DEMOCRACY AND CONSTITUTIONALISM:

CIVIC EDUCATION

CONFERENCE REPORT & KEYWORDS

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CONTENT

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Awarded the Ruth First Fellowship for 2014 at the University of the Witwatersrand, Johannesburg , Ebrahim was a part time lecturer at the WITS School of Governance for 2018 and 2019. Until July 2023 he was Director of Programmes at the Auwal Socio Economic Research Institute (ASRI), and previously headed the Governance Institutions and Processes Program at the Electoral Institute (EISA) [2009-2016]. He writes on politics and development in academic and policy journals and regularly contributes analysis, opinion and comment in the media.

He was formerly Senior Researcher and Analyst at the Centre for Policy Studies (CPS) in Johannesburg [2003-2009], and worked at the Institute for Democracy in South Africa (IDASA) [1998-2003] at both IDASA's Pretoria and Cape Town offices. He also worked at the first democratic Parliament of the Republic of South Africa (1996-1998) in the Legislation and Oversight Division. Before that, he was a tutor in English Literature at the then University of Durban-Westville (1994-1996).

He read for a post-graduate degree in English Literature with options in Politics, at the University of the Witwatersrand, Johannesburg and was elected on to the Students Representative Council in 1992.as projects officer.

He was visiting fellow at the Institute of Development Studies at the University of Sussex (2006), and was a Draper Hills Summer Fellow at the Centre for Democracy, Development and the Rule of Law at Stanford University, for 2011. He serves on the Board of Directors of Afesis a development NGO based in East London, and has been a member of the Advisory Council of the Council for the Advancement of South Africa's Constitution.

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CONSTITUTIONHILL

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FOREWORD

"It is certain, in any case, that ignorance, allied with power, is the most ferocious enemy justice can have." (James Baldwin)

The right to education is guaranteed by Section 29 of the South African Constitution. Given South Africa's history of racialised inequality in education, the normative development of the right in South Africa has tended to focus on improved education provisioning within the schooling context. A missing element in South Africa's discourse in respect of the right to education has been the role of civic education.

The need for a specific focus on civic education is clearly stated in the Universal Declaration on Human Rights (UDHR) which states (with our own emphasis) that:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

In South Africa, while the National Curriculum Statement contains a commitment to the teaching of civic principles such as inclusivity, environmental and social justice and human rights, this teaching is recognised as being relatively limited and has been deprioritised and undervalued. Furthermore, organisations engaged in civic

education in the early years of South Africa's democracy are much fewer in the current civil society landscape. Thus, within a context of worrying trends towards an unprincipled, authoritarian populism not only in South Africa but globally, there is a need to revisit civic education to deepen and widen support for core constitutional values and principles, and to empower and facilitate an engaged citizenry.

This was no more evident that in then in the widespread civil unrest, looting and violence in the provinces of KwaZulu-Natal and in Gauteng of July 2021. Much of this is alleged to have been fuelled by an attempted insurrection following the arrest of former President Jacob Zuma for his failure to comply with summonses issued by the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Zondo Commission) and to appear and give evidence at the Zondo Commission.

SECTION27 together with Council for the Advancement of the South Africa Constitution (CASAC) hosted a workshop in February 2022 to promote human rights and democracy education and to catalyse social

movements and civil society to begin discussion, training and action to promote civic education within their own constituencies in a more sustained manner.

While the core work of SECTION27 has been to advocate for health and education rights in pursuit of socio-economic equality, we are concerned that our rights-based campaigns will be undermined and risk becoming meaningless when government at all levels is riddled by corrupt practices, dysfunctionality, dwindling public resources and a growing contempt for the rule of law.

CASAC has been at the forefront of many of the important rule of law cases that sought to push back on the state capture years that has eroded our society at huge cost to our country and the pursuit of substantive quality. We hope that our alliance that brought everyone together at the workshop is the beginning of many new alliances and collaborations to deepen and widen support for our core constitutional values and principles, and that this report will form the basis for the work and conversations that must continue.

SECTION27 and CASAC would like to thank Ebrahim Fakir for taking on the role of rapporteur long after the workshop and when the initial rapporteur was no longer able to complete the project.

