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The Zimbabwe Law Review is no longer a thing of the past!

You may have been starting to think that the Zimbabwe Law Review had become redundant. One unkind person went as far as to suggest that we should rename our journal "The Historical Law Review" !

Unfortunately we had fallen a few years behind in the production of the Review. The last issue to appear previously was Volume 7 / 8 covering the years 1989 and 1990. The Editorial Board of the Review sincerely apologises to all of valued subscribers and buyers of the Review for the inconvenience caused to them. In order to speed up the process of getting up to date we decided to combine Volumes 9 / 10 (1991 and 1992) of the Review into a single number. Those who have subscribed in advance will be receiving their ordered issues within the near future. The next volume, Number 11 (1993), will be ready for distribution within the next few months. The Editorial Board would like to assure you that in the future the Law Review will be produced on a more regular basis.

We hope that you will renew your interest in this publication by renewing your subscriptions if you have allowed them to lapse. Details of current subscription rates are to be found on the cover of the Review. There is a reduced price for those ordering a set of the Zimbabwe Law Review.

We would like to call for the submission of articles, book reviews and casenotes for consideration for inclusion in this publication. These are momentous times for Southern Africa. Democratic rule has finally come to South Africa after so many years of struggle, suffering and oppression. We would like to take this opportunity to extend our heartfelt congratulations to the people of South Africa on the attainment of their liberation from apartheid rule.

In Southern Africa there is an urgent need to analyse and debate topical matters such as issues relating to development and reconstruction, equitable land redistribution, the impact of economic structural adjustment programmes, the protection of human rights, democracy and constitutionalism and the protection of the environment. We call for the submission of articles on these and other important issues.

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Professor G Feltoe, Mr B Hlatshwayo and Professor W Ncube

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The Editorial Board would like to extend its sincere gratitude to the Raul Wallenberg Institute of the University of Lund in Sweden for its generous donation of desktop publishing equipment to the Faculty of Law of the University of Zimbabwe. This equipment was donated for use in the production of the Zimbabwe Law Review and other Faculty publications. This current number of the Zimbabwe Law Review was produced using this equipment.

THEORY AND PRACTICE OF LIBERAL DEMOCRACY IN THE POST-COLONIAL STATE IN AFRICA: THE ZIMBABWEAN EXPERIENCE

by

Munyaradzi Gwisai*

Introduction : The Values and Institutions of Liberal Democracy

The 1979 Lancaster House Constitution which ushered in Zimbabwe's independence in 1980 was supposedly based on liberal notions of constitutionalism such as universal and equal suffrage; limited, representative and accountable government; separation of powers of the legislative, executive and judiciary organs of the state; an independent judiciary and a Bill of Rights of the individual and other concepts of constitutionalism.¹ This article is concerned primarily with one key aspect of the concept of constitutionalism, namely liberal democracy and its practice in Zimbabwe in the first decade of independence.

Liberal democracy may be broadly defined as a political order where legitimate legislative and executive authority is vested in public officials chosen directly and indirectly in periodic free and fair elections on a universal and equal franchise.² The liberal democratic political system only came into full existence as a political system in the twentieth century, starting in the 1930's, in a number of European and North American countries such as Sweden, Belgium, the United Kingdom, the United States of America, Canada and Australia.³ Certain fundamental values underlie the concept of liberal democracy, two of the most important being the inherent equality and autonomy of all human beings and the concept of popular sovereignty as the basis of all legitimate government authority. These notions have their origins in ideas developed in the eighteenth century, as reflected in the works of philosophers like John Locke, Jean-Jacques Rousseau and Blackstone. The main elements of what Professor L Henkin has called the "eighteenth century thesis"⁴ can be distilled to the following essentials: That all men were created equal and autonomous in a state of nature in which all possessed natural rights, chiefly rights to life, liberty and property; equal entitlement of citizens to participate in the political process, including the formation of laws through electing representatives in periodic and free elections of "the people", the inalienability of the fundamental rights of "the people"; that political and civil authority was created by freely consenting and equal men, by

* Graduate student of University of Zimbabwe.

¹ W Ncube, "Constitutionalism, Democracy and Political Practice in Zimbabwe," in *The One-Party State and Democracy* p 155 (Ibbo Mandaza & Lloyd Sachikonye eds, 1991). For an outline of American constitutionalism see Louis Henkin, *Constitutionalism, Democracy, and Foreign Affairs* pp 6-15 (1990).

² CB MacPherson, *The Life and Times of Liberal Democracy* p 9 (1977).

³ Robert A. Dahl, *Democracy and Its Critics* p 234 (1989)

⁴ Louis Henkin, *The Rights of Man Today* pp 4-22 (1978).

means of a mythical original social contract, for their benefit and that the main purpose of the state was limited to the protection of the rights of the people; that "the people", namely the free and autonomous individuals taken together, were the source of all sovereignty and they retained the right to alter or abolish the state if they felt that it was no longer accountable to them or serving their interests and that in order to guarantee the above the state was to govern by promulgated and established laws of equal application to all men and arbitrated by an impartial judiciary.⁵ These ideas were strongly reflected in the eminent constitutional documents and political institutions of the late eighteenth century which laid the foundations of modern liberal democracy. Their most articulate development articulation was in the U.S.A. and France. In the U.S.A. the most significant articulation of these ideas was found in the various state constitutions in particular that of the state of Virginia and the Declaration of Independence of the United States of America (1776), both of which were strongly influenced by the ideas of Locke as developed by Thomas Jefferson. The Bill of Rights of the Constitution of Virginia declared: "Section 1. All men are by nature equally free and independent, and have certain inherent rights, of which when they enter into a state of society they cannot, by any compact, deprive their posterity; namely the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 3. That government is or ought to be, instituted for the common benefit, protection of the people and that when any government shall be found inadequate or contrary to these purposes the majority of the community hath an inalienable right to reform, alter or abolish it . . .⁶ The French Declaration of the Rights of Man and of Citizens (1789) was more influenced by Rousseau and declared *inter alia*

- (i) Men are born and always continue, free and equal in respect of the rights.
- (ii) The end of all political associations is the preservation of the natural and inalienable rights of men.
- (iii) The nation is essentially the source of all sovereignty.
- (iv) A public force being necessary to give security to the rights of men and of citizens, that force is instituted for the benefit of the community and not for the particular benefit of the persons to whom it is entrusted"

The second most important value of liberal democracy is that of universal equal suffrage for all adults in a given political entity. The principle is based on the inherent equality of human beings and presupposed on the rationale that if all persons are born equal then they are all entitled to be part of "the people", in other words to participate in the making of collective decisions, subject to a compelling reason showing other wise such as age or minority status. This idea was initially developed

⁵ J Locke, *Of Civil Government* pp 170-90; J Rousseau, *On the Social Contract* pp 147-52; Blackstone, *Commentaries on the Laws of England* pp 155-27. See Dahl, *supra* note 3, at pp121-24.

