

# Governing in Sub-Saharan Africa

## Fragmentation or Unity?

The land area of the African continent is as large as the United States, China, and India combined. The continent is composed of fifty-five separate countries whose formal international boundaries today are essentially the same as those carved out by the European imperial powers at the beginning of the “great game” in the 1880s. Those borders, however politically illogical, have been sustained by the norms of the post–World War II international state system. The principles enshrined in the United Nations charter—territorial integrity, noninterference in another state’s internal affairs—provided postcolonial African states with legal standing and African leaders with security in knowing that any challenge to territorial boundaries, whether by internal or external groups seeking self-determination, could be trumped by the rules of international statehood. In short, there has been an unspoken pact among African political leaders for almost fifty years that any successful alteration in state boundaries could lead to more competition for power and the likely unraveling of a number of states.

Although the population of the whole continent is about 690 million, the variation by country is a more important figure. Nigeria has around 130 million people, while Tanzania, similar in geographic size, has 35 million. Sudan, three times the size of Nigeria, has only 33 million, and Botswana, the size of France, has only about 1.7 million. The demographic diversity extends to ethnicity, language, climate, human and natural resource endowments, and life expectancy. These many elements make for a complex political sociology. Though challenging to understand, politics and government in Africa are always interesting and frequently surprising.

In facing up to the choice of just a few countries to illuminate the complexities of governing across the subcontinent, we opted for those that illustrate different challenges and relative successes or disappointments in the responses to those challenges. Not only are Nigeria, South Africa, and Botswana good candidates for this examination in their different ways, but Nigeria and South Africa are also important actors within the Africa region as well as in the world.

## NIGERIA

### Precolonial and Colonial Origins

Before the arrival of Europeans, indigenous life and social organization in the region of today’s Nigeria revolved around the Niger River watershed.<sup>1</sup> The savannah areas north of the river included groups of pastoral herders organized as Muslim emirates. This feudal cluster of herders was governed by the Sardauna of Sokoto, in what historians call the Sokoto Caliphate. The people spoke dialects that fit into an overall Hausa Fulani language family. To the west and south of the river were a series of Yoruba-speaking kingdoms. They were hierarchically organized but not unified under one monarch. They did, however, speak the same language, and they have a robust identity that persists today. The extreme southwest corner, called the Lagos Consulate, was the entry point for foreign traders, an enclave that the British named. To the east of the watershed and the delta were small groups of people whose indigenous organization was more localized than the Yoruba; they had no chiefs or kings. These farmers of open spaces and forest products spoke one dialect or another of the Igbo language but could usually understand one another.

The impact of the slave trade between the sixteenth and nineteenth centuries is complex and cannot occupy us in this brief introduction. What we can say is that the dislocations caused by foreign slave traders and/or the complicity, reluctant or otherwise, of indigenous people as agents of the exploiters would have been most severe on and near the coast. The historical circumstances north of the

river are complicated by the fact that the Sokoto Caliphate kept slaves of their own, taken from the middle belt of today's Nigeria.<sup>2</sup> The British outlawed slavery and slave trading in 1916, putting an end to the commercial exploitation of people from the region.<sup>3</sup>

The British arrived in the Lagos Consulate in 1861. Taking advantage of local conflicts and scattered populations, they gradually expanded control, by 1900 to the areas we know today. Although the British officially amalgamated the southern and northern regions in 1914, in fact they continued to administer the two parts quite separately. The North was seen as coherent and well organized. The originator of what came to be called "indirect rule," Frederick Lugard, used the hierarchy of the Sokoto Caliphate to minimize the need for British personnel on the ground. The South was more fragmented but also more open to foreign ideas and the benefits of trading.

The colonial administration reified the two Nigerian "protectorates" in countless ways over time. Missionaries brought education as well as Christianity to the South. The British did not permit them in the North. That choice has had a profound effect on the openness of the two regions to this day. "Throughout the 1950s, secondary schools in the south outnumbered those in the north by twenty to one."<sup>4</sup> The colonial administration further institutionalized a Hausa Fulani "aristocracy." Moreover, the British created a third administrative region in the Yoruba west in 1939, endowing another language group with an institutional identity.

The British thus created three minimalist colonial states, allegedly consolidated after 1914 but not in practice. The three regions evolved differently under weak centralization. That became most obvious after independence, when the civil bureaucracies, the army, and the police were expected to work together as national institutions. Accordingly, the so-called nationalist movement of the 1940s and 1950s was more anticolonial in different ways than truly nationalist. The fault lines were regional in the organization of anti-British actions. As Kohli has observed, "commerce and missionary education mobilized the few, but the national independence movement was thin, elitist and locally focused."<sup>5</sup>

## **Governmental Organizations and Institutions**

**Constitution and Federalism.** The federal constitution of 1960 established a classic, two-tier parliamentary system for the central government, a federal district (then Lagos), and three regional governments. The federal executive was complemented by an elected National Assembly (House of Representatives and Senate), where representation was based on population in the respective regions. Similarly, each region drafted a constitution establishing an elected assembly. From the outset the federal center was weak relative to the power of the regional governments, which were monopolized by single regional parties corresponding to the historical patterns already identified. The National Assembly reflected the three regional parties, of course, but the party of the North commanded over half the seats. The prime minister was, therefore, from the North. In the hope of diluting northern dominance, a fourth region was created in 1963 when the federal constitution was amended to create a republic. That severed the last remaining authority relationship with the British crown, allowing the head of state (formerly the governor general) to be a Nigerian from another region, while the northern prime minister remained head of the government.

These changes initiated a dynamic, beginning in 1966, wherein eight successive military rulers appeared to try to balance (or defuse) the political tensions among large ethnic coalitions by increasing the number of states, thus enhancing the power of minorities. Although the creation of more states, presently thirty-six, did empower smaller groups, it did so at the expense of national cohesion and, in the view of many, merely decentralized patronage networks. Of course all this was done during periods of military rule, when the constitution was essentially suspended. With few exceptions the various military governments tended to rule by fiat. The ultimate step in the militarization of politics was the Petroleum Decree of 1969, which vested the federal state with "the entire ownership of all oil and gas within any land in Nigeria, as well as under its territorial waters and continental shelf."<sup>6</sup> This change in the "law" transformed a weak federal state into a power center for military dictatorship financed by oil revenues.

By 1999, after a total twenty-eight years of northern-dominated military rule, the many promises of previous top generals to return power to civilians finally came to pass. That brought about another constitutional revision, the most important aspects of which are (1) the further elaboration of state and local government structures and powers, including the removal of the right of each state to draft its own constitution, and the specification of a single-chamber, elected legislature for each, and (2) the specification of a formula mandating the sharing of oil revenues with the state governments.<sup>7</sup> So the Federal Republic of Nigeria today is a loose federation of thirty-six states, a federal territory at Abuja, and 768 local government areas, all of which depend on transfer payments from the capital for the lion's share of their public revenue. In principle they have great authority over important public services: education, the courts, police, and policy for industrial development. In practice all this depends on the connections state politicians have with those who control the federal oil revenues. The real power now reposes at the federal level, not in federal institutions but in a barely civilianized "hierarchy of command shadowed by a hierarchy of entitlement."<sup>8</sup>

Serial military governments from the 1960s through the 1990s, combined with the proliferation of new states, have saddled Nigeria's federal experiment with a set of crippling paradoxes. Each new wave of state creation "generated a greater demand for ethnic minority self-rule."<sup>9</sup> Traditional leaders at the grass roots have been reinvigorated by subnationalist sentiments that reinforce local autonomy, often with regional-level affiliations. Some of these, such as the Yoruba Progressive Organization, are solidarity groupings. More recently some have taken on virtual secessionist aspirations, for example, the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), a reference to the civil war of 1967–1970.<sup>10</sup>

Moreover, the "federal character principle," which is supposed to ensure reasonable balance in access to opportunities, such as employment and education, among the plethora of ethnicities at local, state, and federal levels, is constantly undercut by the application of another constitutional principle—*indigeneity*. Each of the states has a core minority group that claims to be indigenous to that area, meaning that an individual's parents and grandparents were born in that state. Since all states have many, many citizens who cannot possibly prove indigeneity, the principle has been used to discriminate, often arbitrarily, in the distribution of opportunities and benefits. This practice has led to ethnic militias, intercommunal clashes, vigilantism, and simple thuggery, displacing over "three million [people] and...the deaths of 14,000 since 1999."<sup>11</sup> Spreading instability is exacerbated by a patronage-ridden, dysfunctional bureaucracy at all levels and threatens to delegitimize the nation-state itself. "Nigeria has adopted a political system that subordinates demands for good, democratic governance to demands for ethnic equity and a bigger slice of the federal cake. This advantages elites at all levels of government and in all ethnic groups, who loot the country's wealth while marginalized members of the various...groups squabble over what is left."<sup>12</sup>

**The Judiciary: Customary, Republican, Shari'a.** The legal tradition at the federal level in Nigeria is essentially that of British common law. The courts use a Nigerian version of civil and criminal codes, and the judiciary operates a hierarchy of courts, using an adversarial process before a magistrate or tribunal or a jury. At the grass roots and particularly regarding matters of family law—marriage, dowries, divorce—customary courts still operate, with chiefs or traditional magistrates sitting in judgment.

