

# Ensuring Voice and Accountability in National Constitutional Reform Processes: Lessons for Political Parties from Praxis

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## ***Abstract***

Political parties play the twin functions of aggregating societal demands and articulating them to the political system. Thus political parties are expected to voice public demands, represent groups and interests and hold those in power accountable. As regards national constitutional reform processes, civil society and political parties can be said to have played important roles in demanding for constitutional changes and contesting constitutional frameworks. But the experience of political parties in providing voice and accountability in the constitutional reform processes have been varied. Apart from few exceptions, that include Namibia and South Africa, the role of political parties in providing voice and accountability in constitutional reforms efforts in Eastern and Southern Africa have been minimal. The main reason for this has been the challenges facing political parties, such as: weak institutionalization; lack of internal democracy, weak funding base, lack of distinct ideology/policy platforms and reliance on individual personalities. These challenges combined with closing of democratic spaces and institutional bottlenecks have made it difficult for political parties to effectively articulate grievances/demands and hold authorities to account, especially over the constitutional reform processes, which have tended to be dictated by the Executive and designed to meet the need of incumbents. This paper discusses the recent state of affairs vis-à-vis the role of political parties in the constitutional reform processes and compares different country experiences in Eastern and Southern Africa. It is argued that where constitutional reform processes led to acceptable Constitutions, such as in South Africa, political parties played an important role. However, in countries where the constitutional reform processes have faced protracted contestation, political parties played a minimal role either because they were initially excluded or faced serious challenges to exercise voice and ensure accountability.

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## **Introduction**

The early optimism that came with the 'second liberation' of the 1990s has now turned to pessimism and cynicism, as democratic reversals have been recorded in more than a dozen African countries, while the military have returned and there is a growing number of incumbents hanging on to power through manipulation of constitutions, electoral rules and outright electoral fraud. Indeed, it was assumed that the mere establishment of institutions of democracy, such as political parties, regular elections and democratic constitutions would enhance political contestation and improve the quality of governance. However, almost two decades later it is now acknowledged that democracy in Africa is far from consolidated. There is growing evidence that in the majority of countries that underwent democratic transition no

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real political contestation exists, as representative bodies such as political parties are weakly institutionalised, poorly organized, often co-opted and largely dis-jointed from their constituencies (van Cranenburg, 2008). New rulers have tended to be authoritarian, intolerant and bent on pursuing policies and programmes that placate a small minority while the majority of the population wallows in abject poverty.

The explanation of the nature and character of political institutions in Eastern and Southern Africa and their undemocratic and often anti-democratic features may lie in the colonial and authoritarian one-party heritage of these societies. As Melber (2003) has rightly observed:

“...the new societies carried within them essential elements of the old system. Thus it should come as no surprise that aspects of the colonial system have reproduced themselves in the struggle for its abolition and subsequently in the concepts of governance applied to post-colonial conditions.”

The pursuit of power and struggle for its maintenance, as conceptualized by Machiavelli, has remained the *raison d'être* of politics throughout the ages. From precolonial, colonial to the one-party states different elites have used different strategies to acquire and maintain political power. Some of these strategies have endured over time and have shaped the character of modern political structures. Independence in Africa and elsewhere was fought around the core issues of voice, representation and accountability. The principles of colonial representation and accountability may have altered, but the structures which were erected were defined by the colonial framework. The authoritarian character of the colonial order was retained with its exclusiveness, which may explain the prevailing political culture of aversion to political competition, intolerance to dissent and limiting of political space in Africa.

The notions of representation, voice and accountability are central to the understanding of the nature of African politics. Many commentators (Erdmann and Simutanyi, 2003; Rakner and Svåsand, 2003) agree that the transition heritage has influenced the nature and character of political institutions that evolved after 1990 and undermined the development of democracy. Some of the continuities that form important aspects of the heritage can be traced back to the colonial and authoritarian one-party state, which include personalization of power; deference to

the 'Big Man', a penchant for unanimity, lack of voice, intolerance to dissent and opposition, weak vertical accountability and entrenched clientelism (Bates, 2008).