⁶ Va. Const of 1776, Bill of Rights 2,5,13.; Mass. Const. of 1780, articles iv, vii, viii opening part of Declaration of Independence of the United States of America, July 4, 1776.

in the nineteenth century by the classical utilitarians, who advocated for a universal franchise. For Jeremy Bentham and James Mill universal franchise was essential because it was the only means by which every person could protect their interests from an otherwise inherently abusive government. This view was based on their concept of society as being a mere sum-total of inherently self-conflicting individuals, whose only driving force was to maximise the flow of happiness and utilities from the rest of society to themselves. Everyone was qualified to be in the "demos" because everyone was presumed to be interested in maximising happiness to themselves and minimising pain.⁷ John S. Mill further developed this argument by stating that human beings were not just merely self-interested and conflicting individuals, but also had a capacity for personal self development and the argument for universal franchise was that it gave everyone an interest in the operations of government thereby activating and energising them and in the process creating more developed, virtuous and efficient persons and societies.⁸

However, the concept of not only a universal but equal franchise for all adults was only fully accepted and developed in the twentieth century. The classical utilitarians never fully accepted the idea because of their fear of perceived class legislation by the poor and majority sections of society.⁹ Some of the twentieth century political scientists based their rationale for universal suffrage on the "good society" principle developed by J.S. Mill.¹⁰ Another justification was that based on John Rawl's model of all persons as rational and moral beings and therefore equally competent and qualified to participate in the making of public decisions.¹¹

Another value underlying the concept of liberal democracy and which is based on the notion of equality of the "demos is that participation of the people must be genuine, authentic and voluntary and not one achieved by coercion, deception or fraud. Thus Rousseau stated: "In a society in which the rich person can buy the "consent" of the poor person to the social contract cannot be considered free and rationale consent and contract cannot be considered just on these grounds. "In the nineteenth century participation was judged essentially free and voluntary if physical coercion and ballot fraud were absent, where as in the twentieth century there is an increasing acceptance of the notion that want of basic welfare rights like food, basic health care, elementary literacy and so forth is just as important an obstacle to free participation as denial of the basic political and civil freedoms. Article 11 of the Covenant on Economic, Social and Cultural Right declares: "The state Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing."¹²

⁷ J Bentham," An Introduction to the Principles of Morals and Legislation", in *Collected Works* p 64 (Bowring ed, 1970); J Mill," An Essay on Government " in MacPherson *supra* note 2, at pp 37-42.

⁸ JS.Mill," Considerations on Representative Government" chapter 3 in *Collected Works*, 404 (J.M. Robson ed., 1977).

⁹ Id.

¹⁰ E. g. AD Lindsay, *The Essentials of Democracy* p 8 (1935).

¹¹ One of the most developed articulation of this theory is by RA Dahl *supra* note 3, at p 105.

¹² International Covenant on Economic, Social & Cultural Rights G.A. Res 2200A (XXI), U.N. GAOR (1966), art. 11. A. Gutman, *Liberal equality* p 189 (1980); Henkin *supra* note 4, at pp 23-27; *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973).

Whilst the above constitute the basic underlying values of liberal democracy, society's experience in the past two centuries has shown that certain institutions are essential if these values are to be realised in any meaningful way. These are the political and civil institutions and liberties which are intrinsically related to the values of democracy as to be almost inseparable from them. The first of these is that government power, in particular legislative and executive should be wielded by elected officials, who are chosen and removable in frequent free and fair elections based on a universal and equal franchise. This is in order to achieve the value of equality of all human beings and popular sovereignty. Equally important is the right of all adults to run for public office for which elections are held, although this might be made subject to certain age and feasibility-administrative qualifications such as the designation of constituencies. Further the citizens must have an effectively enforced right to freedom of expression, including the right to criticise public officials, the prevailing socio-economic order and ideology. This presupposes a freedom of the press and the existence of alternative sources of information other than state-controlled ones. Citizens must have an inalienable freedom from arbitrary arrest and detention and should only be subject to criminal sanctions by means of a fair trial under established and promulgated law as interpreted by an impartial judiciary. In order for citizens to effectively protect their rights, they are entitled to form and join autonomous associations and organisations including political parties and other interest groups which form the core of civil society. These include professional, workers' students, cultural and religious organisations. Such associations must enjoy the above basic liberties in their own right, if in fact the individual rights of their constituent members are to be realised.

These values and institutions of liberal democracy, along with other values of constitutionalism, have become the basic yardstick by which the legitimacy of government authority is measured in the twentieth century community of nations and by citizens, internally, in the various states.¹³ Indeed these rights and institutions form part of the core of what some scholars have termed "The International Bill of Rights."¹⁴ It follows therefore that in our assessment of the practice of democracy in Zimbabwe's first decade of independence the primary reference and guide shall be the above-enunciated institutions and values of liberal democracy as they have historically evolved. However, this is not an arbitrary nor unilaterally imposed criteria by which Zimbabwe is to be judged. The restoration of the democratic rights of all citizens of Zimbabwe was a fundamental objective of the national liberation struggle. The 1973 Political Programme of the main nationalist movement, the Zimbabwe African National Union (ZANU), which was to become the ruling party after independence, declared that: "The broad democratic freedoms — speech, press, assembly, association and movement — which have been taken away from the people of Zimbabwe by the settlers will be restored and guaranteed in all citizens of a free, democratic, independent and socialist Zimbabwe."¹⁵ Further independent Zimbabwe

¹³ Examples include, Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. GAOR (1948) art. 21; International Covenant on Civil and Political Right, G.A. Res 2200A (XXI) U.N. GAOR (1966) art.25; African (Banju) Charter on Human and Peoples' Rights (1986) art. 13.

¹⁴ See for example Louis Henkin, "Introduction" in *The International Bill of Rights : The Covenant on Civil and Political Rights* pp 6-26 (Henkin ed., 1981).

¹⁵ Ncube, *supra* note 1, at p 157.

has not only become signatory to the international treaties cited above, but has also enshrined these rights in a Declaration of Rights in its supreme law, The Constitution of Zimbabwe. It is in this context therefore that we shall proceed to analyse the post — colonial practise of liberal democracy.

Achievements in the First Decade of Independence

Most of the values and institutional framework of liberal democracy received recognition in the Zimbabwe Lancaster House Constitution of 1979, and have essentially remained intact up to date, albeit with some amendments in 1978 and 1990. The Lancaster House Constitution created a two — chamber parliament constituted of a forty seat Senate and hundred seat House of Assembly, which parliament was to sit for a five year term. The hundred members of the House of Assembly were to be elected on a universal adult franchise from eighty common (Black) roll constituencies and twenty white roll constituencies. Parliament was to be the supreme legislative organ of the state whilst executive authority vested in a prime minister ad his/her cabinet, all of whom were to be sitting members of parliament. In 1987 the reserved white parliamentary representation was abolished through the Constitution of Zimbabwe Amendment Act, No. 6 of 1987 and in 1990 the Senate was abolished to establish a one: hundred and fifty (150) unicameral House of Assembly. A hundred and twenty of the members of parliament are to be elected by direct universal and equal franchise by secret ballot; twelve are to be nominated by the President; ten are traditional chiefs and eight are provincial governors.