In twelve of the states, Shari'a law prevails. Shari'a is an Islamic code that has both civil and criminal aspects. Because of the traditions in these mostly northern states, this practice becomes the subject of controversy when the judgment of a Shari'a proceeding results in a punishment that would be regarded in other parts of the country as unjust or cruel, for example, stoning to death. States that employ Shari'a have an appeals court at the state level, so that convicted defendants have some recourse. Moreover, although there is no Shari'a appeals court at the federal level, a conviction in a Shari'a court that is sustained in the appeal can still be appealed to the Federal Court of Appeals, which uses secular law. In other words, from the outset the republic's appeals process trumps the Shari'a. Rather than test this premise, however, Shari'a appeals courts have overturned or vacated other court decisions where public opinion, especially international opinion, has found the sentence offensive to human rights. This

was particularly apparent in the case of Ms. Amina Lawal, convicted of adultery in March 2002 and sentenced to death by stoning. The Shari'a Court of Appeal ruled the conviction "invalid" after an international outcry. President Obasanjo had gone on record saying that had the Shari'a Court of Appeal sustained Ms. Lawal's conviction, the case would have gone to the Federal Court of Appeals where, he intimated, the outcome would be benign.

The 1999 constitutional revision provided greater separation of powers in that the Supreme Court is empowered to review executive and legislative acts and to declare them void if they violate the constitution. Moreover, the new constitution guarantees the independence of judges.

### **Civil Society: From Pluralism to Fragmentation**

In the late colonial period, the aspirants to independence from Britain included teachers, civil servants, clerics of all kinds, small-business owners, even incipient trade unions. These civil society organizations provided linkages across ethnic lines that held the promise of greater unity. They were complemented by local-level groupings such as market vendors, farmers, purveyors of traditional medicine, burial societies, and credit schemes, all of which organized in parallel to modern civil society groups. These were in addition to various religious groups, whether Christian or Islamic, that engaged in charitable works from care giving to teaching.

The potential unifying effect of such civil society organizations has been stunted over the past forty years by the authoritarian character of the successive military governments. The fragmentation described above as a feature of the country's dysfunctional federalism has turned civil society inward to more provincial concerns. Although many organizations of the types identified exist at state and local levels, their activities are more focused on survival than on nation- or capacity-building. Teachers, health workers, and many others spend much of their time simply trying to get paid for work completed.

This also explains why I have said little about political parties in Nigeria. They come and go, mostly at election time. But there have not been many elections, so it is only recently that parties could be regarded as instruments of representation. But because everyone seems to have a grievance that their group has been marginalized, parties are narrow and ethnically based instead of being broad coalitions with expansive political programs that would appeal across social boundaries.

A free media is the one area in which civil society might be regarded as thriving. There are many newspapers, and many of them serve local political and social interests with such things as elaborate obituaries, gossip about local notables, dramatic reports of violence (whether political or criminal), articles complaining about double standards in government allocations, and so forth. Radio and TV can be both publicly and privately owned, and they are highly political when it comes to licensing of operations. Whether they can be said to be integrative in their overall effect is doubtful, but the media in Nigeria offer more outlets for all types of public expression than in any other African country except South Africa.

### **Political Economy: The "Curse" of Oil**

The importance of petroleum in Nigeria's political economy can hardly be overstated. It accounts for "80 percent of the government's revenue, provides more than 95 percent of export earnings and generates over 40 percent of the country's GDP."<sup>13</sup> Though coca, oil palm, and rubber were important export earners in the early years of statehood, those are essentially gone. Nigeria used to export food, but it has been a net importer for years.

Most ironically, domestic consumption of refined petroleum products such as diesel and gasoline has to be imported and subsidized at retail. The politics of pricing local fuel makes it uneconomic for Nigerian refineries to convert their own oil production into consumables. Local refineries are also subject to all kinds of pressures, delayed maintenance, mismanagement, and even sabotage.<sup>14</sup>

One would think that all the oil wealth would result in new investments in manufacturing enterprises. Remarkably, “manufacturing is a smaller proportion of the economy—about 6 percent—than at independence.”<sup>15</sup> The single-commodity economy, especially in good times, provides what is perceived as an endless supply of capital with which to finance most any venture. Critical analysis is displaced by reckless confidence. Inefficiency and waste abound. State-owned enterprises supplying everything from water to steel are created with fanfare, only to be managed and directed by boards of friends, family, clan members or clerics, whether they understand the business or not. Political pressures on credit institutions result in loans to persons or groups who don’t have to demonstrate their bona fides or a credible business plan. After a while nobody knows where the money went. Meanwhile 37 percent of the population is living in absolute poverty.<sup>16</sup>

The distribution of oil-derived wealth has become the currency of Nigerian politics. The state monopoly manages all relations with the foreign oil companies that explore for and exploit the resource. The poverty and ecological damage in the Niger Delta oil fields have become an international scandal. “[T]he great paradox of the Delta is that it is rich. In few, if any, other places in the world are oil companies producing so much oil next to so many poor people, and in few other places are the perceived failures of the industry and government to pass on benefits to their host communities so great.”<sup>17</sup> State revenues for the Delta states from the federal distribution pool have grown in recent years in percentage terms, and they will continue to grow given present world oil prices. But corruption and incompetence at the state level are part of the problem of where the money goes. Ten years of peaceful demonstrations by the aggrieved population in the Niger Delta have now evolved into endemic oil theft, incendiary accidents that kill innocent people, the kidnapping of foreign oil workers, and organizations of militants who commit acts of sabotage that reduced the country’s oil output by 25 percent in 2006.<sup>18</sup>

## **Public Health (HIV) and the Workforce**

Nigeria has an HIV/AIDS prevalence rate of 5.8 percent, low when compared to countries such as South Africa (19 percent) or Botswana (24 percent). However for the continent’s largest country this translates into 3.5 million infected persons.<sup>19</sup> Moreover, only about half the school-aged children are in school, which means that millions more young adults will mature without good information about how to avoid the disease. In a rapidly expanding population many of these children will become infected adults. There are already a million AIDS-created orphans. Although President Obasanjo announced as early as 2001 that the government was mounting a nationwide treatment program and would provide generic antiretroviral medications to those infected,<sup>20</sup> it is very difficult to get information on what has happened on the ground since then. The 2006 UNAIDS report shows that the 5.8 percent prevalence estimate may be on the high side and that the reality is more likely around 3.9 percent. That good news is offset by the absence of any information on numbers of infected persons receiving antiretroviral treatment.<sup>21</sup>

Why is the overall infection rate in Nigeria lower than in states in the southern part of Africa? The single most common correlate of HIV infection is mobility. Where there are large transient populations there are greater concentrations of infected persons: soldiers, motor freight and railway workers, migrant farm workers, and miners. Because of the economic boom in southern Africa and the general emigration from Zimbabwe there is enormous human mobility in that region. There is nothing equivalent in Nigeria, except along the West African littoral where heavy motor freight traffic east and west is a concentrated source of infection. Ominous signs of future increases include the increasing instability in the Niger Delta as well as ethnic and sectarian conflicts in other states such as Plateau.

Another hypothesis as to why infection rates throughout West Africa are lower than in East or southern Africa is that Islam permits polygamy, thereby reducing circle of intimacy in which a married male might function, sexually speaking. The logic is that since Muslim males can take several wives, they are less likely to interact sexually outside a routine circle of intimacy than a male in a monogamous marital culture. In the latter case the extramarital range of sexual contact might be more random, increasing the probability of an individual’s becoming infected or infecting the partner. Research on this

hypothesis is still rudimentary, but it is a fact that HIV/AIDS infections in Islamic West Africa are much lower than in more Christian or traditional East and southern Africa.

### **The Biggest Challenge: Political Leadership**

The authors of a recent study of the role of leadership in policy reform and economic growth in Africa concluded that a large number of countries, “perhaps the majority, have been ruled by individuals who had sufficient power to implement reforms had they been so motivated. However, their motivation led them in different directions.”<sup>22</sup> Their findings demonstrated that visionary leaders could overcome entrenched interest groups when they employ their talents to the reform goal.

Much was expected of former general Obasanjo when he became president in 1999. He was “a retired general and former military ruler who had willingly handed over power to an elected president” in 1979.<sup>23</sup> He had a track record, in Africa and the world, as an eloquent advocate for democracy, having served time in jail while defending the victory of a candidate in the 1990s whose election was annulled by President General Babangida. Obasanjo had been out of uniform for many years and was thought to have the capacity to forge a new commitment to national unity unencumbered by past ties to the military.

After his 1999 election victory President Obasanjo was celebrated on the international scene with many appointments of distinction. He was named president of the African Union and chaired the New Economic Program for African Development (NEPAD). He offered his capital, Abuja, as a venue for conflict resolution negotiations such as those concerning Darfur and for numerous international conferences. But Obasanjo’s inability to govern at home has become palpable. From the beginning of his tenure the country experienced increases in crime, sectarian violence, and economic and environmental distress in the oil states, which has evolved into local guerrilla actions against Nigerian oil interests and their foreign partners.

