

THEME: EVALUATION OF THE CONSTITUTION-MAKING PROCESS IN ZIMBABWE

TOPIC: Political Parties and the Constitutional Process in Zimbabwe (1999/2000)

1. Introduction

In a modern conventional political situation, political parties are the best known entities in the process of competing for, acquiring and exercising power. A conventional political set up is one whereby political formations have a free wheel play, without the constraint of tyranny (J. S. Mill, 1872). There are many organisations which resemble the structure of political parties; however, these similarities do not extend to the functional arena. Competing for power, by wooing political supporters, plus the pursuit of the opportunities to form a government at some point, wholly distinguishes a political party from the rest of organisations in the community. Thus, the pursuit of politics and the concomitant engagement in express political behaviour is the vocation of any political party (Morris Janovitz, 1970:90). The constitutional initiatives in Zimbabwe in 1999 and 2000 have generated significant lessons in respect of the modalities of conducting a constitutional review (or making) and the role that political parties should play. It is interesting to learn how the process plunged into abortion in February 2000. These lessons will help to define new strategies.

2. Constitutional Process

The constitutional process is one of those basic political activities that occur in any political system, and community .The prime object of a constitutional process is the constitution itself. As the social, political and economic environment changes, both within the domestic and international spheres, the legislative and executive institutions have to constantly reflect upon existing laws or the entire constitution itself, with a view to adapting them to the changing social climate.

The constitutional process can be divided into two types, namely, "Constitutional reform" and "Constitution-making." In the first type, the political business consists of engineering a new bond of supreme legal norms from which the legislative process will draw in the progress of time. Typical examples include South Africa's constitution-making process between 1992 and 1997 and the 1776 Philadelphia Congress in the United States. In either case, a new constitution was accomplished from the constitutional deliberations. Constitution-making often consumes time and it requires the benefit of representative wisdom.

In the second type, the major activity consists of updating certain sections of the constitution to suit a changed socio-economic and political environment, or to address historically long-standing problems (punishment of past crimes against humanity , redistribution of property, restitution of rights etc. The constitutional activity in most post-independent African countries has been dominated by attempts to reform the existing constitution. Incidentally, the reforms generated tyrannical rule in many cases.

3. Historical Background

The colonization of Zimbabwe at the end of the 19th century and the subsequent discriminatory and oppressive policies against the indigenous black majority population created the basis of all attendant constitutional problems in Zimbabwe to date. From 1890 to 1979, Zimbabwe, then a British colony, had an anomalous constitutional dispensation which progressively became the object of violent political conflict (1966-1979) and the international ostracism of Rhodesia during the urn period (1965-1979).

It took to the 1979 Lancaster House Conference for both issues, war and isolation, to be resolved. Yet this very conference provided a constitution that tied short and folded the hands of the post-independence government to effect fundamental economic reforms, particularly in land redistribution, resettlement and economic ownership and control of the entire economy. These constraints have persisted through the last twenty years of independence. The 1990 Constitutional Draft and subsequently, the February 2000 constitutional referendum, were based on the need to rectify the situation. The outcome signalled the persistence of longstanding constitutional problems, including those created after independence.

4. Constitution-making or Constitutional reform in Zimbabwe?

To determine whether the constitutional activities that prevailed on the political landscape of Zimbabwe throughout 1999 to 2000, but especially from June 1999 to February 2000, we need to revisit the events in 1979/80. From September to December 1979 was convened the Lancaster House All-Party Constitutional Conference in London, United Kingdom. Among the participants were the then Patriotic Front, then led by Robert Mugabe and Joshua Nkomo; the then Salisbury Government led by Ian Smith and Bishop Muzorewa, plus the British Government which acted the organiser and mediator at the constitutional conference. The aim of the conference was to reconstitute Rhodesia to legality and international acceptance by drawing a new constitution that would serve as a doorway into independence and majority rule. The outcome from these deliberations was the Lancaster House Constitution; this was a newly drafted constitution, though the British drafters drew largely from the English constitutional practice. In significant terms, the constitutional process at the Lancaster House in 1979 was a constitution-making process, whatever the loopholes of the process. In 1980, on the basis of the Lancaster House Constitution, Zimbabwe attained independence through a democratic electoral process.

The Lancaster House Constitution was amended several times, sixteen times by June 2000. Some of the fateful amendments were the introduction of the Executive President in 1987, Political Parties Finance Act in 1989 and the Land Acquisition Act in 1992. More recently, the constitution was amended in June 2000 to provide for government acquisition of farm land for redistribution and resettlement without paying compensation to the predominantly white commercial farmers.