FARANAAZ VERIAVA & LAWSON NAIDOO

"Constitutionalism means that no office and no institution can be higher than the law. The highest and the most humble in the land all, without exception, owe allegiance to the same document, the same principles. It does not matter whether you are black or white, male or female, young or old; whether you speak Tswana or Afrikaans; whether you are rich or poor or ride in a smart new car or walk barefoot; whether you wear a uniform or are locked up in a cell. We all have certain basic rights, and those fundamental rights are set out in the Constitution."
(President Nelson Mandela at the adoption of the final Constitution, 1996)

INTRO-*DUCTION*

On 28 February and 1 March 2022, SECTION27, the Council for the Advancement of the South African Constitution (CASAC) and Constitution Hill jointly hosted a civic education conference at the historic Constitution Hill Women's Jail in Johannesburg, to discuss constitutionalism, the rule of law and democracy. The event identified key themes that must be confronted if South Africa's developmental democracy is to be advanced, while attempting to draw lessons from comparative perspectives to build on, and identify pitfalls to avoid.

The purpose of the conference is to launch a series of seminars and lectures to reignite a grassroots activism and civic education programme, committed to the values of democracy and constitutionalism on which the post-apartheid state was built, but which are currently under threat.

Many of the problems of democratic developmental governance and economic growth are inter-related, and the solutions to them are interdependent. What is clear is that interventions in one area of public life can have consequences in others. Consequently, interventions and activism must pose the question: *"What good are we trying to promote, and what bad are we trying to prevent?"*

There is justifiable concern at the rise of populism and anti-democratic trends growing around the world and in South Africa. In the United States, the rise of populism has led to the passage of exclusionary laws targeting certain communities, such as restrictive immigration policies and voter suppression measures, which undermine the democratic principles of inclusivity and equal representation. Under Jair Bolsonaro Brazil has witnessed the ascent of right-wing populism, resulting in the erosion of democratic institutions, the repeal of environmental protections, and attacks on marginalised groups including LGBTQ+ communities and indigenous people. In India, majoritarian politics fuelled the enactment of oppressive laws such as the Citizenship Amendment Act, which discriminates against Muslims and 'low caste' Hindus.

"What good are we trying to promote, and what bad are we trying to prevent?"

Journalists have been targeted, imprisoned and even killed for their work, limiting the free flow of information in India. Countries such as Turkey, Russia and the Philippines have also experienced notable declines in press freedom. Russia has seen the tightening of a single leader's grip on power, shored up by oligarchs, with increased restrictions on political opposition. This has been exacerbated by Russia's war with Ukraine, which has drawn in large parts of the world and disrupted supply chains and has pushed up prices of basic goods and services. The Russia-Ukraine war demonstrates how a surge in populism and anti-democratic trends contribute to global instability and breaches of international law.

Disrespect for a rules-based global order creates injustice and instability in international relations, and a lack of co-operation among countries in the international system; but it also has perverse effects that undermine the rule of law within countries, eroding people's ability to enjoy their liberties and rights, and curtail the redistribution of socio-economic goods.

One part of addressing these concerns is to re-initiate grassroots activism and civic education programmes that characterised some previous successful struggles against prejudice and injustice – including against apartheid, and during the formative years of shaping South African democracy, constitution-making and institution-building. Institution-building is as necessary as promoting and protecting democracy, since democracy and its rights and entitlements will not be enjoyed by all, especially the most vulnerable, if government is riddled with dysfunction, inertia, ineptitude and corruption at all levels. Due to malfeasance, maladministration and the mismanagement of resources, already limited public resources are dwindling further; and with this has come a growing contempt for the rule of law.

Transformed judiciaries are a part of the solution to this problem. Transformation in general, and of the judiciary particularly, is not just a numbers game in terms of the racial and gender composition and representation of the judiciary, though these are critical for transformation; equally important is the transformation of the legal system, ensuring that it serves all people and shapes a jurisprudence that contributes to the upliftment of society and the forging of greater social justice. One of the critical indicators of a transformed and effective judiciary is its ability to get governments to comply with its rulings and orders – something that is on the wane in South Africa. In a range of socio-economic rights cases this is having a material impact of people's lives and livelihoods.