By 2005, perhaps because of increasing skepticism expressed by the international financial community regarding endemic corruption and the country’s outsized debt, Obasanjo had to do something to restore credibility. Accordingly, he appointed a high-performing Nigerian at the World Bank, Dr. Ngozi Okonjo-Iweala, to head an economic reform team. In subsequent months she established a new reputation for fiscal rectitude and negotiated a debt relief program for Nigeria, generating accolades all around. It was a surprise to most when Dr. Okonjo-Iweala was told in July 2006 that she was being moved to head the Ministry of Foreign Affairs, not usually a spot for a top economist. She resigned a few days later.

The meaning of these moves is murky, but the following hypothesis is plausible in the Nigerian context: About the time that debt relief was assured, President Obasanjo was having his supporters in the Senate float a trial balloon on the possibility of amending Nigeria’s constitution so that he could run for a third term. After weeks of intense speculation, the Senate voted against changing the constitution. That meant that Obasanjo could not stand for reelection to the presidency in 2007. Adding to the drama, in July the president of Senegal, while attending a conference in Abuja, made a public statement suggesting that Obasanjo should be allowed to serve again! Putting this extraordinary comment in the context of the removal of the minister of finance from her stewardship of the Treasury, one might conclude that it had something to do with gaining access to resources for next year’s election.

In sum, Nigeria’s leaders continue to disappoint. Although elections occur, the electorate do not really choose their leaders. The top candidates remain former soldiers or their approved proxies from the patrimonial elite. One observer has encapsulated the leadership failure this way: “Whatever the current regime, the Nigerian state has repeatedly lacked the commitment and the capacity to facilitate economic transformation, as state elites focused their energies on maintaining personal power and on privatizing public resources.”<sup>24</sup>

## SOUTH AFRICA: POLITICS OF COMPROMISE AND PROMISE

### Origins: Dynamic Populations in a Strategic Location

It has been said that South Africa's 47 million people derive from nine African, three Asian, and a half-dozen European cultures, generating a legacy of eleven official languages. The earliest people in the region were Khoisan hunter-gatherers and later pastoralists. By the seventeenth century a related group, the Khoikhoi, came down the west coast, interacting with the earliest Dutch who arrived in 1652 establishing the port at Cape of Good Hope. In the eastern part of what is now South Africa the Bantu (a linguistic, not an ethnic or racial category) peoples had been moving south for many years between the twelfth and eighteenth centuries. They included several linguistic clusters, such as the Nguni (Zulu, Xhosa, Swazi, Ndebele), the central region Sotho and Tswana speakers, and the northern group of Venda, Lemba, and Shangaan-Tsonga.

As the white population (Dutch, German, Huguenot, and British) expanded at the cape they brought slaves to support them from the Indian Ocean territories. These interactions resulted in a mixed group who are still identified as the "coloured" population, of over 4 million. Finally, the origins of today's "Asians" date from the mid-to-late nineteenth century, as Indians and Malays were brought by the British as indentured workers for the sugar plantations.

Today roughly 78 percent of South Africa's population is of African ancestry, 10 percent is white, 9 percent is coloured or mixed-race, and 2.5 percent is of Asian descent. Under the apartheid state of the mid-twentieth century one's skin color defined all life chances and opportunities, even to different schools for children of the same parents who might be darker or lighter than their siblings. Today these categories remain both as a legacy of another era and as criteria for allocating opportunities and subsidies more positively to redress the past. "Affirmative action" is called "black economic empowerment" in South Africa and is, of course, directed at enhancing the skills and opportunities of the majority as opposed to the minority.

**White Populations in Pursuit of Hegemony.** European settlers gradually populated the area of the western cape in the seventeenth and eighteenth centuries. Dutch, Germans, and French protestants (Huguenots) came as adventurers, laborers for the port, and farmers. The indigenous Khoisan hunter-gatherers, very scattered over the same large area, came to serve the settlers, herded their livestock, or stayed on the periphery of foreign settlements. Over time the foreign white settlers developed a composite, ultimately distinctive language that came to be called "Afrikaans." The settlers adopted a conservative Calvinist Christianity, which fostered a simple rural lifestyle. The Afrikaner identity became more cohesive when the British began to show up in greater and greater numbers in the late eighteenth century, challenging Afrikaner claims to the cape and surrounding land.

The British had an imperial agenda for the southern cone of Africa. Cecil Rhodes became governor of the Cape Colony in the early nineteenth century, with ambitions extending to the already-anticipated mineral wealth of the region's central plateau. The relentless British expansion east and north caused conflicts with Africans east of the cape, such as the Xhosa, as well as obliged the Afrikaners to move in search of more land for themselves. The Afrikaners in turn encountered more and more resistant indigenous African populations, such as the Zulu. Ultimately white firepower prevailed over African spears and any tactical advantage of numbers or indigenous knowledge of the terrain. By the end of the nineteenth century the now essentially indigenous white settlers, the Afrikaners, began to resist the expanding Anglo business adventurers, who played out their own gold rush in the Transvaal area, where the Afrikaners had thought they were finally safely removed from British power. This conflict between the whites exploded in a war (1899–1902) from which the British emerged dominant, if depleted. A classic colonial irony added insult to injury, as African populations were dragooned into service on both sides of a struggle between people that Africans regarded as foreigners.

Summarizing history to the early twentieth century, South Africa became important to Europeans because of *where* it was (straddling the Atlantic and Indian Oceans) and because of *what* lay beneath it—

gold, diamonds, coal, chromium, manganese, platinum, and many other resources necessary for an industrial imperial Britain. The consolidation of white hegemony was formalized in 1910 under a charter establishing the Union of South Africa. The Union established four “republics” (two English dominated, two Afrikaans dominated) under a unitary central government, with Westminster-type parliamentary institutions. However, only white people could vote; no African or indigenous language was accorded any standing; and within three years land laws were passed restricting where Africans could live. A national Chamber of Mines was established as the principal agent for contracting labor and governing the availability and use of capital. Africans were denied collective bargaining rights. Although the policy of total separation of the races was not established until 1948, the seeds were sown in 1914 with the formation of the National Party, whose “white supremacy program” was formulated as early as 1924.

**Majority Resistance to Minority Rule.** The emerging mineral economy of South Africa required concentrated supplies of labor. Mines also attracted providers of ancillary goods and services such as banks, insurance companies, and purveyors of mining equipment, housing, and so forth. So a previously rural, almost exclusively agrarian economy began to urbanize and industrialize in the twentieth century. Not surprisingly the early program of the African National Congress (ANC) revolved around wages, hours, contracts, and conditions in the mines. Since African labor had no bargaining rights, in the modern context organized political resistance by the African majority to minority political control begins with rights relating to jobs, housing, and related land use.

Moreover, Africa was not entirely isolated from the international message broadcast by the Russian Revolution of 1917. The idea of workers uniting to exercise political power penetrated industrial Europe, resulting in communist parties almost everywhere in the 1920s and 1930s. South Africa was exceptional only in that the early communist activists were white laborers. The Communist Party of South Africa (CPSA) was formed in 1921, with a worker’s rights message that took very little time to penetrate the consciousness of the African working population. The CPSA was the only political organization to have members from all racial groups. In the context of the Great Depression of the 1930s, when every industrial country suffered high structural unemployment, the CPSA became a voice for African labor as much as for its white members. Solidarity crossed racial lines in the class message of the Communist Party. These dynamics, all converging before World War II, are the antecedents to today’s South African ruling coalition of the ANC, the CPSA, and the Congress of South African Trade Unions (COSATU), the federation of the largest labor unions.

It has to be remembered, however, that over half of the white population believed in white supremacy and used its political power to continuously circumscribe the rights of Africans to land, to upper levels of education, to organize politically. The 1930s have been characterized as the “segregation era” because so much legislation passed during the period to enhance white power and render Africans and other racial groups completely dependent. Although South Africa supported Britain once again in World War II, there were many Nazi sympathizers among the Afrikaner population, especially on the race question. They also greatly feared the revolutionary message of communist parties, as the Soviets threatened Eastern Europe and Marxist labor parties commonly became members of governing coalitions in the social democracies of Western Europe shortly after World War II.

Ultimately, however, it was the nationalist movements in India and Africa, beginning in the late 1940s through the 1950s, that most threatened the white power structure in South Africa. Although most independence movements in African territories to the north were more anticolonial than genuinely nationalistic, the rhetoric of nationalism and revolution appropriated from the Soviets, and subsequently the Chinese (1949), with all its passion for the “rights of the oppressed,” galvanized the African majority in South Africa. White fear, combined with the emergence of articulate organizers among the African population, allowed the right-wing National Party to win the election of 1948 outright (with no need to form a coalition with the more liberal United Party).

