# Rooting democracy on African soil

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# 1. THE AFRICAN EXPERIENCE

## Introduction

A tide of democratic change is sweeping through Africa. Despite persistent ethnic tensions, continued economic stagnation and nagging fears of possible military intervention, the transition to democracy is proceeding at a relatively fast pace. Remarkably, this move towards democracy comes at a time when the Cold War has ended, regional conflicts from Cape to Cairo have abated and Europe, the keg of global wars from the late eighteenth to the mid-twentieth centuries, has moved into a historic process of economic and political unification. An era of democratic reawakening is engulfing the whole of the African continent. There is all the hope that it will be an era of rooting democratic values in the fabric of the body politic of African society and of encouragement of the development of a human rights culture throughout the continent. This suggests that there is a better chance for legal and constitutional renewal in Africa today than ever before.

The burden of the history of law-making in Africa, from the colonial to the post-independence eras, weighs heavily against an easy transition from authoritarianism to the rule of law on the African continent.

It might be painful to look back and examine the role and function law in the colonial era and the post-independence period, but if we ignore history we will by so doing not only be condemned by it to become its victims, but we will also fail to realistically assess the available resources from which to create a new future. Our failure to understand the history of law under colonialisim in Africa as an instrument of oppression and exploitation is to fail to understand the very essence and character of the whole process of colonialism.

## The post-colonial state and its crisis of legitimacy

The paradigm of law under colonialism was not that of equality and freedom, but of discrimination, coercion and repression (Seidman). The Africans had very little understanding of this law of which they regarded themselves as merely victims. Its concepts and procedures sat uncomfortably with their customs and ways, which alone had legitimacy in their eyes, and the very subordination to the law which these customs and ways were subjected further undermined its acceptability (Diamond). Indeed it was the defiance of this law, writes Yash Ghai, which made heroes of men and women. In short, the law was seen as repressive, alien and an instrument of colonial rule.

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The crisis which the African state has faced since independence in the early 1960s can easily be traced from the constitutions that were imposed on them at independence.

African states were created in the image of the West, with national constitutions, bureaucracies, legal systems and Western ideologies of law that were imposed on them at independence. But the very alienness of these institutions posed problems of their legitimacy. What compounded the problem was their inheritance of the colonial state, which lacked all forms of legitimacy, with its *raison d'être* the economic exploitation of the indigenous society.

## The crisis of expectations and African independence

It was only with independence that the state regained some of its legitimacy. Through the state the ruling elite got access to public resources and to its repressive apparatus. The law, far from reflecting modified and legitimising independent economic relations, became a central instrument in creating political and economic power for the ruling elite. On the part of the indigenous people this led to a crisis of expectations. The African people had expected that independence would be a vehicle through which their sufferings would be alleviated.

This, however, did not happen at independence due, *inter alia*, to the under-developed economies and the concomitant ramified state apparatus inherited by the post-colonial states. Using the emotional slogans of the primacy of 'nation building' and 'economic development', the ruling elite has been able to justify its centralisation of power, the appropriation of surplus from the rural and other communities, the repression of all dissent and the outlawing of all opposition political parties (Ghai, 204).

## The process of democratisation and the legacy of colonialism

In the post-colonial era, the problems of democracy and state formation and consolidation had to be confronted simultaneously. The inherited colonial state lacked the underpinnings of the imperial power and prestige. Its colonial character and its lack of secure popular base limited its legitimacy. As Nolutshugu rightly points out, the central problem of statehood is authority: the capacity of the state and those who control it to secure compliance and obedience without constant recourse to threats and physical coercion. The central problem of democracy is consent: the extension of submission to

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authority, to a relationship between the state and individuals, which bases authority upon the will of the people in some observable way such as free and fair electoral procedures. That involves the reciprocal recognition of rights and obligations (between rulers and the ruled, and among the ruled) which are embodied in institutions and procedures broadly regarded as upholding those principles (Nolutshungu, 86).

Although some of these rights might have been entrenched in the Constitutions and Bills of Rights at independence, experience demonstrates that it was not long before these fundamental freedoms and rights of citizens were eroded by the ruling elites in almost all of the African countries.

