



COUNCIL
FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN
CONSTITUTION

***The Constitution, Policy
and the State:
An Agenda for Economic
Transformation***

By

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26 July 2012

Wolpe Dialogue

Wits University

A visitor from Mars, unfamiliar with our history and struggle, would be fascinated by the agitation and excitement or sudden sense of urgency to deal with poverty, inequality and unemployment in our country. The reality however, is that these have been such a central feature of our transformation agenda that they have been codified in the nations vision; the Constitution. Eighteen years on, with such blatant persistence of these challenges: it is legitimate to ponder what we should have done differently and whereto from here.

The answer lies in a candid review of our journey since the dawn of our democracy which the report of the National Planning Commission and more importantly the debates in the ruling group (ANC, COSATU and SACP) have generated.

We attribute the failure to: firstly a weak and incompetent state whose capacity continues to deteriorate; secondly a set of policy choices; and thirdly external factors been beyond our control, and fourthly the crippling impact of corruption.

CHARACTERISTICS OF AN APARTHEID STATE

The thorough-going transformation of our society into a democratic constitutional dispensation places enormous responsibility on the state. Ironically, the apartheid state we inherited was ill-suited for the task and the liberation movement had insufficient number of competent cadres with requisite experience that could be relied upon.

Apartheid was a government of some, for a few, by elite. It was an unashamedly undemocratic and exclusive government an illegitimate political order. It was racist, sexist and homophobic. The ruling National Party depended on a system of parliamentary sovereignty to legislate its wishes. The judiciary was used to enforce the apartheid laws

The repressive apparatus of the state such as security forces, police intelligence and the military were firmly controlled by the ruling party. The police force and its related agencies were a

highly politicised machinery to put down dissent and occasionally deal with crime particularly in white communities. Similarly, the Defence Force had to remind the regional states of the invincible nature of the illegitimate state through occasional incursions.

An illegitimate state, it relied on manipulation of the public, through the media, religion, education, sports, culture and others, to maintain its dominance. The SABC, a State Broadcaster, was a propaganda tool, while, the rest of the print media, with a few exceptions, succumbed to state pressure to self-censor or worse still, be apologists for the system. Access to information was highly restricted

There was a fusion between state and party. Key strategic roles in the state and related organs were the preserve of party loyalists and supporters. The politics of cronyism, patronage and nepotism were entrenched. Afrikaner empowerment was driven and supported by the state. This was the apartheid version of cadre deployment and tenderpreneurship.

This was mirrored in the governance of black people, through the Bantustans and black local authorities. Councillors and Bantustan politicians who had easier access to business licences. These are the people who constituted the leadership and membership of NAFCOC and its breakaway FABCOS.

The apartheid state we inherited therefore was corrupt, abusive, repressive and undemocratic. The Apartheid Grand Corruption report adequately documents the extent of this scourge. It is its impact on the culture of governance long after the demise of the apartheid system that is relevant in this discussion.

The apartheid state was uneven. Capacity was distributed in accordance with the apartheid hierarchy. Consequently, Bantustans had, the poorest capacity; as were black local authorities. Hence in the post-apartheid state, those provinces that inherited Bantustans (Limpopo, Eastern Cape, and Mpumalanga) tended to be the weakest in governance.

The apartheid state had strong elements of a developmental state, albeit conceived for limited objectives. Parastatals, including the Development Finance Institutions, played a catalytic role in driving the economic programme of the apartheid government. Employment, artisan training, rural development strategies and other similar programmes were driven through them. These were greatly assisted by requisite fiscal and monetary policies.

FROM AN APARTHEID TO A CONSTITUTIONAL STATE

Ironically, the apartheid state had to be the midwife in the birth of the constitutional state. The delivery of an inclusive, just and equitable society that is the vision of our constitutional democracy rests largely with the state, albeit with the active participation and involvement of citizens and organs of civil society. This would be a state and government that would be subject to the constitution and the rule of law.

This is an accountable and transparent. Hence among the early pieces of legislation passed by the democratic parliament were the Promotion of Administration of Justice Act (PAJA) and Promotion of Access to Information Act (PAIA) as well as the Public Finance Management Act (PFMA).