## Laws and Organizations of the Apartheid State

As political liberation swept across the African continent in the 1950s the white minority government in South Africa dug in. The National Party erected an edifice of laws whose goal was to completely separate everybody and every institution into white, African, coloured, or Asian life trajectories. This legal-social regime, known as *apartheid*, or “apartness,” included all the segregation laws that had been established earlier, plus the following and more:

- Mixed-race marriages and sexual contact were prohibited.
- All public facilities were segregated, whether education, transportation, accommodation, sanitation, or restaurants.
- Ethnic “Homelands” were created in rural areas, ostensibly to accommodate the principal tribal group occupying that area in history but really to keep people from migrating to the cities in search of work. If an African working in an urban area lost his job, he could be sent to a Homeland that the government thought corresponded to his heritage, even if he was a third-generation urban dweller.
- Nonwhites had to carry identity “passes” at all times, especially if they were visiting or working in “white,” that is urban, areas.
- Nonwhites could be detained indefinitely without trial.
- Black artisans in the building trades could practice their skills only in restricted areas.
- Black labor unions and strikes were prohibited.

The ANC and other political organizations responded to these cumulative indignities with passive resistance. A peaceful demonstration protesting the pass laws at Sharpeville in 1960 was met with a fusillade of police gunfire that killed sixty-seven Africans. Those events gave rise to a military wing of the ANC that subsequently embarked on a campaign of destroying infrastructure and bombing buildings after hours (when people would be least likely to be injured). A number of such incidents led to the famous Rivonia trials that resulted in sentences of life imprisonment for ANC leaders, including Nelson Mandela, Walter Sisulu, and Govan Mbeki (the late father of current president Thabo Mbeki). The ANC and all African political organizations were “banned” in 1964. Banning could be extended to individuals as well, whereby the target of the order would be confined to home and forbidden from receiving visitors or phone calls.

The African majority lived in a world of totalitarian oppression from the mid-1960s until the early 1990s. Political activists became fugitives, with many taking up exile in neighboring African countries, the United Kingdom, and the United States. By 1976, however, secondary school-aged young people began to rebel. They boycotted school, refusing to learn the Afrikaans language. They mocked their parents for weakness and intimidated the African constables and their informants in the segregated townships like Soweto with beatings and worse. The student-led Black Consciousness Movement brought on new levels of brutality by the police, as they tried to decapitate the movement as they had the ANC. The martyrdom of Steve Biko in 1977, at the hands of the police, served to galvanize young people, who perceived their life chances as so grim that they had nothing to lose.

**Collapse of the Apartheid State: Negotiations, Transitions.** The police state tactics of the apartheid regime drew the attention of independent neighboring states, as all were harboring South African dissidents. Embargoes and sanctions imposed by the UN, the United States, the UK, and many other countries, organizations, and businesses against the South African economy began to take effect in the 1980s. Apartheid South Africa became a pariah state. African mine workers mounted a general strike, which forced the legalization of their trade unions. The Pass Laws were repealed. In 1990 then-president F. W. DeKlerk revoked the ban on the ANC and all other African political organizations. During the

turmoil of 1989–1990 DeKlerk was negotiating with Mandela, who was then in his twenty-seventh year of confinement.

As a coda, the collapse of the Soviet Union during the same period actually helped the South African government come to the conclusion that it had to negotiate a solution or fight a civil war. Without the USSR and world communism as a bogeyman with which to promote fear of all African nationalists, the conflation of African nationalist aspirations with communism was hollow.

In 1991 a Convention for a Democratic South Africa (CODESA) was convened to negotiate the country's future. The parties included the government, the ANC, and seventeen other political organizations. Three difficult years of bargaining over an interim arrangement for power sharing, economic rights, and a postconflict method for addressing the crimes of the past ensued. Many times the conference collapsed or was interrupted by angry partisans. By 1994, however, a draft interim constitution was agreed to by the convention. It was put to a national referendum (based on a universal adult franchise of one person, one vote) and became the basis for a Government of National Unity, headed by Nelson Mandela as interim president. Mandela's position that South Africa was for everyone carried the day.

**Truth and Reconciliation Commission.** The effect of the apartheid regime had been to deny the vast majority of the South African population any political existence or sense of citizenship. As observed earlier, hopelessness fostered increasing anomic violence in the 1970s and 1980s, with police brutality taking an increasing toll. Harassment, intimidation, and disappearances in police custody built a legacy of anger, sorrow, and despair that a new, inclusive constitution alone could not satisfy.

Accordingly, the delegates at CODESA had to create some process of transitional justice that would address the collective wounds of the majority as well as the fears by the minority of terrible retribution. The Truth and Reconciliation Commission (TRC), chaired by Archbishop Desmond Tutu, was created in 1995 by an act of parliament under the interim constitution as an agency of the new Government of National Unity. Its terms of reference were unusual in the annals of postconflict justice proceedings. Anyone, whether police officers or individuals resisting political oppression, who had committed gross violations of human rights that were demonstrably *political* crimes could apply for amnesty from the TRC. If the commission was persuaded of the truthfulness of the account and amnesty was granted, the TRC had the authority to guarantee that the person would not subsequently be prosecuted. The logic in this formulation was that truth was prerequisite to healing. In a criminal court case, the truth of what happened to someone who had disappeared might not come out. If amnesty were offered in exchange for a full accounting of who did what to whom and, quite literally, where people died and where their remains reposed, that truth was perhaps more important to reconciliation than retribution. Between 1995 and 1998 the TRC received some 15,000 statements from victims and over 7,000 amnesty applications. Perhaps 10 percent to 15 percent of all the victims testified publicly before the commission. By late 1999 amnesty had been granted to 538 individuals, whereas 5,412 applications were rejected, usually because the applicants provided less-than-full disclosure of their actions. Many of the latter could become subject to criminal charges.

Whether or not the TRC achieved its goals is an ongoing debate. Many whites believe that black victims were given more attention than white victims and that the commission was soft on violence committed by black liberation movement activists. Many black South Africans believe that most white perpetrators of crimes did not even apply for amnesty because their crimes were simply personal, criminal assaults and not, in the end, official acts. They believe the TRC was too generous with amnesty for white perpetrators, given the scale of brutality involved, and that truth is not really a substitute for justice. On the matter of whether the unpleasant truths revealed were sufficient for many mothers or wives who had lost sons or husbands in disappearances, there is little doubt that a collective cathartic purpose was served.

## Government in the New Republic of South Africa

**The Constitution.** In 1996 a revised and final new constitutional charter was signed, not coincidentally, in Sharpeville. The new constitutional order is one quite explicitly focused on the protection of individual rights, including social and economic rights such as health care and access to food and water, housing, and basic education. This is achieved by a separation and diffusion of political authority through a combined unitary but multitiered structure, including nine provinces and several types of municipal and local governments. It has to be said that the constitution does not define provincial powers specifically, not to mention the discretionary powers of local governments. There is supposed to be a spirit of “cooperative” intergovernmental relations, and disputes are to be resolved through mediation and negotiation. Local government was defined in subsequent legislation as metropolitan (*unicities* or mega-urban areas), district (small towns and low-density areas), or local (mostly rural). In operational fact the government is still more unitary than federal, with fiscal powers in particular remaining highly centralized. Where the spirit of cooperative government is not adequate to resolve disputes among the tiers of government, the interpretation and implementation of authority are left to the stewardship of an eleven-member Constitutional Court.

**The Executive.** The head of the executive branch of government in South Africa is the president, whose powers derive from a parliamentary tradition. That is, the president must win a seat in the National Assembly and is elected by that body, not by general election.

As in parliamentary systems, the president comes from the majority party in the Assembly after a general election. The constitution provides for a deputy president appointed by the president from the Assembly. The deputy president serves in the cabinet, presides when the president is absent, and becomes acting president in the event of the president’s absence or incapacitation. Not surprisingly, the deputy president might be a member of the Assembly from the president’s own political party, the ANC.

Similarly, cabinet members must be elected members of the Assembly, although they do not have to come from the majority party. Several members of both of President Mbeki’s cabinets have come from minority parties in the interest of inclusiveness.

The president is accountable to the supreme law of the land, the constitution. He approves bills passed by parliament or sends them back to the Assembly if he disagrees. If the Assembly resubmits legislation to the executive for signature and implementation, the president must sign it unless he believes it to be unconstitutional. In that case he can refer it to the Constitutional Court for an opinion. If the court finds that the bill comports with constitutional principles, the president must sign it into law.

The cabinet departments are the instruments of the executive in implementing laws. Cabinet ministers and their deputies preside over the civil administration in the content area to which they were appointed. The president or deputy president presides over cabinet meetings. Cabinet ministers are individually accountable for the conduct of business in their respective portfolios. However, the president and cabinet are collectively responsible for the performance of the government. That is, public policy failures, as against lapses in competence or ethics in a given department, are collective governmental failures.

**The Judiciary.** The law in South Africa is a mix of Roman Dutch and English common law. The former is what jurists call “positive” law, meaning that it is a written code specifying the rules of conduct for social order. In legal proceedings adversaries argue whether the behavior in question violates the code. Positive law is not about previous cases, or precedents. However, long exposure to British influences has left the new South Africa with an additional tradition of common law, whereby some behaviors or practices over many years take on the authority of law. Moreover these common laws tend to be recorded in casebooks through which precedents gradually emerge. Over time both court decisions and national legislation shape the law.

