frederick D. Lugard, The Dual Mandate in British Tropical Africa, London, 1926, pg. 215.
12. With respect to the jurisdiction of the native courts in relation to civil and criminal matters. See Gubba v. Gwandu Native Authority [1947] 12 WACA 141 and Maizabo v. Sokoto Native Authority [1957] NRNLR 133. The conferment of criminal jurisdiction on the native courts and the effect of the sentences which they passed especially with respect to Islamic law issues led to the promulgation of the Penal Code Law in 1959 for the regulation of criminal activities in the Northern part of Nigeria. The jurisdiction of the native courts was limited to civil matters.
13. Obilade, Ibid.
14. Cap. 49 Laws of Northern Nigeria, 1963.
15. Cap. 44 Laws of Western Region of Nigeria 1959.
16. See for example section 34 of the High Court Law of Katsina State Cap. 28 Laws of Katsina State 1991.
17. Section 14 Evidence Act, Cap. 112 Laws of the Federation of Nigeria, 1990. It is necessary to point out that the Evidence Act has been in operation since June 1, 1945.

18. [1991] SCNJ 73 at 77. See also Adah v. Adah [1998] 6 NWLR (pt 552) 97; Oyebisi v. Governor of Oyo State [1998] 11 NWLR (pt 574) 441.
19. [1973] 11 SC 1.
20. [1961] 1 All NLR 304.
21. at pg. 309.
22. [1908] 1 NLR 81.
23. at pp 100 - 101.
24. See Lewis v Bankole [1908] 1 NLR 81.
25. Daniels, Common Law in West Africa pg. 270 at pp. 270 - 271.
26. [1932] 11 NLR 47.
27. [1961] NRNLR 81.
28. [1976] 1 U. T. L. R. (pt III) 378.
29. [1949] 19 NLR 38.
30. [1931] A. C. 662.
31. at pg. 673.
32. [1959] GLR 390.
33. at pg. 401. See also Ademola Yakubu, 'Opting to Contract a Polygamous Marriage: A Consideration of McCabe v. McCabe'. [1998] Vol. 5 No. 1, Abia State University Law Journal, pg. 49.
34. [1944] 17 NLR 149.
35. [1985] 12 SC 84.
36. at pg. 88.
37. [1968] NNLR 97. Cited in Olowu v. Olowu at pp. 88 - 89.
38. Section 14 Evidence Act, Cap. Laws of the Federation on Nigeria, 1990.
39. [2000] 5 SCNJ 1.
40. at pg. 11.
41. at pg. 11.
42. [1916] PC 74 - 28.43.
43. Supra.
44. [1962] WRNLR 136.
45. [1947] 12 WACA 127.
46. [1957] NRNLR 29 at 39.
47. [1999] 3 SCNJ 6. See also Agbabiaka v. Saibu [1998] 10 NWLR (pt. 571) 534 Daku v. Dapal [1998] 10 NWLR (pt. 571) 573; Okene v. Orianwo [1998] 9 NWLR (pt. 566) 408); Ejimeke v. Opara [1998] 9 NWLR (pt. 567) 587; Ahuchaogu v. Ufomba) [1998] 12 NWLR (pt. 577) 293.
48. Cap. 59 Laws of Katsina State 1991.
49. Kano State Sharia Penal Code Law, 2000.
50. See section 2 of Katsina State High Court Law, Cap. 59 Laws of Katsina State 1991.

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Autorités traditionnelles, multipartisme et gouvernance démocratique au Cameroun

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Résumé

Cette étude part du constat suivant lequel les chefferies traditionnelles constituent le cadre naturel de mobilisation des masses pour les actions de développement en milieu rural. Elle s'interroge sur le militantisme politique des chefs (notamment sur le soutien qu'ils apportent au parti au pouvoir en ce temps de multipartisme au Cameroun), sur leur incursion dans les arènes électorales et constate que cet opportunisme ne conduit qu'à l'affaiblissement de leur position, au dysfonctionnement des chefferies et même plus grave, à la criminalisation de la politique. Elle pose alors comme gage d'une bonne gouvernance, la neutralité politique des chefs qui ne signifie nullement déparcipation politique. Et parce que ceux-ci seront neutres, ils gagneront en dignité et la cohésion des chefferies renforcée. Avec une telle caution morale, les chefs constitueront un vecteur de mobilisation plutôt que de division et ne seront nullement exposés à l'indocilité de leurs populations. Ce faisant, ils imprimeront dans leurs chefferies une dynamique de développement en leurs qualités d'administrateurs de la brousse.

Abstract

This study is based on the principle that traditional chieftainships constitute the natural framework for the mobilisation of the population for local development. It examines the political activism of chiefs (notably the support which they provide to the ruling party during periods of multiparty elections in Cameroon), and their involvement in the electoral arenas. The paper concludes that this opportunism only leads to the weakening of the position of chiefs, a dysfunctioning of chieftainships and the criminalisation of politics. It advocates as a safeguard to good governance, the political neutrality of chiefs even within a framework of political participation so as to ensure the dignity and cohesion of reinforced chieftainships. With such a moral caution, the chiefs shall consti-

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tute a vector of mobilisation rather than division. In so doing, they will instil in their chieftainships a form of development dynamism in their status as rural administrators.

Introduction

En Afrique, le rôle des autorités traditionnelles ne peut être résolu selon des formules simples. Les situations sont diverses et varient selon les États et à l'intérieur d'un même État, selon les régions. La position des chefs dépend d'abord pendant la période coloniale de l'attitude du colonisateur et ensuite au moment des indépendances, de l'attitude des nouveaux maîtres. Dans certains cas comme au Maroc, le transfert du pouvoir est réalisé au bénéfice des monarques. Dans une deuxième série de cas, les autorités traditionnelles sont intégrées au nouvel ordre politique. C'est le cas du Nigeria et du Ghana. Dans une troisième série de cas, les chefs sans participer directement aux institutions politiques, font cependant partie de l'appareil d'État au niveau des administrations locales. C'est la continuation de la politique coloniale. Enfin, dans quelques rares cas, la décision a été de supprimer l'institution de la chefferie comme en Guinée en 1957 et au Sénégal en 1960 (voir Gonidec 1978:53-55). Mais qu'ils aient voulu préserver, supprimer ou dénaturer les chefferies, une constante demeure, à savoir que celles-ci survécu à tous les avatars de l'histoire et que les chefs continuent à jouer un rôle non négligeable dans de nombreux États à cause du poids des traditions et de leur emprise sur les populations (Nach Mbach 2000:79; Nyamnjoh 2003:121-149). Ainsi, alors que dans les années 1950 et 1960 les États africains nouvellement indépendants sous couvert des politiques de construction nationale, avaient tenté de museler les chefferies, celles-ci vont effectuer comme par vengeance leur retour dans les années 1990 (Oomen 2002:14).

Cette étude tourne autour de la problématique de la place des chefs dans ce nouveau contexte de multipartisme et de démocratisation au Cameroun. Le problème est de savoir si leur militantisme politique est aujourd'hui conciliable avec la bonne gouvernance. La question est la suivante: peut-on être chef, militant d'un parti politique et être apôtre de la démocratie et du développement? Cette interrogation est pertinente pour deux raisons fondamentales.

- D'abord, le droit de vote est devenu un élément essentiel du credo démocratique, l'élargissement du suffrage universel étant contemporain d'un mouvement d'idées qui voit dans le vote l'occasion de réaliser la démocratie. Mais pour que le peuple puisse choisir librement ses gouvernants, il importe que le jeu politique soit ouvert à plusieurs courants et aspirations socio-politiques. Ce libre choix implique

l'existence de plusieurs alternatives, à la fois en hommes et des projets politiques, car le peuple n'est pas un corps mou unidimensionnel. Chaque individu détermine son choix politique en fonction de ses aspirations religieuses, idéologiques, sociales, de son passé et de son avenir (Tshiyembe Mwayila 1990:34). L'expérience du militantisme politique des chefs depuis la restauration du multipartisme au Cameroun incline malheureusement au pessimisme; et pour cause, ces derniers ont choisi leur camp en devenant pour la plupart des hérauts zélés du parti au pouvoir, le RDPC (Rassemblement démocratique du peuple camerounais). Cette connivence avec le RDPC en elle-même n'est pas ou ne serait pas un drame. Après tout, les chefs sont des citoyens. Elle n'est devenue problématique que dans la mesure où elle justifie et conduit à des situations autoritaires, subvertissant ainsi le processus de démocratisation .

- Ensuite, sur la scène locale, en tant qu'ils sont les «représentants naturels» de leurs populations, les chefs disposent des pouvoirs importants suivant la structuration des chefferies et sont de ce fait des acteurs de développement: ils sont juges de paix, administrateurs, gestionnaires et allocataires des terres (voir Guissou 1996:71), sans oublier le domaine de l'invisible, de la sorcellerie où ils sont eux-mêmes sorciers, en même temps protecteurs contre la sorcellerie. Parfois certains arrivent à trouver un point d'équilibre entre l'ordre politique traditionnel de leurs communautés et les exigences de l'économie moderne (voir Konings 1996:244-265) ou politique (voir Geschiere 1993:151-173), en mettant à profit les structures socio-politiques et économiques qui entraînent l'émergence d'une nouvelle élite d'entrepreneurs. En conséquence, l'univers de la chefferie est un univers de la diversité. D'ailleurs, les pouvoirs du chef en matière contentieuse sont importants. Dans un certain nombre de domaines, c'est lui qui est le véritable juge où il applique non seulement le droit d'importation, mais aussi et surtout, comble les lacunes du droit étatique avec la coutume. Avec une telle marge de manœuvres, les chefs versent dans une sorte de syncrétisme qui fait que leurs comportements ne sont jamais déterminés à l'avance (Van Rouveroy van Nieuwaal 1996). Il est donc difficile de déterminer s'ils sont des acteurs «modernes» ou «traditionnels», de tels concepts présentant des limites telles que formulées longtemps par von Benda Beckmann (1979). Il en est ainsi de leurs rapports de l'État qui ne sauraient se ramener à un jeu à somme nulle; ces relations sont par essence complémentaires voire de compétition, les deux étant liés par un

> mariage de raison (Van Rouveroy van Nieuwaal 1999:22-26). Il y a donc à craindre de leur militantisme politique en ce temps de pluralisme politique tant cet engagement peut saper leur caution morale auprès des populations et miner ainsi le développement local.

