

## Democratic Consolidation in South Africa

By Shauna Mottiar, EISA, January 2002

It has been noted that of the three basic political processes of democratisation - authoritarian break down, democratic transition and democratic consolidation, the last is the least studied and the least understood. Omar Encarnacion in his review of current literature on the subject of democratic consolidation claims that the reason this is so is because examinations of democratic consolidations are abstract, complex and have no clearly identifiable benchmarks.<sup>1</sup>

Various definitions of democratic consolidation have been put forward. Guillermo O'Donnell claims that a democracy is consolidated when power is alternated between rivals, support for the system is continued during times of economic hardship, rebels are defeated and punished, the regime remains stable in the face of restructuring of the party system, and there exists no significant political anti-system.<sup>2</sup> Philippe Schmitter argues that a democracy is consolidated when "social relations become social values i.e. Patterns of interaction can become so regular in their occurrence, so endowed with meaning, so capable of motivating behaviour that they become autonomous in their internal function and resistant to externally induced change."<sup>3</sup> Schmitter therefore lays stress on political culture and social values. Adam Przeworski states that "democracy is consolidated when under given political and economic conditions a particular system of institutions becomes the only game in town; when no one can imagine acting outside the democratic institutions, when all losers want to do is to try again within the same institutions under which they have just lost."<sup>4</sup>

Juan Linz and Alfred Stepan, co authors of the book Problems of Democratic Transition and Consolidation argue that democracies can be considered *consolidated democracies* when democracy becomes internalised behaviourally, attitudinally and constitutionally.

Behaviourally, a democracy is consolidated when no significant national, social, economic, political or institutional actors spend significant resources attempting to achieve their objectives by creating a non-democratic regime or by seceding from the state. Attitudinally, a democracy is consolidated when a strong majority of public opinion, even in the midst of major economic problems and deep dissatisfaction with incumbents, holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life, and when support for anti-system alternatives is quite small or isolated from pro-democratic forces. Constitutionally, a democracy is consolidated when governmental and non-governmental forces alike become subject to, and habituated to, the resolution of conflict within the bounds of the specific laws, procedures and institutions sanctioned by the new democratic process.

Linz and Stepan elaborate their argument by referring to five specific conditions that ought to prevail before a democracy can be said to be consolidated. First, the conditions must exist for the development of a free and lively civil society. Civil society is defined as an arena of the polity where self-organising and relatively autonomous groups, movements and

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<sup>1</sup> Encarnacion, O.G, "Beyond Transitions: The Politics of Democratic Consolidation", **Comparative Politics**, Vol 32, No 4, July 2000.

<sup>2</sup> O'Donnell, G, "Illusions about Consolidation", **Journal of Democracy**, Vol 7, Pt4, 1996.

<sup>3</sup> Schmitter, P.C, "The Consolidation of Democracy and Representation of Social Groups", **American Behavioural Scientist**, Vol 35, 1992.

<sup>4</sup> Przeworski, A, Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America, Cambridge University Press, Cambridge, 1991, p23.

individuals attempt to articulate values, to create associations and to advance their interests. Second, there must be an autonomous political society. Political society refers to the arena in which political actors compete for the legitimate right to exercise control over public power and the state apparatus, its core institutions being, political parties, legislatures, elections, electoral rules, political leadership and inter-party alliances. Third, throughout the state all major political actors, especially the government and the state apparatus must be subjected to a rule of law that protects individual freedoms. The rule of law animated by a spirit of constitutionalism is crucial in ensuring that the elected government and the state administration are subject to transparency and accountability. Fourth there must be in place a state bureaucracy. To protect the rights of citizens and to deliver other basic services, a democratic government needs a functioning state bureaucracy. Fifth, there must exist an institutionalised economic society. Economic society is defined as a set of norms, regulations, policies and institutions that sustain a mixed economy. Linz and Stepan argue that democracies cannot be consolidated in command economies because a certain degree of market autonomy and ownership diversity is vital to produce an independent and lively civil society. Likewise, democracies cannot be consolidated where completely free market economies are in place. The main reason for this being that markets require legally enforced contracts, the issuance of money, regulated standards for weights and measures and the protection of public and private property. A democracy, in order to be sustainable, must produce policies that generate government mandated public goods in the areas of education, health and transportation it must also provide an economic safety net for its citizens and some alleviation of gross economic inequality.<sup>5</sup> Linz and Stepan are not the only theorists showing interest in democratic consolidation, it would seem that although a previously neglected field of study, democratic consolidation is beginning to take hold as a vital notion in democratisation.