To the extent that poverty and unemployment are degrading and dehumanising, they are an affront to the Constitution and its justiciable Bill of Rights. The Constitutional democracy is an affirmation, not only of civil liberties, but also socio-economic rights. The new democratic state carries a mandate to deliver these and conduct itself in a manner that not only upholds these values, but also ensures that the rest of society does likewise.

Aware of our painful past and its possible negative bearing if left unattended; restorative justice and redress are the cornerstones of our Constitutional architecture as we journey to a new order. Clearly a state that intervenes and mediates the interest of the

weak and poor is envisaged. The idea of an interventionist developmental state is not a political fancy of the ruling group, but it is about an enabled agency to deliver on the constitutional mandate.

When inequalities in society are so rampant and the gap between the rich and poor is widening, clearly the constitution's vision of a just and equitable society is betrayed. This new found agitation with the triple challenge of poverty, unemployment and inequality is therefore a recognition of this failure.

In our report "subject to citizen: Let the People Govern" released in May as a submission to the NPC, we argue that these are a result of policy and governance failure rather than the constitution.

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Inevitably, the search for answers will focus on the Executive, as it is responsible for government policy and programmes.

However, it should go beyond this to include the legislature and the institutions established in terms of Chapter nine in the constitution. For a very good reason, we have separation of powers that enable checks and balances in how power is exercised. Consequently, all of these arms of state have a role in delivering the vision of a constitutional democracy.

Parliament which has legislative power as well as oversight. Has it done this to good effect? Critically, on an annual basis it passes the Appropriation Act on (the budget) to implement this agenda. Are they happy with the impact these budgets on transformation over the last 18 years?

The Ad Hoc | Independent Panel on the Assessment of Parliament, chaired by Pregs Govender, now Deputy Chairperson Human Rights Commissioner, pointed out; the conventions and practice, as well as the procedures, necessary to be effective in the oversight role, are still to be built. Parliament is yet to act on

this report. We conclude that the electoral reform is urgent in order to enhance public accountability.

Have Chapter Nine institutions such as the Auditor General, SAHRC, PP, CGE and others lived up to their envisaged role. Should these bodies not have been in the frontline of the struggles to defend the rights of citizens in education, health, workplace discrimination, sanitation, water, housing and others? Is the Auditor General's repeated complaints that his reports are ignored, not point to weak accountability? The Public Service Commission findings and reports are often not followed through and implemented. Are the public protests against lacking service delivery and the repeated challenge of government through the courts not an indictment on the effectiveness of Parliament and these Chapter Nine bodies and to hold the executive to account?

The report of the ad hoc parliamentary committee on Chapter Nine bodies that was chaired by Professor Kader Asmal has not been properly debated or considered by parliament, even though it is five years since it was completed. The report contained a hard-nosed analysis of the problems that are obstructing the performance of the Chapter 9 bodies and how they might be reformed.

Ironically, it is the judiciary particularly the CC and SCA that the government wants to review in order to ascertain its role and contribution to the transformation of society. While, a discussion on this is important, we remain concerned that government wants to carry out such a review, as this smacks of an ulterior political motive, especially in light of the context in which it is being proposed. Evidence, however, suggests that the judiciary, with a few exceptions, has developed jurisprudence that affirms the vision of the constitution especially in the area of socio-economic rights.

POLICY: OPTIONS AND CHOICES

There can be no doubt that great efforts were invested to dismantle apartheid and establish a new democratic order. This

was the agenda of the Mandela era. Against this, successes were registered which we will not dwell on. The ruling party was elected on the promise of the Reconstruction and Development Programme (RDP), a classical Keynesian demand led expansionary economic agenda similar to the Marshall Plan of post war Europe. Employment creation, the central feature of this strategy, was linked to delivery of social transformation programmes such as improving health and education services, housing, sanitation, transportation and others. Clearly, the drive to deliver on socio-economic rights was central to the RDP.

It did not last, as the view in government at the time was that it was not sustainable as the state neither had the resources in its coffers nor the capacity to raise these through borrowing. Consequently a self-imposed, typical World Bank, structural adjustment programme was introduced Growth, Employment and Redistribution (GEAR). Unlike the RDP, this was a contractionary framework in which the state's demand for goods and services in the economy was reduced.