The post-colonial African states were characterised by their inheritance of the colonial structures of government and institutions. Because of the exploitative and oppressive purposes for which these structures were designed in the colonial era, the post-colonial governments found themselves trapped within these authoritarian structures and therefore incapable of employing them to extend democracy to the people. The crisis of legitimacy which bedevilled the colonial governments was carried over to the post-colonial states. This was further exacerbated by the crisis of expectation which flowed from the failure of independence to deliver socio-political democracy. Belief in the rightfulness of the government structures through which authority was exercised was eroded. This ultimately led to the questioning of the incumbency of those who occupied positions of authority.

Authoritarianism became the answer of those in authority. Constitutions failed to protect the ordinary citizens from the high-handed authority of the state organs. Opposition parties were proscribed.

## 2. THE SOUTH AFRICAN EXPERIENCE

African experience demonstrates that in the period immediately preceding independence, the constitution becomes a centre of controversy. Parties and groups look up to it for the solution of political and economic problems. The constitution as finally negotiated is therefore safeguarded by a high degree of entrenchment of its provisions and the vesting of powers of review in the courts to enable them to rectify its infractions. It becomes a fundamental law of the country, the real basis of the organisation of state power and established the real basis for political competition (Ghai, 187).

It seems that era has arrived in South Africa. The present political era is characterised by an intense constitutional debate where each party sings praises

of its constitutional proposals, and those of others are virulently attacked and their merits are searchingly examined.

To the majority of South Africans, a constitution for a democratic, non-racial, non-sexist South Africa promises to be the cementation of nationhood. Its role as a symbol of our unity is no less important than its role as the charter of a democratic, non-racial, non-sexist government. We hope it would be the tie that binds all our people and personify South African nationhood. Inherent in all these hopes and aspiration is the desire to start again; a time to reconceive and restructure the basis of our society. It would be the only opportunity we have ever had of asserting our freedom and rooting once and for all the hard-won affirmation of our individual rights.

To the majority, especially the blacks, a democratic constitution promises fairness and justice to all, the rule of law and restraint on those who govern. It is our shared long term interest, an interest greater than any immediate party-political victory or gains. However, Africa and the Third World in general have taught us that in as much as constitutions may enshrine all the fundamental human rights and be bastions of democracy, the structuring of the government may be such as to give room to the violation of those rights and the erosion of democray.

It is for this reason that the structure of government must be amenable to function as an instrument to achieve the ideals of democracy.


## Legitimacy and the structure of government

To be publicly acceptable and therefore effective and functional the state apparatus and institutions of government must enjoy legitimacy among the governed. Legitimacy has been defined as the popular positive response to the moral basis of the government and its structures. This moral basis is predicated on the ability of the government to deliver democracy. Basically, the underpinning of legitimacy of the government is its ability to serve a a vehicle for democracy to the people.

The exercise of governmental authority is to a large extent determined by the nature of its structures and the extent of their legitimacy. The notion of legitimacy is conceptualised by Mitchell in the following terms:

> The legitimacy of authority is ultimately a matter of belief in the rightfulness of the institutional system through which power is allocated and authority exercised as well as perceptions regarding rightfulness in

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authoritative positions and of the commands themselves.
(Mitchell, 13-14)

It is in this area that the South African government suffers a chronic crisis of legitimacy. In the eyes of the black majority in South Africa the present structure, together with the socio-political and socio-economic order it serves to preserve, lack every semblance of credibility.

The constitutional transformation of South African society will therefore have to bring about far-reaching structural changes in the state apparatus in order to restore credibility to government structures.

The society from which we are presently emerging is one that has been characterised by social and economic inequalities for the creation and sustenance of which the government has been very instrumental. The administration, judiciary, bureaucracy, security forces, the legal system, etc., were designed to maintain and enforce an illegitimate socio-political and economic order – apartheid. The South African executive was characterised by the enhancement of its authority at the expense of the legislature.

This was done by, among other things, the manipulation of the white voters' perceptions, which created a belief in an impending security onslaught against the country. It was this perception that gave a blank cheque to the government to rule in a particular way which did not call for accountability to the legislature. This justified the secretive nature and unaccountability of the government structures to the electorate.