The executive authority is vested in a President who is elected for a six year term by direct universal suffrage elections and a cabinet appointed by him from within members of the House of Assembly. In terms of section 31 F (I) of the Constitution, the House of Assembly can remove the President, by a vote of no confidence if he has acted in wilful disobedience of the constitution or has been incapacitated by physical or mental factors or when he has committed gross misconduct.

Two elections have been held in the post — colonial era under these constitutional arrangements and involving at least six political parties. In 1985 Zanu (PF) won sixty three of the eighty seats at stake on the common roll, ZAPU won fifteen ad ZANU-Ndonga got the remaining two. The twenty white seats were all won by the Conservative Alliance of Zimbabwe, formerly the ruling party in the pre-independence days under the name Rhodesia Front.¹⁶ Over ninety five (95) per cent of the eligible voters took part in this election. The second election was held in 1990 under the new constitutional amendments and of the hundred and twenty seats at stake in the House of Assembly one hundred and seventeen (117) were won by the ruling party ZAPU (PF), two seats by the Zimbabwe Unity Movement (ZUM), and one (1) by ZANU-Ndonga. A number of smaller parties like the United African National Congress (UANC) and National Democratic Union (NDU) got nothing. The Presidential elections were won by the ruling party candidate Robert Mugabe, who polled seventy eight (78) percent of the total votes polled compared to six (16) percent for the loosing ZUM candidate, Edgar Tekere.¹⁷

¹⁶ Thomas Arms & Eileen Riley, Facts on File, *World Elections on File* p 2 (1987).

¹⁷ Europa Publications Ltd. *Africa South of the Sahara* 1992 p1140 (21st ed. 1991).

Similarly other important institutions of liberal democracy such as freedom of expression and association have received legal recognition in the constitutional dispensation of Zimbabwe. Chapter 111 of the Constitution establishes a Declaration of Rights which *inter alia* provides for the right to liberty, and life, freedom of expression, freedom of assembly and movement and freedom from arbitrary arrest and detention. Further citizens have the right to apply directly to the Supreme Court when a contravention of the rights provided under the Declaration of Rights is being alleged. However, section 68 of the Constitution allows the declaration of a State of Emergency by a two thirds majority of the House of Assembly, during whose existence certain derogations from the Declaration of Rights can be made, subject to the fulfilment of a number of procedures and safeguards. Amongst the rights which can be suspended under a State of Emergency are personal liberty, freedom of expression, freedom of assembly and movement and freedom from arbitrary detention or search.¹⁸ However, whilst a person can be detained indefinitely and without a trial, under a state of emergency, they are entitled to certain mandatory constitutional safeguards detailed in the Second Schedule of the Constitution and as they have been interpreted by the High Court and Supreme Court, both of which have played a very important and activist role in upholding the fundamental human rights of citizens recognised in the Declaration of Right. In *Minister of Home Affairs v Allan*, HH- 202-85, Reynolds J. states; "Since time immemorial the liberty of the individual has been regarded as one of the fundamental rights of man in free society. The protection of this right is enshrined in the Constitution of Zimbabwe, and the Courts will certainly play their part in preserving this right against all infringements and all attempts to erode or violate the principle involved". It is in this light that the courts have interpreted the constitutional safeguards of detainees, which include the right to be informed no less than seven days after detention of the reasons for detention; the right to legal counsel of one's choosing and at one's expense and the right to have one's case reviewed no later than thirty days from the date of detention by a Review Tribunal, which has the discretionary authority to make a recommendation of release to the President.¹⁹ These safeguards are mandatory. The High Court and Supreme Court have developed a doctrine to the effect that a state violation of these safeguards which goes "to the root of the detention" will render the detention order invalid and thereby ordered the release of the detainees. In *Minister of Home Affairs & Anor v Austin & Anor*, 1986 1 ZLR 240 (S), the Supreme Court ruled that a "detainee is entitled to be provided with sufficient reasons and information to enable him to know what is alleged against him so that he can make a meaningful representation when his case comes before the Review Tribunal vague, imprecise and bald general allegations will not suffice"²⁰ There have been other instances of judicial protection of human rights; such as freedom from torture of arrested persons. In *State v Slatter & Ors*, HH-315-83, the accused person were acquitted on the basis that the confessions they had made to the police after intensive interrogation incommunicado, were inadmissible.

¹⁸ Zimbabwe Constitution s 25; International Covenant on Civil and Political Rights, art. 4(1),(2); W Ncube, *The Constitutional Recognition and Popular Enjoyment of Human Rights in Zimbabwe* 1987 Vol 5 *Zim L Rev*.

¹⁹ Zimbabwe Constitution Second schedule, Para. 2(1).

²⁰ W Ncube, *supra* note 18, at p 89. Other important cases include *Dabegwa v Minister of Home Affairs & Anor*, 1984 (2) SA 345 (S). *Bull v Minister of Home Affairs & Anor* 1987 (1) SA 422 (H).

As of today Zimbabwe has a small but very active press which provides alternative sources of information to citizens. There are at least three weeklies and several monthly magazines which are privately owned. These include *Parade*, *Moto* and *The Financial Gazette*. These newspapers enjoy to a very large degree the freedom of press and expression which are essential in any democratic society and have in fact made criticism of government officials, including the President, and exposure of government corruption and abuse of human rights a top priority. They have been especially active in the later aspect and played a major role in the exposure of gross government atrocities in the Mataberland and Midlands provinces in the early 1980's.²¹

Negative features

The above shows the extent to which the theory and practice of liberal democracy has received legal and practical recognition in the post-colonial state in Zimbabwe. However, a closer look will reveal serious inadequacies both in theory and practice which essentially refute any impression of a successful realisation of the concept, which one might get from a casual appraisal, such as the above. Examples of serious violations abound. Zimbabwe's Lancaster House Independence Constitution was inherently flawed in so far as it provided for the entrenchment of a number of privileged white seats in the legislative organ of the state for the first seven years of independence, specifically twenty seats in the House of Assembly and ten in the Senate.²² Whilst the theory of liberal democracy recognises the right of the majority of the "demos" to extend certain favourable provisions to a minority in order to protect some of their special and unique interests²³ such concessions cannot operate in a way which effectively makes the majority hostage to the demands and interests of the minority, for this would violate the whole principle of universal and equal suffrage in so far as the demands of some would be receiving greater legal recognition than of others. Further the majority must freely and genuinely extend such special provisions to the minority. By providing that these entrenched positions could not be abolished for ten years without a 100 percent affirmative vote in the House of Assembly, including the votes of the privileged parties themselves, the Lancaster House Constitution effectively meant that a minority of less than one percent of the population could hold hostage the other ninety-nine percent for ten years. The majority of the population never in fact gave a genuine and free consent to these provisions. The granting of national independence to the indigenous population was in fact made conditional on the acceptance of these undemocratic provisions at the Lancaster House Constitutional Conference in 1979, and the nationalist movements only accepted these provision after realising how futile resistance was, given the amount of pressure exerted on them by Britain, the United States and some African countries.²⁴ These provisions were essentially created to protect the privileged economic, social and political positions that colonialism had given to the white settler population and Western foreign economic interests in Zimbabwe. This was done by

²¹ *Moto*, January 1984.