Comment alors concilier ces deux impératifs de la démocratie et du développement? Telle est la trame de cette analyse. Sur la participation politique de chefs traditionnels dans ce nouveau contexte de démocratisation, une avalanche de travaux existe tant sur le Cameroun que sur l'Afrique en général. En nous inscrivant dans la problématique des effets induits du multipartisme et de la démocratisation sur la position des chefs, il apparaît trois thèses: pour les uns, le multipartisme ouvre de nouvelles perspectives aux chefs; pour les autres, il mine plutôt leur position. Le troisième courant insiste plutôt sur l'ambivalence des chefs.

La capacité d'adaptation des chefs traditionnels face aux différentes forces de changement depuis la colonisation constitue la pierre angulaire du courant du renforcement de la position des chefs (Rouveroy van Nieuwaal 1996:39-78; Ouedraogo 1996:249-261; Oomen 2002; Nyamnjoh 2003:320-337; Perrot et Fauvelle-Aymar 2003). C'est sur cette base qu'au Cameroun, Francis Nyamnjoh observe les itinéraires politiques des *fon* (chefs) Angwafor de Mankon et Galabe Doh Gah Gwanyin de Bali-Kumbat, province anglophone du Nord-Ouest, respectivement premier vice-président et député du parti au pouvoir. Cet auteur note que depuis la libéralisation politique, des grands chefs ont su faire alliance à un niveau plus élevé avec le pouvoir central en entrant au parlement, au gouvernement, au comité central du RDPC; d'autres sont présidents des conseils d'administration des entreprises publiques ou gouverneurs de province. Dans cette connivence poursuit-il, certains chefs sont si puissants qu'ils sont même au-dessus des lois républicaines comme à Rey Bouba où le lamido a une armée, peut arrêter qui il veut, le battre et même le tuer sans en être inquiété (Nyamnjoh 2003:127).

L'alliance des chefs avec le pouvoir central étant la quête des suffrages en cas de compétitions électorales, les tenants de la thèse de l'affaiblissement de la position des chefs estiment qu'il s'agit d'une peine perdue, parce que les chefs traditionnels ne sont plus à même de contrôler les ressources électorales; au contraire, ce militantisme politique mine position (Miaffo 1993:5; Nantang 1995:44; Konings 1999:195). Cette crise ne va cependant pas jusqu'à faire créditer l'assomption suivant laquelle les chefs traditionnels n'auront plus de valeur une fois les nouveaux élus investis dans leur responsabilité. Pendant la colonisation, des auteurs comme Balandier (1972) avaient avancé de telles idées; mais malgré ces prévisions, les chefs traditionnels continuent de trouver de nouveaux espaces dans la vie politique.

Raison pour laquelle un troisième courant insiste sur l'ambivalence de leur rôle en tant que «gardiens et symboles de la tradition», voire le pont entre le passé et le présent, sans oublier qu'ils sont parfois porteurs d'un «projet modernisateur».

La thèse du renforcement de la position des chefs pèche par plusieurs écueils à nos yeux; d'abord, elle paraît quelque peu conservatrice sur la chefferie traditionnelle; ensuite, elle participe de la perspective d'un État autoritaire qui fait fi des droits humains, des chefs en quête d'intérêts égoïstes et personnels; en outre, elle se focalise surtout sur les processus politiques au sommet de l'État, sur les élections présidentielles et parlementaires. Enfin, elle ne nous renseigne pas sur les fractures sociales que peut générer le militantisme politique des chefs quand leurs choix contrarient ceux de leurs sujets. C'est donc une vue purement du «haut». Contre cette approche, cette étude soutient que le militantisme politique des chefs constitue aujourd'hui un frein à la gouvernance démocratique.

La thèse de l'affaiblissement de la position des chefs ne bénéficie pas aussi totalement de la clause favorable. Un peu radicale, elle est plutôt une vue du «bas» et à l'image de la première thèse, son attention se focalise surtout sur la seule connivence entre la chefferie traditionnelle et le parti au pouvoir, sur l'instrumentalisation par celui-ci de celle-là. En plus, elle semble minimiser les variations régionales voire locales dans la position des chefs et sur l'ancrage des institutions traditionnelles dans l'imaginaire des populations. Or, le multipartisme induit par le processus actuel de démocratisation a plutôt conduit à des trajectoires variées du comportement politique des chefs: en raison de certains facteurs, certains chefs ont vu leur position s'affaiblir, d'autres par contre, sont devenus des banques de vote. La thèse de l'ambivalence des chefs semble plus féconde pour notre étude. Elle cherche moins à établir la corrélation entre démocratisation et participation politique des chefs traditionnels qu'à évaluer les ressources dont disposent ceux-ci en vue de l'administration citoyenne de la brousse, en vue d'un pont entre leurs sujets et l'État, en vue de maîtriser le changement. Nous considérons ces ressources qui vont du contrôle des terres à la coalition avec les élites (urbaines notamment) en passant par les sentences de conciliation et d'arbitrage, comme des variables explicatives du renforcement de la position de ces représentants du pouvoir coutumier. Nous postulons donc une dépolitisation des chefs vers un rôle tourné à l'essentiel au développement économique, social et culturel. Ce travail s'appuiera sur des données recueillies à l'Ouest, dans le Nord-Ouest et le Nord-Cameroun.

Le militantisme politique des chefs au Cameroun frein à la gouvernance démocratique en contexte multipartiste

Le militantisme politique des chefs notamment le soutien qu'ils apportent au parti au pouvoir repose sur un fondement: le monopole gouvernemental d'allocation des ressources étatiques. Nos monarques étant mus par l'instinct d'accumulation, il s'ensuit qu'ils tombent dans le chantage conservateur du régime. Pris ainsi dans l'étau du pouvoir, ils divisent souvent leurs sujets et perdent ainsi leur caution morale auprès de ceux-ci. Dans certains cas extrêmes, certains chefs versent dans la criminalisation de la politique et aux violations flagrantes des droits humains.

Monopole gouvernemental d'allocation des ressources étatiques, instinct d'accumulation des chefs et coalition conservatrice

Les chefs traditionnels sont des «chasseurs d'intérêts ou d'utilité»; «leur option pour ceux qui tiennent le fusil» c'est-à-dire l'État, est un «choix rationnel» qui leur permet de pénétrer l'État et d'obtenir en échange de leur collaboration des gages bureaucratiques de reconnaissance, de sécurité et d'autonomie. Dans cette coalition d'intérêts, les chefferies traditionnelles et l'État participent dans une certaine mesure de la même nature autoritaire (Sindjoun 2002:85). Quelques épisodes fort révélateurs: lors de la campagne des municipales de 1996, en sa qualité de tête de liste du RDPC dans la commune urbaine de Foumban, le sultan-roi des Bamoun Ibrahim Mbombo Njoya se présentait comme le défenseur et le tribun de ses populations auprès de l'État:

> L'heure est justement à la démocratie. Par conséquent, que j'adhère à un parti et que mes amis, mes enfants et d'autres membres de ma famille militent dans d'autres ne devraient pas vous surprendre. Maintenant, s'agissant du roi des Bamoun que je suis, mon engagement dans le parti leader confirme mon souci de mieux servir mon peuple, car le peuple bamoun est un groupe minoritaire et ses intérêts ne peuvent être défendus que par les décideurs.
>
> Je ne crois fondamentalement pas être en conflit avec certains de mes sujets, mais être davantage engagé dans la défense des intérêts des Bamoun. C'est d'ailleurs à leur demande pressante que j'ai accepté de présenter ma candidature. Ils ont pensé que j'étais le mieux placé pour assurer la réalisation des priorités liées au développement de leur cité, et ces besoins sont nombreux.... (cité dans *Le Messager* no 472 du 23 janvier 1996, p. 7).

Bien avant même les élections de 1996, il ne cessait de dénigrer le parti concurrent de l'UDC (Union démocratique du Cameroun) en ressassant auprès des populations que «lorsqu'un chef de famille fuit des averses, il ne doit se mettre que sous la protection d'un arbre charnu, afin que lorsque la tempête secoue ses branches, il en ramasse quelques fruits qui tombent pour nourrir

ses enfants». Traduction, lui, le souverain des Bamoun ne peut soutenir que le parti au pouvoir, c'est-à-dire le RDPC, le seul qui puisse répondre aux sollicitations diverses de ses populations, au contraire de l'UDC, un arbre «stérile». Dans une interview accordée à sa Majesté Nintcheu François, chef supérieur Baboutcha-Nitcheu, un groupement bamiléké du département du Haut-Nkam, le journal *Soleil d'Afrique* no 55 du 21 mars 1996 (p. 3) lui faisait part du reproche de ses populations quant à sa sympathie pour le RDPC et ajoutait que les élites le préféraient politiquement neutre. Dans sa réponse, le chef ne nia pas les faits; au contraire il se livra à une plaidoirie en faveur du RDPC:

> Je suis un auxiliaire de l'administration, en tant que autorité traditionnelle. Je me vois mal de m'opposer aux institutions du pays. Je suis obligé de soutenir le chef de l'État et le parti au pouvoir. Les populations attendent beaucoup de réalisations de moi et, ce n'est pas en militant dans l'opposition que je pourrais valablement négocier avec le gouvernement pour obtenir de lui ce que les administrés désirent. Vous savez, en politique, c'est du donnant donnant. Mon peuple veut de l'eau potable, de l'électricité, des écoles. Nous ne pouvons compter que sur l'État pour obtenir tout cela. C'est aussi simple que cela. Car, pour être un bon meneur d'hommes il faut avant tout faire preuve de réalisme et de pragmatisme. De toutes les façons, je soutiens le RDPC, mais je ne fais aucune pression contre certains de mes fils pour les obliger à intégrer les rangs du parti au pouvoir.. même si mes souhaits sont de les voir tous rangés politiquement derrière moi.

Cette convergence est également soutenue par une forte logique patrimonialiste laquelle, se manifeste par la confusion entre le public et le privé, par l'extorsion des ressources publiques. A titre d'illustration, l'on peut citer la remise en 1984 aux lamibé de la province de l'Extrême-Nord par M. Abdoulaye Babale (alors Ministre de l'urbanisme et de l'habitat) au nom du chef de l'État, de la somme de 17 200 000 FCFA au titre de la fête de fin de ramadan ou encore la facilitation d'accès aux crédits bancaires, autre modalité subtile de distribution de prébendes. En septembre 1992, le liquidateur du FONADER (Fonds national du développement rural) faisait état des difficultés à recouvrer des créances du lamido de Rey-Bouba M. Bouba Abdoulaye (24 266 997 F), du lamido de Touroua, Mohammadou Hayatou (13 136 773 F) et du chef Bandjoun, M. Ngnié Kamga (19 136 773 F) (voir Sindjoun 2002).