The most important change in the law in the new South Africa is the establishment of “constitutional supremacy” as distinct from the presettlement principle of “parliamentary sovereignty.”

The bundle of laws passed under the apartheid regime provided a legal underpinning to the edifice of tyranny. But the constitution of 1996 provides a foundation that is transparent, legitimate in that it was adopted democratically, and that allows government-sponsored laws or legislation emerging from parliament to be struck down by a Constitutional Court if the latter does not regard it as in keeping with the constitution.

Although the president appoints judges, most are appointed on the advice of a Judicial Service Commission. Moreover, the Supreme Court of Appeal and other appellate courts are independent of the executive. South Africa has a long tradition of the judiciary resisting interference by other branches of government. The constitutional supremacy principle strengthens that independence.

**Legislatures.** There are two chambers in the national parliament, a 400-seat National Assembly, and a 90-seat National Council of Provinces. Each of the nine provinces has an elected legislature, as do the metropolitan areas (the six *unicipity* councils).

The National Assembly may initiate legislation in any area save that of money bills, which are the province of the Minister of Finance. The Assembly deliberates, amends, and passes or defeats all bills coming to the floor. Debate is conducted by rules enforced by a speaker and deputy speaker; bills are sequenced by a committee called the Leader of the House; party whips maintain discipline; party caucuses adjust or clarify positions; and there are many “portfolio” committees, as in any western parliament, which handles routine or ad hoc business.

Two hundred of the 400 members of the Assembly are elected using national party lists. Each political party draws up a list candidates in a preferred rank order. “The candidates are elected from these lists in proportion to the number of votes the party wins in the election.”<sup>25</sup> The remaining 200 members are elected from provincial party lists, and its population determines how many seats beyond the minimum of thirty a particular province will get.

The National Council of Provinces (NCOP) is less like a senate than a body that represents the interests of the provinces right at the center of government. The NCOP processes the legislation passing through the National Assembly, adding the views of the provinces to the debate. There is direct liaison between the NCOP and the nine provincial legislatures because the ten delegates from each province to the NCOP come in a complex scheme of special and permanent delegates. The party composition of each of the nine provincial legislatures will determine the composition of its delegation to the NCOP, where each province has one vote.

**Party System and Elections.** South Africa’s dominant political party, the African National Congress, is an offspring of the movement for majority rule. Founded in 1912, the organization argued for fairness, equal access to public facilities, property ownership, the right of African workers to organize and bargain collectively, and equality before the law. It battled intimidation and legalized discrimination from official agencies for seventy years, including the period when it was banned. It became the majority party in the National Assembly in the 1994 election, with 63 percent of the vote, achieved over 66 percent in 1999, and over 69 percent in the 2004 election. Over the course of the three national elections the largely white opposition has faded, its supporters having chosen the ANC, the Democratic Alliance (DA), or various splinter parties that have won one to four seats. The early opposition of the Inkatha Freedom Party (IFP), based in Kwazulu Natal province and led by Chief Buthelezi, garnered 10 percent of the vote in 1994 but dropped to 6.9 percent by 2004. After the 2004 election, of the 400 seats in the National Assembly the ANC held 293, the DA 47, and the IFP 23. The remainder were divided among thirteen parties with a variety of narrow political programs.

Why has the ANC prevailed when its social promises have failed to materialize? In a one-party-dominant political system all the cleavages are on the inside. These cleavages have become much more salient since 1994. However there have been only two national elections since the national unity government, so the broad-based commitment to the symbol of national liberation for the majority continues for the moment but attenuates from within.

**The Military.** In the apartheid era the South African Defense Force (SADF) was used to control the periphery of the country by supporting antigovernment armed groups in neighboring Angola and Mozambique. The white-officered, black infantry SADF engaged in “destabilizing” activities in neighboring countries, as a reminder that South Africa would intervene anywhere on its periphery if a neighbor might be harboring political fugitives from South Africa.

Now the SADF is the South African *National* Defense Force, symbolizing the integration of all color groups in all ranks, as well as the incorporation of militias of the former liberation movements, such as the ANC’s Umkhonto we Sizwe (Spear of the Nation), the armed wing of the Pan African Congress, and the Azanian People’s Liberation Army Society. With the incorporation of these former guerrillas the planned establishment of 70,000 soldiers in the SANDF is now as high as 100,000. The numbers will gradually be trimmed, as the role of the military today is strictly defensive.

At the time of the settlement in 1994 many white soldiers and officers of the SADF retired or resigned rather than serve under an ANC government. Many offered themselves to private security firms both in South Africa and in other countries. Some formed private security companies to do a variety of contract work in troubled parts of Africa and elsewhere. The image of white former South African soldiers selling their services as special operations personnel or as arms dealers in troubled parts of Africa embarrassed the government of South Africa. To curb what was looking more and more like private mercenary activities, legislation has passed the Assembly prohibiting citizens from serving in foreign military operations even as private persons.

South Africa developed a large and economically important arms industry during its isolation, and it is now struggling with reducing economic dependence on the arms trade. As an important player on the subcontinent South Africa does not want to be contributing to the already-large problem of arms in the hands of unofficial bodies. The arms business has also been the source of a domestic political corruption scandal, which the government would like to discourage. On matters of large weapons, the government declared several years ago that it had abandoned its nuclear weapons program and has eschewed any future plans in this regard.

## **Civil Society**

After the settlement in 1994 South Africa has generally free news media. There are many newspapers and a number of private radio stations. There are print and broadcast outlets using English, Afrikaans, Xhosa, and Zulu languages. The most popular media are in English. However, the South African Broadcasting Corporation (SABC) still alternates much of its programming between English and Afrikaans. (Afrikaans is still the first language of a large portion of the Coloured population in the Western Cape.) It must be said that the government, especially the office of the president, does not like to be criticized, and that has led to more than one case of intimidation of journalists. But the right to criticize the government is frequently and openly exercised by the public. There is also a rich tradition of visual and performing arts, which are often politically provocative.

As the only industrial country in Africa, South Africa has a tradition of employer and industry associations. Business associations had more political influence perhaps under the old regime, but they have come to embrace the black economic empowerment policies of the government, reflecting the practicality that the minority cannot prosper unless the majority prospers. COSATU, the labor federation of twenty-one unions representing 1.8 million workers, is a partner of the ANC in governing, although relations have become strained in the absence of job security and new employment opportunities. Frequent strikes keep the pressure on the government.

Most official figures on religious communities suggest that the country is predominantly Christian, principally Dutch Reform and Anglican. There are temples for Hindus among the Asian population as well as mosques. Less well documented is the role of traditional beliefs about the spirit world, which are important to the mental health of many, a fact which has become more salient with the impact of the HIV/AIDS crisis.

Finally, at the grass roots, urban and rural, there are networks of indigenous NGOs that are helping with both humanitarian and social integrative services. Under apartheid most urban areas were bifurcated, with the “white” town having full electric, water, and sewerage systems and paved roads, while the “black” town had none of these. Foundations created by the two large mineral combines, Anglo American and Gencor, support the challenges of physically integrating urban areas, including retail and small business services.

### **Political Economy: A New Model**

South African policymakers confront simultaneously a series of structural problems that most other industrializing countries had the relative advantage of tackling sequentially. At the very time when South Africans search for a way to manage profound internal fragmentation with more inclusive policies and institutions and improvements in living and working conditions for the majority, they also face the new imperatives of a global economy. Globalization, among other things, obliges a country to place competitiveness, or productivity, at the center of a national strategy. For South Africa the question is whether the pressure for increased productivity of the workforce can be reconciled with the pressure for redistributive justice that the majority seeks and the ANC promised. Exacerbating this tension is the structural legacy of an import substitution economy, which developed during the apartheid period in response to the restrictions many countries imposed on inputs to, and markets for, South African goods. In short, South Africa is confronting the demands of global competitiveness with an economy designed for self-sufficiency, or noncompetitiveness, in a domestic political context of high expectations for generous social policies.

In June 1996 the government released a new macroeconomic strategy in a report called “Growth, Employment and Redistribution” (GEAR). GEAR emphasizes price incentives, market forces, and a more limited role of the government in the economy. It advocates a flexible labor market, actually suggesting that South Africa’s high unemployment rate (officially 32 percent at the time) is explained by rigid labor rules. Needless to say neither of the ANC’s informal partners in governance, COSATU or the South African Communist Party (SACP), was happy with that argument.

The emergent policymaking model at work the past ten years is one of corporatism or consociational democracy. Such a model entails a coalition of state, labor, and business elites that sets the policy agenda through bargaining among their representatives. Similar systems are common in highly fragmented or stratified countries in Mediterranean Europe, some countries in Latin America, and Holland. The accords, sometimes legislated, sometimes not, govern for a time in a particular policy arena. This model goes a long way toward accounting for how South African policymakers have managed, so far at least, to avoid substituting a statist regime of the left for a statist regime of the right.