A review of recent literature shows that various ideas on benchmarks for democratic consolidation are emerging. Gunther, Diamandourous and Puhle in their publication entitled The Politics of Democratic Consolidation: Southern Europe in Comparative Perspective<sup>6</sup> advance the view that democratic consolidation is complete when there has been an adoption of democratic institutions, processes and values by the political class and the masses. Mainwaring and Scully in their publication entitled Building Democratic Institutions: Party Systems in Latin America<sup>7</sup> stress the institutionalisation of political organisations in the party system as critical to democratic consolidation. Buchanan in a publication entitled State, Labour, Capital: Democratising Class Relations in the Southern Cone<sup>8</sup> emphasises the spheres of industrial and labour relations and economic policy making as crucial to democratic consolidation. Jelin and Hershberg in their publication entitled Constructing Democracy: Human Rights Citizenship and Society in Latin America<sup>9</sup> draw attention to issues of social rights and citizenship, they argue that democratic consolidation involves constructing new rules and institutions of political life and also extricating residues of the old regime. Morlino in a publication entitled Democracy between Consolidation and Crisis: Parties, Groups and Citizens in Southern Europe<sup>10</sup> makes an analysis of the political arena emphasising the relationships to civil society among the elite, parties, the state and interest associations.

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<sup>5</sup> Linz, J,J and Stepan, A, "Toward Consolidated Democracies", **Journal of Democracy**, April 1996.

<sup>6</sup> Baltimore, The John Hopkins University Press, 1995.

<sup>7</sup> Stanford, Stanford University Press, 1995.

<sup>8</sup> Pittsburgh, Pittsburgh University Press, 1995.

<sup>9</sup> Boulder, Westview Press, 1996.

<sup>10</sup> New York, Oxford University Press, 1998.

In spite of the divergences of the above works, their commonality is that they all explore beyond the oft-cited indicator for measuring the extent of democratic consolidation, Samuel Huntington's "two turn over test". Huntington contends that democracy becomes consolidated when an electoral regime is fully entrenched and capable of delivering free and competitive elections. He argues that there is consolidation if "the party or group that takes power in the initial election at the time of transition loses a subsequent election and turns over power to those election winners, and if those election winners then peacefully turn over power to the winners of a later election."<sup>11</sup> This measure of democratic consolidation has been criticised from many angles the most persuasive of which is Larry Diamond's contention that in many of the world's new democracies, competitive elections have not ensured liberty, responsiveness and the rule of law.<sup>12</sup> Richard Rose and Doh Chull Shin support this view pointing out that the primary priority of the World Movement for Democracy is "deepening democracy beyond its electoral form"<sup>13</sup> They argue that institutionalising electoral competition is not sufficient for the consolidation of democracy. This argument is widened with their contention that countries in the first wave of democratisation, initially became modern states<sup>14</sup>, establishing the rule of law and institutions of civil society before introducing universal suffrage. By contrast, third wave democracies have democratised backwards, introducing free elections before establishing such institutions as the rule of law and civil society. Rose and Shin refer to a minimalist definition of democracy as being the "fallacy of electoralism", that is, privileging elections over all other dimensions of democracy.

It has been observed that South Africa's first democratic election in 1994 was a major achievement. The achievement was hailed as remarkable in the light of the fact that there was no civil war and that democracy has not fared well on the African continent. It is probably for the latter reason that South Africa's democratic consolidation should be monitored. Michael Bratton and Nicholas Van der Walle point out that all across Africa, the signs of democratic gains are eroding. Either democratisation has been reversed as military forces have overthrown elected governments, or, democracies survive but elected rulers have lapsed back into manipulating political rules in order to consolidate their personal hold on power.<sup>15</sup> While it is unlikely in my opinion that either of these two conditions could emerge and prevail in South Africa, it is also unlikely that democracy will become entrenched without careful checks and balances. Already theorists are highlighting issues that constitute if not threats to our democracy then contradictions at least.

Courtney Jung and Ian Shapiro express concerns that there are no powerful actors to play the role of loyal opponents to the government and its policies. They point out that the reason for this is based on the fact that the political order that has been created is designed to

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<sup>11</sup> Huntington, S,P, The Third Wave: Democratisation in the Late Twentieth Century, Norman, University of Oklahoma Press, 1991, p267.

<sup>12</sup> Diamond, L, "Development, Democracy and Civil Society", Madrid, Institute Juan March, Working Paper, June 1996, p3.