Dans certains cas, la collusion d'intérêts se joue en faveur de la population et renforce le pouvoir du chef mais toujours contre une saine concurrence multipartite comme à Banka, un groupement bamiléké du Haut-Nkam. Dans une série d'entretiens que nous avons menés dans cette chefferie sur les

municipales de 1996 et 2002, lesquelles ont vu le chef supérieur dudit groupement, sa Majesté Monkam Tientcheu David accéder au poste de maire RDPC, il est apparu clairement que cette production accrue de son pouvoir faisait suite au bilan positif de son alliance avec le pouvoir central, cela en termes de dividendes drainées à la faveur de son groupement. Suivons ces quelques témoignages:

M. M. Emmanuel:

> ...La force du RDPC dans les zones rurales repose sur la mainmise des chefs traditionnels qui réussissent facilement à expliquer à leurs populations les enjeux politiques du moment. Ces populations misent beaucoup sur leurs intérêts; or, ceux-ci ne peuvent être assurés que par le parti au pouvoir, contrairement à l'opposition qui ne peut pas leur apporter ceux dont ils ont besoin.
>
> ... Ces enjeux sont: le développement des villages. Ainsi, le chef explique qu'en votant pour le RDPC, le développement suit. Il faut miser sur les actions concrètes telles que la création des multiples établissements scolaires par le régime. C'est pourquoi, contrairement aux législatives et à la présidentielle de 1992, beaucoup de choses ont changé à Banka, les populations ayant bien compris que l'opposition faisait des promesses fallacieuses. Celle-ci disait que d'un trait, l'on pouvait faire chuter le régime. Or, les populations ont compris que ce n'est pas de sitôt.

D'après M. K. Samuel, le chef est juste, est à l'écoute de leurs problèmes et répond favorablement à leurs diverses sollicitations, et cela, bien même avant ces élections. Comme preuve, il cite leur stade de football à Manila (un quartier de Banka) construit suivant ses propres termes par le RDPC à l'initiative du chef. Quant à leur école primaire, celle-ci était un établissement confessionnel. A la suite des démêlées avec les missionnaires, ces derniers mirent les clés sous les portes. L'école fermée, ils entreprirent sous le couvert de sa Majesté Monkam Tientcheu David des démarches pour que l'administration la transforme en établissement public. «Ils (les responsables de l'administration) avaient marché comme nous voulions», c'est-à-dire que cette école fut érigée en établissement public. En même temps, ils furent gratifiés d'un bon stade de football. Aujourd'hui, affirme-t-il, si les jeunes aiment le sport à Manila, notamment le football, c'est effectivement grâce à ce stade. En conséquence, «si le chef dit qu'on ne doit pas creuser le terrain, on ne creuse pas», en d'autres termes, ils sont des disciples du chef et ne doivent agir que conformément à ses directives.

Effectivement, lors de notre rencontre, sa Majesté Monkam Tientcheu David martelait avec force qu'à son accession au trône à Banka, il y avait à peine deux écoles. Or, comme il «conjuguait le même verbe avec le pouvoir

en place», cette collaboration lui avait facilité la création d'autres établissements dans son groupement. Seulement, ce militantisme politique des chefs, parce qu'il divise dans la plupart de cas les populations, affaiblit très souvent leur position.

Militantisme politique et affaiblissement de la position des chefs

Aujourd'hui, l'engagement plus ou moins volontaire de certains chefs dans les partis politiques place leur chefferie dans une position partisane qui est contraire à cette responsabilité traditionnelle qui est de défendre tous les ressortissants de leur territoire quelle que soit leur chapelle politique. Dès lors, ceux des chefs traditionnels qui ne se mettent pas au-dessus des partis politiques font face à de sérieuses difficultés. Leur posture partisane constitue une menace sérieuse pour l'unité de leur chefferie, tant il est évident qu'en tant que symbole de l'unité et garant de la tradition, le chef partisan marginalise une partie de son peuple quand ce n'est pas une partie de ce peuple qui le marginalise. Aussi la chefferie s'étiole-t-elle lorsque le chef, coupé du lien par lequel le peuple et lui se tiennent perd son autorité et sa crédibilité. Les affrontements entre certains chefs et les élites politiques sont d'autant plus violents et ravageurs que ces élites se recrutent pour la plupart parmi ceux qui hier appartenaient à la bourgeoisie administrative ou à la haute sphère de l'État et qui aujourd'hui sont victimes de l'exclusion du régime en place ou du retrait de tous leurs avantages et ressources politiques. Ayant maintenu des attaches locales quand ils étaient aux affaires, ils s'organisent dans l'opposition dans l'espoir d'y revenir un jour et voient d'un mauvais oeil le soutien de leur chef au régime (Tabapssi 1999:200-201).

Voyons la situation des *fon* Angwafor II et Galabe Doh Gah Gwanyin dont parle Francis Nyamnjoh (voir supra). Son discours lénifiant sur la personnalité de ces deux chefs dans leur alliance avec le sommet de l'État au Cameroun cache quelque peu la crise de légitimité dont souffrent ces derniers: lors de l'élection présidentielle de 1992, la résidence de *fon* Angwafor avait été incendiée par ses populations acquises au SDF (Social Democratic Front) (voir Konings 1999:195). Le chef Galabe Doh Gah Gwanyin quant à lui, avait bourré semble-t-il les urnes de sa cour avant le début du scrutin. Ulcérés, certains «récalcitrants» avaient conditionné les opérations électorales à l'ouverture préalable desdites urnes. En réaction, *fon* Galabe menaça d'ouvrir le feu sur ses sujets et de leur côté, ceux-ci se résolurent à incendier son palais, brûlant tout sur leur passage. N'eut été l'intervention rapide des forces de l'ordre, ce chef aurait pu se suicider (Nantang 1995:44). Lors des législatives de 1997, toujours sur fond de suspicion de fraudes, le même *fon* récidiviste, dût subir les fourches caudines de sa population; résultat, son

palais fut pris d'assaut après sa victoire dans les rangs du RDPC et lui-même se réfugia pendant un certain temps à Bamenda, le chef lieu de la province.

M. Thomas Ejake Mbonda dans *Challenge Hebdo spécial* (no 07 mercredi 26 août 1992, p. 8), à l'époque Gouverneur par intérim de la province du Nord-Ouest, se référant aux chefs de cette province, attirait déjà l'attention sans le savoir sur cette fracture entre les chefs et leurs populations du fait de leur militantisme politique:

> ... Tout dépend. Nous avons des chefs qui assimilent bien la leçon du multipartisme et la répandent auprès de leurs sujets. D'autres ne la perçoivent pas de la même manière, mais c'est leur droit d'avoir leurs opinions politiques. Il y en a qui souffrent de la rébellion de certains notables qui ne partagent plus les mêmes opinions politiques qu'eux. Le *fon* de Mankon en est un exemple, mais tout cela est injuste. Les notables n'ont pas le droit de se rebeller contre un chef traditionnel tout simplement parce qu'il est membre d'un parti politique qu'ils ne tiennent pas à coeur... La politique ne doit pas creuser l'écart entre un chef et son peuple, surtout en ce qui concerne le respect des symboles traditionnels qui sont, dans le cas du Nord-Ouest, encore sacrés.

Réagissant à la tentative du *fon* de Bali-Kumbat qui voulait ouvrir le feu sur ses sujets lorsqu'ils s'opposaient à sa tentative d'organiser la fraude pendant les législatives de 1992, notre gouverneur fit cette déclaration somme toute significative:

> Le *fon* de Bali-Kumbat a rempli ses fonctions de bon citoyen camerounais. Il s'agissait de quelques vandales qui voulaient détruire les urnes sous le prétexte de les contrôler. Constatant qu'il n'y avait pas les forces de l'ordre à portée de main, et usant de la parcelle du pouvoir administratif qu'il détient, il a restauré l'ordre en attendant l'arrivée de l'armée. C'était un acte courageux....

Plus récemment, lors de la campagne pour le double scrutin législatif et municipal du 30 juin 2002, le chef du village de Dir (province de l'Adamaoua), sa Majesté Bakari, est passé de la vie à trépas, suite à son militantisme politique excessif sous la bannière du parti au pouvoir. Suivons à ce sujet Engelbert Bouck Malem dans le journal *La Nouvelle Presse* (no 062 du mercredi 3 juillet 2002, p. 12):

> **«Mbéré: le RDPC sacrifie un chef de village»**
>
> Sa Majesté Bakari, chef supérieur de l'Arrondissement de Dir a rendu l'âme le 21 juin dernier des suites d'un arrêt cardiaque. En pleine campagne électorale...

> La santé de Sa majesté Bakari, selon des proches, aurait commencé à décliner le 20 juin dernier quand on lui annonce que l'UNDP (Union nationale pour la démocratie et le progrès) va organiser le lendemain, un grand meeting dans l'arrondissement. Bouleversé par ce revirement de situation, il va organiser une opération de dénigrement vis-à-vis du sieur Samba Djaoro, tête de liste des candidats conseillers de l'UNDP à la mairie de Dir. Le chef de canton va d'abord couvrir son ennemi d'injures en plein marché avant de débarquer chez lui armé des pierres pour détruire un véhicule que l'opposant avait loué à un villageois pour battre campagne. Ledit véhicule sera miraculeusement épargné grâce à la ruse de son locataire qui, à tous les coups, désarmera son agresseur. Après moult tentatives infructueuses, Sm Bakari va choisir d'investir le domicile du sieur Samba Djaoro qu'il va poursuivre longtemps avant de le surprendre et de lui assener des coups de poing devant les notables, autorités administratives locales et les badauds qui ont accouru sur les lieux de la scène rocambolesque. «Quand il est sorti chez moi, il s'est lancé à ma poursuite en aboyant à mon endroit des paroles ignobles. Quand il a fini par me rattraper, il m'a roué des coups. En m'essayant de me libérer de son emprise, il a trébuché et il s'est retrouvé par terre les quatre fers en l'air. Il est suffisamment vieux pour que je l'agresse. J'étais en position de légitime défense, les autorités que j'ai saisies en sont témoins. C'est elles et les notables qui m'ont demandé de m'enfuir avant de le ramener à la chefferie» raconte le sieur Samba. Depuis cet instant, dit-on, le chef va être mal en point. Quand l'UNDP est venue le lendemain battre campagne, le malaise du chef a empiré et s'en est suivie la mort.

