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Moves to multi-party democracy in Africa

Under pressure from aid donor countries and agencies, a number of states of Africa, ruled by a "Governing Party" or military régime, are in 1993 apparently moving towards multi-party democracies.

In Malawi (formerly Nyasaland) "Life President" Dr Hastings Banda has announced that a referendum will be held to consider whether the one party régime should be replaced.² A referendum for the same purpose was held in 1992 in Niger. In Nigeria, the most populous and potentially most prosperous state of Africa, the military régime has instituted elections designed to transfer power to a civilian government. However, the moves in this direction were interrupted by the postponement of the presidential poll, allegedly because of irregularities found by the military rulers in the preliminary processes.

Perhaps the most notable shift to a Parliamentary democracy was scheduled to occur in Kenya on 29 December 1992. President Daniel arap Moi initiated elections to fill the posts of President, the national Parliament and local government councils. The election was bedevilled with legal difficulties and complaints about intimidation and irregularities. A Commonwealth Observer Group, organised by the Commonwealth Secretariat in London, was one only of several

observation teams scrutinizing the run-up to, and conduct of, the Kenya elections. The Commonwealth Group was chaired by Right Hon Justice Telford Georges, a past Chief Justice of Tanzania, Zimbabwe and the Bahamas. The Deputy-Chairman of the Group was Mr L F Bowen AC, a past-Deputy Prime Minister of Australia. The Group's report² identified numerous defects in the conduct of the Kenya election, specifically in relation to the impartiality of the Election Commission; the procedure for the registration of voters; the failure to divorce the ruling Party (KANU: the Kenya African National Union) from the government; a purported shortening of the election period later declared unlawful by the Kenya High Court and numerous cases of violence, intimidation and State corruption. Nevertheless, the report concluded:

*"Despite the flaws, we believe that these elections mark the first step on the path to multi-party democracy. The process as it turned out was facilitated greatly by the resolute determination by the voters to make a success of their contribution to its development. Regrettably, the contribution of the Government and the political parties did not match that of the voters on this occasion."*³

President Moi was re-elected, seemingly because of the political divisions amongst his Opponents. The former ruling Party also gained a majority in the Kenyan Parliament. But shortly after the new Parliament met in January 1993, it was suspended by the President allegedly because of disruption by the Opposition. The fate of democracy in Kenya remains uncertain.

Constitutional history of Lesotho

The most recent case of a move towards a democratic society in Africa is to be found in Lesotho (formerly Basutoland). Its course is worth noting. Lesotho, entirely surrounded by the Republic of South Africa, was first made a British Protectorate in March 1868.

It was, and is, a monarchy, the monarch succeeding in accordance with custom. During colonial times, the territory was troubled by conflicts between nearby British and Boer settlers. The interest of the British Crown arose as a result of hostilities between the indigenous people and the Orange Free State Republic in the 1860s.

With the establishment of the Union of South Africa in 1910, provision was made by Britain for the three protectorates within the Union's borders - Basutoland, Bechuanaland (now Botswana) and Swaziland - to be included in the Union, subject to the consent of the local inhabitants. Such consent was never forthcoming. Lesotho was granted a new constitution in 1956 and secured full internal self-government in 1965. Complete independence from Britain was granted in October 1966. However, the last free election was held in January 1970 after which date the country has been effectively run successively by régimes controlled by the Prime Minister (Chief Jonathan) and, later, the military.

For a long time party-political organisations were banned in Lesotho. In November 1990 the King, Moshoeshe II, was deposed. He proceeded to live in exile in London. His son was sworn as King Letsie III. The government of Lesotho was thereafter undertaken by the new monarch and a Military Council advised by a Council of Ministers. In 1992, the Government announced that a new democratic election would be held. The first date given was June 1992; but this was later postponed. The date finally fixed for the election was 27 March 1993.