²² ZW. Const. 38 (1) (b) and 33(1) (b) (repealed 1987).

²³ International Covenant on Civil and Political Rights, art. 29.

²⁴ Ibbo Mandaza, "The State in Post-White Settler Colonial Situation" in *Zimbabwe the Political Economy of Transition 1980-1986* p 38 (Ibbo Mandaza ed., 1987); W Ncube & S Nzombe, *The Constitutional Reconstruction of Zimbabwe : Much Ado About Nothing?* 1987 Vol 5 *Zim L Rev*.

making the right to property a fundamental and inalienable right under the Declaration of Rights, which could only be abolished by a 100 percent approval of the House of Assembly, which would be virtually impossible to achieve given the vested interests of the white parliamentary representatives in maintaining the right to private property. Thus the vast majority of the people of Zimbabwe and their representatives were in effect not allowed to decide for a least seven years after national independence on this critical aspect of democracy. Such constitutional entrenchment of private property has effectively ensured that the land question and the extreme inequitable distribution of wealth inherited from colonialism did not change.²⁵

At another level the ruling party and government have played a major role in undermining the full realisation of democratic governance. This has been done through a number of methods, legal and extrajudicial. At a legal level the state has retained most of the repressive legal instruments that the Rhodesian colonial regime had created, in particular the Law and Order (Maintenance) Act, Chapter 65, and the Unlawful Organisations Act, Chapter 91. The Rhodesian government had created a brutal and repressive legal regime designed to deal with the increasingly violent African resistance to colonial rule. Under these laws the state could detain, indefinitely and without trial, persons deemed a threat to public order, ban political parties, prohibit demonstration, censor the press and so forth. One scholar has observed that the colonial legislation in fact amounted to a criminalization of all political opposition to the colonial government.²⁶ These provisions were so brutal that the then Chief Justice, R. Tredgold, resigned in protest describing the Law and Order (Maintenance) Act as "savage, evil, mean and dirty law"²⁷ Under section 68 of the Constitution the post-colonial state retained the colonial Law and Order (Maintenance) Act, and the State of Emergency (until 1990). Thus it was possible to suspend a number of civil and political rights of citizens and thereby harass and silence political opposition, in particular during election time. Just before the 1988 general elections most of Members of Parliament of the then main opposition party (ZAPU), were detained in order to frustrate their election campaign efforts. Opposition parties have also been effectively demobilised in so far as the police have denied them permission to hold rallies, demonstrations or even meetings, which is required under the Law and Order (Maintenance) Act. In 1991 virtually the entire executive committee of the main opposition party, ZUM, was detained for nearly a week after attempting to hold a meeting in a private hotel without police permission.²⁸ With the lapse of the State of Emergency in 1990, it is most likely that the Law and Order (Maintenance) Act's very wide terms authorising the state to ban the right to assemble for virtually any reason is inconsistent with section 21 of the Constitution and Article 21 of the International Covenant on Civil and Political Rights. Both of these instruments allow restrictions which "are necessary in a democratic society." banning all assemblies simply because they are of an opposition political line is certainly inconsistent with the values of a democratic society. Extra-legal methods to silence the political opposition have been resorted to. The 1985 and 1990 general elections were both characterised by the perpetration of mass political

²⁵ W Ncube, *supra* note 16, at p 90.

²⁶ W Ncube *supra* note 1, at p157.

²⁷ *Id.*

²⁸ *Parade*, December, 15, 1991.

violence on supporters of the opposition parties, by the youth and women sections of the ruling party. During the 1985 elections a number of suspected ZAPU supporters were murdered, injured or had their homes burnt in Harare, Kwe-Kwe, Bindura and other urban centres by ruling party supporters with the police doing nothing to protect the victims until high ranking government officials intervened.²⁹ In the run-up to the 1990 elections the ZUM National Chairman, P Kombayi, who was involved in a very close election race with the state Vice-President, S Muzenda, in Gweru constituency, was almost fatally shot a few days before the election day by state intelligence officers accompanying the Vice-President. Up to date none of them have been prosecuted.³⁰ This political violence has taken place with the tacit encouragement of the leadership of the ruling party. In a 1985 pre-election rally speech in the opposition stronghold of Bulawayo, the then Prime Minister, Mugabe, stated: ".where will be tomorrow? Is it war or is it peace? Let the people of Matabeleland answer this question?" and in the 1990 presidential election campaign he was to declare, in reference to the main opposition party: "We are saddened that there are others who want to divide us. But people must not listen to small, petty little ants which we can crush."³¹

Principles of equality of citizens and their political associations have also been violated by the use of public funds for the maintenance of only one political party, at the exclusion of others. Up to April 1992, there was a Ministry of Political Affairs whose sole function was to service the ruling party by paying the salaries of party workers and funding party events such as election campaigns. The ministry received an annual government budget allocation of over twenty million Zimbabwe dollars. According to the State President this was justified because the ruling party had brought independence to the country! The ministry was abolished in July 1992 after both internal and external pressure (from Western governments and the World Bank).³² However thinly-disguised public funding of the ruling party has continued under the recently passed Political Parties Funding Act, which provides for state funding of all parties with at least fifteen seat in Parliament. This criteria conveniently suits only the ruling party, since it is the only one which currently qualifies!

The ruling party has also used similar tactics to undermine any attempts at creating functional and autonomous civic associations, which are essential for restraining state abuse of power. The state has been particularly vicious with university students and trade unions, which have been in the forefront of denouncing government repression and corruption, from about 1988. Using provisions of the Law and Order (Maintenance) Act, the state has banned student demonstrations and harassed and detained student leaders with increasing regularity.³³ In October 1989 the Secretary-General of the Zimbabwe Congress of Trade Unions (ZCTU), was detained for over three weeks for writing an article which criticised the state-ordered closure of the university, after student unrest following the detention of student leaders.³⁴ Simi-

²⁹ See generally, *Zimbabwe: A Break with the Past? Human Rights and Political Unity*, in *Africa Watch Report*, pp 100-130 (London, 1989).

³⁰ John Makumbe, "The 1990 Zimbabwe Elections: Implications for Democracy" in *The One Party State and Democracy*, *supra* note 1, at 183

³¹ W Ncube, *supra* note 1, at p 164.

³² John Makumbe, *supra* note 30, at p 183.

³³ See *Parade*, November, 1989; *Moto*, October 1989.