L'auteur de cet article termine son propos par un réquisitoire contre les chefs et le parti au pouvoir: «Trop à Dir. Il fallait s'y attendre. Cette situation ne pouvait qu'arriver à des chefs grabataires que le RDPC a enrôlés dans la politique en leur inculquant que la démocratie n'exclut pas la monarchie. Comme la plupart de ses pairs du département, feu Sm Bakari aspirait au conseil municipal de la commune locale du RDPC. On disait de lui qu'il nourrissait une haine féroce pour l'opposition...». La situation se complique davantage quand, en fait de militantisme politique, certains chefs versent dans la criminalisation, en violant de manière flagrante les droits humains les plus fondamentaux comme dans certains lamidats au Nord-Cameroun.

Militantisme politique des chefs, criminalisation de la politique et violation des droits humains au Nord-Cameroun

Au Nord-Cameroun comme au Tchad (voir Toriana 1995:76), la situation se caractérise par une prédominance des systèmes de valeurs locales défendues et conservées en raison des besoins identitaires. Les différents groupes se protègent de l'intérieur, mais restent défensifs vis-à-vis des autres et de ce qui est imposé de l'extérieur. A tel point que même les lois nationales manquent

de vigueur face aux multiples résistances. Nous vivons alors à la fois un jeu de synergie et de concurrence entre plusieurs valeurs avec toutes les conséquences que cela peut avoir sur le droit et sur la vie en société. C'est dans ce sens que certains lamibé, véritables potentats «féodaux», mènent une lutte sans merci pour émasculer par tous les moyens les formations politiques de l'opposition. Dans ce duel où tout est permis, ce qui compte, c'est moins les vies humaines qui ne sont nullement épargnées, que les allégeances politiques aux monarques. Deux études de cas de ce vécu quotidien des droits de l'Homme au Nord-Cameroun sont assez illustrateurs: celui du lamido de Rey Bouba, province du Nord, et celui du chef Mada dans la province de l'Extrême-Nord.

1. Cas du lamido de Rey Bouba

Ce lamidat épouse les contours du département du Mayo-Rey. Ici, la justice de l'État à proprement parler, est absente. De ce fait, la plupart des affaires se règlent chez les dogaris (doungourous du lamido), l'instance suprême se trouvant à Rey Bouba, capitale du royaume, où réside «l'Empereur». Ce dernier, tout-puissant, sait qu'il ne peut avoir véritablement opposition de pouvoir entre l'État camerounais et lui. C'est lui qui prélève en effet les taxes et les impôts sur le commerce dans son lamidat; ici, certains fonctionnaires jugés trop zélés par lui, perdent leurs postes, voire leurs emplois, etc. Cédons plutôt la parole à ce gendarme de Touboro, s'adressant aux militants de l'UNDP de Gay Toukoulo battus par les dogaris de qui, ils durent arracher le fusil, rapportée par le journal *L'oeil du Sahel* (n° 005 mars 1998):

Vous avez bien fait de ne pas tuer un des dogaris, sinon l'armée serait intervenue pour détruire votre village. Comprenez que c'est de la part du lamido que les dogaris ont reçu l'ordre de porter des armes. Et ceci est connu et admis du président Biya. Vous auriez mieux fait d'apporter le fusil arraché au grand dogari et non à la gendarmerie. Moi je suis un étranger, un jour, je partirai et vous laisserai avec votre lamido. Si le lamido agit ainsi, ce n'est pas pour rien, c'est qu'il a reçu l'ordre du Président Biya.

Pour étayer davantage ses propos, il cita des exemples bien connus, à savoir André Birda et Laomaye Dogofan, tous deux tués à Touboro par les dogaris, lesquels, n'ont jamais été inquiétés. Depuis l'avènement du multipartisme, les partis d'opposition, plus précisément l'UNDP, sont interdits dans ce lamidat. Ceci explique pourquoi aux législatives de 1992, ce parti n'avait pas pu y battre campagne. L'UNDP en sortit pourtant victorieuse. Après ces élections, ses députés élus furent contraints à l'«exil» interne pour échapper aux foudres assassines du monarque. L'un d'eux, en l'occurrence le député Haman Adama, devait d'ailleurs trouver la mort lors des municipales

de 1996, de suite des coups et blessures à lui assénés par les dogaris lors de la campagne pour ces élections. Le député avait pourtant reçu l'aval du lamido. Aux législatives de 1997, l'autre député UNDP, Nana Koulagna, venu également battre campagne à Rey-Bouba se retrouva en prison à Garoua, à la suite d'une altercation avec les dogaris. Outre ce forfait, ces derniers causèrent la mort à cinq autres militants dudit parti.

Le lamido Bouba Abdoulaye, puisqu'il s'agit de lui, vient de mourir. L'on se demande si son successeur poursuivra toujours cette ligne politique dure.

2. Cas du chef Mada aux législatives de 1997

En 1997, suite à un certain nombre de manœuvres déloyales du parti du RDPC mais aussi et surtout à l'incapacité de l'opposition de s'entendre sur une candidature unique, celle-ci (SDF, UNDP, UDC, en particulier) boycotta l'élection présidentielle. Cependant, ce boycott ne put empêcher le lamido de Demsa, sa Majesté Moustapha Moussa, Directeur de l'agence de la BEAC (Bánque des États de l'Afrique Centrale) de Garoua et maire de Gashiga, adepte des méthodes du lamido de Rey Bouba, de séquestrer six militants de l'UNDP. Ceux-ci étaient partis de Garoua la veille pour s'enquérir de la situation des militants de leur parti à Demsa, détenus dans les geôles du lamido pour avoir prôné ledit boycott. Mais le pire était surtout venu du Mayo Sava dans la cour et aux abords de la chefferie Mada, dont le chef est l'actuel Président de l'Assemblée nationale, le très Honorable Cavaye Yeguié Djibril. L'hebdomadaire catholique d'information, *L'Effort camerounais* (n° 83 du 23 au 29 octobre 1997) rapporte le témoignage de Mgr Philippe Stevens (l'Evêque de Maroua-Mokolo), «des chrétiens, des musulmans et des animistes sur la torture exercée par des militaires sur des paisibles citoyens, pour avoir boycotté cette présidentielle». Ainsi, au mépris des libertés élémentaires, ces populations avaient subi des pires brimades et des atrocités incroyables de la part des autorités qui leur exigeaient de voter contre leur gré, et de la manière qui leur avait été imposée, contrairement à la loi:

> Les tortionnaires sont des militaires présents pour maintenir l'ordre en période électorale à risque. Des notables leur indiquent les plus récalcitrants des «opposants» pour lesquels il faut «adapter le traitement». Certains autres notables, effrayés de la situation, demandent clémence pour leurs frères. Les victimes, une quinzaine au moins, sont des personnes de 17 à 50 ans. Parmi elles, des musulmans, des chrétiens, des gens de la religion traditionnelle. Ils sont accusés par leurs chefs de quartier ou leurs frères de village, de n'avoir pas voté ou pas voulu voter ou d'avoir eu des attitudes provocantes. Certains ont été convoqués à la chefferie. D'autres ont été «ramassés» chez eux par les militaires.

En outre, à tour de rôle, les hommes en tenue les frappèrent des dizaines et des dizaines de fois, de toutes leurs forces, sur la plante des pieds avec de gros rondins de nimier. L'on leur demanda de se relever, de sauter ou de danser sur place et les conduisit tout en courant et en les frappant sur la tête dans la cour de l'école publique. Des femmes étaient là, en pleurs. Et, ce n'était plus sur le dos qu'ils couchaient, mais sur le ventre et les rondins s'abattirent rageusement sur les fesses jusqu'à casser l'avant-bras de l'un entre eux qui essayait de se protéger. La plante de leurs pieds était devenue rouge, molle et tellement gonflée qu'ils ne tenaient plus debout. Alors, l'on s'amusait à piétiner les pieds et les jambes avec les «rangers» jusqu'à ce que cela devienne bien noir.

Cela n'était pas suffisant! Il fallait aller puiser de l'eau au forage. Et alors le supplice devint horrible. Comment pomper avec des pieds mutilés? Tant pis, ils puisèrent jusqu'à sept fûts d'eau. Et, le lendemain, ils balayèrent la cour avant que la séance ne pût reprendre. Le «café» comme dit! Pour certains, le traitement dura plus de deux jours et ne s'acheva qu'après paiement d'une rançon «négociée» avec les notables ou les bourreaux. Certains s'étaient même vu dépouillés à domicile de leurs chèvres pendant qu'ils étaient enfermés. Le jour des élections, on avait vu huit d'entre eux conduits en car devant le bureau de vote de leur domicile puis obligés à voter après avoir été rossés publiquement par les militaires devant les membres du bureau de vote, impuissants. Dominik Fopoussi a donc raison pour dire que,

> «... les chefs traditionnels qui ont du mal à s'éloigner du pouvoir en place, éprouveront de plus en plus des difficultés pour jouer leur rôle de rassembleur, l'une des raisons d'être des chefferies traditionnelles. Car, aussi longtemps que les chefs traditionnels s'engageront ouvertement dans les combats politiques partisans, ils constitueront des instruments de division. Par ailleurs, le RDPC continuera-t-il à faire confiance à ce pôle de pouvoir en perte de vitesse...? Il faut en douter. Les chefferies traditionnelles (...) ont montré que dans un contexte de multipartisme, leur influence sur leurs populations reste marginale pour ce qui est des choix politiques. Et cela, le RDPC devrait le savoir et les laisser jouer leur rôle originel. Les chefs eux-mêmes gagneraient à prendre de la hauteur vis-à-vis des positions partisanes s'ils ne veulent pas voir la parcelle d'autorité qui leur reste se réduire comme peau de chagrin» (*Dikalo* du 25 janvier au 01 février 1996, p. 11).

En dressant ce tableau sans fards de la politique politicienne des chefs au Cameroun, nous avons voulu tout simplement sonner le tocsin d'une situation en opposition avec la gouvernance démocratique, une situation voulue et entretenue. Nous sommes cependant conscient que la chefferie traditionnelle demeure un maillon important de la personnalité africaine. Face

à ce dilemme, s'impose une relecture du rôle des chefs, un pis-aller qui les dépolitiserait pour les confiner à l'essentiel aux tâches de développement, surtout qu'ils sont capables d'innovation.