Both the nationalists who came to power after independence and the pro-democracy activists shared one thing in common, appropriation of liberation history into a right to rule in perpetuity. They understood their success in founding elections as a right to represent the people and advanced a discourse of being the 'sole and legitimate representative of the people'. Like the colonial state or one-party state before them they re-invented in the practice of post-colonial politics new meanings of voice, representation and accountability. In other words, once in power they claimed to represent everyone (though they excluded their opponents in a variety of ways) and accountability was only to themselves or an executive President, who inherited vast powers from the colonial and one-party state. Importantly, there is need to demystify the assumption that colonial and pro-democracy struggles were essentially fought to promote voice and accountability. While these notions were contested, the new rulers had no difficulty retaining the foundations of the very political order they sought to replace. What was really at issue was the right of inheritance and not the fundamental transformation of the colonial or authoritarian one-party state structures.

The other important heritage about the African party system is exclusion of core constituencies. Both during the nationalist struggle and under one-party rule, political parties were believed to represent mass grievances/demands, which was often equated to the 'national interest.' However, this concept of representation and accountability is contested, which explains ethnic, regional and sectional support that parties have. The question is do parties provide voice and accountability? Whom or which interests do political parties actually represent and to whom are they accountable for their actions?

### **Deepening voice and accountability: some reflections**

While democracy remains a highly contested concept, there is general consensus about its meaning or characteristic features. Samuel Huntington (1968) has defined democracy in instrumental terms, as a system of government which is characterised by free and regular elections, a free press and guaranteed civil and individual liberties. For Dahl (1982) democracy

involves two things, participation and contestation. In participation is implied the notion of voice and self-expression, while contestation involves representation of demands, challenging the status quo and demanding accountability. Modern politics involves both voice and demands for accountability.

In a representative democracy, citizens elect leaders to represent them and articulate their demands and grievances (voice). They then hold those they elect to account or expect them to be accountable for their actions or omissions. This relationship can be both vertical and horizontal. That is to say, citizens role may not end with the election of their leaders (or representatives, such as members of parliament) but they may continue to voice their concerns and make demands on their representatives throughout their tenure of office. Furthermore, the representatives are not only expected to hold the central power holders accountable but are expected to be accountable to their members internally.

The idea of deepening voice and accountability is based on an assumption that citizens do have a voice and representatives should necessarily be accountable to the electors. But the reality often is that voice and accountability have different meanings to the various actors and may even be highly contested. In order to promote voice and accountability there is need for institutions and accountability mechanisms. Civil society has long been recognized as the basic channel through which citizens voice their demands and grievances. Civil society organizations can and do provide voice by making demands on behalf of citizens, including calling those in authority to account. However, under a democracy political parties are also important actors that could and do play a role in articulating, demanding and providing checks and balances (accountability).

Political parties are supposed to provide voice to a variety of interests and be accountable to the people or their constituents. However, the people should or must demand that their concerns are heard and that their representatives are not only accountable to them but hold those in authority accountable on their behalf. But to what extent do political parties play this role?

African political parties have been defined by their functions and peculiar characteristic features (Randall and Svåsand, 2002). A political party can be defined as an organisation established with the sole purpose of acquiring or maintaining political power. Ideally, the functions of a political party include: (a) representing and aggregating grievances/demands to the political system; (b) framing policy alternatives and structuring electoral choices; (c) holding those in power accountable (checks and balances); (d) recruitment of political leadership, membership and supporters and communicating government policies and decisions to constituencies (Salih, 2003). Not all of these functions may be said to apply to African parties. This is because African political parties tend to have peculiar features compared to their Western counterparts. The characteristic features of African political parties as discussed in the literature (Gyimah-Boadi, 2007) include the following:

