Challenges of Constitutionalism in Africa: Focus on Military Interventions in Three Countries in the 1990s.

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Abstract

The paper examines three military interventions in Sub-Saharan Africa which took place in the mid and late 1990s in Rwanda, the DRC and Lesotho. These interventions took place despite high expectations of international and regional peace on the part of most analysts after the collapse of cold war in 1989. However, interstate and intrastate conflicts re-emerged with more intensity than ever before, and sub-Saharan Africa proved to be no exception. The study sets out to analyse the constitutionality of these military interventions in Rwanda in 1990, the DRC in 1996-7, and the Lesotho intervention in 1998. In examining these interventions, the study investigates the role of national parliaments of these countries in facilitating these interventions. It also assesses the efforts of the national parliaments of intervening

countries in holding their political executive accountable and evaluates the constitutionality of these interventions.

Introduction

Military interventions played a crucial role in Rwandan, DRC and Lesotho intra-state conflicts in 1994, 1996-1997 and 1998. Realists like Morgenthau (1967), and Kenneth Waltz (1979) argue that, states which subscribe to realism, abide by international law only when it is not inconsistent with their quest for power and national security interests. If these laws are seen to be in conflict with their power interests, they violate them. This violation is also extended to their internal constitutions when they are regarded as being limiting or threatening to the augmentation and preservation of their power interests. This paper analyses the extent to which the intervening countries subscribed to or violated their own constitutions before and during their interventions in Rwanda, the DRC and Lesotho intrastate conflicts.

The constitutionality of the interventions and the effectiveness of the parliaments of intervening states in facilitating them will also be evaluated. This is crucial because the military, as the coercive institution of the state, cannot be left to generals and presidents alone. The former French Prime Minister, Georges Clemenceau, put this point succinctly: "War is a much too serious matter to be trusted to the military" (Tshitereke 2004: 72). on their own. This statement presupposes that, while other state institutions are equally important, the security of the state is even more critical and, like other state institutions, it should not escape public scrutiny. Therefore, the;

> *"defence and security is such a vital area of public policy both in terms of its subject matter (war) and in terms of the proportion of public expenditure that it cannot and should not be left to the Executive alone. It is also a vital area of concern in terms of regulating civil-military relations and in finding a*

> *balance between the military security of the territory/state and the socio-economic security of the citizens. The challenge to Parliament is how to balance this equation not only as the elected watch dog over public policy but also as the ultimate authority over the public purse" (Mwesiga 2004:36).*

It is imperative that the civilian leadership, and most importantly parliament, must be closely involved in security matters. The parliamentary oversight and scrutiny of the military is, therefore, critical in any state. It is also important to note that Uganda during its 1990 intervention in Rwanda did not have a constitution in place, while the Burundian and Rwandan constitutions were also in suspension or going through a process of redrafting, pending adoption by referendum.

The concept of constitutionalism limits the arbitrariness of political power. While the concept recognises the necessity of government, it also insists upon limitations placed upon its powers. In essence, constitutionalism is an antithesis of arbitrary rule. Its opposite is dictatorial government, the government of will instead of law or rather undemocratic government, which is not accountable to its constituents. Constitution, therefore, is "a formal document having the force of law, by which a society organises a government for itself, defines and limits its powers, and prescribes the relations of its various organs inter se, and with the citizens" (Nwabueze1973: 2). Conversely, the Constitution can also be used for other purposes rather than as a restraint to governmental powers. It is also in this perspective that the paper will evaluate the constitutionality of these interventions.

The Constitution as a Rule-Binding Instrument

For parliaments to function effectively and efficiently, they must operate within a constitutional framework because "constitutions are especially important in determining the territorial distribution of powers within the state"(Hague, *et al*,1993:261). Similarly, John Locke argues that, "The first and fundamental positive law of all Commonwealth is the establishing of the legislative power; as the first and fundamental natural law, which is to govern even the legislative itself, is the preservation of the society, and of every person in it" (Locke1991: 355-6). The importance of constitutions in this regard cannot be overemphasised because even "authoritarian and repressive regimes rarely dispense with constitutional appearances completely; constitutions are part of this tribute that vice plays to virtue" (Locke1991: 262). This is because constitutions set the rules and powers of the governors and the rules of the political game (Watson1989:pp.51-64, Lijphart1984).

David Beetham opines that, for power to be legitimate, it should not only be based on the three Weberian principles of traditional, legal rational and charismatic authority, but "it must conform to established rules"(Beetham 1991:16, Schwarzmantel 1994:16). Therefore, constitution forms the crucial aspect, in this case as a rule-binding instrument. This implies that all the intervening countries were rule bound to subscribe to their constitutions, whether they liked it or not. In exercising their power, states have to respect constitutional rules and, therefore, not act in an arbitrary manner.

Holmes argues that constitution, as a higher law, "is a device for limiting the power of government…it disempowers short-sighted majorities in the name of binding norms"(Holmes 1995:135). Hague sees it as a "state code in which the powers of, and relationships between, institutions are specified in considerable detail"(Hague et al 1993:262). Most of the intervening countries

had constitutions, which regulate the behaviour between public authorities and their citizens(Plotke2000:1-7).

The Role of Legislatures

Legislatures are the most important organ of the state. Locke contends that "the legislative power is that which has a right to direct how the force of the Commonwealth shall be implored for preserving the community and the members of it" (Locke1991: 364). The legislature is the law making body where government policies are discussed and assessed (Read1993). The political history of legislatures inform us that "the roots of the name of the first modern legislature, the British Parliament, suggest this crucial function, the French word 'parlez' means 'to talk'"(Danzinger 1998: 132). Apart from discussing and assessing policies, legislatures enact legislation, oversee the national/political Executive, and represent the citizenry. Therefore, "the roots of the word legislature itself are the Latin words *legis*, meaning 'law', and *latio*, 'bringing or proposing'" (Danzinger 1998: 132). In contemporary society this role has been taken over by the Executive in most political systems. However, this does not mean that the central role of enacting legislation has been removed from this body. Legislatures still make laws in most political systems. In many of these polities, laws are similarly initiated and drafted by this body.