Pour un rôle des chefs porté à l'essentiel au développement

Aujourd'hui, face aux graves difficultés de régulation étatique en Afrique voulues par la crise économique et l'ajustement structurel, le bien-être des populations est devenu crucial pour la consolidation du processus de démocratisation (Olukoshi 1998:33-34); au même moment, la question de développement est de plus en plus posée en termes de compétence locale face au pouvoir central, la dimension locale avec toute sa charge identitaire étant devenue le domaine privilégié des pauvres, le lieu qui leur est concédé pour une participation sociale qui, finalement, ne remet guère en question les macro-structures de l'économie ou de la géopolitique (voir Alternatives Sud vol IV (1997) 3). L'Afrique étant plus rurale qu'urbaine, l'on ne saurait s'abstenir devant ce double impératif, d'aborder le grand problème des chefferies, de l'administration de la brousse. Ceci est d'autant plus vrai que depuis l'indépendance, le développement administratif des États d'Afrique l'a emporté sur le développement politique. Certes, l'extension des structures administratives publiques et parapubliques est un phénomène général. Mais il faut constater avec Gérard Conac que ce développement est loin d'être harmonieux. Il a abouti au gonflement des administrations gouvernementales, à l'instauration des systèmes politico-administratifs qui, parce qu'ils sont peu reliés à leur environnement, dépensent la plus grande partie de leur énergie à assurer leur propre fonctionnement au mépris d'un développement à visage humain. D'ailleurs, les capitales africaines font illusion. La très grande majorité de la population africaine est rurale. Or des capitales à la brousse, le territoire souffre d'une insuffisance d'encadrement administratif, alors qu'il est souvent exposé aux dangers de la misère, de l'insécurité, de l'anarchie. Dans ce cas, il n'est pas douteux qu'un recentrage du rôle des chefferies contribuera à une bonne administration de la brousse; une administration de dialogue et de développement (Conac 1979:LXIII).

Il n'est pas question ici de prétendre ressusciter les chefferies traditionnelles dans une authenticité qui ferait long feu. Il est par contre permis de réfléchir scientifiquement sur les mécanismes en cause, en vue de dégager la structure et les valeurs autochtones en fonction desquelles les élites africaines pourront imaginer une organisation aussi originale que possible. Ainsi que l'affirme Pierre Ngaka,

> «Si l'on veut résoudre le problème que pose le développement général de nos sociétés, il faut procéder par des réformes et non par la suppression de nos institutions traditionnelles qui ont fait preuve et ont su s'adapter à toutes

> les époques (...). Nous devons rétablir l'édifice de la chefferie traditionnelle sur des fonctions rénovées. C'est le problème essentiel à notre avis. Mais dans ce domaine des réformes, nous devons nous montrer très prudents car la chefferie n'est pas le fruit d'un travail conçu par un homme. Elle ne peut en conséquence être modifiée impunément dans sa substance sans se dénaturer».

Des missions classiques des chefs traditionnels comme administrateurs de la brousse

Même si pour certains, «l'intégration des chefferies traditionnelles dans l'organisation locale de l'administration territoriale au Cameroun pose un problème en raison des exigences contradictoires de la technique administrative, de la politique, des idéologies (modèle traditionnel/modèle légal-rationnel)», il n'en reste pas moins que la remarque suivante formulée en 1917 par le gouverneur Joost Vollenhoven reste d'actualité:

«Tout naturellement, le commandant de cercle recherche pour assurer le succès de sa tâche, des intermédiaires plus qualifiés, jouissant de la confiance et du respect des populations. Ses recherches ne sont pas longues: neuf fois sur dix, cet intermédiaire existe. C'est le chef traditionnellement écouté et c'est ainsi que se pose le problème des chefs non par déduction mais par simple bon sens et sous la pression de la nécessité. On peut les définir: des fonctionnaires qui existent quand ils n'ont pas d'attributions et dont l'autorité est reconnue même quand il n'y a eu ni investiture, ni délégation des pouvoirs».

Cette citation met en exergue la nécessité des encadreurs des populations rurales que sont les chefs traditionnels. Aujourd'hui, plus qu'hier, ce rôle reste toujours d'actualité. Par exemple, Basile Léon Guissou (1996:71; voir Ouedraogo 1996:249-261) observe qu'au Burkina Faso, de nombreux chefs traditionnels ont joué, et jouent encore de nos jours un rôle non négligeable dans la vie politique nationale. Cette influence est permanente et effective depuis les premiers contacts avec la colonisation française, en particulier depuis 1986. Cet auteur rapporte qu'en 1990, lors d'un entretien dans le cadre de ses enquêtes sur le fonctionnement contemporain des institutions de l'Empire mossi de Moagha, le «Manga Naba» (chef de Moagha) lui avait singulièrement éclairé sur le «mariage de raison effectif» entre l'État moderne et l'État moagha.

Tout commence avec l'indépendance où le «Manga Naba» devient successivement ministre des finances et ministre de la défense nationale dans les équipes gouvernementales du Burkina Faso. Avec le coup d'État militaire du 25 novembre 1980 qui porte le capitaine Thomas Sankara au pouvoir, il se retrouve prisonnier politique. Libéré et mis à la retraite de l'administration, il rejoint la capitale de sa province pour y assurer ses fonctions de chef

traditionnel. De sa résidence, il suit les turbulences socio-politiques de la révolution démocratique et populaire entre 1983 et 1987. Les chefs traditionnels sont alors des cibles privilégiées dans les discours enflammés des révolutionnaires les plus zélés. Ces «féodaux réactionnaires» sont accusés de tous les maux. Le «Manga Naba» se tient donc tranquille chez lui, évitant de rendre de simples visites de courtoisie aux nouvelles autorités politiques locales. Mais, le Haut Commissaire de sa province (la haute autorité de la révolution) se retrouve vite débordé par les multiples conflits fonciers et matrimoniaux: contestation des limites de cultures entre familles, affrontements entre éleveurs et agriculteurs, «vols» de fiancées promises en mariage, fuite de jeunes «filles mal mariées», etc.

Ces problèmes constituent l'essentiel des problèmes quotidiens que les chefs traditionnels ont toujours traité depuis le millénaire d'existence de l'Empire Moagha, avec ou sans la collaboration de l'administration dite «moderne». Ni la colonisation, ni l'indépendance politique n'ont rien changé à cette réalité de terrain. La révolution, elle aussi, finit par se plier à son corps défendant. Car, suite à l'accumulation de ces conflits impossibles de résoudre au seul niveau de l'administration «moderne et révolutionnaire», le Haut Commissaire se vit obligé de venir frapper à la porte du «Manga Naba», un soir. A la grande surprise de celui-ci, le «gendarme de l'orthodoxie révolutionnaire» dans sa province lui tint ces propos de détresse:

«Papa, je viens à vous en tant que votre fils pour solliciter votre appui et votre collaboration afin de nous aider à solutionner les multiples conflits fonciers et matrimoniaux en instance. Une fois qu'ils ont quitté les bureaux du Haut Commissariat, tous les protagonistes refusent de se conformer en pratique aux jugements que nous rendons. Nous en sommes arrivés à la conclusion que les intéressés se soumettront à votre verdict à vous, à leur chef. Ils sont convaincus de s'exposer à toutes sortes de malédictions de la part de leurs ancêtres s'ils venaient à transgresser les lois sacrées des ancêtres en vertu desquelles vous rendez la justice».

Depuis ce jour affirme Basile Léon Guissou, au sortir des bureaux administratifs, les protagonistes se rendent dans le vestibule de «Manga Naba», sur invitation expresse du Haut Commissaire. Et au bout du compte, tout le monde y trouve son compte: le chef local de la Révolution et le chef local de la tradition travaillent «la main dans la main» pour le progrès de la province de Zoundwego.

Au Cameroun, plus particulièrement à l'Ouest, dans le Nord-Ouest et le grand Nord, outre ces tâches classiques dont l'exemple vient de l'empire mossi, les chefs remplissent diverses tâches de mobilisation notamment en matière d'investissements humains: construction et aménagements des ponts,

écoles, dispensaires, etc. Ces interventions sont d'autant plus souhaitées que dans ce contexte de crise économique et d'ajustements structurels, les investissements et les actions sociales de l'État se raréfient, et seul compte le soutien actif des populations. Ainsi en est-il des lycées et collèges que l'État se borne parfois à créer, à charge pour les populations locales de construire les infrastructures. Dans cette foulée, les chefs, hérauts assermentés, viennent au secours de l'administration pour galvaniser les masses et susciter leurs contributions. Et c'est pour cette raison qu'ils occupent une place de choix dans les comités de développement des villages. Déjà, M. Victor Azarya (cité par Fogui 1990:297) notait dans son étude, comment dans le lamidat de Rey Bouba, la milice du lamido (les *dogaris*) était le véritable fer de lance de la politique d'encadrement et de sensibilisation des populations: ces *dogaris* assurent la police, participent à la perception des impôts, servent de guides aux visiteurs et d'intermédiaires entre le lamido et les autorités administratives. Pour ce qui est de la sensibilisation des populations à l'école moderne, ils vont dans les écoles chaque jour pour s'assurer que tous les enfants inscrits sont présents. Ils reçoivent des maîtres, la liste des absents chez qui ils se rendent aussitôt pour vérifier s'ils ont une excuse valable. Si ce n'est pas le cas, ils infligent des sanctions sévères aux parents. Avec cette initiative de socialisation scolaire, nous entrons dans l'arène des pouvoirs des chefs axé à l'essentiel sur le développement économique, social et culturel. Nous appuierons notre argumentaire ici par les initiatives de sa Majesté Ibrahim Mbombo Njoya, le sultan-roi des Bamoun.

Des missions novatrices des chefs axés sur le développement économique, social et culturel: le cas de sa Majesté le sultan-roi des Bamoun

Depuis son accession au trône en 1992, les œuvres de sa Majesté Ibrahim Mbombo Njoya sont assez nombreuses et épousent des domaines aussi variés que la culture, l'économie, le social et le religieux dans le royaume bamoun.

Au plan culturel, l'on peut citer entre autres, la restauration des journées culturelles bamoun, le nguon; du Musée royal, de tous les palais du royaume bamoun et de la construction d'une maison de la culture qui abrite l'école shümon.