Preparations for the conduct of elections

In anticipation of the conduct of the election, three initiatives were taken. First, the Government secured advice from the Commonwealth Secretariat in London and the secondment to its service of the Chief Electoral Officer of a Commonwealth Caribbean

country. She will supervise the conduct of the Lesotho elections. Secondly, a programme of instruction of electoral officers was established. Extensive instruction of these officers was conducted at Maseru, the capital of Lesotho, in January 1993. Thirdly, the United Nations Centre for Human Rights in Geneva was invited to undertake a series of seminars on elections and human rights in a democratic society. These took place in Maseru and in surrounding country centres of Lesotho (including Mafeteng) between 19 and 22 January 1993. The International Commission of Jurists (ICJ) cooperated with the Human Rights Centre in providing participants for the seminars. Those participants included Justice Enoch Dumbutshena, former Chief Justice of Zimbabwe, a Vice-President of the ICJ, and Dr Philip Amoah, (Ghana) an officer of the ICJ specialising in African affairs. The writer also took part in his capacity as Chairman of the Executive Committee of the ICJ.

Other experts participating in the series of seminars in Lesotho included Mrs Christine Ngambi, Vice-President of the Foundation for Democratic Process in Zambia and Advocate F J Kozongwuizi, the Ombudsman of Namibia. Both Zambia and Namibia have lately undergone democratic elections which were pronounced acceptable by observer teams. In Zambia, the Government changed peacefully as a result of the elections. In Namibia, the transition to independence from South Africa brought to an end a conflict which had earlier been carried on before the International Court of Justice and in the battlefield in the former South West Africa.

In addition to the foregoing speakers, the rôle of the United Nations in the building of a democratic society and the UN's function in establishing international standards and providing international assistance was described to the seminars by Ms Yolande Diallo, an officer of the United Nations Centre for Human Rights.

An important feature of the seminars was the vigorous participation in them of Lesotho citizens of all walks of life. The absence of democratic institutions for 22 years had not diminished their capacity and willingness to speak out vigorously about the defects of military government and the need for democratic change.

Much of Dr Amoah's contributions to the seminars involved descriptions of the work of the African Commission on Human Rights and the operation of the *African Charter on Human and Peoples Rights*. Dr Amoah came to Maseru after a high level conference on the *African Charter* conducted in Dakar, Senegal, in mid-January 1993 to which also the ICJ contributed. That seminar was addressed by the Secretary-General of the ICJ, Mr Adama Dieng, himself a distinguished Senegalese lawyer. Mr Dieng presented an important background paper in Dakar, prepared by the ICJ, which was also made available to the participants in the Lesotho seminars.⁴ This paper described the need to strengthen the African Commission; to increase its membership; and to ensure the election of women Commissioners and representatives of Portuguese and Spanish-speaking African States to the Commission. At present, there is a heavy preponderance of membership from Francophone Africa. A second stage envisaged by the ICJ document on human rights in Africa is the establishment of an African Human Rights Court along the model of the European Court of Human Rights.

A number of the participants in Maseru condemned what they saw as the unacceptably wide "clawback" clauses in the *African Charter*. More than one urged that economic sanctions constituted the only language which African dictators would understand and which would help restore respect for human rights in Africa. The régimes of Idi Amin, the Emperor Bukassa and other more contemporary African rulers were singled out for condemnation. By contrast it appeared

generally acknowledged that the military régime in Lesotho had been relatively benign. Nevertheless, reference was freely made to the report of Amnesty International which has condemned the imprisonment of trade union officials in Lesotho for apparently legitimate union activities. The absence of a proper system by which High Court Judges could visit prisons and conduct the traditional judicial function of gaol delivery was noted and criticised.

A constant theme of many of the floor participants in the Maseru seminar was the unacceptability of imposing on Africans a "second-class" status when it came to respect of, and protection for, human rights. Satisfaction was expressed about the peaceful transition to multi-party democracy and the change of government in nearby Zambia. The particular problem in African states with large tribal and ethnic minorities (such as Kenya) was identified as an impediment to rapid and successful moves for the protection of democracy, the acceptance of tolerance of difference and effective respect for human rights in African states.

Advocate Kozongwuizi pointed out that he had been chosen to be Ombudsman of Namibia although he was a member of an Opposition party. He argued that multi-party democracy based upon little more than the personalities of politicians was unsatisfactory. He urged that the coming elections in Lesotho should concentrate upon issues of a political and economic character. He suggested, for example, that consideration might be given to public discussion about the subject of the constitutional monarchy. This remains a highly controversial topic in Lesotho. In some quarters it is believed that the restoration of democracy will lead to the resumption of the reign of King Moshoeshoe II. During 1992, that King returned to Lesotho. But whether he will resume his rôle as monarch, following elections, will doubtless depend upon their outcome.