The legislature is a representative body of the citizenry (Birch 1993, Hague 1993,:292,Lijphard2000). The concept of representation is not a straightforward one, since it has four conceptual meanings of interests that a parliamentarian must strive to represent, namely:

a) the group that forms his constituency, which may be a social class or religious group;

b) the country as a whole, "whose broad interests might transcend those of any group or party; or the legislator's own conscience which provides moral and intellectual judgement about appropriate political behaviour" (Danzinger 1998:133, Hague *et al*, 1993:292).
c) the political party to which a parliamentarian owes loyalty; and
d) the most important function of a legislator is to represent the interests of the governed.

In most states, it is possible for a legislator to represent these four conceptions without a deeper conflict in dealing with the problem of representation. However, in some cases legislatures seemed to lack choices, mostly in undemocratic states and democratic one-party dominant states, like Uganda, Namibia and Zimbabwe. The common characteristics of these states are their diminished independence of the legislators' role. The legislators under these conditions, "where their actions are dictated by the political leadership, act as little more than 'rubber stamps'. This position would probably characterise the behaviour of a legislator in Cuba or Zimbabwe"(Danzinger 1998:133).

The role of legislators in the countries that were involved in intrastate conflicts in Rwanda, the DRC and Lesotho were characteristic of the above description. In democratic states like South Africa, Namibia, Zimbabwe and Botswana, legislators are required to follow the party line. They have to conduct themselves in this manner or else they risk being de-selected come the next election. The legislator who desires to survive politically is confronted with this difficult choice. This constraint has incapacitated the oversight role of legislatures where the Executive is too strong and dominates the whole parliament (Thandi 2004).

Oversight of the Executive

The other important function of the legislator is to oversee the actions of the political Executive. While political systems vary in different respects, in some cases, legislators may exert considerable influence on the actions of the Executive. This may be in relation to Executive actions, confirming members of the Cabinet, electing the Executive, authorising major policy discourse of the Executive or approve the Executive choices of individual members of Cabinet and other key appointments. Similarly, the legislative oversight, "involves the right of the Legislature to scrutinise Executive performance. In many political systems, there are regular procedures by which the legislative body can question and even investigate whether the Executive has acted properly in its implementation of public policies"(Danzinger 1998:134).

Parliament has the last word on both the defence and security policies of the state. It is parliament, which has the power to review these policies as it wishes and hold the Executive accountable for their implementation and for the development and deployment of the military both within and outside the state's borders. Similarly, and consistent, with the above perception, parliament performs the unique constitutional function of providing authorisation of security and defence expenditure. It scrutinises the operations of the military and also declares "states of emergency and [the] state of war. The state is the only organisation in society with [a] legitimate monopoly of force. This is delegated to the military and the military must therefore be accountable to the democratic legitimate authority"(Slaa 2004:26). As an instrument of foreign policy, the military should conduct its activities within the confines of the nation state, hence the reason that the parliament must sanction its activities.

The end of the Cold War has brought into currency the conscious aspect of the protection of human rights. The issue of human rights has become an essential requirement for

democratisation and good government. This conditionality has equally elevated the role of parliament more than ever to ensure their protection. Inevitably, this has made parliamentary oversight over the security apparatus of the state even more important to ensure that the military desist from acts, which violate human rights. The fact of the matter is that, there must be sufficient controls over the military, otherwise the institution will degenerate. It is important that parliaments ensure the existence of these controls, which will be strong enough to legitimise the operations of the military and prevent the degeneration of the service.

It is necessary for parliament to oversee the operations of the military and the Executive. This stems from the fact that parliament has a constitutional duty to enact legislation that governs the defence and security services of the state. It is within these laws that mechanisms for budgetary control of the military, accountability and transparency are built. Parliaments in their oversight function also have a legislative role regarding activities of the state security sector and other sectors. The legislative review of the Executive abuse or misuse of power in areas such as the deployment of the military without legislative sanction, is important in two ways. As Bentham wrote:

> *"...firstly, legislators can halt Executive abuses and or poor decisions, the country is likely to be better off, since resources, both human and material, consequently will not be squandered on inappropriate missions. Secondly, even when the legislature is not sufficiently powerful to reverse decisions of the Commander-in-chief, legislative review can be beneficial. By publicizing instances of Executive abuses and/or poor judgment, the legislature effectively limits the power of the Executive"(Bentham 2000, The Constitution of the Republic of South Africa1996).*

Ensuring that the military does not overstep its mandates and violate civil rights has become a public as well as a parliamentary issue. The concept of oversight presupposes the existence of a democratic government with a democratic constitution. It also entails the concept of separation of powers between the Executive, judiciary and legislature. This would mean that all institutions of the state must be policed, most importantly by parliament, which is composed of democratically elected members of society serving as gatekeepers for national interests.

The activities of the military must be monitored and parliament, as the supreme body, must stamp its authority onto defence policy. Structural relationships between the government and armed forces are important in any country in building a political culture that determines the parliamentary control over the military. In order to perform this task, parliament must ensure the existence of structural relations between government and the military. Baregu writes:

> *"...it is imperative to note that the extent and effectiveness of Parliamentary oversight over defence and security matters in any country will depend mainly on the structural relationship that exists between the armed or defence forces and the government. All governments have such relations with their militaries"(Mwesiga 2004.37).*

These structural relationships are formal in the sense that they have been spelled out in national constitutions, and are informal in the sense that they are embedded in the political culture of the country concerned.