Le nguon, véritable forum social, fut banni par le colonisateur français en 1924 en réponse à la résistance du sultan Njoya aux pressions françaises; le shümon est une langue inventée par ce même sultan Njoya au début du XXe siècle dans le cadre de la modernisation de son royaume. Or, comme les Français eurent de lui une image aussi bien au niveau de l'administration locale qu'à celle du pouvoir central, qui allait focaliser l'hostilité de l'appareil colonial sur lui, Njoya fut déporté et exilé et certains palais tombèrent en

ruine. Il fut en outre accusé d'avoir inventé une langue pour empêcher la diffusion de celle des Européens. Comme conséquence, toutes les écoles shümon furent interdites et cette langue devint elle-même un sujet tabou.

Dans le domaine économique et financier, nombre d'institutions financières représentées par les banques, les assurances et les réassurances existaient dans le royaume bamoun, preuve de son embellie économique. Seulement, la fin des années 1980 sera catastrophique pour les banques camerounaises. Comme partout en Afrique, elles avaient non seulement laissé prévaloir les considérations politiques, mais aussi et surtout, elles n'avaient guère mieux réussi à utiliser les dépôts recueillis pour financer des projets susceptibles de favoriser le développement économique. Prises alors en défaut, elles connaîtront une restructuration; partant, nombre d'entre elles disparaîtront, fermées ou liquidées. Dans le royaume bamoun, lequel épouse le cadre territorial du département du Noun, aucune structure bancaire ne survivra à cette déroute, avec les conséquences somme toutes très dommageables. Sous l'impulsion du roi des Bamoun, deux coopératives d'épargne vont voir successivement le jour: la Caisse d'épargne pour le commerce et le développement (CECD), créée en 1994, mais qui n'a fonctionné que pendant deux ans, malade de management. Elle sera relayée finalement par la CPAC (Caisse populaire pour l'agriculture et le commerce). Cette dernière structure fonctionne avec plus de bonheur. Elle est présente dans tous les neuf arrondissements du département du Noun y compris certaines localités du Nord-Ouest.

L'on ne saurait oublier la création de l'UCOOPAN (Union des coopératives des producteurs agricoles du Noun), créée à Foumbot pour relayer la moribonde CAPLANOUN (Coopérative agricole des planteurs du Noun). En effet, la population du Noun est en majorité agricole. Ces agriculteurs étaient encadrés dans les années 1980 par la CAPLANOUN, laquelle était le principal pôle d'attraction économique du département. Elle rassemblait alors 22 118 adhérents, réalisait un chiffre d'affaires de plus de 5 milliards de francs CFA par campagne caféière et occupait à bas mot, 180 agents permanents et entre 250 à 800 saisonniers; autant de familles qui s'y rattachaient. La population croyait bien en l'avenir de leur coopérative qui assurait la tutelle d'une brigade phytosanitaire, la production et la distribution des plantes sélectionnées aux planteurs, approvisionnait les adhérents en fertilisants, fournissait aux adhérents les petits matériels agricoles et matériaux de construction non sans contribuer au mouvement sportif du département, voire coopérer avec les services publics et privés de la santé. En 1989, elle cessait ses activités pour «des raisons économiques» mettant ainsi les populations dans le désarroi.

Au plan social, l'Hôpital du palais des rois bamoun de Foumban, est un autre exemple assez édifiant des moyens alternatifs des chefs au déficit de régulation étatique. Ce centre inauguré le 16 décembre 1996, est une oeuvre sociale construite avec l'aide généreuse du Conseil général des Hauts-de-Seine de France. Il offre des soins de qualité à un prix relativement bas, des soins gratuits aux orphelins et indigents, et des soins sur bon en urgence ou en cas de difficulté. Etablissement hospitalier le plus équipé du pays bamoun en matériels, il est une retombée des journées culturelles du peuple bamoun, le «Nguon» de 1994. Le «Nguon» avait alors posé un problème de taux élevé de mortalité, faute d'établissement médical suffisamment équipé. Le sultan-roi s'engagea à apporter une solution à ce problème. Au lieu de saisir l'administration du Cameroun, il préféra user de ses relations à l'étranger, en tendant la main à son «ami personnel», l'ancien ministre d'État français Charles Pasqua, à l'époque, président du Conseil général des Hauts-de-Seine. Celui-ci accéda à ces sollicitations.

Ce centre dispose de plusieurs services pour la satisfaction et la bonne santé des populations du Noun. En moyenne, la fréquentation des malades 40 à 50 malades par jours. Vu l'engouement des populations qui se manifestent chaque jour, sa capacité d'accueil a été très vite dépassée; ce qui explique les travaux d'extension en cours actuellement. Cet hôpital connaît néanmoins des difficultés dues au fait qu'il a un caractère humanitaire et doit s'autofinancer. Cependant, il reçoit de temps en temps des dons en médicaments et matériels. Il est à noter que les premiers équipements ont été offerts par une généreuse Américaine, Marron et tout récemment, le conseil général des Hauts-de Seine l'a gratifié d'un important don de médicaments et de matériels.

Au plan religieux, sa Majesté Ibrahim Mbombo Njoya s'est lancé depuis 1993 dans le cadre de la modernité islamique, dans une vaste entreprise de réformes en vue de la rationalisation de la pratique de l'islam bamoun. Ces mesures ont changé le paysage religieux du pays bamoun, que ce soit en ce qui concerne l'organisation du Conseil islamique, les cérémonies funèbres, la gestion de la mosquée, les nominations des imams, etc. Prenons les cérémonies funéraires, par exemple, celles-ci sont ramenées de quatre à une, laquelle intervient trois jours après la mort du fidèle musulman. Les Peul et les Haoussa en introduisant l'islam dans le royaume bamoun avaient institué les funérailles de trois, sept, quarante jours et d'un an, pour ne pas vite bousculer les traditions bamoun de lamentations. Aussi ne reposaient-elles pas sur un fondement religieusement soutenu. Elles étaient d'ailleurs source des problèmes comme l'adultère, le sida en ce temps de forte mortalité, quand

les femmes mariées abandonnaient leurs conjoints pour résider pendant longtemps au lieu de deuil, semble-t-il.

Tout ceci est une preuve que les chefs traditionnels sont capables d'innovation, qu'ils offrent par leurs pouvoirs de régulation et leurs initiatives personnelles ou de concert avec certaines de leurs élites, une alternative aux institutions étatiques en crise. Reste à préciser, que sa Majesté le sultan Ibrahim Mbombo Njoya, ancien ministre des régimes successifs des présidents Ahidjo et Biya est membre du bureau politique du RDPC; de ce positionnement politique, sa position est aujourd'hui largement écornée auprès des populations acquises à la cause du parti de l'UDC. Aux municipales de 1996, il fut d'ailleurs largement battu par le leader de l'UDC Adamou Ndam Njoya, de plus en plus crédité comme le nouveau tribun des Bamoun. En 2002, Ibrahim Mbombo Njoya préféra se mettre en réserve.

Pour une nécessaire neutralité politique des chefs

Nous venons de voir que les chefs traditionnels constituent un maillon essentiel de la vie de nos populations, qu'ils offrent par leurs initiatives ou de concert avec les élites, des moyens alternatifs au déficit de régulation étatique. Ce rôle qu'ils jouent, nos monarques le tiennent du tréfonds de la tradition car, aussi longtemps que les chefferies seront le centre d'un ensemble de normes morales garantissant la cohésion d'une population dans une communauté politique, elles continueront à inspirer la confiance de celle-ci et à être le foyer du mystère de l'obéissance civile. Comme le soutient avec raison Dieudonné Miaffo, paix à son âme,

> La population doit respect et obéissance au chef. Ceci découle de ce que tout acte posé, toute parole proférée doivent avoir pour finalité la protection et le bien-être des habitants de son village. C'est ce qui explique qu'en principe, le chef de village ne se trompe pas parce que ses décisions les plus importantes engageront le destin de son peuple tout au moins, sont prises après débats, concertation et délibération. Traditionnellement, il ne saurait être publiquement contredit par un de ses sujets et aucun conseil ne saurait lui être donné en public. Il doit respecter tout un protocole de dignité qui le place au-dessus des autres (Miaffo 1993:29-31).

Le chef ne débat pas, il écoute et décide: «On ne saurait écrit Pradelles de Latour, le contredire ou lui parler en proverbes et allusions, et on ne lui parle jamais sans mettre la main dans la bouche» (de Latour 1991:187). Comment un chef pourrait continuer à assumer ce rôle de protecteur et d'arbitre impartial s'il s'investit dans un parti politique qui, dans un régime démocratique donne au débat et à la contradiction? Pour reprendre Meyer Fortes et Edward Evans Evans-Pritchard, le gouvernement africain consiste dans un équilibre entre le pouvoir et l'autorité d'un côté et la responsabilité de l'autre.

Quiconque détient une charge publique a la responsabilité du bien-être public correspondant à ses droits et privilèges. Un chef ou un roi a le droit d'exiger de ses sujets les impôts, le tribut et les prestations de travail, mais il a l'obligation correspondante de leur assurer la justice, de veiller à leur protection contre les ennemis et de sauvegarder par des actes et des observances rituels leur bien-être général. La structure d'un État africain implique que les rois et les chefs gouvernent par consentement. Les sujets d'un dirigeant sont pleinement conscients des devoirs qu'ils lui doivent. Ils sont capables d'exercer une pression pour l'obliger à s'en acquitter (Fortes et Evans Evans-Pritchard, 1964:208). Pour toutes ces raisons, l'on note de plus en plus une pression allant dans le sens de ce désengagement militant des chefs exercée par des individus sympathisant d'une manière ou d'une autre avec l'opposition et même ceux du pouvoir qui en ont marre des ombrages des chefs comme en témoignent ces propos recueillis à Banka:

M. Jean, militant UFDC:

> «... C'est la colonisation qui a fait naître les chefs politiciens. Le chef devrait coiffer les partis politiques. Donc il n'a pas le droit de militer dans un parti. Mais c'est la politique du ventre qui les fait aller derrière les partis. Les chefs traditionnels doivent rester à la chefferie pour mieux gérer les personnes...».