In 1994 the parliament established the National Economic Development and Labor Council (NEDLAC) to examine policy proposals before they are introduced to parliament or adopted for implementation. NEDLAC has several committees, or de facto policy “shops,” for analysis, debate, and bargaining over policy choices in such areas as labor, trade and industry, public finance, urban and rural development, and housing policy. The appointees to this statutory body and the policy committees come from the three main pillars of the South African political economy: business, labor, and government. NEDLAC played a central role in charting a course for national policy in the first few years. It was the arena in which the original ANC Reconstruction and Development Program (RDP) was modified from its idealized and implicitly redistributive thrust to the more pragmatic, distributive character of the subsequent Growth, Employment and Redistribution (GEAR) policy. The ANC ascended to power with a program that would have nationalized more industries and used economic power to employ people in the name of social justice. However, the dialogue among union leaders, large employers, and government agencies concerned with economics, finance, and labor yielded a consensus on a balance of measures that would preserve growth and at the same time protect labor.

## **Public Health (HIV) and the Workforce**

Today in South Africa 5.5 million people, or 12 percent of the population, are infected with HIV. Every day 800 deaths and 1,000 new infections occur. In 1991 average life expectancy was sixty-three years; today it is under fifty years. Although South Africa has the most advanced human and physical health infrastructure in Africa, official policy has been contentious and slow to arrive at the conclusion that the most advanced medications need to be available for everyone who is infected with HIV.

For years the government took the position that there is no direct connection between HIV infection and the onset of the AIDS disease. Accordingly the public health service emphasis was on nutrition as a way of maintaining a strong overall immune system, especially through a diet high in garlic, lemons, and beetroot. Even after the government finally yielded to pressures from the country's medical establishment to encourage testing and provide infected persons the antiretroviral (ARV) medications that extend life by staving off the onset of AIDS for many years, implementation of the policy has been slow, and the message from the Ministry of Health has been confusing in that it favors traditional methods over those of western medical science. This ambivalence manifests itself in the paradox that, despite the local availability of state-of-the-art medications, only about 250,000 infected persons are being treated with ARVs when as many as 700,000 are in desperate need.<sup>26</sup>

## **Biggest Challenges: Political Leadership, Employment Creation, and Public Health**

The most daunting challenge in the new South Africa is employment. Unemployment figures range from 30 percent to 50 percent. Government policy has been based on stable and responsible monetary and fiscal management to attract investment from both internal and foreign sources. Avoiding capital flight, keeping skills at home, and developing a globally competitive work force have been the strategy of the first ten years. Has it worked?

New investment was slow to arrive but has definitely become robust in the past five years. Criminal violence was, and continues to be, a deterrent to investment that the government has to overcome. The strategy requires that organized labor eschew demands for large wage increases, even if deserved, as expensive labor reduces the number of job opportunities as well as threatens the global competitiveness of the work force. The unions were unhappy but tolerant of these conditions in the early years after 1994. However as privatizations increased and the demands for "labor market flexibility" continue, COSATU's members are breaking ranks and engaging in frequent wildcat strikes. There is increasing concern that the social program of the ANC has somehow been downplayed. Only in the last few months has anything been done beyond the free market "willing seller, willing buyer" principle to help the majority achieve access to the 70 percent of the land they have been denied for seventy-five years. A public body is selectively buying farms or parts of farms from areas where ownership is disputed, compensating the usually white landholder to give up land for redistribution.

The challenge for the remainder of President Mbeki's second term is to keep the focus on job creation and address a series of domestic services, the absence of which is becoming intolerable to large segments of the population. There are still several million households without electricity, access to clean water, and access to health care. The AIDS plague, now augmented by a new super-strain of TB, is both a public health crisis and a workforce problem. Thousands of orphans have no care or schooling. Workplace absenteeism is affecting productivity, whether because of illness, ill family members, or simply because people spend time every week going to funerals.

## BOTSWANA: THE POLITICS OF UNITY AND STEWARDSHIP

The connection among institutions of governance, public administration, and development has become attenuated, if not severed, in many countries of Sub-Saharan Africa. An exception to that pattern is the Republic of Botswana. Though drought prone and one of the poorest countries in the world at the time of its independence in 1966, Botswana has enjoyed high growth rates, political stability, and openness (eight successive openly contested elections) for forty years. Accounting for the “Botswana exception” is a combination of leadership, vulnerability, and luck. The founding president, Sir Seretse Khama, eschewed his chieftainship of the largest tribe in the country to be the president of all Botswana. He was modest in his personal style and was able to attract the confidence and loyalty of most citizens. The country’s vulnerability to menacing intrusions and threats from the paranoid apartheid regime in South Africa in the 1960s and intrusions from the north during the Zimbabwe civil war in the 1970s caused most citizens of Botswana to understand that national unity was absolutely necessary. There are numerous examples of good luck, but the timely discovery of gem-quality diamonds in Botswana, just when its only other source of foreign exchange faded, was a near-miracle. The country’s only export had been beef from its commercialized cattle herds, but a combination of foot-and-mouth disease and the exclusionary levies of the expanding European Community against beef imports left Botswana without a reliable foreign revenue source. As it happened, auspicious deal making and exploitation of the diamond wealth, along with good macroeconomic management and spending on roads, schools, and health, have resulted in a great success story for a small country of only 1.7 million people.

### Origins: Small Societies in Harsh Environments

The whole region that today comprises Botswana and the northern Transvaal of the Republic of South Africa was an arena of migration of clans, or lineage clusters, until the colonial consolidation in the nineteenth century. The hunter-gatherer San (or Sarwa) are generally acknowledged to have been in what is now Botswana before any other group, around 500 A.D. The Kgalagadi came after 500, and the Rolong and Tlhaping after them. It was only after these groups were in the area that we can identify the arrival of what we would today call a core of Tswana-speaking peoples: the Kwena and the Kgatla. The latter two groups settled in the southeastern part of contemporary Botswana. The range of Setswana-speaking peoples is much broader today because of a process of lineage clusters dividing and subdividing through secessions and relocation.

**Village Authority.** Historically Batswana (the collective form of people in Botswana) lived in a “capital” village, with croplands in one concentric circle around the village and the grazing lands in a circle beyond that. Men and boys might spend many weeks at the “cattle post,” but they lived in the central village. The organizational pattern of the Tswana groups revolved around a *kgosi* or chief, representing a royal clan, with members of that extended family appointed as ward heads throughout the large central village. In very large villages some wards might comprise a lineage cluster that was not closely related to the chief, in which case that ward head would come from the lineage of his ward.

Influence on the chief was exercised in several ways. The ward heads collectively were the chief’s council. Not surprisingly, perhaps, the subchiefs and headmen who were the *kgosi*’s kin had more influence than those who were remote from the royal family. A second group of influentials in precolonial governance were the chief’s retainers and courtiers. These were people who were always around the chief’s compound, acting both as secretariat and as a day-to-day consultative group. Some accounts suggest that this group was more important than the council of ward heads insofar as they were ever-present and could claim to know what the chief was thinking. A third consultative influence would be the elders in the community who, though not a group, could speak with authority derived from experience and criticize or aggressively dissent with a degree of impunity younger people could not risk.

Decision making normally involved some configuration of this dynamic consultative process, depending on the issue and the personality of the chief. If it affected the community at large, a matter would be raised in the *kgotla* (meeting place), which was in the capital village at the chief's compound. The chief might present a dilemma to the gathering and ask them what he should do. The session would frequently end without resolution, but in due course events would reveal what the kgosi had decided.

Some historical sources suggest that prior to the colonial presence chiefs did very little without the consent of their people—that they were extremely responsive to public opinion. Subsequently, one of the effects of colonialism was to alter that relationship in the direction of chiefs becoming autocratic agents of the foreigners, issuing decrees and acting arbitrarily either to please or because they feared (for themselves or their people) the wrath of the occupiers. Although prior to colonialism many chiefs were very responsive, others were quite directive, and some notoriously authoritarian, such as, Sebele II of the BaKwena. Similarly, after colonial consolidation many chiefs used traditional institutions like the *kgotla*, the ward heads, and the *mephato* (age regiments) to share information and manipulate the outsiders. As anywhere, one has to separate roles and institutions from the idiosyncratic characteristics of those who occupy them.

**The Colonial Consolidation.** Nearly all of the territory bounded within today's Botswana was declared the Bechuanaland Protectorate by the British in 1888. The incentives to impart official colonial status to a large, poor, and sparsely populated territory were two: first, the strategic impulse to counter with a British presence the collaborative moves of the Afrikaners in the mineral-rich Transvaal and the Germans in today's Namibia, which could have shut down the corridor from the cape to "Rhodesia"; and second, an appeal by the chiefs of three of the major Botswana tribes for British assistance in blocking the encroachment by Afrikaner farmers on their tribal lands.