Executive Accountability

Schedler argues that political accountability primarily denotes "two basic connotations: answerability, the obligation of public officials to inform about and to explain what they are doing; and enforcement, the capacity of accounting agencies to impose sanctions on power holders who have violated their public duties"(Andreas1999: 14). He argues further that this definition embraces monitoring, checks, control, oversight, restraint, public exposure and punishment that may be imposed on the public official for violation of these rules. In essence, to account means to justify your actions or policies (Read1993: 70). In fact, "the word 'executive' comes from the latin *ex sequi*, meaning 'to follow out' or 'to carry out'"(Danzinger1998: 140). The Executive is expected to explain before parliament how it arrives at certain budgetary figures. It has to account for how it intends to implement its financial policy or for how it has overspent the budget allocated by parliament (Wilson1993). Parliament makes defence policy and approves the budget. This means that it can also concur with the Executive, alter, cancel or refuse to approve the budget. The budget is one of the most effective implements of civil control over the military (Ngoma2004), if not the most insightful method that parliament can use to hold the Executive to account.

Apart from its major role of supervising the state administration, the primary role of the Executive is "to carry out the state's policies, laws or directives"(Danzinger 1998: 140). For that reason, the Executive manages the external relations of the state. In managing foreign affairs, the Executive also manages the military. Therefore, "given the state's monopoly of the legitimate use of force, the military (including internal security forces) is an area over which the top political Executive usually has direct control"(Danzinger1998: 143). The Chief Executive is always regarded as the Commander-in-Chief of the entire military establishment. Therefore, he or she sets policies, supervises the military organisation and utilises military capabilities. This task

carries the most severe consequences for the security establishment and the well-being of the state at large. It is the legitimate duty of the legislature to scrutinise the Executive and hold it accountable. It is therefore important to examine the extent to which the parliaments of the intervening states held their Executives accountable for these interventions.

The Role of the Parliaments of Intervening Countries

In any democracy the Executive is held accountable by the body politic/legislature. It is the legislature that scrutinises the Executive's actions/ and decisions regarding military interventions. The principle of accountability stems from the citizens represented in the legislature. Without Executive accountability, citizens' rights are in truth merely promises (De Tocqueville1988, Locke1980). Unlike other intervening countries, which had constitutions, at the time of their (Angola, Botswana, Namibia, South Africa, Uganda and Zimbabwe) intervention in the DRC, Burundi and Rwanda did not. The other countries' constitutions embraced these rights that are safeguarded by the legislature through the principle of Executive accountability.

The Ugandan Government

The government of Uganda was made up of a guerrilla movement, which came into being in the early 1980s under the leadership of Yoweri Kagata Museveni's (Reilly2000) National Resistance Movement (NRM), which deposed "the military government of General Tito Okello Lutwa on 26th January 1986"(Reilly2000: 38). The movement system of government, as the NRM is usually referred to, forbade political parties from mobilising for office and performing other legitimate party activities during the period of their intervention. The movement system of government is a one-party system that serves as "a vehicle for the nation's leader or a device for distributing patronage"(Hague *et al*, 1993:250, Nnoli1986) This unorthodox system was adopted in an effort to

remedy intense factional fighting which had bedevilled Uganda since independence, and its concomitant abuse of power (Reilly2000). The proponents of the Ugandan movement system observe that it has ensured that the government remains accountable to the Ugandan polity rather than to narrow sectional interests of various Ugandan ethnic groups (The Ugandan Monitor1999). Uganda has a unicameral government with numerous methods of electing representative to the legislature (The Constitution of the Republic of Uganda, 1995).

The 1995 Constitution of Uganda requires at least two-thirds of a parliamentary vote in order to declare war. The Ugandan decision to intervene in the DRC was made by "the President himself, after consultation with only a few close military advisers. Apparently, neither important civilian advisers nor the parliament were consulted before the decision was taken, as is required by the Ugandan Constitution"(Clark2001: 262-3). In fact, there is little evidence to suggest that even the Presidential Cabinet and other interest groups were involved. Museveni's government did not follow its constitution's requirements when Uganda intervened in the DRC in both 1996-7 and 1998. Museveni appeared to have violated both the letter and spirit of the Ugandan Constitution. He was not given a mandate by the legislature to deploy troops outside Uganda. His decision to intervene in both Rwanda and the DRC seems to have been unconstitutional because "the deployment of Ugandan Peoples Defence Force (UPDF) outside Uganda without parliamentary approval was unconstitutional, and parliamentarians for the most part failed to adequately respond to public criticism of Ugandan role in the DRC"(Clark 2001:49).

The Ugandan Parliament, in the same light, is empowered to make laws regulating the activities of the UPDF, especially providing for "the deployment of troops outside Uganda"(Mugunga1999). Therefore, the Executive decision to deploy troops in the DRC could be viewed as not only a violation of the UN Charter but also of the Ugandan Constitution. Since the

deployment of troops was neither approved of nor forbidden by the Ugandan Parliament, it seemed that the Commander-in-Chief acted unilaterally and unconstitutionally by deploying these troops in the DRC. President Museveni also appears not have appraised the Ugandan Parliament about the UPDF's operations in the DRC or outside the Ugandan territory, as required by the Ugandan Constitution. His violation of the Ugandan Constitution was even more pronounced in August 1998:

> *"…when the Forces Arme'es Congalaises (FAC) began their insurrection against Kabila's rule, Museveni was similarly circumspect with Parliament about Ugandan involvement. After Ugandan spokesmen were first silent about any UPDF role in the DRC. Second Deputy Prime Minister Eriya Kategaya announced in late August that the UPDF was indeed operating just over the border within the DRC, ostensibly to pre-empt Allied democratic Forces (ADF) attacks into western Uganda"(Onyango-Obbo 2004).*

Immediately after the above admission by the Deputy Prime Minister, it was also reported that the UPDF was operating deep inside the DRC in places like Kisangani. Ordering the deployment of Ugandan Forces outside Ugandan territory without appraising Parliament in this way was another clear violation of the Ugandan Constitution by the President.