The lack of accountability of government to Parliament was illustrated by the unilateral withdrawal of South Africa from the Commonwealth by the government, and the declaration of the States of Emergency in 1985 and 1986 without consulting Parliament. The executive did not only assume autonomy in decision making, but within the cabinet structure a further concentration of power occurred (Heymans, 38). The ascension of the state security system within the cabinet eroded the very power of the cabinet itself. The manner in which the executive was organised and functioned led to concentration of power in centralised bodies such as SCC, and the concomitant shift of power from parliament and other lower-tier decision-making bodies. The 1984 Constitution further weakened the link between Parliament and executive.

The judiciary has unashamedly been the instrument of repression rather than a vehicle for the distribution of justice. It is exactly this employment of the judiciary for oppressive purposes that has given birth to the operation of a plethora of alternative means of dispute settlement by the oppressed majority of this country.

In a non-racial democratic South Africa the political system should provide for an effective participation by those who live under it. It will only be the materialisation of such democratic participation in government structures that values essential for the peaceful and harmonious development will be deeply woven into the fabric of our society.

The present demon of violence engulfing our society which is the legacy of apartheid can be exorcised by the fulfilment of the legitimate political and economic aspirations of our people. It therefore becomes imperative to restructure the government in such a way that meaningful participation is afforded to our people.

## Democracy and development

Although many blacks in South Africa are proud to be associated with the victories that Africa has achieved especially in defence of independence, particularly in the last three decades, many of us feel uneasy at the criticism that is being heaped on the African continent because of its violation of basic human rights and its inability 'to register progress' in economic development. Although we might be inclined to ignore this criticism, the mounting pressure for change on the African ontinent, especially from Africa's citizenry, is becoming increasingly difficult to ignore (Lowe Morna, 133).

Within academia, there is an approach developing which attributes most of these developmental and human rights disappointments to failures of state, governments and law. The thrust of such criticism has been directed on the role of state and law in developmental policies and the top-down approach where the state is perceived as the panacea to all socio-economic ills.

Meanwhile, within the non-governmental organisations' developmental network there is a growing realisation that the state can be both a problem and a solution in roughly equal measures. There is thus a need for a top-down and a bottom-up balance among law and state devices to maximise the contributions made by individuals, voluntary organisations and the state to development and human rights (Brietz, 28).

Perhaps it is the role the African 'state' has played in developmental issues, especially in the economy, which has tempted many analysts to compare events with recent events in Eastern Europe. It is true that there are differences between African political parties, which were formed originally to struggle against colonialism, and the vanguard parties that sprouted in Eastern Europe after the Second World War. Despite these historical, cultural and political differences, there was a similarity and sometimes even an affinity, between the governments

that evolved in Africa and those in Eastern Europe. Opposition has been brutally suppressed, leaving military coups as the only avenue for change in most African countries. Whether to the left or the right of the political spectrum, the one-party state, with its attendant corruption and lack of accountability, became the norm.

Recently there has been a growing realisation of the need to 'move towards more accountable and participatory forms of government'. This is clearly discernable in the OAU 1990 Heads of State Summit declaration and the warning contained in the World Bank's ground-breaking report *Sub-Saharan Africa: From Crisis to Sustainable Growth*. Whilst the OAU communiqué calls for the 'consolidation of democratic institutions', the World Bank report links democracy to economic development. Regional aand international events have demonstrated this linkage. The mounting pressure sustained by the democratic forces against apartheid have to some extent opened the eyes of many to political restrictions in their own countries. Perhaps the events in Eastern Europe might provide some lessons for Africa and for South Africa in particular.

## The economy and democracy

In many countries the process of democratisation is usually closely accompanied by progress in economic development. In South Africa the process of 'liberalisation' has been closely accompanied by the worst economic and social crisis in the history of the country. Unlike the example of Latin America where democratisation has been linked with economic growth which enabled the regimes to negotiate agreements and implement some redistribution schemes, in South Africa by contrast, the long continuing recession has accentuated the disintegration of society.