A single British protectorate administrative regime subordinated the independent Batswana tribes to the status of districts. This reflected a colonial desire to minimize administrative overhead by adapting indigenous institutions to facilitate administration through indirect rule, "with due regard for native laws." In the late colonial period (1934) the British "gave" their high commissioner approval authority in the naming of chiefs. He was also granted power to suspend or to dismiss chiefs. Native councils were introduced to the *kgotla*, making it mandatory that chiefs consult and work with the councils in administering tribal affairs. In 1943 the native authority replaced the native councils. The high commissioner was given the power to appoint tribal chiefs to the native authority, but the chief would be subordinate to the district commissioner on matters over which the chief had had the final word. The order also gave the high commissioner refusal, suspension, or dismissal power over anyone elected to the native authority by the tribes. Chiefs were no longer able to rule independently but had to follow the consensus achieved by the native authorities, thus reducing chief's power within the *kgotla*. Administrative powers concerning law and order were also removed from the chief and vested in the native authorities (areas covered included prostitution, drugs, the manufacture of liquors, arms control, gambling, and capital rape and murder).

The principal legacy of the colonial period for such governance issues as legitimacy and accountability is the institutionalization of a unitary state (as distinct from a federal, confederal, or other distribution of authority to the component units such as the various Batswana tribes). The almost prefectural district commissioner remains the locus of authority in the districts; he is the chief executive officer as well as the chief development officer. Traditional or Tribal Authorities (TAs) emerged with almost no autonomy except in dispute resolution through customary courts. The very structure of the TAs is an extrapolation from a core Botswana state model that never existed in many of the groupings now subject to such arrangements. Moreover, the TAs report to the Ministry of Local Government and Lands, having only an informal relationship to locally elected councils.

## The Republican Constitution

The constitution and governmental arrangements launched at independence in 1966 reflect the colonial enshrinement of tribes as districts. By putting the “eight” tribes into the constitution by name, the republic has in some measure rooted its legitimacy in a local social category that has not yet been a serious problem, though it could become one. The Batswana tribes are not nearly so homogeneous as is often thought, and rivalries among Setswana (the lingua franca) speakers are now beginning to emerge, quite apart from the very large percentage of the population whose first language is not Setswana.

The main government structures that the 1965 constitution established are the following:

- An executive resident, elected by the National Assembly from the majority party, combines the functions of head of government and head of state.
- A National Assembly made up, presently, of forty single-member electoral districts, operates on parliamentary principles and procedures, in which the majority party forms the government. The president also can nominate four members to the Assembly. Elections are held every five years, through party political competition, with universal adult suffrage.
- A fifteen-member House of Chiefs advises government on any matter that the chiefs perceive to affect customary laws, practices, and/or tribal affairs. Their actions are not constitutionally binding.
- Civil liberties are enumerated, and an independent judiciary interprets and administers the constitution and other laws. Presidential appointees to judgeships are selected from lists of names vetted and recommended by a Judicial Service Commission. The magistrates’ and high courts, using Roman Dutch common law and English criminal law, are complemented by customary courts using customary law to resolve civil and misdemeanor criminal disputes at the grass roots. Customary courts are presided over by chiefs in the village kgotla or by secular court presidents in urban areas.

Though not in the original constitution, the local government system was established by statute at the time of independence. District councils have assumed many of the administrative and development responsibilities previously held by the chiefs (primary education, health care, road construction and maintenance, water supply). There are nine district councils, one city council (Gaborone), and four town councils (Francistown, Lobatse, Selebi-Phikwe, and Jwaneng). Councillors are elected through party political competition at the same time as the national elections.

Other landmark statutory changes established the environment of governance at the local level:

- The Local Government (Tax) Act of 1965 removed from chiefs the authority to levy and collect taxes. The chiefs had relied on a commission earned from the collection of taxes as a revenue stream not only for themselves but for the community. Chiefs are now salaried through the Ministry of Local Government, Lands and Housing. The *Matimela* Act of 1968 removed from chiefs the disposal authority over stray cattle, another source of revenue, however modest.
- The Tribal Land Act of 1968 established Land Boards and removed chiefs’ allocative authority over communal lands. As ex-officio board members, chiefs provide information and must verify that land about to be allocated has not already been so. The act was recently amended to allow every citizen of Botswana access to communal land. The influx of citizens who are not of the tribal group but are seeking the use of tribal land will further weaken the chiefs, as those individuals have no allegiance to their traditional authority.
- The Customary Courts Act of 1986 established appeal procedures from customary courts to a Customary Court of Appeal. The court president is a distinguished chief who rehears cases for procedural integrity. Of course, the citizen can always seek relief from the magistrates’ court. It is

true that customary courts are losing the support of the educated, financially able, and young, but they still afford a timely and low-cost option in the areas of small claims and family disputes.

The public service position of the chief is ambiguous. He presides over a statutory Tribal Administration. The employees of the TA are neither civil servants nor local government officers, but their appointments are made by a staffing committee in which the district commissioner (central administration) has considerable influence, and they are paid by the Ministry of Local Government and Lands, as are the chiefs. But the chiefs are not part of an establishment, despite the fact that they are expected to keep normal business hours during the work week.

**Legitimacy.** Forty years of state sovereignty, eight successive and peaceful civilian elections, public affection for the founding chief/president and respect for his nonroyal successors, the cohesion deriving from being under siege by apartheid, extraordinary national economic development, external respect from the international financial community as well as political observers—all these contribute to the sense of legitimacy that citizens of Botswana accord their central government.

The formalization of former Tswana states into colonial and postcolonial politico-administrative districts has perpetuated the local government base of the ruling Botswana Democratic Party's (BDP) legitimacy for forty years. The BDP, having been the government ever since independence, is coterminous with the institutionalization of a unifying central government for the republic. One reason the BDP has endured is that the "natural" governing class has been in power from the outset, a loose coalition of rural elites from the core Batswana groups, who have delegated much to senior administrators, especially in the domain of finance and development planning. What could threaten the durability of this coalition is the changing political economy of the country, which is diamond dependent and increasingly urban.

Corruption by public officials has always been dealt with very harshly in Botswana. Although many would say that the treatment of lower level officials has been harsher than that for seniors, compared to almost anywhere else in Africa public affairs in Botswana have been generally free of venality. There have been scandals from time to time that resulted in ministers' having to resign from the cabinet or in the jailing of civil servants. Official inquiries are undertaken in these instances and are made public through the press and broadcast media, as well as through the government printer.

## **Performance of the Public Service**

Government has become aware of the exponential growth of the civil service in the forty years since independence. This growth presents an emerging problem of a generally young civil service, even in top positions, along with an increasing need for scarce technical manpower such as engineers. Past sources of expatriate talent are expensive to the point of political controversy, and technical assistance is being de-emphasized by nearly all donors.

As part of a concern with future wage costs and productivity, all ministries were subjected to a functional and structural review in the 1990s. Some have been reorganized, but the main effect has been to reduce recruitment to the civil service considerably. This has resulted in many more local secondary school and university graduates without the access to the public sector that was taken for granted up until the mid-1990s.

## **Rule of Law: Legal and Judicial Framework**

Botswana's reputation as a country in which the rule of law is effective and institutionalized compared to most others remains intact. At the same time, the country's material success and the growth in the public sector have proved too tempting for some. The lapses in comportment by public officers range from the

merely ambiguous (senior officers and ministers spending more time on their private businesses than they used to) to outright corruption, however infrequent. A few corruption cases involving high officials have been the subject of high-profile official investigations. Heads have rolled, including that of a former vice president and minister of finance and development planning. But the main message is that wrongdoing more often than not is investigated and prosecuted, and the guilty are punished—regardless of political status. As the result of some of these scandals the government has established a Directorate of Corruption and Economic Crimes, modeled on the experiences of Singapore and Hong Kong.

Formal mechanisms to assure civil and criminal accountability are institutionalized in the form of magistrate's courts and the paraphernalia that goes with them. As we have said, there are also customary courts, which are very informal, localized, and inexpensive. Only felonies must be heard in the magistrate's courts; all other civil and criminal cases can be handled by the customary court, depending on the preferences of the parties to the dispute.

**Customary Courts and Dispute Resolution.** Reliance on customary courts for the adjudication of disputes in Botswana is substantial, accounting for about 78 percent of all litigation. Moreover criminal cases are increasing as a percentage of litigation in the customary courts relative to civil suits. Criminal cases are increasing because of the increase in juvenile delinquency and a changing social order in villages, particularly large villages. Chiefs say that the number of cases reported is misleading, in terms of actual dispute settlement, in that they often mediate family disputes themselves, finding the culprits in cases of battered wives or the fathers-to-be of pregnant young women. Civil suits are moving to the magistrate's courts as cases go beyond local family law into the larger tort arena and the litigants are increasingly urban.

The court clerk is the second-most-important administrative position in Tribal Administration after that of the tribal secretary. He or she schedules cases, records proceedings and judgments at the customary court (chief or subchief presiding), and reports outcomes to the Ministry of Local Government, Lands and Housing. The local police (as distinct from the national constabulary) collect fines and execute arrest warrants in Botswana, but the Tribal Administration must secure the warrant, and often the means of transportation, from the district administration (central government on the ground).

This rural model of customary courts is being replicated in the suburbs of the capital city and larger towns in Botswana. The presiding officer, a court president, has no hereditary connection, but conducts proceedings and makes judgments according to "customary law," a code that is partially recorded while at the same time being peculiar to a chief's use or claims about what it says. The customary court's popularity in the three years it has been operating in peri-urban Gaborone relates to its low cost (no attorneys' fees) and timeliness of decision. Appeals of customary court judgments occur through a customary appeals court, which is parallel to the magistrate system and which ends at the Ministry of Local Government, Lands and Housing, not the Ministry of Justice.