> *When Museveni eventually appeared before the Ugandan Parliament in mid-September 1998, he was unrepentant. When making his carefully planned appearance Museveni did not seek approval for his decision from Parliament: instead, he "launched into a tirade which included calling MPs who demanded dialogue 'collaborators', and the Hutus who comprised*

> *much of the DRC's eastern forces 'barbarians'"(Onyango-Obbo 2004).*

From this time on, Museveni avoided MPs in debating Ugandan involvement in the DRC intervention. Museveni's apparent disrespect of the Ugandan Constitution appears to be a carryover from his guerrilla background. He believed in unilateralism rather than bilateral or multilateral negotiations. Lark argues that, most important:

> *"one observes a casual attitude towards the rule of law, as in Museveni's despatch of the UPDF to Congo without an enabling law from the Parliament, as specified in the Constitution. In Uganda today, it is actually the military High Command that takes real decisions related to security, and not the Cabinet of President Museveni"(Clark 2001:274).*

It would seem that Museveni bypassed the Ugandan Parliament because it was not going to help his cause: solving African conflicts by military means. This practice is a direct violation of Article 210 of the 1995 Ugandan Constitution, which argues that "Parliament shall make laws regulating the Uganda People's Defence Force, in particular for… (d) the deployment of troops outside Uganda"(The Constitution of the Republic of Uganda1995). Nevertheless, no such law existed at the time of the UPDF deployment in Rwanda in 1990. However, Article 210 was never put to operation during the Ugandan intervention in the DRC.

Similarly, Ugandan "Parliamentarians have generally failed in their duty to check Executive abuses. The list of MPs who regularly denounce Uganda's involvement in the DRC was very short" (Reilly2000:pp.51-52). Most MPs seemed to display a lack of bravery in holding the Executive to account. The striking exception in this regard was a motion tabled by the MP from

Samia Bogwe North, Aggrey Awori, in relation to UPDF deployment in the DRC. It called for, inter alia:

> *"…a judicial inquiry into 'current UPDF operations in DRC', including a look at the 'justification, legality and cost' of UPDF involvement, as well as a requirement that the UPDF leave the DRC within 90 days. While Awori claimed to have 28 signatures in total, only six MPs allowed their names to go on the copy presented to the Speaker, Francis Ayume. Upon receiving the motion, Ayume requested that Awori delay moving it; Awori alleged that Ayume needed the time in order to seek guidance from Museveni"(Reilly2000:52).*

Despite Awori's allegations, this was an apparent demonstration of the Ugandan Parliament's inactiveness in holding the Executive to account. It can, therefore, be argued that the Ugandan Parliament proved very reluctant to conduct its parliamentary duty. For instance, the deficient legislative review appears to have been exacerbated by the dominance of the ruling party in Uganda. The Executive Parliamentary dominance on legislative affairs has made accountability extremely difficult. These events have weakened the principle of legislative oversight of the Executive and Executive accountability in Uganda. Museveni appears to have succeeded in illegally bypassing Parliament when deploying the UPDF in the DRC. In addition, the Ugandan Parliament proved inadequate in employing serious efforts of holding Museveni accountable for the UPDF deployment in DRC and Rwanda.

The Namibian Government

In Namibia, the parliamentary oversight function is enshrined in the Namibian Constitution. Article 119(2) stipulates that "the President shall be the Commander-in-Chief of the Defence Force

and shall have all the powers and exercise all the functions necessary for that purpose"(The Constitution of the Republic of Namibia 2000: 60). In other words, the Namibian President can deploy the Namibia army as he or she determines. Article 32(f) argues further that the President has the power to "declare martial law or, if it is necessary for the defence of the nation, declare that a state of national defence exists: provided that this power shall be exercised subject to the terms of Article 26(7) hereof" "(The Constitution of the Republic of Namibia 2000: 60). The President can also declare war euphemistically, known as a 'state of national defence', if he thinks that such conditions pertain in Namibia. He or she has been given considerable latitude to decide when to declare a state of national defence and is the sole decision maker in this regard. Nevertheless, in performing these important functions, the President must adhere strictly to Article 26(7) of the Namibian Constitution, which states that:

> *"The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia: provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-thirds majority of all the members of the National Assembly"(The Constitution of the Republic of Namibia 2000:18-19).*

This constitutional directive was, nevertheless, not adhered to. The Namibian intervention in the DRC conflict could only be consistent with the declaration of martial law only if the DRC was at war with it, which was not the case in this DRC intervention. This violation could be apportioned to what Tapscott (2005). claims to be a failure of substantive parliamentary democracy in Namibia. This violation of the Namibian Constitution appears to have been influenced by the friendship cultivated during the

struggle days between the Laurent Kabila and Sam Nujoma. Close ties developed between them during the early 1970s when SWAPO had its military bases in Tanzania. Like Zimbabwe, Namibia has no common border with the DRC and there was thus no immediate security threat to Namibian security. It was rather on the basis of the friendship between Nujoma and Kabila that the Namibian leader ordered the deployment of his troops in the DRC, in order to assist his friend. This deployment was done without consultation with the Namibian Parliament.