- Lack institutionalization (weak bureaucratic & organizational structures);
- Lack internal democracy (intolerance to dissent, absence of internal debate, absence of competition to elective office);
- Personalised and personality-based (i.e. reliance on individual personalities, personal networks and loyalties);
- Informalisation (informal, personal and clientelist networks);
- Highly fragmented;
- Less differentiated by ideology or programmatic concerns;
- Non-adherence to internal rules and procedures (e.g. informalised rules & procedures);
- Lack a clear, distinctive and identifiable membership and regular mechanisms for collecting membership contributions (i.e. absence of up-to-date membership registers);
- Elite and urban-based (not organically linked to society or the grassroots);
- Lack sustainable funding base;
- Lack transparency, especially in accountability for election campaign financing.

To be sure, as Larry Diamond (1988) has observed African political parties are institutionally 'weak, shallow and fragile.' It is this lack of institutionalization which combined with lack of internal democracy and personality-based politics which has implications for the deepening of voice and accountability in African democracies. Indeed, the discussion of the institutional

weaknesses of political parties, which has been a recurring theme at many conferences on democracy in Africa since the early 1990s, has paid little attention to the inner workings of political parties and how that impacts on democracy.

### **Role of political parties in constitutional reform processes in Africa**

Since independence in many African countries there has been serious contestation over the rules of the political game. The constitutions inherited at independence (often handed out in hurry to facilitate founding elections) were not only found inadequate and inappropriate, but usually abrogated in preference for one-party authoritarian systems. Thus following the return to multiparty system there were popular demands for constitutional reform. The main issues dominating the constitutional reform processes have centred on what Brooke (2005) has referred to as ‘immutable principles.’ These include issues of separation of power (checks and balances or accountability mechanisms), reduction of powers of the executive, openness and transparency (including media freedom), responsiveness, accountability, equity, inclusiveness, popular participation and respect for the rule of law.

Constitutional reform processes have been underway in many African countries, including Ghana, Kenya, Malawi, Mali, Tanzania and Zimbabwe. The processes have often been inconclusive and dominated by incumbents. In the case of Kenya and Zimbabwe, constitutions were popularly rejected by populations as failing short of their aspirations.

While in Malawi the process has simply stalled.<sup>2</sup> Zambia has witnessed a protracted constitutional reform process dating back to 2003. This was but the third attempt since the re-introduction of multiparty system in 1991 (the first being 1991 and the other 1995). The current constitutional reform process claims to be much more inclusive and not dictated by the Executive. However, there are grave concerns as to whether it will produce a Constitution that will be acceptable to the Zambian people. The process has been said not be inclusive enough as the major opposition party (Patriotic Front) and influential civil society

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<sup>2</sup> In Uganda a constitution was popularly adopted in a referendum in 1995 and shortly afterwards President Yoweri Museveni demanded the removal of term limits in 2005 to allow him contest presidential elections as often as he pleased.

organizations, including the Catholic Church have boycotted due to disagreements over the perceived dominance of state representatives.

The main concern regarding constitutional reform processes in African is that they have tended to be designed and dominated by incumbents. Until, very recently in former British colonies constitutional reviews involved Government constituting a commission of enquiry and accepting or rejecting key recommendations. However, the movement is now towards popular participation by the people in the constitution review process (Mbao, 2007 and Gathii, 2008). To what extent are people's views articulated and how accountable are those who are expected to represent societal interests? It is against this background that the role of political parties in the constitutional reform processes will be interrogated here.

It can be observed that the role of African political parties in constitutional reform processes has not been closely studied.<sup>3</sup> To our knowledge there are few countries where political parties were instrumental in initiating and influencing constitutional reform processes that were inclusive, participatory and ensured accountability. In former French colonies the national conference was adopted as the most popular form of involving citizens in bringing about constitutional change. There was limited success in some countries, such as Mali and Benin, where political forces played a crucial role in the sovereign national conferences. But in many former French colonies, national conferences did not bring about genuine change in the rules of the game and structure of governance, as evident in the Democratic Republic of Congo, Congo Republic, Ivory Coast and Togo where incumbents manipulated the conferences to produce a result favourable to them despite the participation of political parties.