But lives and livelihoods are also dependent on environmental protection and preservation and climate justice as a means towards more sustainable living. Weaknesses in the provision of safety and security (especially for women), the absence of proper policing and a criminal justice system in decline have not just affected quality of life but have fundamentally undermined the rule of law. This seminar series will focus on each of these in turn, along with economic decline and the low or non-existent growth prospects for the economy. Each session will be reported on thematically, distilling the key features of the discussion. Signposts will also be provided to the key political and social challenges, and the report will outline what initiatives may be required for the pursuit of a more progressive democracy and effective democratic governance, promoting social and economic reconstruction.

It is hoped that this report will be used by nascent youth movements, civil society, social movements and other sectors of society to stimulate discussion and debate on the kind of society South Africa ought to be, to enable every person living in this country to live with dignity and be provided with the opportunity to thrive.

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JUSTICE JODY KOLLAPEN

SPEAKING AT THE CONFERENCE ON
CONSTITUTIONALISM

Thank you for the invitation to deliver this talk at your conference. The topic is an important one and of great significance at this time in our country when the very idea of a Constitution and the principle of constitutionalism is talking centre stage in a lot of the public discourse that is unfolding.

Former President Nelson Mandela described the coming into existence of the Constitution in the following terms:
"The brief seconds when the majority of the Honourable Members quietly assented to the new basic law of the land have captured in a fleeting moment the centuries of history that the South African people have endured in search of a better future. And so it has come to pass today that S.A undergoes her rebirth, cleansed of a horrible past, matured from a tentative

beginning and reaching out to a future with confidence."

While the ushering in of a new Constitutional order that evidenced an unconditional rejection of our shameful past and a commitment to a fundamentally and qualitatively different future was always going to be historic, few of us imagined how dominant a place the Constitution would come to occupy in virtually all facets of our lives. From the overtly political to the intensely personal; in commerce, trade and industry; in sport and leisure; indeed in the collective and individual consciousness; in the self-determination of individuals and collectives; and in the daily struggles of our people, the Constitution has been a constant.

Of course, its very nature and content

and the scope of its impact continue to be the subject of ongoing contestation and will invariably be substantially shaped by the vantage point of the reviewer.

For many, the Constitution has truly been the source and the foundation of a better society, a better life, a better future – one characterised by respect for their worth and dignity and one that has enabled them to reach their potential, as the preamble to the Constitution so boldly proclaims.

For many others, however, the Constitution remains an illusion far on the horizon. They impatiently wait to feel its presence and effect and to deliver on its promise of a better life for all. And the longer they wait, the more likely they are to believe it is more illusive than real. And yet, the

very future of our country depends on how this constitutional pact is honoured for all South Africans. More on that later.

And so, important as the coming of the Constitution was, there was life and activism before the Constitution – it was vibrant, robust, boisterous, brave and courageous.

In the pre-1994 era, the institutions of state were not ours – they were created for a privileged minority, worked to advance minority interests and worked uncompromisingly against the interests of the majority. That was after all the perversion of apartheid. And so, the struggle for freedom took place outside of a formal and organised state institutional framework, but it was by no means a disorganised struggle – it was just organised differently and in a real sense organically.

People at all levels of our society and in all sectors recognised that unity in purpose was key if we were to speak in one voice, advance one united struggle and work towards the idea of one South Africa that belonged to all of its people. And what a precarious and exciting time that was. I can recall UDF mass meetings in Laudium where I lived then and still continue to live. The Civic Centre would be packed to the rafters, you never knew if the Security Police would break up the meeting and arrest the organisers and anyone else they felt like arresting; the speeches were rousing and passionate everyone was moved – even the cynical and those who believed that the crude might of the apartheid state was invincible.

And indeed long after the meeting had ended, you had a sense of hope even if objectively the power of the apartheid state was formidable. You instinctively knew and had faith that you were part of a greater movement that was unstoppable – a movement

that was ethically beyond reproach you knew your leaders and you trusted them implicitly and they, in turn, served selflessly. The vibrancy of the organisations of civil society took centre stage in those struggles, they guided, they strategised, they led with integrity and were worthy of being followed. Workers, teachers, lawyers, parents, religious communities, trade unions and many other interest groups formed a resilient common front and gloriously took millions along with them.