Despite noises made by the opposition parties in Namibia, the above constitutional resolution was never passed in parliament. Nonetheless, the Namibian Constitution remains vague regarding the proclamation of a state of national defence. The fact of the matter was that the Namibia intervention in the DRC did not necessitate the above declaration since the DRC was not at war with Namibia.

In defending his actions, President Nujoma argued that, as Commander-in-Chief of the Namibian forces, he took a conscious decision, being fully aware of its consequences, which had "inherent dangers and problems including the death of Namibian troops. It was an honourable act of enlightened self-interests. The very worst was in store for us"(Tapscott,2005). What was more perplexing for most people was that the Namibian people were not initially told about the intervention in the DRC. Most were shocked by the DRC intervention and were completely unaware of the circumstances that led to it. Namibia's legislators and the people at large were angry about the lack of consultation prior to intervention (Foreign military intervention 2004).

The constitutional requirement for the President's proclamation of a state of national defence was not carried out. The question of why the country was at war in the DRC was not answered by the Executive but rather by the Zimbabwean government, which said that both Namibian and Zimbabwean forces were in the DRC to

assist Kabila's regime. Furthermore, on the "Focus on Africa: BBC World Programme", President Kabila agreed that he was being assisted by Namibian troops. It was only after several denials that Nujoma "finally admitted on Heroes Day that Namibian troops were indeed fighting in the DRC on the side of President Kabila"(Namibia2004).

The presidential announcement was not constitutional. For example, it was not accompanied by any parliamentary resolution. Similarly, it was not made in accordance with Article 26(7) of the Namibian Constitution. It was clear that the intervention by Namibian troops violated the constitution. The President did not declare a state of national defence, since this state of affairs pertains only when the country is involved at war with another country (The Constitution of the Republic of Namibia 2000). As such, he could not even declare martial law.

Namibian opposition parties were furious that their President and Commander-in-Chief of the armed forces unilaterally deployed troops in the DRC without consulting either his Prime Minister or his Cabinet (Namibia 2004). What infuriated them was the utter silence from the President in relation to the Namibian involvement in the DRC. They argued further that the government could have at least convened a special session of Parliament so that this matter was subjected to democratic debate "and scrutiny, instead of what appears to have been a personal decision on the part of President Nujoma"(Namibia 2004).
The Namibian President, instead of addressing Parliament on this matter, decided to address his party's Central Committee, thus, denying the legislature its legitimate right to hold him accountable for this constitutional breach. Furthermore, as in most one-party dominant democracies, Members of Parliament from the ruling party seemed to have neglected their responsibility of holding the Executive to account before parliament. They did not push for debates relating to this issue and elected to discuss other matters not associated with the intervention, while the Executive continued

to violate the Namibian Constitution. The failure of the Namibian Parliament to use its tools for checking the Executive was more apparent when the House could not even pass a motion or resolution regarding the intervention in the DRC.

The Government of Angola

Unlike most undemocratic states, Angola has its own constitution and parliament. The Angolan Constitution, like most constitutions of the intervening countries, recognises the President in Article 56(1) as the Commander-in-Chief of the country's forces. It puts the President at the helm of power as its head of state, which in position he **"**symbolizes national unity, represents the nation domestically and internationally, ensures compliance with the Constitutional Law, and shall be Commander-in-Chief of the Angolan Armed Forces"(Constitutional Law of the Republic of Angola August 1992). The President is also empowered to declare war and a state of emergency among some of his or her elaborate powers. In explaining the presidential powers, Article 66 with its various sub-sections, argues that:

> *"The President of the Republic shall have the following powers; (p) To declare war and make peace, after hearing the Government and following authorization by the National Assembly; (r) To declare a state of siege or state of emergency, in accordance with the law.(Constitutional Law of the Republic of Angola August 1992).*

This means that constitutionally, the President may declare war after being authorised to do so by the National Assembly. In addition, he can declare a state of siege following the same procedures in Article 66(p) and (r). The President's capacity to make a unilateral declaration of war is therefore severely curtailed by the Angolan Parliament in this regard. This position is further strengthened by Article 67(1), which stipulates that:

> *"The President of the Republic, after consultation with the Prime Minister and the President of the National Assembly shall take appropriate measures whenever the institutions of the Republic, the independence of the nation, territorial integrity or the fulfilment of international commitments are seriously and immediately threatened and the regular activity of Constitutional public office interrupted"(Constitutional Law of the Republic of Angola August 1992).*

The Angolan Constitution, therefore, forces the President to consult and not act unilaterally concerning military deployment outside the country. The Council of the Republic is mandated by Article 75(1), (c) to "…state its views on the declaration of war and making of peace"(Constitutional Law of the Republic of Angola August 1992). The President must thus also allow the Council to air its views before any declaration of war is made. Only after this process has been undertaken would a declaration of war be legitimate. The Angolan Parliament and the Council have the right to hold the Executive to account before any declaration of war or state of emergency is declared.