5. Onset of the Constitutional Debate

The period June 2000 to February 2000, apart from the period 1979/80, retains tremendous historical significance. There was a firm attempt to put aside the Lancaster House Constitution and to replace it with a new constitution. A draft constitution was prepared and handed over to the state

president by a 400 Constitutional Commission in December 1999. Thereafter, preparations for a referendum on the draft constitution went on track, culminating in the 12/13 February 2000 constitutional referendum. Notably, the initial impetus to work out a new constitution came from the civil society.

Although it could have been in the interest of the ruling party ZANU-PF to initiate a successful constitutional process to do away with the constraints of the Lancaster House Constitution so as to respond to public needs and pressures, the party did not pioneer the recent constitutional debate and process. The initiative to open this debate came from civic groups. The Zimbabwe Council of Churches, as early as 1997, called for national constitutional dialogue. This initiative soon gathered momentum with the formation of the National Constitutional Assembly (NCA). The NCA was a coalition of civic organisations and political parties. One of the largest civic entity to have participated in the NCA was the Zimbabwe Council of Churches (ZCC) until they withdrew towards the end of 1999 to dissociate from express political activity.

In the run up to the referendum, the Constitutional Commission and the NCA became the two most visible actors. Throughout January 2000 and early February 2000, the NCA rose to prominence by campaigning for a "No Vote" throughout the country. It sharpened its mobilisation capacity in the week prior to the referendum.

6. Differential Campaigns

Ideally, a single nation-wide education campaign could have been mounted to sensitize the public to the problems of the Lancaster House Constitution and the intentions in the constitutional draft. However, this possibility aborted due to the modalities set at the beginning of the constitutional process. There was controversy, particularly rising from civic groups and opposition political parties, regarding the state president's role in the constitutional review process. These groups were not favourable to the president acting as the final referee in the whole process. But in legal terms, as the Commissions of Inquiry Act provides for, the president is empowered to play such a role. This, however, could not resolve the controversy. Inevitably, different and conflicting approaches on the issue ensued.

Consequently, two processes began, one by the NCA and other civic organisations, and another, run by the government. The goals of these two campaign processes were not related. The NCA concentrated on educating the public about the problem of modalities of the process and the demerits of the constitutional deliberations and the final draft. The core focus in this case was to mobilize a "No Vote" which eventually triumphed in the February 2000 referendum.

The government run campaign process concentrated on the merits and future benefits to Zimbabwe of the new constitutional draft. This campaign focus failed at the referendum. The voters could have become suspicious, since both the government and members of the Constitutional Commission campaigned for public support through the state media, in advance of the referendum. Voters would have preferred an unbiased presentation of the draft constitution.

Why the "No-Vote" Succeeded

Essentially, by the time of the referendum, there was pervasive public impression, more or less justified, that the final constitutional draft had sifted away the core issues raised during the outreach programme of the Constitutional Commission:

- the issue of Executive Prime Minister
- the issue of Ceremonial President
- the issue of President Mugabe's retirement
- the legal-constitutional status of the president (immunity).

Thus, this pervasive doubt on the representative profile of the draft constitution eroded away most of the public support for it at the referendum.

Donor Funding

The strength of donors reside in their financial aid and support capacity , which they exploit either to entice target political and civic actors or to influence political and economic outcomes in a recipient country .Donor funding can be harmful and it can equally be constructive. Much depends on the motives and strategies of recipients in receiving donor funds. Recipients must be able to tailor donor support to their interests and needs.

In the Zimbabwe constitution-making process, donors played diverse roles. Some of them channeled funds to civic groups that were either opposed to the modalities of the process or were pre-occupied with the genuine education of the citizens. Other donors supported the government, funding the expenses of the Constitutional Commission. Apparently, most of the donors did not have pre-conceived opinions about the outcome of the constitutional process. Rather, it is the strategies of the recipients that shaped the outcome. It appears that the NCA was able to exploit donor funds to expand and finally render triumphant the "N O- Vote" campaign. The government, on the other hand, became somewhat relaxed, taking a simplistic assumption that the people would naturally vote "Yes". Thus, recipient strategies and not the donors themselves, actually influenced the outcome at the referendum.

Conclusion

The constitution-making process needs to be revived. Now that the 2000 parliamentary elections have ushered in a two-party political system and with a variety of civic organisations on the ground, there is abundant room for meaningful and progressive debate on constitutional issues. In fact, there is a greater possibility today of writing a new constitution. The two nation-wide parties, the Movement for Democratic Change (MDC) and ZANU-PF, are in a position to give a sufficient representative profile of their supporters throughout the process.

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