Seven features of good government

The writer's contribution drew upon the then recently released report of the Commonwealth Observer Group on Kenya. It was urged that Lesotho should learn from the defects in the conduct of the Kenyan elections, highlighted by the report of the Commonwealth Group. In particular, stress was laid on the need for integrity in the Election Commission; the proper creation of a voters' roll; the neutrality of the outgoing government; the strict conduct of the election according to the electoral law; the redress and prevention of intimidation in the nomination of candidates; and the suppression of violence and corruption in the conduct of the election campaign.

Drawing upon a policy statement published by the Organisation for Economic Cooperation and Development (OECD) on good government, the following features of good government in Africa were emphasised as the goals towards which Lesotho should work:⁵

1. An educated and informed populace able to understand and participate in political issues;
2. A pluralistic society allowing varying interests to be represented by non-governmental organisations;
3. The guarantee of a free, open and effective media immune from arbitrary interference by government or other powerful forces;
4. The acceptance of a tolerant society in which political opposition is not perceived as treasonous;
5. The establishment of means which allow for the peaceful transfer of government by elections;
6. An effective government, able to draft and administer legislation and to provide governmental services to the

people; and

7. A legal structure able to ensure ultimate equality before the law and to provide a predictable framework for private and public decision-making.⁶

During the democracy seminars in Maseru, the participants had the opportunity to meet the Chief Justice of Lesotho (Justice Brendan Cullinan) and other Judges of the High Court. Also in session during the seminars was the Lesotho Court of Appeal. This Court has traditionally been composed of judges or retired judges from South Africa. The present Judge President is Justice Ismail Mahomed of the Supreme Court of South Africa. He is the first non-European to be appointed to that Court. It was recently announced that Justice Mahomed has also been appointed Acting Chief Justice of Namibia. He adds these responsibilities to his important functions as Co-Chairman of CODESA, the Congress on a Democratic South Africa. CODESA, it is hoped, will have a key rôle in ushering the Republic of South Africa itself into a multi-party democracy in the foreseeable future.

There was great interest in the Lesotho seminars concerning the rôle of the judiciary as a guardian of constitutional rights in a democratic polity. The difficulties for an independent judiciary working under military or other non-democratic régimes were repeatedly referred to. Specific reference was made to the descriptions of the problems which judges in Nigeria have had to face under successive military governments established by the ousting of democratically elected régimes following successful military coups.⁷

There was a spirit of optimism concerning the future of democracy in Lesotho. The general uniformity of the racial composition of the Lesotho population, doubtless arising from its comparative remoteness in a high altitude plain, was thought to be a

reason for optimism when other portents for democracy in Africa sometimes seem less encouraging. Only time will tell whether the optimism about Lesotho was well-founded.

FOOTNOTES

1. See *Human Rights in Mulawi*, Report of the Joint Delegation to Mulawi of the Scottish Faculty of Advocates, the Law Society of England and Wales and the General Council of the Bar, 1992, 33ff.
2. Commonwealth Secretariat, The Report of the Commonwealth Observer Group, *The Presidential, Parliamentary and Civil Elections in Kenya*, December 1992.
3. See *ibid*, xi.
4. International Commission of Jurists, *Background Paper on the African Charter on Human and Peoples' Rights*, Dakar, Senegal, January 1993.
5. See M D Kirby, "Good Government and Social Responsibility - Global Lessons for Lesotho", unpublished paper for the Maseru Seminar, January 1993.
6. Organisation for Economic Cooperation and Development, Development Assistance Committee, *Public Policy Statements on Participatory Development and Good Government*, Paris, 1992 (OECD/GD (92) 67).
7. See M Bello (Chief Justice of Nigeria), "The Role of the Judiciary in Commonwealth Africa" (1991) 9 *Cth Judicial J* #2.
Commonwealth Law Bulletin 9. See also "The Constitutional Protection of Human Rights in the Commonwealth" [1991] *Public Law*, 477 and J Hatchard and P Slinn, "Namibia: The

Constitutional Path to Freedom" (1991) 17 *Commonwealth Law*
Bulletin 644, 656f.