The fiscal and monetary policies were central to the realisation of GEAR. Government departments and other state entities had to reduce spending according to treasury guidelines. Inflation target range was also driven by these objectives. The cost of borrowing became unaffordable, impacting negatively on growth and employment as interest rates in 1998 reached an all-time high of 25.5%.

The unstated industrial strategy was driven by an export orientation programme that was a central feature of South Africa's integration in the world economy. As part of this globalisation, South Africa entered various free trade agreements to open opportunities in other markets for its goods and services. Often these brought with them stringent tariff reduction regimes that resulted in employment displacement effects. Some incentives, central to rural development, including agriculture subsidies and fiscal arrangements to support broader industries

(in erstwhile bantustans) were dropped resulting in closure of most of these, and labour migration to urban centres.

Parastatals had to be self-sufficient as part of cutting expenditure. The biggest casualty of this strategy was infrastructure investment including the Transnet's unprofitable routes to the rural hinterland which further undermined rural development; Eskom's requests for increased investment in electricity generation did not fit this framework and were rejected resulting in the energy crisis of 2008. Other socio-economic infrastructure investment such as hospital and road maintenance, upgrade and construction suffered similarly.

The curtailment of spending was not single-minded as some non-priority projects were funded even though their contribution to the goals of GEAR were not always clear. A typical example of this is the R70 billion Arms Deal. Subsidies to the likes of Denel and SAA among others betray this pretence at a focused strategy.

Similarly was the downsizing of the public services. This project was driven more by the imperatives of GEAR, and less by an appreciation of the calibre, size and character of a state that should deliver the Constitution. Not only was the quality of the public service adversely affected especially in critical scarce skills areas such as education, health, engineering and others, but also possibly in size as well. It nonetheless enabled dramatic change in the demographic profile.

Employment was clearly not a central feature of GEAR. Consequently, unemployment grew even though new jobs were created, more were shed and the size of the workforce expanded. On the other hand growth was sustained for a seven year period and exceeded the three per cent threshold of the past. Two job summits were held, bringing a broad range of stakeholders including business, labour and government. Both of these summits were constrained by the fact that their proposals had to be crafted within the confines of a non-negotiable macro-economic framework where employment was always going to be a

casualty. Not surprisingly, no jobs were created as a result of this Indaba. Renewed calls for another summit to forge societal consensus and agenda to deal with these challenges must be encouraged, but success would require an open-minded approach.

In this period, economic redistribution occurred largely through the transformation of the public sector which saw an increased number of blacks and women occupying senior executive roles. Although some progress was made in the private sector to implement the Employment Equity and Affirmative Action policies of government, it remains slow. Persistent workplace discrimination in the private sector saw high turnover among black employees. A plethora of Black Economic Empowerment Charters and the state preferential procurement policy were also used to mainstream black participation in the economy. These have also met with limited success, though proper assessments remain to be done.

The other more successful intervention by the state to effect redistribution and alleviate poverty has been the social wage including social welfare grants, which have grown to R105 billion in 2012 /13 financial year, with more than 16 million beneficiaries, up from 2,5 million in 1998.. Add to this other support programmes such as housing, education, health, electricity and water subsidy among others. One of the singular failures of the economic transformation policies has been in regard to small and micro-enterprises where most emerging black businesses are concentrated. In many economies, this is often used as a major source of employment. If anything, many of these died on the altar of inefficient supply chain management.

None of these suggest an integrated and clearly articulated agenda to effect economic redistribution. The approaches varied from the resources sector to ICT, financial sector and retail. Contrary to popular belief, the state expropriated mineral rights and reissued these on conditions that black ownership in mining, fishing and energy sectors improved. Although land reform has

been hampered by policy failures as well as lack of capacity in the state, some land was transferred.

Of the triple challenges confronting the nation, employment is the most critical. It is central to an inclusive economic dispensation, the most effective and sustainable instrument of both poverty alleviation and economic redistribution. However, the failure to reduce levels of unemployment since 1994 is largely as a result of policy failure. According to the National Development Plan (NDP) “overall economic expansion between 1994 and 2008 approached 4%, more or less the same as other upper-middle income countries”. This was insufficient to absorb the growing number who were joining the labour market.

Both the New Growth Path (NGP) and IPAP 2 strategies have a much clearer employment creation focus and economic growth agenda through infrastructure investment and re-industrialisation. The success of these would continue to depend on the country’s ability to attract FDI eliminate corruption in procurement process and reduce input costs such as energy, labour and transportation.