³⁴ *Id.*

larly in June 1992 the government banned ZCTU demonstrations in protest against the Labour Relations Act Amendment Bill, which drastically curtailed various workers' rights, including the right to strike in the parent statute. Even seemingly "innocent" public assemblies have not been saved from state repression. In November 1992, the state banned an interdenominational church march to pray for rain in Bulawayo, on the basis that it might be "hijacked by the ZCTU for subversive purposes."³⁵

The government has denied access to alternative information and means of expression to those with opposing political views through its virtual monopoly control over the mass media. Although a private press exists, it is too small compared to the resources available to the state. The government owns the two dailies in the country and one of the three weeklies and enjoys monopoly over television and radio broadcasting. In spite of the fact that these institutions are funded by public money the government has ensured that only those views and personnel favourable to the government and ruling party find expression in these media. Journalists who have attempted to pursue objective journalism, by impartially covering diverse political views have been dismissed or effectively forced to resign. Good examples of these include the forced resignation of the first black editor of the government — owned weekly, *The Sunday Mail* in 1994 after he exposed the mal-treatment of Zimbabwe students studying in Cuba. (A strong ally of the government). Similarly, G. Nyarota, the editor of *The Chronicle*, was forced to resign in 1990 after he exposed massive corruption by certain cabinet members and top civil servants, who used their positions to acquire vehicles at cheap state-controlled prices and re-selling them at exorbitant prices. These eventually led to a public enquiry chaired by a High Court judge, *The Sandura Commission of Enquiry into the Distribution of Motor-Vehicle by Willovale Motor Industries*, chaired by a High Court judge, and whose results led to the resignation of at least five cabinet ministers and the suicide of one.³⁶

Another characteristic of the post — colonial constitutional dispensation in Zimbabwe has been the increasing concentration of power in the executive organ of the state, in particular the presidency. Democratic values require that legislative authority be vested primarily in freely elected representatives of the people, who will exercise such authority as an assembly of representatives, which in the case of Zimbabwe is the House of Assembly or parliament. The Constitution of Zimbabwe Amendment Act No. 7 of 1987 introduced a number of sweeping powers for the State President, whose overall effect has been that of thoroughly undermining the role of parliament, as the supreme legislative organ of society. In terms of section 31 J (1) and (2) of the Act the President may unilaterally declare a state of Emergency for a maximum of fourteen days. During a State of Emergency a whole range of fundamental rights guaranteed in the Declaration of Rights can be suspended. Whilst section 29(3) gives the House of Assembly authority to pass a vote of no confidence in the President, such power has effectively been nullified by the fact that in the event of such a vote, the President has the authority of dissolve parliament, and is not specifically required to immediately call for general elections in such event.³⁷ The rationale for this thoroughly undemocratic constitutional provision

³⁵ *Parade*, December, 1992.

³⁶ See Makumbe, *supra* note 30, at 180.

³⁷ Zimbabwe Constitution 31 F (1) (amended 1987).

which can lay the basis of a one-person dictatorship was explained by the then Minister of Justice, Legal and Parliamentary Affairs, E. Zvobgo, who introduced the Bill as that President R. Mugabe is such a man of integrity who would never stoop so low to abuse the democratic process.³⁸ What the minister, a University of Harvard trained lawyer, did not bother to explain is how and why, in a democratic society, such fundamental constitutional provisions should be tailored to a specific individual. The President is also allowed to nominate directly and indirectly up to thirty Members of Parliament, in other words twenty percent of the whole parliament.³⁹ The implications of this power are far reaching because it can give the President and his party the decisive parliamentary majority in a closely constituted parliament, thus operating to undermine the legislative electoral process.

It is therefore clear that in spite of the formal constitutional proclamation and recognition of the values and institutions of liberal democracy in Zimbabwe, such values have in practise been so emasculated as to render them virtually insignificant. The ruling party has been able to impose a *de facto* monolithic and authoritarian political and legal order, which only differs in degree to the formal one-party political systems or military juntas that have generally characterised the post-colonial state in Africa⁴⁰ It is therefore important to try and unravel some of the factors which have led to this phenomenon, so uniformly followed in post-colonial Africa. Zimbabwe offers a good case study because it has a number of factors which would otherwise be favourable for the creation of a democratic political order. Zimbabwe attained national independence at least two decades after most African states and was therefore in a unique position to learn from the post-colonial experience of the other African countries. It also has one of the most diverse and industrialized economies in Sub-Saharan Africa.⁴¹

The Underlying Causes of the Undemocratic Political Order in the Post — Colonial State

Any serious analysis of the factors behind the failure of democratic governance to take root in Zimbabwe and Africa in general must address itself to the complex pressures generated by the severe levels of economic underdevelopment and vulnerability to foreign economic and political factors that have been prevalent in all these countries. Various studies have shown the fundamental link between the level of socio-economic development of a state and the realisation of a democratic political order.⁴² Robert Dahl basing himself extensively on the studies carried out by Vanhanen and Russett has been able to come out with a very persuasive argument as to the critical importance of high levels of socio-economic development in the emergence of the modern liberal democratic state in the twentieth century.⁴³ He argues that the liberal democratic state only came into being after the emergence of

³⁸ Moto, October, 1984.

³⁹ Zimbabwe Constitutional Amendment Act No. 6.

⁴⁰ Claude Ake, *Revolutionary pressures in Africa* p 13 (1977)

⁴¹ See *Africa South of the Sahara* 1992, *supra* note 16, at 1130-1134.

⁴² Seymour M. Lipset, "Economic Development & Democracy" in *Political Man* pp 45-76 (1960); Bruce M. Russett, *Trends in World Politics* pp105-26 (1965); Robert Dahl, *Polyarchy* p 41 (1971); Vanhanen, *The Emergence of Democracy : A Comparative Study of 119 States*, 1984;

⁴³ Dahl, *supra* note 3, at p 251.

a modern capitalist state characterised by high levels of income per capita, literacy, urbanisation, general improved standards of living on a national basis, the emergence of the industrial and service sectors as the dominant sectors of the economy and a relative decline in the importance of the agriculture sector. These factors were crucial because they resulted in the dispersion of economic, cultural, social and political power amongst the various sections of the governing elite and conversely discouraged concentration of power. This in turn fostered a competitive political culture characterised by compromise and alliances amongst the various factions of the economic elite. The development of such a society increasingly made it difficult for the then governing elite to maintain their monopoly on the political process in particular against the demands of the excluded groups "closest to them in social and economic positions". At the same time the rapid development of capitalism in Europe and North America after the second half of the nineteenth century was necessarily accompanied by the emergence of the urban working class as the majority class in society, which class was to increasingly become more powerful and conscious of its interests as a class as it struggled to emancipate itself from the wretched poverty of *laissez faire capitalism*, which inevitably led to its demand for inclusion in the political process. Both John S Mill and Karl Marx concluded, after observing the unprecedented militancy of the European working class in the 1840's, that henceforth it would not be possible to keep the working class out of the political process for much longer because industrialisation had made them politically conscious of their interests. However, they drew different conclusions as to the long-term implications of this new development⁴⁴. The outbreak of the First World War in 1914 and the consequent need by the ruling class of each capitalist state to gain the support of its own working class in order to successfully execute its war effort against the ruling classes of the other bourgeois nations combined with the 1917 Bolshevik Revolution in Russia which dramatically showed the international capitalist order the potential consequences of denying the working class some say in the political process, ultimately provided the trigger which forced the government elite in the developed capitalist states to grant some political say to its own working class.