The government of Angola, nonetheless, intervened in both the Congo-Brazzaville and the DRC without soliciting the views of the above bodies. This was despite several calls from parliamentarians, mostly the leader of the opposition. After intense lobbying, the government of Angola was forced by parliamentarians to agree to participate in parliamentary debates relating to Angola's military interventions in the two neighbouring Congos (the DRC and Congo-Brazzaville). During the debate the Angolan government's Minister of the Interior, Fernando da Piedade Dias dos Santos "Nando", told the members of parliament that:

> *"…military intervention by the Angolan Armed Forces (FAA) in those countries was prompted by state reasons and imperatives of national security. Nando explained that such an action occurred in response to continued destabilization of Angola through direct and indirect aggressions carried out by the two countries"(Angola Parliament pursues debates on troops in DRC 2004).*

This military intervention was against the spirit of the Angolan Constitution. In It was also apparent that the Executive did not inform Parliament when it took the drastic decision of intervening in both the DRC and Congo-Brazzaville. The Angolan Constitution was therefore violated by the Executive. The leader of the opposition *Partido Renovador Social* (PRS), Lindo Bernardo Tito, initially argued that "the military intervention of Angola in the Congos was illegitimate and unconstitutional"(Angola Parliament pursues debates on troops in DRC 2004). The debates, which were driven by the PRS, were a result of an overt Executive intention not to account before the Angolan Parliament about these interventions. The Angolan legislature made great strides in holding the Executive to account for its interventions, unlike other intervening countries. Nevertheless, the dominance of the ruling party in the Angolan Parliament allowed the Executive to escape thorough scrutiny despite having intervened in both Congos unconstitutionally.

The Government of Zimbabwe

The intervention of Zimbabwe in the DRC was also not sanctioned by the country's legislature or its constitution. According to the Zimbabwean Constitution, Chapter IV section 27(1): "There shall be a President who shall be head of State and Head of Government and Commander-in-Chief of the Defence Forces"(The Constitution of Zimbabwe1996). This Constitution was published as a Schedule

to the Zimbabwe Order 1979. In Chapter X, which deals with the defence forces in Section 96(2), the Zimbabwean Constitution argues that the Commander-in-Chief shall make determinations for the defence of Zimbabwe. "The supreme command of the Defence Forces shall vest in the President as Commander-in-Chief and, in the exercise of his functions as such, the President shall have power to determine the operational use of the Defence Forces" (The Constitution of Zimbabwe1996).

The Zimbabwean Constitution has thus given the President leeway to use the military as he pleases. In exercising his powers, he still has to consult the Cabinet and parliament. Nothing prevents Parliament from being involved or demanding the tabling of motions regarding decisions to intervene in other countries. The Zimbabwean Constitution argues that the President shall have such powers as are conferred upon him by it. Furthermore, an Act of Parliament or other law or convention in the same spirit shall confer power on him/her, which shall be made subject to any provision made by Parliament. In addition to this power the President has such prerogative powers as were exercisable before the appointed day. Furthermore, section (4) without prejudice to the generality of subsection (3), stipulates that:

> *"The President shall have power, subject to the provisions of this Constitution – (c) to proclaim and to terminate martial law; and (d) to declare war and to make peace; and (5) In the exercise of his functions the President shall act on the advice of the Cabinet, except in cases where he is required by this Constitution or any other law to act on the advice of any other person or authority…(6) Nothing in this section shall prevent Parliament from conferring or imposing functions on persons or authorities other than the President" (The Constitution of Zimbabwe1996).*

This means that even though the President has been conceded considerable discretion in carrying out his functions, he is still accountable to parliament. The decision to send 2,000 more troops into the DRC in October 1998 was believed to have been taken outside both the Cabinet and parliament (Good2002: 19). According to Hartnack (*Business Day*, 30th October 1998): "This major decision was taken by President Mugabe alone, without consultation with either parliament or his cabinet. More than half the members of the 54-strong cabinet were believed soon after to have voiced their opposition to the war" (Good2002: 19). It was inconceivable how the war would be funded. For some years before 1998, Zimbabwean finances were alleged to have been run from State House. This practice have made it difficult for the parliament to hold the Executive to account for funds destined for the military incursion and also for the intervention itself, which was conducted in complete violation of the Zimbabwean Constitution.

Kenneth Good is of the opinion that the DRC operation was conducted with so much secrecy that dead and wounded soldiers were even flown back at night. Parliament was completely in the dark about the cost of war because of this secrecy. The President's decision to intervene in the DRC without prior consultation with parliament, the Cabinet or his party's Central Committee, shocked most Zimbabweans. Horace Campbell submits that:

> *" there was no debate in the Zimbabwean Parliament. Under section 98 of the Constitution, ZNA forces were to be used only for the defence of Zimbabwe. There were no public discussions on the costs to the Zimbabwean society or whether Zimbabwe could sustain an army in a country as large as Western Europe" Campbell 2003:26).*

This unparliamentary action by the President motivated civil society, including the churches, trade unions and human rights

groups, to mobile against it. Morgan Tsvangirai, who chaired the task force of the Zimbabwean Congress of Trade Unions, led these groups. According to local opinion polls, over 70% Zimbabweans were against the war. The Zimbabwean legislators were furious with the Executive for deploying troops in the DRC without consultation with parliament. The failure for the Executive to convene a special session of parliament to discuss the DRC intervention was seen as the greatest violation of the Zimbabwean Constitution. Parliamentarians were worried about the increasing costs of the intervention, for which the government continued to use a budget that was not passed by Parliament.

The opposition voices demanding an Executive explanation to parliament were ignored. The ruling party, which dominated Parliament, was not in concurrence with the opposition to hold the Executive to account. Parliament's apparent inability to hold Mugabe to account was pervasive. Only two Zanu-PF members to play this role; one member was a woman while the other was a retired army general, Solomon Mujuru (Machipisa2004).[1] It can also be argued that the retired member of the governing party had nothing to lose by criticising the Executive. He feared no de-selection at the next elections because he was already retired. As for the other Member of Parliament, she was not taken seriously by a Zanu-PF politburo since she was a minority of the minorities in this male-dominated party. Nonetheless, their criticism was supported by business people, the NGOs and Zimbabwean people in general.