In addition to workplace discrimination, the failing and deteriorating education system, particularly in black schools is compounding marginalisation of blacks in the economy and the widening race associated inequalities. The roots of South Africa’s skills shortage can be traced from the deteriorating failure of our basic education system. With scarcity of skills, those in the high end of this trajectory in the globalised knowledge economy command excessively higher income compared to the unskilled at the bottom of the ladder.

An education system that is continuing to deteriorate may see the jobs created through these interventions as projected in the NPC taken up by an increasing number of immigrants as locals become unemployable. As the education failures affect mainly black schools in black working class areas (rural, urban and peri-urban), the goal of reversing inequalities is also undermined.

Combine this with a public health system that is also in dire straits, resulting in a negative impact on productivity and life expectancy which dropped from 56 in 2000 to 54 in 2011.

Education is, among other things, intended to equip learners with life skills for the real world including that of work. Not only does our education system fail to impart competent knowledge and intellectual skills such as reading, writing, numeracy, communication etc, but also fosters an environment that lacks basic disciplines of time management, fulfilling commitments such as homework, diligence, good work ethic, conscientiousness and industriousness. These traits are incompatible with competitive labour market requirements.

As under apartheid, those who, matriculate through this system often end up in under resourced black universities, euphemistically referred to as Historically Disadvantaged Institutions (HDI). If Verwoerd's dream was an education system that would make blacks hewer of wood and drawers of water; ours is a system that manufactures a black underclass destined for the periphery of not only the S.A economy, but also the global labour market. In these circumstances apartheid will continue to thrive. The result is a systematic exclusion and marginalisation of black labour in contrast to public policy and the constitution.

The labour market instruments intended to mitigate these developments have been disarticulated, weak and ineffective. Training programmes are a shot in the dark as they were often not informed by clear industrial policies, consequently many who completed these could not secure employment afterwards.

The Department of Labour's (DOL) ability to transform this situation is hampered by lack of capacity. A comparative analysis of the positioning of our Public Employment Services (PES) shows ratios of one PES staff for every 42 unemployed people in Germany, to 80 for Britain, 150 in Hungary and 483 in South Africa. We spend 76 times less on PES than Brazil. These low levels of capacity do not correspond with government's public commitments to deal with unemployment.

The DOL inspectorate is overstretched and unable to effectively prevent workplace discriminatory practices and enforce employment equity. Even the short term Public Works Programmes are linked neither to the National Skills Development Strategies of the Department of Higher Education and Training (DHET) nor the demand side of the labour market. Consequently, many end up with no employment after this short experience. In the past, it would be the state through housing construction programmes, development of infrastructure programmes that would absorb these prospective employees. In the context of a contractionary state, outsourcing many of its functions, there was no such prospect.

The State: A contested terrain:

The central feature in the strategy of the liberation movement was the seizure of state power with the aim of turning it into an instrument to deliver the emancipation of the people from racial and gender oppression, inequality and poverty. In essence a developmental state playing a catalytic role in overcoming the legacies of apartheid and colonialism. Its success was always going to depend on the availability of competent development activists, driven by a passion to serve, who would feel rewarded by the transformation of the lives of people and the realisation of the values of the liberation struggle, now articulated in our constitution. As these would be the custodians of the revolution, the broad democratic movement eagerly released its best cadres to serve even when it sometimes affected their organisational capacities.

It was not long before the trappings of power changed all that resulting in the assimilation and acculturation of many cadres to the old system; some of these agents of transformation got co-opted. They came to embrace self-service, enrichment and aggrandisement. Consequently, the conditions of public office bearers such the Executive, legislators and councillors and those served in the Executive arm of state sky-rocketed above those under apartheid even when the calibre, qualification and

competencies of the incumbents deteriorated. In light of the World Bank Report released on Tuesday and the nation's concerns about the widening inequalities; can our President and his colleagues accept the recommendation for further improvement in their conditions of service without losing moral leadership and credibility to deliver on equitable society?