M. N. Christophe, militant RDPC:

> «... A mon avis personnel, un chef est un citoyen, un Camerounais qui a un mot à dire sur les affaires de son pays. Et parce qu'il est camerounais, il a des suggestions à donner concernant l'avenir de ce pays dont il est originaire. Sa position de chef ne devrait pas constituer un obstacle pour qu'il soit électeur ou éligible. Ce que nous n'aurions pas souhaité, c'est de leur donner des postes de responsabilité: ils ne sont pas présents à leurs postes quand ils sont maires; même s'ils font des fautes, leurs adjoints ne peuvent pas leur faire de reproches. La tradition ne le permet pas puisqu'ils sont nos chefs spirituels. Ils sont là pour l'éternité et ils le savent eux-mêmes. Toutefois, ils devraient être consultés en leur qualité de conseillers.
>
> «Seulement, un maire ou un député doit être accessible. Or quand un chef est maire, si vous voulez le rencontrer vous pouvez passer trois jours sans suite. On ne frappe pas à la porte du chef comme on le fait pour le maire ou le député.
>
> «Vous programmez un mariage aujourd'hui et un litige survient entre deux quartiers; le chef doit d'abord s'y rendre. Dans nos coutumes, un chef ne doit pas être trop vulgaire...».

M. K. Isidore:

> «... Le chef est le chef de tous les partis dans son village. En admettant qu'il fasse la politique, il faudrait laisser les autorités administratives devenir des candidats. On ne peut pas être juge et partie.
>
> «Ces chefs par leur position de maires et de conseillers municipaux, s'attirent des ennuis. Car, si je vais dans une mairie gérée par le chef, je vais l'appeler M. le Maire et non Majesté. Et c'est là que le bât va le blesser! Ils intimident les gens, les menacent et les torturent. Dans la région de Banka, c'est grave.
>
> «Le fait d'être conseiller municipal, c'est quoi à un chef? Sinon être militant du RDPC. Ce qui est paradoxal, quand tu appelles un chef conseiller municipal, il se fâche alors même que vous avez fait référence à son grade le plus élevé. A mon avis, il faudrait qu'ils choisissent entre le poste de chef et de maire...».

M. P. T. Emile:

> ... Nous demandons que les chefs traditionnels soient au-dessus des partis dans leurs groupements. Comment peut-on entendre qu'un chef soit militant d'un parti politique et puisse juger deux de ses sujets dont l'un est son camarade? Le condamné dira que le chef a tranché en faveur de son camarade. Pourquoi les sous-préfets ne sont-ils pas candidats? Le gouvernement n'aime pas nos chefs traditionnels; il leur fait perdre leur honneur. Quand on rencontre un chef on l'appelle camarade. On le voit et on ne se décoiffe plus car militant d'un parti adverse. Le chef bamiléké n'est plus celui qui pouvait cracher et l'on avale à cause de son militantisme derrière le RDPC. Personnellement, je respecte les chefs mais nos militants, eux ne le font plus...

La représentation élective ne constituant donc pas le gage sine qua non de la démocratie, un renoncement qui n'est pas synonyme de déparcipation, est raisonnable pour les chefs qui se respectent. Leur place serait dorénavant au dessus des partis politiques sur le modèle des royautés constitutionnelles de la vieille Europe dont on mesure l'efficacité en temps de crise, comme ultime recours. Il est vrai qu'il est difficile d'être neutre, mais cela leur permettra d'éviter les querelles politiciennes surtout si leurs choix contrarient ceux de leurs populations. Partant, la cohésion de la chefferie sera assurée. Avec cette cohésion, ils ne pourront redouter de l'indocilité de leurs populations et pourrait pallier au déficit de régulation étatique en leurs qualités d'administrateurs de la brousse, en se consacrant aux tâches de développement. Cette neutralité est possible . Elle ne devrait cependant pas se muer en un combat souterrain contre un parti ou contre l'État qui, il faut le reconnaître, demeure un léviathan. L'État devrait de son côté en assurer la

garantie sachant qu'il peut en tirer le plus grand bénéfice pour l'encadrement des populations.

Conclusion

Aux termes de cette analyse, il apparaît clairement que le militantisme politique des chefs dans ce nouveau contexte de démocratisation constitue un frein à la gouvernance démocratique. Ce militantisme est mû par l'instinct d'accumulation où s'imbrique logique patrimonialiste et autoritaire. Ce militantisme conduit en outre conduit à l'affaiblissement de la position des chefs dans les arènes politiques locales quand ils perdent leur caution morale auprès des populations. Ainsi que le souligne Nicodemeus Awasom,

> les chefs traditionnels dans leur vécu quotidien sont entre le marteau de l'État, et l'enclume de leurs sujets. De l'équilibre entre les deux, dépend leur survie. Or, depuis la restauration du multipartisme au Cameroun affirme-t-il, la position des chefs (du Nord-Ouest ici) a été largement entamée et démystifiée à cause de leur soutien inconditionnel au parti au pouvoir en proie à une fronde sans précédent de leurs populations. N'ayant donc pas été en mesure de satisfaire simultanément, et les exigences de leurs sujets, et la pression du gouvernement, les fons ont ainsi coupé le cordon ombilical qui les lie avec les populations. Pourtant, ni les populations seules, et a fortiori l'État moderne, ne peuvent pleinement garantir la légitimité des chefs; celle-ci, il faut le répéter, dépend des deux protagonistes. Et c'est parce qu'ils ont privilégié un maillon au détriment de l'autre, qu'ils sont aujourd'hui réduits aux valets à la solde du pouvoir (Awasom 2003:101-102).

Dans des cas extrêmes, certains chefs versent dans la criminalisation politique en violant de manière flagrante les droits humains les plus fondamentaux. Pourtant, il n'est pas temps de chanter leur oraison funèbre. Cette hypothèse est même impossible, car, il faut le souligner, ceux-ci ont survécu jusqu'aujourd'hui à tous les avatars de l'histoire. Mieux, ils sont des acteurs de développement local en leurs qualités d'administrateurs de la brousse. Capables d'innovation, ils offrent par leurs initiatives des alternatives au déficit de régulation étatique. De ce fait, quand un chef perd sa caution morale auprès de ses populations et fait face à leur indocilité, c'est le développement qui s'en trouve ainsi bloqué. Pour toutes ces raisons, l'on note de plus en plus une pression allant dans le sens de leur désengament militant.

Dans ce contexte de neutralité politique, les chefs devraient continuer à exercer leur droit de vote, pour se prononcer en toute intime conviction dans l'urne, en faveur ou non d'un parti politique, en leur qualité de citoyens dans une République. Dans la mesure où ils voudraient voir leurs intérêts préserver dans un parti, ils pourraient désigner des proches, des parents ou des notables. En outre, ils devraient avoir leur mot à dire sur les grandes options

fondamentales du pays; comme il en fut par exemple avec les chefs traditionnels de l'ex-Cameroun britannique au sujet de la réunification; ou plus près de nous au début des années 1990 avec les chefs anglophones membres de la «All Anglophones Conference», qui oeuvraient pour une décentralisation des structures étatiques camerounaises en vue d'un plus grand respect des droits de la minorité anglophone (voir Konings 1999,181-206). Par ailleurs, la nouvelle constitution camerounaise de 1996 dans le cadre de la décentralisation régionale, a ouvert une passerelle en vue de la représentation des autorités traditionnelles au sein des conseils régionaux. Aux termes de l'article 57 al 2, le conseil régional qui est l'organe délibérant de la région, comprend outre les délégués des départements élus au suffrage universel indirect, des représentants du commandement traditionnel élus par leurs pairs. De même, ceux-ci auraient nécessairement une représentation au sein du Sénat prévu par la constitution, parmi les trois des dix sénateurs des régions appelés à être nommés par le chef de l'État.

Notes

1. Charles Nach Mbach parle de «dérives politiques» dans son article publié dans *Africa Development*, nos 3& 4, 2000:77-117: La chefferie traditionnelle a Cameroun: ambiguïtés juridiques et dérives politiques.
2. Employé par le décret no 77/245 du 15 juillet 1977 portant organisation des chefferies traditionnelles, modifié et complété par le décret no 82/241 du 24 juin 1982, il recouvre ici, des réalités sociales, politiques et religieuses diverses: les sociétés lignagères du Centre, du Sud et de l'Est où dans la plupart des cas, le chef fait surtout figure de grand patriarche, plus respecté que craint, un primus inter pares; les lamidats du Grand Nord où les chefs peul (les lamibé) notamment, demeurent des potentats «féodaux» et enfin les chefferies des Grassfields (provinces de l'Ouest et du Nord-Ouest) dont la ténacité tient à ce qu'elles ont une légitimité rituelle profonde et procèdent d'une longue tradition. Dans ce dernier cas de figure, il s'agit pour reprendre Jean-Louis Dongmo (1981, t1:45) d'un «un État (...) qui s'individualise par un territoire bien délimité, une population bien définie et un pouvoir qui les contrôle réellement. Les limites sont bien précises mais ont bougé au cours de l'histoire à la suite de pertes ou de gains de territoires consécutifs aux guerres: c'est la colonisation européenne qui a figé la situation vers le début de ce siècle, telle que nous la connaissons aujourd'hui». Mais à l'Ouest, existent des variations locales dans la structuration des chefferies traditionnelles; de ce fait, il convient de distinguer deux formes principales d'organisation politique: les sociétés à chefferies d'une part que l'on rencontre chez les Bamiléké et d'autre part, le royaume bamoun qui présente une structure plus centralisée, la taille du territoire plus vaste et la population plus dense.

3. C'est pour cette raison que le RDPC, parti au pouvoir, se retrouvait seul en lice à Rey Bouba, Touboro et Mandringuing. Dans les deux dernières circonscriptions, le parti au pouvoir avait même remporté un score significatif de 99,95%, 90,65 et 100% respectivement.
4. Le développement ne doit pas seulement être pris en termes de croissance, elle-même évaluée en données statistiques qui, souvent, simplifient et mystifient la réalité. Il est la capacité d'un système politique à initier et à contrôler les changements positifs qui concernent les besoins fondamentaux de la société, la participation de tous les segments sociaux, la démocratisation. C'est aussi l'ensemble des enjeux sociaux et culturels fondés sur le bien-être social. Ainsi que le souligne Okwudiba Nnoli (1987:216), le développement est d'abord et avant tout un phénomène basé sur le renforcement illimité de la capacité de l'individu et de la société à maîtriser les forces de la nature et de l'humanité en général. En conséquence et en deuxième lieu, c'est en termes de développement que doit être appréhendée la relation entre l'individu et l'État en Afrique (Osaghae 1994:4).
5. D'ailleurs, même urbanisé, les Bamiléké au Cameroun (et bien d'autres groupes ethniques) participe à la vie de sa chefferie avec ce que cela suppose de présence physique aux associations et dépenses financières. Sa réussite sociale n'étant complète que si elle se solde par la détention d'un titre vénal, dans l'une des sociétés des notables. Il contribue ce faisant aux opérations de développement de sa région dont il a fréquemment l'initiative et au gré des voyages et d'échanges incessants, tout en y diffusant de nouvelles façons de manger, d'habiter et de se vêtir (Bayart 1989:31; Barbier 1979:149; Miaffo et Warnier 1993:47).
6. Pierre Ngaka cité par Etienne Le Roy, «les chefferies traditionnelles et le problème de leur intégration» in Conac, 197: 126.
7. Cité par Etienne Le Roy in Conac, 1979, p. 105.
8. Voir *Cameroon Tribune* du 6 février 2001, p. 20.
9. -Un département de gynécologie et obstétrique avec un échographe et un foptoscope électrique.
   - Un département d'ophtalmologie doté d'équipements d'examen et d'opération.
   - Une dentisterie comprenant un fauteuil dentaire complet plus matériels d'exploration et de soins complets.
   - Une unité d'endoscopie dont une fibroscopie, une coloscopie et une bronchoscopie.
   - Un bloc opératoire muni d'un appareillage de réanimation, de bistouri électrique, d'un capteur d'oxygéné ambiante et de toutes les boîtes chirurgicales.
   - Une salle d'accouchement dotée de 3 couveuses pour les prématurés, 2 photothérapies et un appareillage de réanimation du nouveau-né.
   - Un laboratoire comprenant 1 microscope, 1 spectrophotomètre, un microscope pour hématologie complet, 1 centrifugeuse électrique, 1 poupinel, 1 frigidaire et 1 kit de réactif complet.