Also of importance was the fact that this socio-economic development started as a product of internally maturing processes. There was very little foreign intervention, with the economic development internally centred and expanding into the global economy due to the expansion of the domestic economy. Thus the economies of these early industrialising states was well integrated into the global economy and the latter acted as a complimentary favourable influence, unlike the adverse role it would play on the economies of those states which attempted industrialisation at a later stage.

Zimbabwe, like most other post-colonial states in Africa, on the contrary is a society characterised by extremely low levels of economic development, acute income inequalities and dependency on external factors for economic development. It has a narrow economic base in which the main exports are from primary and extractive industries, mainly agriculture and mining reliant on the developed Western countries for its major export and import markets, lacks any significant degree of control of the terms of trade of that relationship, and is dependant on the developed

⁴⁴ JS Mill, "Principles of Political Economy" in *Collected Works supra* note 8, at pp 754- 5; K Marx & F Engels, "The Communist Manifesto" reprinted in *Karl Marx and Frederick Engels* p 43 (London, Lawrence & Wishart 1968) (1848).

countries for the critical factors of development, in particular investment capital, technology and personnel. There is also a high concentration of foreign ownership and control of the economy, estimated at over 70 percent of the capital stock and a high debt burden with a current debt-service ratio of over 35 percent of export earnings. This has left the "local" economy highly vulnerable to external influence from the developed states, which influence is primarily geared at serving the strategic economic and political interests of these states rather than of Zimbabwe. This has in fact largely contributed to the continuance of the inherited colonial structures of underdevelopment and dependency.⁴⁵ At the same time there are severe levels of absolute social poverty and inequality and a lack of development of the main social classes characteristic of a capitalist society, namely the working class, the middle class and the capitalist class. On the other hand, over seventy percent of the population is squeezed into impoverished rural areas with relatively high infant mortality rates, illiteracy and lack of basic health care. Less than 0.5 percent of the population, mainly white commercial farmers occupy over 45 percent of the most fertile land. Unemployment in urban areas is over thirty percent and the recent removal of subsidies and price controls under the International Monetary Fund (IMF)- sponsored economic structural adjustment programme, combined with the worst drought this century have created unprecedented levels of urban and rural poverty in Zimbabwe.⁴⁶ The main social formations characteristic of a modern capitalist society are also seriously underdeveloped. The proportion of the working class employed in the formal sector of the economy, excluding agriculture is less than 10 percent of the total population, whilst over 70 percent are peasants involved in subsistence farming. The high levels of foreign capital concentration has precluded the development of a truly indigenous capitalist class and instead what exists is a multi-faceted petit-bourgeois class serving either as a clientele class for the foreign multinationals, or engaged in marginal activities or in management of the various organs of state. Perhaps the only authentic bourgeoisie is to be found amongst the white commercial farmers, but this section of the ruling class has been politically marginalised both because of its tiny size and its immediate colonial past.

This dependent, distorted and underdeveloped economic and social structure is essentially a product of the manner in which colonialism integrated the Zimbabwean economy into the global economy as a dependent economic structure designed to serve the metropolitan centres of capitalism, particularly the British one, as a supplier of low valued raw materials and a market for the centre's finished products. This militated against the development of an industrialised and internally-self sufficient economic structure.⁴⁷ The little industrialisation which took place essentially constituted of production of light consumer goods for the small white settler and urban population and was based on import-substitution, with a heavy

⁴⁵ Europa Publications *supra* note 16, at pp 1130-1134; Theresa Chimombe, "Foreign Capital" in *Zimbabwe: The Political Economy of transition* *supra* note 36, at p125

⁴⁶ Arnold Sibanda, "The Economy Since Independence" SAPEM 10, April 1990; Mandaza, in *Zimbabwe: The Political Economy of Transition 1980-1986*, *supra* note, at pp 41-69

⁴⁷ Clive Y Thomas, *The Rise of the Authoritarian State in Peripheral Societies* p 243 (1984).

dependency on foreign components.⁴⁸ At the same time the African population, over 98 percent of the population, was effectively marginalised from the political and economic processes of the country. This was done to ensure a continuous supply of cheap labour to the burgeoning capitalist economy and also to prevent the colonised people from acquiring such economic and political power which could have threatened the whole settler colonial economic and social structure. However, the fact that this structure of economic underdevelopment and dependency has not only remained intact but has strengthened in the post-colonial era is attributable to the fact that the post-colonial African governing elite accept it and only sought to alter it to the extent necessary to accommodate the new African rulers. In explaining why his avowedly "Marxist — Leninist" government had decided to maintain the high degree of foreign investment concentration in the economy, inherited from the colonial era, the then "Prime Minister, R.G. Mugabe, stated in his government's first economic policy statement, (The Three Year Transitional National Development Plan): "While the inherited economy, with its institutions and infrastructure, has in the past served a minority it would be simplistic and naive to suggest that therefore it be destroyed in order to make a fresh start. The challenge lies in building upon and developing on what was inherited, modifying, expanding and where necessary, radically changing structures and institutions in order to maximise benefits from economic growth, and to develop Zimbabwe as a whole."⁴⁹ The new African political elite decided to maintain the existing economic relations both because of its own objective class aspirations of advancing economically within bourgeois relations of production, and because it lacked the political will and courage to challenge the international centres of economic and political power, by formulating self-reliant and internally based economic policies. As one observer has stated: "Having decided that accumulation in Zimbabwe would need a large dose of private capital, local and foreign, the state had to enjoy the "confidence" of capital and the International Monetary Fund stamp of approval which is often considered crucial. This in turn demanded a set of policy measures that would tilt the scales in favour of capital and against the popular classes so central in the struggle for independence and the political legitimacy of the state."⁵⁰ Thus the only thing that has grown since Independence has been the personal wealth of the new black elite, social and income inequalities, the concentration of foreign capital in the economy, the national debt, landlessness, and rural and urban poverty, factors which all combined by 1989 to force the government to accept an IMF-sponsored economic reform programme that it had bitterly resisted since 1982.⁵¹

The outlined social economic structure of Zimbabwe has had profound effect on the country's failure to achieve liberal democratic governance. The marginalization of the African middle-class during the colonial period and the strong presence of foreign and former white Rhodesian capital in the private sector of the economy has forced the former African nationalist leadership to almost exclusively concentrate on the acquisition of political power as a means of gaining economic well-being. This has been done through easy access to public loans, extortion of bribes and favours from

⁴⁸ Daniel B. Ndelela, "Problems of Industrialization: Structural and Policy Issues" in *Zimbabwe: The Political Economy of Transition 1980-1986* *supra* note 36, at p 141

⁴⁹ See Theresa Chimombe, "Foreign Capital" in *Zimbabwe: The Political Economy of Transition 1980-86* *supra* note 36, at p123.