**Magistrates' Courts.** The principal problems in the formal court system today are insufficient numbers of magistrates and judges, especially indigenous Botswana judges, and resulting long waits for cases to come to trial; inadequate physical facilities; and the difficulty of providing adequate access to counsel for accused persons. Some problems also arise from inconsistencies between the intent of the bill of rights in the constitution and actual statutes based on Roman Dutch common law.

An important case in the 1990s raised constitutional questions. Mrs. Unity Dow, a Botswana woman married to an American citizen, had two children, one of whom was born in Botswana. She assumed the children were Botswana citizens. The Department of Immigration, however, denied both children passports on the grounds that they were not citizens of Botswana. When Mrs. Dow took the case to court, the magistrate ruled that citizenship is accorded through the father's side of the family, not the mother's, so that she had no case. She appealed the decision on the premise that such a ruling was inconsistent with the human rights provisions of the Botswana constitution. The High Court ruled in her favor, indicating that the magistrate's court had erred.

The case created serious debate, and it became something of a cultural showdown, as women identified with Mrs. Dow, and most males agreed with the lower court. There were reports of serious consideration being given at the highest levels to trying to amend the constitution to specify the preeminence of the male line in determining citizenship. The case brought home to both men and women the cultural price that has been paid in family instability in Botswana because of years and years of absentee males working in the mines of South Africa. Over 50 percent of Botswana's households are headed by women with no permanent male partner. Women too often regard contemporary Botswana males as unreliable, an attitude the men resent. It is exacerbated by the perception that Botswana women take "foreign" husbands or partners (Africans from South Africa) because they are more reliable providers and fathers. The Dow case thus touched a very sensitive issue of culture and power when the matter of the children's citizenship deriving from the Motswana mother was raised.

The government finally yielded to the High Court's view that the citizenship laws were unconstitutional as regards discrimination between the children of male and female parents. The minister of labor and home affairs announced that the government would introduce legislation to end such discrimination relating to citizenship as well as address other laws that discriminate against women in respect of property rights.<sup>27</sup>

### **Civil Society: Accessibility, Transparency, and Openness**

Accessibility and transparency are closely related in that access to political power, or to power brokers, is not only a question of "voice" but often a question of information. Joining a political party, writing to a newspaper, or writing for one gives the citizen voice, but the currency of effective voice is information.

Compared to other developing countries, not to say African countries, one would have to say that public access to good, official information in Botswana is very good indeed. Official documentation of the economy and social policy is, for the most part, timely and of good quality. Accounts and audits are slower but fully accessible to anyone when published (usually within two years). The normal channels of access are the retail outlet of the government printer, the source ministry or department preparing the report, the Central Statistical Office, or the national public library system. The *Government Gazette* is timely and widely available. Excerpts of important documents, such as national plans and white papers, are broadcast on Radio Botswana and appear in the newspapers. Parliamentary debates are accessible in English through the published Hansard and in the vernacular through daily radio coverage and interviews with MPs during parliamentary sessions. Legal opinions are slower to appear, but when documentation is completed they can be found in libraries or purchased through government documents outlets.

Public access to independent sources of information is less good. The one official newspaper, the *Daily News*, is now supplemented by several private newspapers. One of the private papers, *Mmegi*, is more critical of the government than the others; it has prospered to the point where it is a daily and has its own Web site. Despite occasional criticism from official spokespersons, the papers have not experienced any direct intimidation. In general, Radio Botswana, the *Daily News*, and several other print organs are not purveyors of callow propaganda, but they do put the official spin on everything.

The policymaking process itself has not always been transparent. In the first decade after independence civil servants and expatriate advisers dominated cabinet discussions. Their domination extended to the National Assembly in that the BDP had its majority there. By now, however, despite the fact that the higher civil service, led by the economists and finance officer cadres, tend to get what they want, there is more open debate within the bureaucracy, as well as more informed argument in parliament itself.

Official financial transactions are also transparent insofar as Botswana adheres to standard international accounting, reporting, and auditing standards. Moreover, on matters related to capital budgeting and expenditure the reporting requirements of the various international donors add another incentive for transparency.

An area where transparency has been lacking until very recently is the military. The Botswana Defense Force (BDF) was created in the late 1970s in response to incursions from the north and east by belligerents in the Zimbabwe war of liberation. After that settlement in 1980, the BDF became much more visible in the south because of the tensions in and with South Africa. As the threat from South Africa evaporated after 1994, the BDF has been less controversial. Moreover, the former brigadier of the army, now vice president and minister of finance and development planning, Ian Khama, is the son of the founding president. He is expected to run for president in the 2008 election. The size of the military is estimated at between 18,000 and 20,000 in the army, air force, and police mobile units. The budget of the BDF is still not public.

## **Public Health and the Workforce**

For most of the 1990s and into the new century Botswana has had the highest reported HIV infection rates of any country in Africa. For a number of years estimates were as high as 40 percent of the working-age population. For a very small population the specter of possible economic collapse has been of grave concern. The government has been both progressive and proactive in its approach to the problem. Preventive public information campaigns have been notable countrywide since the early 1990s. For whatever reason, for example, the mobility of people to and from South Africa and the presence of political refugees from Zimbabwe in the northeast and Angola in the northwest, infection rates stayed alarmingly high.

Because the government was publicly vocal about the country's vulnerability, its plight caught the attention of the Bill and Melinda Gates Foundation. The Gates foundation, along with Merck Corporation, a major experimental and manufacturing firm of ARV medications for HIV/AIDS, created with the Botswana government a five-year "African Comprehensive HIV/AIDS Partnership."<sup>28</sup> This partnership provides free testing and free access for life to the most advanced ARV medications available for anyone testing positive for the virus. The project also entails training local citizens to undertake all phases of action needed to defeat the epidemic in the country, from health care workers to HIV-dedicated research laboratories. The early results of this project have extended life for those receiving the medications. The challenge remains to overcome the conundrum of denial and to remove the poverty-related causes of people continuing risky behaviors. The health services infrastructure—both health care practitioners and facilities—is also behind schedule. But there is nowhere else in Africa where the government more committed to, or has more at stake in, overcoming the epidemic than Botswana.

## **Biggest Challenges: Leadership, Civil Society, and Public Health**

If participation and representation are the mechanisms of voice, information is the fuel. There are manifest instruments of voice: political parties, members of parliament, district and town councillors, interest groups, and the independent media. There are also latent mechanisms of voice reposing in the various civil society organizations, from religion to art and culture. Economic interest groups are few. Citizen appreciation of the value of occupation or product as a basis for organizing and trying to influence politics is just beginning to emerge. Most of the groups that are effective are so because of heavy government tutelage (teachers, civil servants, federation of trade unions) or because they serve expatriate constituencies who are experienced and expect to shape government policy.

In fact, scholarly commentary on the linkage between civil society and the state in Botswana converges on a general assessment that civil society in Botswana is weak. Nonpolitical social groupings at the community level are fading, especially in rural areas. Modern organized religion, scouting, school groups, sports groups, and occupation groups do not interact in a mosaic of civic engagement. Citizens have high expectations of government, and they are increasingly vocal. A potential problem for the future is that such demands may not be diffused and processed through cross-cutting social groupings. Any

collective expression of dissatisfaction immediately focuses on central government responsibility, regardless of the antecedents of the disappointment or anger. Through its arrogation of authority—justified always on the grounds of national cohesion in the face of apartheid and a prosperity, based on minerals and cattle, that is always vulnerable—government has weakened local institutions and fostered the consequences it now worries about. By the time of the next national election in 2008, the founding political class will be handing over to a new generation of leaders who have known nothing but prosperity and political openness. Whether this remarkable experiment will last depends on many things, including successfully shifting the economic development strategy from commodities to some combination of light manufacturing and services, and containing the HIV/AIDS plague.<sup>29</sup>

## CONCLUSION

Short treatments of two large countries and one small one cannot fully serve as proxies for the whole of Sub-Saharan Africa. Nonetheless, taken together these three cases illustrate the institutional dynamics of many countries on the subcontinent. Nigeria is one of many states where government bureaucracies are administrative legacies that have been captured by indigenous social processes. In understanding the politics of governing, what is going on is more important than what happens. Accordingly, while Nigeria has used its commodity wealth almost entirely as a tool of patronage, it has not been able to forge national unity. In contrast, Botswana and post-apartheid South Africa have used their mineral wealth in the broader public interest.

The political institutions of all three countries were designed as parliamentary democracies at the core, but each has evolved quite differently given peculiar histories, regional pressures, and leadership. The political elites of Botswana and South Africa seem to have in common an appreciation of what is at stake if unity is not cultivated. There are many more states in Africa where unity has not been sufficient incentive to induce the political class to put aside their more parochial agendas, leaving the future most uncertain. This uncertainty is especially disquieting for the many Africans who live in poor countries with poor climates and no natural resources.

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## Notes

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