The de Klerk Administration's reaction to this has been the introduction of a comprehensive and systematic programme of unilateral restructuring and privatisation of the South African State and economy

The restructuring programme represents a response to the political and economic crisis facing the regime. The South African economy has been facing a long-term structural economic crisis, which is clearly reflected in such key economic indicators as declining investments, high and rising unemployment, and the inability to control the rate of inflation. The regime is also faced with a serious budgetary problem or fiscal crisis. And it is haunted by the spectre of political change and an end to minority rule.

Opposition from the democratic movement has, at least temporarily, compelled the Pretoria regime to curtail its ambitious plans for privatisation.

Initially, the state expected to privatise many core public-sector activities, including telecommunications, postal services, rail and road transportation, etc. It still seems intent on carrying out these plans, but now in greater secrecy, away from public debate and scrutiny.

On a step by step basis, at different levels and in different forms, the process of restructuring continues. It now encompasses all major areas of social, political and economic life.

Max Sisulu and Trevor Manuel in a report to the democratic movement pointed out that there are several objectives to the regime's action:

1.  To move as much of the existing public sector beyond the reach of an ANC government and to entrench the white economic dominance.

2.  To tie the hands of a democratically elected government by putting in place structures, institutions and processes that cannot be changed later.

3.  To bolster its revenues in the run up to elections, both in order to provide some visible improvements in services and infrastructure for the majority, and to give 'golden handshakes' to sections of the civil service.

These objectives underlie the state's strategy of restructuring. That strategy has three main thrusts:

a)  Minimise the role of the state in the economy through privatisation and deregulation. This strategy applies both to economic activities and to social services. It involves, not only privatisation, but less obvious limits on government control over pastatals, so that their managements enjoy greater autonomy. As a whole, these measures will limit the ability of a new government to address the legacy of apartheid.

b)  Tax reforms that shift the tax burden from the corporate sector to individuals and from the upper-income group to other sector of the population. The introduction of VAT represents the most regressive and notorious of these measures.

c)  Increasing the foreign and domestic debt of the central government and parastatals. This practice also gives the existing government more money in the run up to elections, and places new constraints on the spending of the future democratic state.

This type of restructuring seeks to change the nature of the state formation and, indeed, the basic political-economic constellation as a whole. The minimalist view of the state, as embodied in the new-liberal ideology, is actually an attempt to bring about changes in economic structure. It actually represents an activist approach to the economy. In effect, it initiates an array of novel

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limitations on government action. In the process, it removes the burden on the state for the provision of a safety net and adequate social and economic infrastructure – a burden that remained unquestioned when most of the benefits still went to whites.

Sisulu and Manuel justifiably accuse the de Klerk regime of clearly acting in bad faith. As usual, it is engaged in double dealing. On the one hand, it is involved in political negotiations. On the other, it is secretly engaged in a programme of unilateral economic restructuring. The regime has not disclosed any of its plans in advance. Nor has it subjected its plans for economic restructuring to multi- party scrutiny. Many Bills have, in fact been quietly sneaked through parliament.

It is ironic that, in the political arena, the de Klerk government insists on power-sharing by a democratically elected party, while itself is aggressively shoring up minority domination in the social and economic spheres.

The democratic movement cannot accept the refusal of the De Klerk government to fully disclose its plans. The regime cannot and must not be allowed to continue implementing unilateral policies with impunity.

Sisulu and Manuel stress that the current crisis is a manifestation of long standing tensions between the unregulated market economy and the needs of community and the common good. They note that South African have the political will to manage change, to direct and control the market economy, so as to achieve the social objectives of fairness equality of opportunity, environmental sustainability and democratic participation. Realisation of these objectives will require fundamental economic renewal, a challenge we both accept and invite.

Sisulu and Manuel emphasize the need for democratic participation in and greater community based control of the economy, and recognise that 'top down' models of economic planning must be reassessed.

While recognising some role for the democratic government in the economy, the two authors recognise the need for decentralised and popularly based alternatives to complement the role of government. They insist that our vision of a mixed market economy has nothing in common with bureaucratic central planning systems. Our basic economic goals and objectives should be aimed towards building:

- An economy which puts people first. The economy should provide a decent standard of living, in the widest sense of the term, for all our fellow citizens and the benefits of the economy must be widely and fairly shared among the regions of the country. Our concept of a standard of living includes

access to social entitlements and a wide range of quality public services and public amenities.