[1]The retired army chief, General, openly challenged Mugabe about the wisdom of sending Zimbabwean soldiers to the DRC during a recent politburo meeting of the ruling party. Other party members also were unhappy about the move. "We are very bitter about the decision to send our soldiers to Congo," said Mavis Chidzonga, a ruling party member of parliament. "We can't go to war to support a country that never lifted a finger when we were fighting for our liberation." "In Zimbabwe, people are suffering, dying from hunger, there are no roads, no clean water, but we can afford to fund a war in Congo. We are very bitter about it," added Chidzonga. "Where is the money coming from?," she asked.

Global Witness, a British-based NGO, in its quest to make the voices of ordinary Zimbabweans heard, argued that the Zimbabwean government should unilaterally withdraw from the SOCEBO logging deal because this action was inconsistent with peace efforts. This NGO went further to demand that the Zimbabwean Parliament should condemn the corporate ambitions of the ruling party because some of them militated against peace initiatives in the DRC and were detrimental to regional peace efforts (Branching out2004).

The Zanu-PF-dominated parliament could not hold the Executive to account for the intervention. Among the opposition parties in the Zimbabwean Parliament, the Movement for Democratic Change (MDC) had only three seats while Reverent Ndabanigi Sithole of ZANU had only two seats, out of total of 120 elected members of the legislature. The lone voices of the opposition were not heard by their counterparts on government benches. While opposition parties did not agree on several issues at the time of the intervention in the DRC, they were united on Mugabe's military intervention in the DRC (Gamal 1996).

Despite the glaring constitutional breaches by the Zimbabwean Executive and the lone oppositional voices of Zanu-PF members and members of the opposition, the Zimbabwean Parliament was unsuccessful in holding the Executive accountable for this intervention. The governing party disabled the ability of parliament to hold its Executive to account for its deeds. Therefore, important constitutional questions could not be asked. Once again, parliament could not uphold the principle of Executive accountability though it had sufficient tools to do so.

The South African Government

In South Africa, the dawn of constitutionalism and democratisation in 1994 ushered in a period of high expectations for accountable governance, not only within the SADC but also throughout Africa as a whole. Conversely, instability in the SADC region and Africa militated against this goal. This was characterised by the South African intervention in Lesotho.

After the release of Nelson Mandela and the first democratic elections in April 1994, South Africa joined the list of democratic countries in the world. The country adopted a new constitution on the 8th May 1996, which provided for election of the nation's Chief Executive, the President, to the National Assembly. The Constitution names the President as the Commander-in-Chief of South African National defence Force (SANDF) and obliges him to be accountable to the South African Parliament for any action he takes in this capacity (The Constitution of the Republic of South Africa1996).

The South African Constitution gives the President more flexibility when it comes to the declaration of war, or what is known as the 'state of national defence'. According to the Constitution, only the State President can declare war or a state of national defence. He is the sole official who can deploy the SANDF for this purpose. Chapter 11 of the Constitution, which deals with defence, is more idealistic in content. Section 200(2) evokes the UN Charter's Article 2(4), which prohibits the threat or use of force. It argues that the SANDF should protect the Constitution of South Africa and its territorial integrity in accordance with the principles of international law. This means that the functions of the defence force are circumscribed by the principle of just war theory as discussed in international law. These instruments therefore fall within the UN Charter, which regulates the unilateral use of force. This shows that the South African intervention in Lesotho, like that of Uganda in Rwanda and those

of the three SADC countries in the DRC, was inconsistent with the South African Constitution and therefore fell outside this international framework.

According to Section 201(2), the South African Constitution empowers the President to deploy the SANDF in co-operation with the police in fulfilment of defending the country or carrying out its international obligations. The Constitution nevertheless mandates the President in accordance with section 201(3) to inform parliament promptly, when carrying out the above functions, of:

a) The reasons for the employment of the defence force;
b) Any place where the force is being employed;
c) The number of people involved; and
d) The period for which the force is expected to be.

(4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in subsection (2), the President must provide the information required in subsection (3) to the appropriate oversight committee The Constitution of the Republic of South Africa1996).

Therefore, the President may declare a state of national defence as long as parliament approves his declarations within seven days. Put differently, the Parliament needs only be informed of the deployment "promptly" or no later than seven days after the SANDF is committed. In relation to the military intervention in Lesotho, the South African Parliament held debates on this matter. However, there were serious limitations regarding the review of the legislative process of the decision to deploy the SANDF outside the Republic. "In particular the president's office violated the spirit of an accountable Executive branch when it made the decision to intervene, and parliamentarians failed to adequately react to their constituents concerns with operation Boleas"(Reilly2000:46). The whole process encountered major problems from the beginning to the end**.** South African Parliamentarians seem not to have been consulted prior to the intervention. While the omission may be proper due to the urgency

of what South African decision makers perceived as the explosive situation which was unfolding in Lesotho, it was inconsistent with the principles of parliamentary review of the Executive.

Like the Ugandan Parliament, which was dominated by one party, the overwhelming majority of South African parliamentarians come from the ruling African National Congress (ANC). It can be argued that these parliamentarians failed to publicly criticise the Executive action in the coalition, the prosecution of the operation itself or the manner in which it was managed. This trend stems from the fact that the South African government appears to be developing authoritarian tendencies, especially against outspoken ANC parliamentarians, who have on occasion been demoted, disciplined and chastised not only by parliament but by the party as well (Kuperus1999:pp. 643-668). The cases of Bantu Holomisa and Patrick Lekota have shown the government's determination to centralise power within the upper echelons.

According to the South African Communist Party (SACP), what was more telling was that "Parliamentarians largely neglected their democratic obligation to subject the decision to mount operation Boleas to close scrutiny and public debate"(SA Soldiers Die in Lesotho1998). Political allegiances within the dominant ruling party seemed to make most parliamentarians unwilling to seriously challenge the SANDF intervention in Lesotho. There were sufficient parliamentary mechanisms available to legislators for an effective review of the Commander-in-Chief's orders. Nevertheless, the majority of legislators agreed with the Executive.