<sup>13</sup> Rose, R and Shin, D.C, "Democratisation Backwards: The Problem of Third Wave Democracies", **British Journal of Political Science**, Vol 31, Pt 2, April 2001.

<sup>14</sup> Weber characterises the modern state as based on the rule of law and multiple institutions of civil society, a Rechtsstaat. Weber, M, The Theory of Social and Economic Organisation, Glencoe, Free Press, 1947, p274.

<sup>15</sup> Bratton, M and Van der Walle, N, Democratic Experiments in Africa, Cambridge University Press, Cambridge, 1997, Chpt 7.

involve every player of political consequence in government.<sup>16</sup> The view that a strong opposition is imperative in a democracy to act as “watch dog” over the ruling party and to provide an alternative for voters should they become disillusioned with their present government has been offered in the case of South Africa. It has been argued by Anthony Johnston that South Africa is a “party dominant democracy” and that the electoral dominance of one party contradicts the idea of a multi party democracy.<sup>17</sup> Steven Friedman however refutes the contention that South Africa is a “party dominant democracy”. He states that there are certain criteria for party dominance that the ANC fits but it still has a long way to go before it can fully establish dominance.<sup>18</sup>

In spite of reaching this conclusion Friedman makes some worrisome points. He claims that it would be reasonable to assume that the ANC is in the process of building a formidable presence in civil society that would inevitably buttress its rule. The worrying aspect of this is that ANC strategists sometimes do suggest that their cadres insert themselves into civil society formations so as to promote the ANC’s transformationist goals and agendas. The intentions may be honourable enough but the effects result in an associational life that becomes increasingly a political “transmission belt” for state policies. The outcome of this could be demoralising. Political organisations that attempt to absorb or co-ordinate civil society often destroy the participatory and voluntary spirit that constitutes its main source of strength. Friedman adds that while civil society may influence the quality of government, (an example cited by him is the fact that the press has greater leeway to report on corruption than it did in the past), it is in a limited capacity. This claim is all the more troublesome when read with reports of corruption in the state bureaucracy. Constanze Bauer warns that corruption in government administration is on the increase especially with regards bribery, favouritism and fraud.<sup>19</sup>

Jonathan Klaaren in a study of the separation of powers in South Africa, points out that although there is no higher law than the constitution, the President, that is the executive, still enjoys significant independent power (entrenched in the Constitution.) He can for example exercise powers such as procedural veto and appointment of the President and Deputy President of the Constitutional Court. Klaaren claims therefore that the process by which the Constitutional Court is constituted is firmly placed within the political branches and is “tilted towards the executive”.<sup>20</sup>

The question then arises whether or not the Constitutional Court makes its decisions without fear or favour. Several cases which have come before the court and which have political implications, are enlightening. One example is Premier Kwa Zulu- Natal and Others v President of the Republic of South Africa and Others, 1996. The applicants in this case argued that central governments amendments to the interim Constitution were unlawful in

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<sup>16</sup> Jung, C and Shapiro, I, “South Africa’s Negotiated Transition: Democracy, Opposition and the New Constitutional Order”, **Politics and Society**, 23, 1995.

<sup>17</sup> Johnston, A, “The 1999 Election and the Prospects of Consolidating Democracy in South Africa”, in Konrad- Adenauer- Stiftung Seminar Papers *Consolidating Democracy in South Africa*, 1999.

<sup>18</sup> Friedman, S, “No Easy Stroll to Dominance: Party Dominance, Opposition and Civil Society in South Africa”, in Giliomee, H and Simpkins, C (eds), *The Awkward Embrace, One Party Domination and Democracy*, Tafelburg, Cape Town, 1999.

<sup>19</sup> Bauer, C, “Crime Corruption and Democracy in South Africa”, in Konrad- Adenauer- Stiftung Seminar Papers, *Consolidating Democracy in South Africa*, 1999.