- A democratic economy which allows for high levels of individual and community participation in economic decision – making.

- A full opportunity economy with low levels of unemployment and widespread opportunities for all.

- An economy which is environmentally sustainable. Economic policy should be as the Freedom Charter stipulates – the creation of a much fairer society, which guarantees all citizens, a decent standard of living, the opportunity to fully participate in the ongoing social, political and economic life and the opportunity to fully develop their individual talents and capacities. We must aim towards building a social system which consciously limits the gross disparities in income and wealth and encourage the provision of significant rights and benefits to people in their capacity as citizens rather than as consumers.

An economy which provides all citizens with a decent standard of living encourages democratic participation. This means the satisfaction of basic needs for food, shelter and clothing sufficient means to purchase quality goods and services in the market and access to high quality public services such as health, education and transportation.

## Constitutional transition and democracy

In South Africa, as in Europe in the late 1980s, we are faced with a series of unprecedented and momentous events. Although there were clear signs of impending change we found difficulties in recognising the advent of these events. We played down their significance and counselled prudence. Almost all our forecasts had been clouded by pessimism and events turned out different and generally better than we had forecast. Although the events in Eastern Europe might be completely different from what is happening in South Africa, and the situation in South Africa might prove to be more difficult and complex, we must be heartened by the fact that despite all difficulties Eastern Europe is succeeding in democratisation and readiness will soon also be registered in economic development.

It might be worthy of note that the prescriptions that are being offered to Eastern Europe – 'free market economy and privatisation – are the same as those offered to South Africa, especially by the De Klerk administration. The source

of this generalisation can be traced in certain classic themes derived from an established literature about democratisation.

The first theme is that attempts at rapid changes of regime are invariably traumatic and prone to backfire. Even if democracy eventually emerges, the trauma surrounding its birth can distort its form and hamper its legitimacy and performance. This distortion can find its manifestation in the deformed government structures whose handicap militates against the extension of democracy to the people. The social, economic and political factors constituting the milieu and the matrix from which a new constitution emerges will, to a large extent, have a telling impact on the resultant government structures and their capability to be vehicles of democracy.

According to Di Palma, democracy is a matter of rules for mediating plural and conflicting interests; when it is introduced abruptly and against the will of some of the players, the losers will resist it and the 'winners' lacking tested democratic organisation and personal experience will be less than fully at ease with its methods. Thus consolidation is placed in doubt, while backsliding is an ever-present possibility (Di Palma, 25). Does this not sound similar to the theoretical justification by academic apologists of De Klerk's government's resistance to implementing agreements meant to accelerate the negotiations process and initiate democratisation?

Even the second approach of linking democratisation to the emergence of favourable social, economic and cultural conditions, is being echoed by apologists of the apartheid system. These include economic prosperity and equality and an independent middle class and national culture which, by virtue of a penchant for tolerance and accomodation, is already well disposed towards democratic ways. Di Palma cautions against accelerated transitions. This he pins on the assertion that democratisation 'violates the double prescription: they are fast and they occur in response to political contingencies which have little to do with the self-propelled, slow motion rise of auspicious conditions' (Di Palma, 25).

A related theme is the need to develop a civil society. This is closely associated with the growth of a bourgeois class of citizens commonly linked to the reconstruction of the market.


## Civil society and the democratisation process

Resistance against apartheid has demonstrated the positive role that plural civil society, one based not only on community but also on an individual role can play in democratisation. It has demonstrated clearly that democracy cannot

function where some specific dogma is held with fanatical zeal, where the spirit of tolerance is regarded as an expression of moral weaknesses and compromise as an act of opportunism. That is why a healthy democracy has no official ideology but is tolerant of all streams of thought.

The Constitution should guarantee the free articulation of differences within the framework of equal rights and tolerance. An open society requires guarantees for the free functioning of non-governmental organisations, such as religious bodies, trade unions, sporting and cultural associations, subject only to respect for fundamental human rights as set out in the Constitution. Non-governmental organisation should be encouraged to collaborate with the government in furthering the aims of the Constitution, without thereby compromising their identity or independence.