In addition to this, the system permits those cadres to undertake private business on condition that they disclose. Fantastic conditions were laid for some of the agents of transformation to be co-opted pawns in the new agenda of corruption. As President Nelson Mandela remarked during his final opening address to Parliament in February 1999:

“Our hope for the future depends also on our resolution as a nation in dealing with the scourge of corruption. Success will require an acceptance that, in many respects, we are a sick society. It is perfectly correct to assert that all this was spawned by apartheid. No amount of self-induced amnesia will change this reality of history. But it is also a reality of the present that among the new cadres in various levels of government, you find individuals who are as corrupt as - if not more than - those they found in government.

This problem manifests itself in all areas of life. More often than not, it is business people who launder funds to curry favour with public servants; it is ordinary citizens who seek to buy themselves out of trouble; it is strange religious leaders who sing praises to criminals or hoard land acquired by the foul means of apartheid. All of us must work together for our redemption.”

Credible policy instruments designed to effect redress of the impact of discrimination in ownership and employment patterns of the past, the Black Economic Empowerment initiatives including preferential procurement and employment equity got expropriated and abused with debilitating consequences for the

competency of the state and its ability to pursue its constitutional mandate. Very few white businesses fully embraced the transformation agenda, and only sought such partnerships with black businesses as would continue to guarantee them government business and or navigate their way through the new regulatory environment. The result was fronting, tokenism and corrupt dealings which compromised many.

Similarly, the unethical behaviour of the black petty-bourgeoisie that depended on the apartheid machinery in the past also found expression in the new. This class, emboldened by a new sense of entitlement demand support from government and sometimes partner with the politically connected or assume such roles directly in order to gain access to state business. With prominent politicians and senior civil servants assuming leadership roles in corporates and pursuing personal business interests; the public service came to be seen as a stepping stone to successful private sector rewards.

The public service including all the various organs of state have been similarly affected. The deployment policy intended to strategically place carefully identified cadres who could be relied upon to drive the transformation agenda was similarly expropriated and abused as incompetent cronies, relatives and business agents abused and corrupted the system.

Even the unionisation of these civil servants, which presumably would deliver the most advanced cadres who would be schooled in progressive politics, did not help. Public sector unions have displayed a strong classical instrumentalism, which means focusing only on serving the narrow interests of their members. Their alliance with the ruling party, which one expected, would make them jealous custodians of the values, agenda and transformation programmes of the broad democratic movement has not helped. They, like public office bearers were narrowly focused on the improvement in their conditions of service. They have not promoted quality service in health, education, social

development, municipal service staff and other areas where they are organised.

In these circumstances, the scramble is on for a role in the ruling group in order to secure a strategic deployment to pursue personal interest. Access to the political leadership has become such a tradeable commodity that an organisation called the Progressive Business Forum (PBF) has been established. Ironically, the key driver and co-ordinator of this, is a former Nationalist Party MP that has since joined the ANC. This group offers access to senior politicians in exchange for cash or donation to the ruling party it is a thinly veiled mechanism for networking in order to secure business interests.

A very disturbing pattern is emerging of a fusion between who are powerfully placed in the ruling party, the state and a varied breed of corrupt players with destabilising consequences for both the ruling party and more worryingly, the state. This begs the question as to whether the dark forces are not gaining upper hand in their quest to capture both the state and the ruling party. Not surprisingly, the Black Business Council: (BBC) President Ndaba Ntsele asserts that with over a trillion rand budget for this financial year; black business must ensure that it gets the bulk of it.

Corruption is undermining strategic institutions of the state and is resulting in the erosion of effective governance. Departments such as home affairs, police Health, Education, Social Development, Public Works and others have also been targeted. So have municipalities. The report of the Auditor General and the Public Service Commission clearly show that we are facing a crisis of competing and accountability in the state.

CONCLUSION

- An incompetent state that is vulnerable to corruption and cannot be a reliable agent to deliver even the best of policies conceived. South African's Civil Service has to be liberated from this onslaught and the many among them that seek to serve our country with honour, integrity and diligence must be affirmed and supported.
- Public Accountability must be strengthened and improved by following on the recommendations of the Review Committees
- On the electoral reform by F. Van Zyl Slabbert; of parliament by Prags Govender and of the Chapter Nine institutions by the late Prof Kader Asmal.
- It is urgent that black education is fixed if we are to reverse inequalities; and lay the ghost of apartheid to rest.
- A new societal consensus has to be forged to urgently redress the legacy of apartheid, poverty, unemployment and inequality.