The Government of Botswana

The President of Botswana is the Commander-in-Chief of the Botswana Defence Force (BDF), according to Chapter IV section 31 of the Botswana Constitution. He is empowered by section 48(2)(a) of the Constitution to determine the operational use of the

armed forces. Nevertheless, the BDF is also accountable to parliament for what Naison Ngoma terms military and budgetary policy, which must be subjected to public scrutiny. These checks and balances are important in subjecting the operations of the BDF to popular will. As far as its operations and the deployment of the BDF outside the country are concerned, the Commander-in-Chief need only inform parliament of such operations after they have taken place.

Parliament has recently been challenged to perform its oversight role over the Executive. The ruling Botswana Democratic Party (BDP) has dominated parliament since independence in October 1966. This means that the accountability and oversight of parliament is a tricky business. The one-party dominance of Parliament seems to have made the principles of checks and balances for different levels of government inefficient. The accountability of government institutions, especially the military, has becomes difficult, elusive and shrouded in secrecy. Equally challenging has been the BDF intervention in Lesotho's intrastate conflict. Most regional analysts were concerned that the decision to intervene in Lesotho seemed to have excluded the Botswana polity, particularly Parliament. Mpho Molomo writes:

> *'the decision that the BDF should intervene in Lesotho in September 1998 was a civilian decision taken by the Executive without the involvement of Parliament. After Botswana and South Africa intervened in Lesotho, there was a popular perception that the president and his cabinet ought to have consulted Parliament before it made the decision to intervene"(Molomo2005).*

While the Botswana Parliament was not informed prior to this intervention, it would appear that the President was not constitutionally mandated to do so. His role, as discussed above, was to inform parliament after the fact. Nevertheless,

parliamentarians appeared to have been reluctant to hold the President to account for the intervention. This led to the Member of Parliament for the Palapye constituency, Mr Sebetelato, angrily writing to Botswana's Vice-President Khama:

> *"…protesting against the cabinet decision to send Botswana Defense Force soldiers to Lesotho without the knowledge of the members of Parliament. He warned that when the Executive became so powerful that it even took the legislature for granted, then there was cause for concern for the future of direct and participatory democracy. That power, he lamented, ran against the nation's efforts to build a consultative, transparent and accountable society"(Molomo2005, Mmegi19*98).

The actions of this sole individual effort serve to demonstrate what Thandi Modise describes as the serious limitations that one-party dominance in parliament creates in terms of parliament's capacity to play an effective oversight role and hold the Executive to account for its policies. Only one Member of Parliament attempted to hold the Executive accountable, while the rest appear to have been less willing to play such a role. This supports Molomo's argument that, in a situation where the Executive holds too much power, as it does in Botswana, it overwhelms the legislature and impacts negatively on its effectiveness. In Botswana, checks and balances are "non-existent as Parliament is totally controlled by the BDP"(Molomo2005), which not only made it difficult for the Legislature to operate effectively, but seemingly disenabled the principle of checks and balances as far as the Lesotho intervention was concerned.

Conclusion

This paper concludes that all states that intervened in Rwanda, the DRC and Lesotho (namely, Angola, Botswana, Namibia, South Africa, Uganda and Zimbabwe) appear to have acted contrary to their constitutions. Their actions contradict Holmes' and Beetham's submission that national constitutions serve as a high law that bind governments to follow established rules and Hague's assertion that states have to respect their constitutions.

Second, this paper concludes that the legislative oversight of intervening states was also weak because of what James Danzinger, Melvyn Read and Thandi Modise called the influential role of one-party dominance in parliament, creating a situation wherein the majority of parliamentarians overtly back the Executive and follow the party line. For instance, the strong political allegiance to the ANC by MPs in South Africa made them reluctant to challenge the Executive decision to intervene in Lesotho. These were the cases in Botswana, Namibia, Zimbabwe and Angola as well. In most cases, the leadership of Namibia, Angola and Zimbabwe displayed a recalcitrant attitude towards informing their people about their real intentions or the reasons behind their armies' involvement in the DRC.

The paper concludes that the supremacy of parliament over the Executive, emphasised by Hague, Anthony Birch(1993) and Melvyn Read, seems not to have worked before or during these interventions. The consequence of is parliaments that could not hold their Executives accountable for the unilateral deployment of troops outside their national boundaries. This practice appears to have weakened the oversight role of these legislatures. The role of the legislature, as conceived by Bentham, seems to have also been ignored by all parliamentarians in the intervening states, who were reluctant to hold their Executives accountable even when they had sufficient tools to do so.

The important principle of accountability, answerability and obligation of public officials to explain their actions, which Schedler highlights, was violated by intervening states. Therefore, in all these countries, especially those which had functioning legislatures, not much effort was made to hold the Executive accountable for the extra-territorial deployment of troops. Their legislatures did not adequately and sufficiently review the Executive's decisions before interventions were conducted. It is clear that the parliamentary function of oversight is at its weakest in those countries where the Executive is strong and the parliament is weak. In all these countries, the interventions undermined the mechanism of Executive accountability because the leadership of these countries did not inform or account to their legislatures before intervening in other sovereign states.

The weakness of these institutions has made it easier for intervening countries to carry out their realists' interests in other countries without being held to account by their legislatures. What this paper has shown is that when state interests are at stake, the Executive does not follow parliamentary processes. The existence of a parliament dominated by one party enables the Executive to execute their realist interests more easily than in one with relatively equal Members of Parliament. This means that in a parliament that is not dominated by one party, the level of oversight is higher and the Executive is more accountable. In such a parliament, the Executive influence is minimal.

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