⁵⁰ Mandaza, *supra* note, at p 62.

⁵¹ Sibanda, *supra* note 45, at p 11.

the foreign multi-nationals operating in Zimbabwe and from wealthy white and Asian business persons seeking government contracts, privileged economic positions and policies. Outright corruption and embezzlement of public funds has also been a favourable tool of the new political elite.⁵² In such circumstances where the state has become the primary modum for wealth accumulation the whole political process becomes a zero game, making the "the political actors struggle even more grimly and tenaciously for political power. whilst the high premium on political power inclines political actors to use any method which will produce desired results rather than confine themselves to methods of competition which are moral or legal."⁵³ The main purpose of the hegemonic faction of the ruling class becomes the dual objective of expanding opportunities for wealth accumulation for itself and applying the most stringent restrictions of such access to other factions in the elite and thus attempt to create a monopoly of political and economic power. It is therefore not surprising that within three years of attaining independence the two main nationalist movements, which had constituted the Patriotic Front had come apart, primarily because the junior part of the alliance, ZAPU, felt that it was being continuously marginalised. The expulsion of ZAPU leaders from government in 1982 led to an insurrection by disgruntled former members of the ZAPU military wing, ZIPRA, in the southern part of the country. In its attempt to crush the insurrection and ZAPU, the government committed gross violations of human rights. These included the killing of hundreds of innocent civilians who were suspected of being ZAPU supporters and the "intense political persecution" of ZAPU. It is clear that the immense pressures on the governing elite from the excluded groups and the working class and its desire to retain monopoly over political power, the governing elite is forced to increasingly rely on force, violence and intimidation. In Africa this has generally led to the militarization of the political process and which finds extreme manifestation in military coups. One of the reasons why the latter has not occurred in Zimbabwe is because of the effective co-option of the military leadership into the political structure during the national liberation war and after independence. However, abundant examples of reliance on coercion in the political process is shown by the frequent use of the repressive laws and structures inherited from the colonial era, in particular the Law and Order (Maintenance) Act. Under this Act the ruling party ritually renewed every six months the State of Emergency until 1990 and was therefore able to suspend a number of civil and political rights guaranteed by the Declaration of Rights. The central components of the Rhodesian repressive and anti-democratic machinery, the police force and the Central Intelligence Organisation (CIO.), were also retained intact with the exception that the latter was staffed by party loyalists who had been trained under the Ceausescu regime in Romania, during the liberation war and just after independence.⁵⁵

⁵² This was graphically revealed by the 1988 Sandura Commission of Enquiry, which revealed how senior cabinet members and civil servants had used their positions to acquire scarce motor-vehicle resources and re-sell them at exorbitant prices to multi-nationals and wealthy Asian and White business people. In 1988 the party also abandoned its "socialist" ethics code, the "Leadership Code" because it had become too obvious that it had failed to prevent party and government leaders from acquiring massive personal property in such a short period of time.

⁵³ Claude Ake, *supra* note 42, at p 49.

⁵⁴ *Wages of War*, *supra* note 25, at 117 20; W Ncube *supra* note 1, at 163.

⁵⁵ *Id.*

To enhance its position the governing elite also seeks to achieve ideological hegemony in the political process. This is essential because the ruling faction cannot rely on force alone to maintain its position. Hence there arises a need to legitimise its monopoly over political power. In a poor imitation of the various one-party political dictatorships in the post-colonial Africa, the ruling party has asserted from about 1984, that Zimbabwe should have a one party political system. The reasons advanced have been the familiar ones in post-colonial Africa, including that the country's extreme levels of economic underdevelopment make it imperative to attain national unity and inapplicability of the Western luxury of multi-party democracy. In any case the latter was denounced as a Western, imperialist imposition, inconsistent with the country's traditional heritage of a unified political system under a feudal chief or king. The ruling party also evoked its official ideology of "Marxism-Leninism", citing itself as the sole political vanguard of the working class and interpreting the 1985 and 1990 election results as the nation's mandate to the party. This was essentially an imitation of the Stalinist dictatorships in Eastern Europe and the former Union of Soviet Socialist Republics. However lacking in sophistication, the Zimbabwean governing elite failed to realise the obvious contradiction between denouncing liberal democracy as an imperialist foreign ideology and adopting "Marxism-Leninism" as its official ideology!⁵⁶ The ruling state ideology then becomes one which idealises national unity as the ultimate goal in the political process and those opposed to it are easily branded traitors deserving the harshest penalties in the state's arsenal. This explains the ruling party's extreme hostile attitude to political opposition and its resort to extreme measures to contain the opposition either through co-option, as in the case of ZAPU through the 1987 Unity Accord between ZAPU and ZANU, or political persecutions, as that experienced by ZAPU prior to 1987. The ruling party only retreated from instituting a one party political system after 1990 because of the combined effects of internal resistance, threats of suspension of Aid from Western countries, which was essential for the newly launched economic reform programme and the collapse of its ideological mentors in Eastern Europe and the USSR.⁵⁷ However it still remains the party's objective to attain what it terms a "de factor" one party system, by creating impossible conditions for opposing political forces to operate.

The above shows that the leading political actors have hostile attitudes towards the values and institutions of democracy and have reluctantly accommodated them due to internal and external pressure. Such a political culture is not conducive to the development of democratic institutions. The situation has been worsened by the lack of what R.Dahl has termed "a favourable historical sequence".⁵⁸ He shows that in a number of countries in which liberal democracy took root, there had already been in existence a political system run on rudimentary democratic lines and which later expanded into a universal franchise system. A democratic culture in the political process was thus evolved and fostered amongst the governing elite and this was to remain so even after the system had been expanded to accommodate the excluded groups. This was essentially the process in old democracies like the United States

⁵⁶ Masipula Sithole, "Should Zimbabwe Go Where Others Are Coming From?" in *The One Party State and Democracy* *supra* note 1, at p 74.

⁵⁷ Lloyd Sachikony, "The Context of the Democracy Debate" *Id*, at p 48.