All men and women shall be entitled to all necessary information to enable them to make effective use of their rights as citizens, workers and consumers and to impart such information. There should be freedom of the press, and the media should be open, accessible and respond to all the views, opinions and interests of the community. Government structures should by their very shape and nature respond to these ideals and give effect to same.


## Rural civil society

Within the anti-apartheid movement inside South Africa, there is a tendency to neglect or underestimate the role and influence of rural civil society. Most of the debate on civil society has tended to focus more on urban civil society leaving the rural areas neglected. This is a serious discrepancy in our process of policy formulation and political mobilisation. The present violence in the Natal rural areas which has spilt over into the Witswatersrand and the Western Cape can be sited as part of that neglect. we should admit that in the years of illegality, when the ANC and other anti-apartheid organisations were banned, we tended to be more occupied with the urban areas leaving the rural areas to the mercy of apartheid created tribal structures. Although we recognised that more than 16,5 million of our people, or 53% of South Africa's population lives in these rural areas and are catered for by apartheid created tribal structures, which have constantly exhibited deficiencies ranging from inefficiency and ineffectiveness to corruption, we still tend to underestimate the havoc ethnicity has wrecked in the psychology and thinking of our people. Coupled with this is the prevailing approach which tends to abandon the office of chieftaincy to the manipulation of the de Klerk administration. We continue to allow the apartheid authorities to restructure rural local authorities in such a way as to be

responsive to the apartheid ideology of 'divide and rule'. There is no concerted effort on the part of the anti-apartheid democratic movement to encourage and accelerate the process of building up and strengthening of Civic associations in the rural areas especially in the Bantustans (Tandy and Mazowar, 2).

If we want to entrench democracy within the South African society, we have to face this weakness squarely. If we continue to ignore it, it would be to our own peril and we might reap the whirlwind. We have to agree that local governmental structures are essential and must underpin a democratic political order in the countryside. Basing ourselves on our experience in independent Africa and elsewhere, we have to admit that such governmental structures and institutions should not only include civic associations but also the complex of associations, which are generally brought under the heading of 'Civil Society'. Further we should recognise that in such a multi-ethnic society as today's South Africa, such institutions and organisations may be subverted to the demands of ethnic identity. It is therefore necessary to consider the challenge that ethnicity poses to democratic transformation and the way in which this challenge may be diffused.

The need to diffuse the ethnic variable in South Africa has been made more urgent by the endemic violence which has engulfed this country during the last five years.

Diffusing the ethnic factor we hope would contribute towards mutual understanding, the maintenance of peace and sustain the transition to democracy. Democracy cannot take place in the midst of violence and anarchy. While we justifiably and rightly blame the apartheid authorities for the havoc and brutality that is wrecking black communities throughout South Africa, we see the need for maintaining public order as essential. It is this need which is central in the demand for an Interim Government, which it is hoped, would establish the necessary administrative machinery for transition to democracy.

The demand for an Interim Government recognises the fact that the il-legitimate structures built under apartheid cannot be relied upon to bring about a peaceful transition. An Interim Government would give some legitimacy to the government structures, thus increasing their affectivity, efficiency and acceptability. Effective government and democracy should thus be regarded as complimentary rather than incompatible. with this in mind, the process of removing all apartheid structures should be accelerated.

We fully agree with Christopher Clapham, when he concludes that:

> the maintenance of orderly government is the first condition for democracy, but by no means the only one. It has to be balanced by a

structure of accountability through which the government can be managed and controlled, in the interest of those on whose behalf it governs. This accountability may be aided by traditional political institutions, embodying shared 'values'.

It needs to be promoted by deliberately constructed political institutions, whose role would be to aggregate and organise the views of broad sections of the populace, in such a way that they can entrench democracy and be made into an effective constraint on the way in which government power is used. We should not consider indigenous African social structures and values as weak, because they failed to offer sustained overt resistance to the encroachment of colonialism and later apartheid, which were forcibly imposed on them. It would be wiser ' to regard them as immensely strong, capable of biding their time, while tacitly subverting the feeble structures of the increasingly impoverished state', advises Clapham. Examples from neighbouring Southern African states have demonstrated that such subversion operates through the informal economy, through a myriad of social values and connections and through local, religious and occupational groupings.