<sup>20</sup> Klaaren, J, “Structures of Government in the 1996 Constitution: Putting Democracy back into Human Rights”, **South African Journal on Human Rights**, 13, 1997.

that they failed to comply with a section in the Constitution which required that a province agree to amendments that affect it. The background to this case is relevant. The IFP has long enjoyed the support of rural chiefs and headmen and it is perceived that the reason for this is because as the party in control of the government of the former homeland, the IFP paid the salaries of the chiefs. When a Bill known as The Remuneration of Traditional Leaders Bill was rushed through parliament in 1995, the IFP- led government of Kwa Zulu- Natal threatened a Constitutional Court challenge to the legislation on the basis that the Council for Traditional Leaders, which had yet to be established, was required by the Constitution to be consulted before such a Bill could be passed. After receiving legal advice that such a challenge could succeed, President Mandela delayed signing the Bill. To circumvent the problem, a constitutional amendment allowing legislation to be passed without the abovementioned consultation until the establishment of the abovementioned Council was passed. The Court dismissed the applicant's argument ruling that the section cited by them applied only to an amendment that affected a particular province and not as was the case before them, where all provinces were affected. It is interesting to note that after the ruling, the Court served notice on parliament stating that while it would refrain from second guessing its decisions, there would be a check on constitutional amendments that went too far. In spite of this, however, Jeremy Sarkin makes the point that "As far as the activities in the provinces are concerned, the trend seems to be that the Court will give considerable latitude to the majority party."<sup>21</sup> Clearly the institutions that are in place to promote democracy need to be investigated in the light of cases such as these. One of these institutions is the Electoral Commission.

In August, *Another v Electoral Commission and Others*<sup>22</sup>, the Constitutional Court found that the Electoral Commission had denied prisoners their constitutionally protected right to register and vote. It subsequently ordered the Commission to make the necessary arrangements to enable the applicants (the prisoners) to vote. The respondents (the Electoral Commission) had argued that the prisoners had, because of their own actions, placed themselves in a position that made it difficult for them to register to vote as they were no longer in the place where they were "ordinarily resident", an express criterion for registration.

Linz and Stepan have noted that one of the most obvious obstacles to democratic consolidation is the danger posed by disappointed popular hopes for economic improvement in states undergoing simultaneous economic and political reform. It seems fair to argue that the majority of the population support democracy because they support the ANC and believe that it will bring about social change. Should socio- economic expectations not be met in South Africa, Linz and Stepan's behavioural and attitudinal requisites for consolidation could be jeopardised.

Allister Sparks points out that South Africa is making the transition from being a primary producing economy based on agriculture and mining to becoming an export driven economy based on manufactured goods. Coupled with this, it is now forced to compete in the global market place whereas before it had existed in an isolationist siege economy.<sup>23</sup>

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<sup>21</sup> Sarkin, J, "The Political Role of the South African Constitutional Court", **South African Law Journal**, 114, 1997.

<sup>22</sup> 1999 (4) BCLR 363 (CC).

<sup>23</sup> Sparks, A, "South Africa's Three in One Revolution", in Konrad- Adenauer- Stiftung Seminar Papers, *Consolidating Democracy in South Africa*, 1999.

This argument is developed further by Johnston. He believes that South Africa faces the global problem of reconciling democracy with the free market. He analyses the differences between early democracies, that is developed countries of the west, and late democracies such as South Africa. His findings are as follows.

Early democracies were made possible by increasing government activism, extending rights to industrial organisations and developing welfare legislation. Late democracies came at a time when the above consensus was at an end. Privatisation was on the increase, trade unions were having their rights curtailed and welfare budgets were being trimmed.

Johnston argues that this is the reason for the prevailing contradictions in South Africa's economic policy. To elucidate this claim he refers to questions of policy that are constantly posed such as: how much privatisation, how much regulation of labour markets, how much influence from COSATU etc. Indeed contradictory economic policy has been in the limelight with theorists arguing that the RDP should not have made way for GEAR as, where the former showed prospects for broadening social democracy, the latter was predicated on growth and attracting foreign investment.<sup>24</sup> The question then needs to be asked how South Africa is to address its economic situation. The right to adequate housing and health care is constitutionally guaranteed and cases claiming these rights have even come up before the Constitutional Court<sup>25</sup>. It is clear, then, that South Africa needs to reconcile globalisation's reduction of state power with enough state power to promote domestic stability and growth.

This brief overview of concerns raised by theorists underlines the need for a systematic analysis of democratic consolidation in South Africa. It will contribute to what Encarnacion terms 'the global empirical laboratory of democratic consolidation', joining studies of democracies in Africa, Asia, the former Soviet Union, southern Europe and Latin America.

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<sup>24</sup> Jozana, X, "Democratic Consolidation in South Africa; Weaknesses and Pitfalls", in Konrad-Adenauer- Stiftung Seminar Papers, *Consolidating Democracy in South Africa*, 1999.

<sup>25</sup> Grootboom v Oostenburg Municipality 2000 (3) BCLR 277(C) and Soobramony v Minister of Health Kwa Zulu- Natal 1998 (1) SA 765 (CC).

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