⁵⁸ Dahl, *supra* note 33, at p 35.

and Britain. In Zimbabwe on the other hand, there was a rapid transition from an inherently undemocratic and repressive political system under settler colonialism, to a fully inclusive political system based on notions of liberal democracy. Neither the leading political activists nor the rest of the politically active population had had any experience in the practise of democratic rule, and the whole process of governing has been a learning experience. The underdeveloped socio-economic structures also undermine the emergence of social forces capable of exerting a counteracting effect on the authoritarian tendencies of the post-colonial governing elite. Given its numerical weakness the working class has been unable to fully play its great historical role in the expansion of democratic practise, as has been the case with its counterpart in the developed states. The vast majority of the population, on the other hand, the peasantry are unable to play such a role. This is due to their lack of the necessary political sophistication which is mainly caused by their geographical dispersion, primitive subsistence livelihood, strong superstitious beliefs and illiteracy and lack of access to information. This absence of fully developed capitalist social classes has given room for non-class social alignments and subcultures, such as ethnicity, racism and religious prejudice, to play a very significant role in the political and economic processes. Without the necessary social class base, either in the middle class or bourgeoisie, the African political elite is forced to utilize the above non-class social formations. The lack of strong class consciousness in the peasantry makes them strongly susceptible to the manoeuvres of the political elite.⁵⁹ It is thus not surprising that political alignments in post-colonial Zimbabwe have a very strong tribal tendencies. This been mainly to the advantage of the parties associated with the main tribes. ZAPU (PF), the ruling party, derives most of its support from the Shona tribes, which constitute over 80 percent of the population, although it is beset by bitter ethnical struggles based on the main sub-tribes of the Shona, namely the Karanga, Zezuru and Manyika. The main opposition party until 1987, ZAPU, primarily drew its support from the Ndebele tribe, which is about 20 percent of the population whilst ZANU-Ndonga bases itself on the tiny Ndau tribe in the south-east of the country. The Conservative Alliance of Zimbabwe is the remnant of the former Rhodesia Front and represents the former white settler population. These factors have operated in the first decade of independence to give the ruling party, ZAPU (PF), overwhelming support amongst the largely peasant and Shona majority of the population, thus guaranteeing it a large parliamentary majority.

However, at the close of the decade a number of factors have started operating and undermining this political structure and have resulted in an increasingly forceful erosion of the ruling party's hegemony. The most important of these factors have included increased urbanisation, expansion of basic education into the rural areas, increasing rural and urban poverty resulting from an ineffective land redistribution programme and the hardships wrought by the I.M.F. sponsored economic reform programme. These forces have generated resistance to the current political order, manifested in two main ways. At one level the working class has shown its resistance simply by abstaining from the political process which it increasingly views as irrelevant in the amelioration of its worsening material condition. Thus election turnout has declined from over 95 percent of eligible voters in the first two elections to only 54 percent in the 1990 general elections, which was even less than 20 percent in the urban areas.⁶⁰ At the same time these factors have led to the beginnings of class

⁵⁹ Thomas, *supra* note 38.

⁶⁰ Makumbe, *supra* note 27 at p 183.

based consciousness in the political sphere. This was reflected in the emergence of ZUM, a trans-tribal party which received significant support it received in the 1990 elections, particularly in the urban areas. Similar political parties, middle-class based but cutting across the traditional tribal and racial lines, have since been formed, the more important ones being the Democratic Party and Forum for Democracy. There has also been increased resistance to the repressive practices of the governing faction, mainly from the university students and the working class. Students have held numerous demonstrations denouncing corruption by senior government officials and the repressive policies of the state.⁶¹ In 1990 the Zimbabwe Congress of Trade Unions (ZCTU) renounced its formal ties with the ruling party accusing the latter of having become a willing tool of international finance capital at the expense of the working class. To maintain its grip on power the ruling elite has had to increasingly rely on open repressive measures designed to undercut civic society and autonomy. The university has been closed more than twice in the past three years for "the undisciplined behaviour" of students, student and trade union leaders have been detained and highly unpopular pieces of legislation designed to curb this opposition have been passed.⁶²

Lack of access to basic welfare resources also operates in reality to deny the vast majority of the population from exercising even the limited political and civil freedoms available. The constitutionally guaranteed fundamental human rights, under the Declaration of Rights have in fact not been available to the poor because in the first place they are ignorant of such rights and even if they knew them they would be unable to assert them because they cannot afford the cost of legal service, because of their material deprivation. Indeed one of the continuing tragedies in Zimbabwe is that whilst the High Court and Supreme Court have strongly protected the rights of victims of gross state violations of fundamental rights such as freedom from torture and right to life, hundreds of peasants who were victims of such violations during the Matabeleland Crisis have remained uncompensated, and neither have the persons responsible for the violations been brought to justice because the victims cannot afford to bring such claims before the courts. Up to date the state refuses to acknowledge its responsibility. In fact the President has stated that there will be no compensation, nor will anyone be prosecuted because these "activities happened during a war situation". Indeed the Government recently promoted to the position of Commander-In-Chief of the Airforce, Perence Shiri, the then commander of the army division most notorious for the gross violations of human rights such as mass murder and torture of civilians during the Matabeleland Crisis in the early 1980's.⁶³

Conclusion

It is therefore clear that the attempt at creating a society based on notions of liberal democracy in Zimbabwe's first decade of independence has not been a success overall. This paper has attempted to outline the immediate and underlying causes behind this. It is clear that an attempt to create a liberal democratic political system

⁶¹ See Ncube, *supra* not 1, at p 167k

⁶² University of Zimbabwe Amendment Act (1990) and the Labour Relations Amendment Act (1992).

⁶³ *Financial Gazette*, November 13, 1992.

on the basis of an underdeveloped socio-economic system, characterised by acute social inequalities, is a very difficult task because such system generates its own internal contradictions which even the most well-meaning leadership cannot overcome. At the same time the very process of underdevelopment itself, whilst to a large degree, externally induced by factors beyond the control of internal processes, has also been due to the subjective decision of Zimbabwe's current governing political and economic elite to maintain the inherited underdeveloped economic relations of production, since these form the basis of its power and income. Having chosen to take that path the governing elite has been forced to increasingly rely on coercion and undemocratic practises to solve the inevitable contradictions and pressures generated by such structure. What is clear is that any struggle for democracy in Zimbabwe will have to address the interlinked problems of economic development and lack of genuine political and civil democracy. This will involve the formulation of viable locally-based and self-reliant development strategies and disengagement of the country's economy from its current dependent and exploitive relationship with the international economic system. Such a strategy, given the inevitable and immense short-term sacrifices it will entail will need the support of the majority of the population if it is to succeed, hence the essential need for the extension of genuine democratic rights to the majority of the population. The current ruling elite cannot lead such an exercise, given its vested and objective class interest in the existing economic relations, in spite of its haughty declarations to the contrary.⁶⁴ It is only a government firmly rooted in the majority of the population, the workers and peasants, which can have a chance of carrying out such a project, which is the only long-term way of guaranteeing the socio-economic conditions essential for the construction of a society based on the values of constitutionalism and democracy. At the same time one recognises the enormous internal and external obstacles that will face any such attempt and may even threaten its very sustainability in particular given the whole dynamics of the international economic and political system which has an inherent interest in maintaining the current inequitable global division of labour and wealth distribution. However, this remains the only viable alternative available and its worth attempting if Zimbabwe's citizens are ever to experience the benefits of a truly just and democratic society.

⁶⁴ For example The African (Banjul) Charter on Human and People's Rights, to which Zimbabwe is a party, declares: "State Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by the international monopolies, so as to enable their peoples to fully benefit from the advantages derived from their national resources." Article 21(5).



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