It was with this in mind that the ANC in its 1987 'Constitutional Guidelines for a Democratic South Africa' called for the democratisation of the ' office of Chieftaincy'. It was in full recognition of the influence and authority chiefs wield in African rural society and the adverse political effects of its 'non recognition', especially at local government level.

The mistakes of some of our fraternal liberation movements in Southern Africa especially Mozambique and Angola, must be foremost in our minds, in our policy formulation process, especially rural developmental policy.

We can never be able to solve the national question in South Africa, which continues to be central in our struggle, without fully recognising problems of the countryside and mobilising our rural constituency. While we should continue to strengthen our alliance with the trade union movement and the urban sector, and win support from the 'racial minorities' by taking into consideration their special and peculiar concerns, we must never act in a manner that would make the rural population, especially in the Bantustans, begin to doubt our commitment to the alleviation of their suffering, betterment of their plight and championing of their cause. Our commitment should be unflinching and never be allowed to waver. The African majority should continue to be our political base, just as it was in the period of armed struggle. Our influence in it should grow deeper by each day, in all its social strata.

We can achieve this by instilling confidence and building democracy into existing social institutions, incorporating them into political life by not only mobilising them but also by 'socialising' them. We should not make the same mistake independent Africa made, by starting with our own preconceptions of which goals we wish to achieve and seek to mould our population accordingly, through a mixture of education and inducement. The challenge facing us is to start from existing social attitudes and organisations and socialise them into public life. It is a task that requires not only great patience, but a level of modesty and restraint which is often absent from many of us. The task of building institutions of rural civil society will provide a base from which we can organise resistance to Bantustans and apartheid rural policies and provide alternative political leadership, support and authority. The characteristic institution of rural civil society would in this sense include the churches, farmers and peasant associations, women and youth organisations, traditional leaders and their councils, traditional healers, professional associations and other social and economic groupings which help to integrate different sections of the rural community. What all these people have in common is that, through their organisations, they stand for values which are widely shared through the society, and which are not restricted to any predetermined group within it.

The primary goal of the liberation movement in South Africa is to forge unity among all anti-apartheid forces, with special emphasis on the African majority. Despite the fact that many victories have been won in the process of forging that unity, the ' demon of tribalism' and the ' spectre of ethnic particularism' continues to haunt South African society. This is not a problem that is peculiar to South Africa alone, but has been prevalent throughout independent Africa and the third world. Recent events in Yugoslavia and the former USSR are concrete examples which have proved that it is not only limited or peculiar to Africa alone but can be found also in 'advanced Europe'. It continues to bedevil developmental policies throughout the African continent. In South Africa it has been worsened by the apartheid policies of 'divide and rule' which the de Klerk regime wants to entrench in a post-apartheid constitution,, through a structure of ethnic federalism based on the homeland policies of apartheid which sought to explicitly recognised ethnicity and to build it into a political system.

It might not be wise on the part of the liberation forces in this country to ignore it or to pretend that it does not exist. The experiences of independent Africa, Yugoslavia, Bulgaria and the former USSR, have demonstrated clearly, how difficult it is to replace individual ethnic identities by a commitment to a single overarching nationalism, in the way in which early proponents of 'nation

building' have hoped to achieve. ' Ethnicity cannot be educated out of existence, or suppressed by force, and attempts to ignore it, or wish it away will soon rebound,' writes Clapham. He advises that some means must be found to manage it. It is on the ability of such management that the success of any democracy in a multi-ethnic state will depend. While we might not necessarily agree with all his advice, the approach should be to seek to play down the political importance of ethnic identities while recognising that these have a hold on popular consciousness, especially in rural areas, that cannot be ignored.

The essential point should be that ethnicity should not become an explicit basis for political participation, but that every effort should be made to build bridges between ethnic constituencies by emphasising the importance of public and national values. The precise way in which this operates, should be guided by skilful application to particular circumstances while being sensitive to local concerns. It would not exclude some devolution to local authorities and should avoid a heavy handed imposition of central control in order to avoid local resentment.