Several observers argue that political parties have not played an important role in the constitutional reform processes. In Kenya, for example, Mutua (2009) makes the point that it was civil society and not political parties that did most of the heavy lifting in the constitution reform process.<sup>7</sup> In Zambia, until June 2007 the constitutional reform process was driven by civil society who persistently demanded for it and provided the leadership. The Oasis Forum,

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<sup>3</sup> This is partly a function of the short history of political parties, whose evolution was interrupted by almost 30 years of one-party and military dictatorship.

for example, formed by prominent civil society organizations in 2001 to campaign against former president Frederick Chiluba's bid to change the constitution to allow him a third term, comprised civil society organizations. It held together when Levy Mwanawasa was elected in December 2001, but seems to have disintegrated after some of its members decided to participate in the National Constitutional Conference (NCC). Until June 2007, political parties did not have their own positions over the constitutional reform process and only followed what civil society organizations said. But after a conference of political parties that resolved to legislate for a National Constitutional Conference as opposed to a civil society demanded Constituent Assembly, political parties now play an important role. The NCC is chaired by a vice president of an opposition party, the Forum for Democracy and Development, while almost all the major political parties are represented apart from the Patriotic Front.

In terms of providing voice and accountability in the constitutional reform processes it is doubtful that political parties can be said to play that role. Given the institutional weaknesses, reliance on dominant individuals, lack of distinct policy platforms and absence of internal democracy, political parties role in the constitutional reform process may not necessarily reflect their members interests. Apart from few exceptions, such as South Africa, many African political parties that may be involved in constitutional reviews have unelected leadership, rarely or never consult their membership to hear what their demands are and lack the capacity to hold authorities to account. Further, the absence of internal democracy also militates against members holding their party leaders to account. In Zambia, of the parties that sit on the NCC, only two (MMD and FDD) have elected leadership.

It is uncommon for political parties to state where they stand on issues being discussed by the NCC. Thus their general membership and the population at large simply does not know where the party stands. Some ruling MMD representatives have articulated a government position and it would appear the party (or at least the senior members) do have positions that they are required to defend or lobby on. However, this is not shared with the general membership, making it an elite agenda to preserve current benefits.

In conclusion, in order to ensure voice and accountability in the constitutional reform processes, political parties should ensure that: (a) they put in place consultative mechanisms to allow views from their members and the general public to be heard and subsequently channeled; (b) their contributions are informed by a policy platform approved by the party and known by the membership; (c) realise that constitutional reform process is a political process and arena of contestation over rules and procedures and should be prepared to articulate proposals that provide an alternative vision of society; (d) should ensure that they report back to their members and the public on the progress being made, their concerns and solicit input or feedback and (e) ensure that they are accountable to their members for whatever action or proposal they make and also demand accountability from the authorities on the integrity of the constitutional reform.

I wish to argue that constitutional reform processes are arenas of contestations over rules and procedures, thus participants need not only be educated to understand the dynamics but should go there with mandates of the people they claim to represent. In the absence of such mandates it is very easy to be captured by the dominant interests and in particular state elites. As former South African Chief Justice Ismail Mohammed once said:

“The constitution of a nation is not simply a statute which mechanically defines the structures of government and the relations between the government and the governed, it is a ‘mirror of the national soul’, the identification of the ideals and aspirations of a nation, the articulation of the values binding its people and disciplining its government.”<sup>4</sup>

Political parties can articulate these values if they are well organized, are in touch with their membership (that is if they even have a membership, as many parties do not maintain regular membership registers) and responsive to the interests of their particular constituencies.

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<sup>4</sup> Quoted by Hatchard, 2001.

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