- Trois salles d'hospitalisation avec au total 17 lits d'hospitalisation.
- Une pharmacie avec des médicaments génériques.
- Comme personnel, l'hôpital emploie: un médecin généraliste, un dentiste, un gynécologue (aux frais du gouvernement égyptien), 10 infirmiers, 2 techniciens de laboratoire, un infirmier anesthésiste, un aide-chirurgien.

10. Depuis la présidentielle de 1992, la plupart des marabouts ont compris au Sénégal qu'ils gagneraient à sortir du jeu électoral à en croire Mamadou Diouf (1993:5). Par la nature impitoyable du jeu électoral, beaucoup de chefs traditionnels ont commencé également à réaliser qu'ils gagneraient à ne pas s'aventurer dans les compétitions électorales au Cameroun. C'est ainsi que lors des dernières municipales de 2002, contrairement à 1996, beaucoup s'étaient abstenus de solliciter l'investiture des partis politiques. C'est le cas notamment de ceux qui étaient sortis vaincus en 1996.

Bibliographie

Acheampong, Kenneth A., 2000, 'Human Rights and The African Renaissance' in *African Journal Political Science*, June, vol 5, number 1, pp. 105-123.

Alber, Erdmute, 1997, «Le pouvoir local face aux mutations au niveau de l'État. Le cas d'un village bariba» in *Cahiers d'études africaines* no XXXVII (1), pp. 37-56.

Alternatives Sud, 1997, vol IV, 3.

Agbu, Osita, 2000, 'Human Rights Implications of African Conflicts' in *African Journal of Political Science*, June, vol. 5, number 1, pp. 92-105.

Bank, Leslie et Souhall, Roger, 1996, 'Traditional Leadership in South Africa's New Democracy' in *Journal of Legal Pluralism and Unofficial Law* no 37-38, pp. 407-430.

Conac, Gérard (dir), 1979, *Les institutions administratives des États francophones d'Afrique noire*, Paris, Economica.

Crouzel, Ivan, 1999, «La chefferie traditionnelle sud-africaine face à la démocratisation des pouvoirs locaux» in *Afrique contemporaine* no 19230-39.

Eyoh, Dickson, 1995, 'Through the Prism of a Local Tragedy: Political Liberalisation, Regionalism and Elites Struggles for Power' in *Africa*, no 38, 1998, pp. 338-359.

Fisiy, Cyprian, 'Chieftaincy in the Modern State: an Institution at the Crossroads of Democratic Change' in *Paiduma* 41, pp. 49-61.

Fisiy, Cyprian and Goheen, Mitzi, 1998, 'Power and the Quest for Recognition: Neo-Traditional Titles among the New Elite in Nso Cameroon' in *Africa*, vol 68, no 3, pp. 383-402.

Geschiere, Peter, 1996a, «Sorcellerie et politique: les pièges du rapport élite-village» in *Politique africaine* no 63, pp. 82-96.

Geschiere, Peter, 1996b, 'Chiefs and the Problems of Witchcraft. Varying Patterns in South and West-Cameroon' in *Journal of Legal Pluralism and Unofficial Law* no 37-38, pp. 39-78.

Geschiere, Peter, 1993, 'Chiefs and Colonial Rule in Cameroon: Inventing Chieftaincy, French and British Style' in *Africa* 63 (2), pp. 151-175.

Goheen, Mitzi, 1992, 'Chiefs, Sub/Chiefs and Local Control: Negociation over Land, Struggles over Meaning' in *Africa* 62 (3), pp. 387-412.

Hurault, Jean, 1956, *Notes sur la structure sociale des Bamiléké*, Paris.

Kamto, Maurice, Sd, *L'urgence de la pensée. Réflexions sur une précondition du développement en Afrique*, Yaoundé, Editions Mandara.

Konings, Piet, 1996, 'Chieftaincy, Labour Control and Capitalist Development in Cameroon' in *Journal of Legal Pluralism* no 37/38, pp. 329-346.

Krieger, Milton, 1994, 'Cameroon's Democratic Crossroads, 1990-94' in *The Journal of Modern African Studies*, 32, 4, pp. 605-628.

Mappa, Sophia, 1998, *Pouvoirs traditionnels et pouvoir d'État en Afrique. L'illusion universaliste*, Paris, Karthala.

Mathieu,Paul, Laurent, Pierre-Joseph, Willame, Jean-Claude (dir), 1996, «Démocratie, enjeux fonciers et pratiques locales en Afrique. Conflits, gouvernance et turbulences en Afrique de l'Ouest et centrale», Bruxelles/Paris, Institut africain-CEDAF/L'Harmattan, *Cahiers africains* no 23-24.

Maugenest, Denis et Pougoue, Paul-Gérard (dir), 1995, «Droits de l'Homme en Afrique centrale». Colloque de Yaoundé (9-11 novembre 1994), Paris, UCAC-Karthala.

Médard, Jean-François, (études réunies et présentées par), 1991, *États d'Afrique noire. Formation, mécanismes, crise*, Paris, Karthala.

Miaffo, Dieudonné, 1993, *Chefferie traditionnelle et démocratie: Réflexion sur le destin du chef en régime pluraliste*, Douala, CEDILA.

Mouiche, Ibrahim, 2000, «Ethnicité et multipartisme au Nord-Cameroun» in *Revue Africaine de Science politique. African Journal of Political Science*, June, vol 5, number 1, pp. 46-91.

Mouiche, Ibrahim, 2001, «Multipartisme et participation politique des chefs traditionnels au Cameroun de l'Ouest» in *Revue Africaine d'études politiques et stratégiques*, no 1, pp. 53-81.

Nach Mbach, Charles, 2000, «La chefferie traditionnelle au Cameroun: ambiguïtés juridiques et dérives politiques» in *Africa Development*, vol XXV, no 3 et 4, pp. 77-117.

Nantang, Ben Jua, 1995, 'Indirect Rule in Colonial and Postcolonial Cameroon' in *Paiduma* no 41, pp. 39-47.

Nyamnjoh, Francis et Rowlands, Michael, 1998, 'Elites Associations and the Politics of Belonging in Cameroon' in *Africa*, vol 68, no 3, pp. 320-337.

Olukoshi, Adebayo O., 1998, *The Politics of Opposition in Contemporary Africa*, Uppsala, Nordiska Afrikainstitutet.

Oomen, Barbara, 2002, *Chiefs! Law, Power and Culture in Contemporary South Africa*, University of Leiden.

Osaghae, Eghosae, 1994, *Between State and Civil Society in Africa*, Dakar, CODESRIA Book Series.

Ouedraogo, Jean-Baptiste, 1996, 'The Articulation of the Moose Traditional Chieftaincies, the Modern Political System and the Economical Development of Kaya Region, Burkina Faso' in *Journal of Legal Pluralism* no 37/38, pp. 249-261.

Perrot, Claude-Hélène et Fauvelle-Aymar, François-Xavier, 2003, *Le retour des rois: les autorités traditionnelles et l'État en Afrique contemporaine*, Paris, Karthala.

Preston, Brent, 1995, *Chiefs: Traditional Authority and Democratic Governance in Malawi*, NDI, Lilongwe.

Pradelles de Latour, Charles-Henri, 199, *L'ethnopsychanalyse en pays bamiléké*, Paris, E.P.E.L.

Sandbrook, Richard, 1998, 'Liberal Democracy in Africa: A Socialist-Revisionist Perspective' in *Canadian Journal of African Studies*, vol 22, no 2, pp. 240-67.

Skalkník, Peter, 1996, 'Authority Versus Power. Democracy in Africa Must Include Original African Institution' in *Journal of Legal Pluralism*, no 37/38, pp. 109-120.

Sindjoun, Luc, 2002, *L'État ailleurs. Entre noyau dur et case vide*, Paris: Agence intergouvernementale de la Francophonie-Economica.

Tabapssi. F, Timothée, 1999, *Le modèle migratoire bamiléké (Cameroun) et sa crise actuelle: perspectives économique et culturelle*, Leiden, CNWS.

Tardits, Claude, 1992, «Le royaume bamoun: un État africain traditionnel qui a traversé toute l'histoire» in *Mondes et cultures*, t 52, no 2-4, pp. 671-694.

van Binsbergen,Wim (ed), 2003, *The Dynamics of Power and the Rule of Law. Essays on Africa and beyond*, LIT, ASC, Hamburg, Leiden.

van Rouveroy van Nieuwaal, E. Adriaan, 1996, 'States and Chiefs. Are Chiefs mere Puppets?' in *Journal of Legal Pluralism* no 37/38, pp. 39-78.

van Rouveroy van Nieuwaal, E. Adriaan & Rijk van Dijk (ed), 1999, *African chieftaincy in a New Socio-Political Landscape*, Leiden, African Studies Centre.

von Trotha, Trutz, 1996, 'From Administrative to Civil Chieftaincy. Some Problems and Prospects' in *Journal of Legal Pluralism* no 37/38, pp. 79-107.

Warnier, Jean-Pierre, 1993, 'The King as a Container in the Cameroon Grassfields' in *Paiduma* no 39.