Central political leaders should attempt to seek out those people who have authority within their local societies and seek to associate them with the national structure and leadership. We should endeavour to encourage coalitions which include members of different groups. Our aim should be to achieve a process of 'socialisation', which would seek to promote leaders who have some authority within their own communities, but who are at the same time prepared to ally themselves with members of other communities, in order to seek common goals of peace national unity and economic development. This is no easy process, especially in South Africa, where there has been endemic violence for over five years and where popular expectations are high and the policies of apartheid and racism have been embedded within society for centuries.

We would be failing in our endeavour to cement national unity, if we did not recognise the existence of these apartheid created suspicions and confront them accordingly with flexible and realistic policies. Throughout the whole world the application of democracy has proved to be a world-wide classroom, through which peoples and communities have been able to learn and distinguish what is good and what is not good for them. South Africa is no exception. We hope the adoption of a democratic constitution will play a central role in nurturing democracy, national unity and non-racialism.

In conclusion we may stress that countries transit to democracy in different ways and consolidate in different types of democracies. The type of democracy that South Africa will ultimately achieve will depend very much on the role civil society plays during the whole process of transition. In the same way that

civil society proved to be the main thrust in pushing the present apartheid authorities towards 'liberalisation', it will be civil society which might prove to be instrumental and be the key that will unlock the present logjams in negotiations, paving the way to genuine democracy. The democracy that will be finally achieved, will definitely have the stamp of civil society on it and might most likely be the outcome of compromise or an extremely complex set of compromises. As a sure guarantor of democracy, civil society would need constitutional recognition.

## Some prospects of a post-apartheid constitution

A non-racial South Africa means a South Africa in which all the artificial barriers and assumptions which kept people apart and maintained domination are removed. In its negative sense, non-racial means the elimination of all colour bars. In positive terms it means the affirmation of equal rights for all. It presupposes a South Africa in which every individual has equal chance, irrespective of his or her birth or colour. It recognises the worth of each individual.

A non-racial constitution can be adopted rapidly but a non-racial South Africa would take many years to evolve. Yet, although the discrepancies in education, health and living conditions imposed by decades of racial discrimination cannot be eliminated by constitutional declarations, the Constitution must provide the positive means to reduce progressively the imbalances and inequalities and to ensure that everybody has an equal chance in life.

The new Constitution must reflect a commitment to full, free and equal participation in the new South Africa. Law and practice keep South African women out of their rightful place in helping to build democracy and enable a new nation to evolve, and deprive them of their human rights as individuals. The new Constitution must therefore:

- guarantee equal rights for women and men in all spheres of public and private life;
- create mechanisms whereby the discrimination, disabilities and disadvantages to which women have been subjected are rapidly removed;
- give appropriate recognition to reproductive and birth rights;
- guarantee Constitutional protection against sexual violence, abuse, harrassment or defamation;
- ensure that women are heard in all issues and participate actively in all levels of society.

Finally, government and its structures should reflect the will of the majority, be effective but not all-powerful. It should operate within the framework of the Constitution, acknowledging a separation of powers and the existence of fundamental rights and freedoms as guaranteed in a Bill of Rights.

Our faith in democracy in South Africa should not rest in the belief in the natural goodness of people, but in the belief that most human beings can learn by experience. In a world in which science can command unlimited, natural power, it can be said that its basic values, shared knowledge, mutual discussion and the institutionalisation of consent can solve more problems with less friction than is possible by entrusting power to minorities who claim to be better judges of the true interests of citizens themselves.

Our aim should be to let the ideals of democracy leave their mark on the whole order of society and the mutual relationships of its members, so as to give each individual the opportunity of a full meaning to life. The result of ideals of freedom flourishing in such a democratic culture inevitably contributes to the solution of problems of poverty.

In time, if peace is preserved, and democratic culture does not yield to despots, the masses bring about democratic changes by their own efforts. Freedom is infectious. The appetite for freedom grows on what it feeds. And once the process of liberalisation begins, there is no telling where it will end.

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