And yet, life was difficult for us, for our parents, for our leaders and for our people. There were days when we were engulfed by despair and other times when hope soared within us. It was as Dickens famously wrote— "it was the best of times, it was the worst of times".

And so the peoples' struggle endured and in 1994 it reached its zenith when we voted for a new government and welcomed an impressive new and comprehensive institutional framework that was firmly located in the new supreme law we had adopted – the Constitution.

And so it raises the question: how does a peoples struggle, deeply rooted in the lived reality of the millions who drove it and owned it and gave it sustenance and legitimacy, relate to the new institutional framework of the Constitution, that was meant to deliver on the expectations of that struggle, which may well have fallen short in some ways, but in other ways substantially delivered on the blueprint for a new democratic order? I wish to make a few observations in this regard.

Firstly, we did not simply replace minority rule with majority rule, but instead with a system of constitutionalism – described in the following terms by William Galston writing in the Journal of Democracy:

"Constitutionalism, denotes a basic, enduring structure of formal institutional power, typically but not always codified in writing. This codified structure is 'basic' in that it provides the basis for the conduct of public life. And it is 'enduring' because it typically includes some mechanism that makes it harder to change the structure itself than to amend or reverse decisions made within it. In addition to organizing power, constitutions also establish boundaries for the institutions that wield it."

In its submission to the Constitutional Assembly in 1995 the ANC said:

==*"The supremacy of the Constitution should not be a system against the state but it should be a system for the democratic state, to guard against the state degenerating into anarchy, arbitrariness and illegality without a framework of rules. Such a state would undermine democracy and democratic practices."*==

Secondly, democratic decision-making or majority rule is recognised to the extent that it is not offensive to the precepts of the Constitution and, to that extent, constitutionalism recognises the necessary constraints that must apply to the exercise of state power. This is important particularly in South Africa where the claims of majorities may come into conflict with the Constitution. The fact that those claims are located in popular sovereignty do not render them any more legitimate

if they conflict with the principles of the Constitution. This is not anti-democratic, rather it is the proper recognition that if you wish to build a truly inclusive society in the bewildering diversity that is South Africa , then the dictates of the majority or as some have said the tyranny of the majority must have some counter-weight.

Those principles operate to protect all – today they may appear as a barrier to the assertion of some claim but tomorrow the same group may invoke them to protect their interests.

Thirdly, the formal structures of the Constitution and those that encourage public participation in its processes were never meant to replace the natural ability of people to come together around an issue; organise and mobilise and advance the public debate on that issue; and push for policy changes, law reform or whatever else was necessary to address the issue. While the structures of the Constitution are there to provide an enabling environment for this to happen, they are by no means dispositive of the manner in which people chose to organise themselves and engage with the formal institutions of state.

The need to and the right to organise and the spontaneity that often accompanies it must not be straitjacketed into formal processes, even though they must be harnessed in the most effective way possible. We must be careful that we do not allow the grandeur of the constitutional order to have a chilling effect on the lifeblood of democracy – people engaging with each other and with their government in the manner they may consider most effective.

Amartya Sen made reference to this on a visit to South Africa many years ago when speaking at Rhodes University, he referred to what he called the 2 perspectives of democracy – the public ballot and the public reasoning perspective of democracy is how he described them.

The public ballot perspective dealt with the adequacy of the public ballot and the freedom to vote and the integrity of the ballot and its assessment. The second interpretation, which he referred to as the "public reason perspective", sees democracy in terms of the opportunity of participatory reasoning and public decision-making. The democratic claim of a political order has to be judged by its commitment to protect as well as to respond to public reasoning.

Voting and balloting are, in this perspective, just one part of the democratic process.

There was a need, he said, for supporting and encouraging open and informed discussion and to work for the responsiveness of public decisions to that interactive process.

This is what is also referred to as government by discussion and accords, in theory at least, with the provisions of our Constitution that speak to the participatory nature of the system of government that it introduces and the opportunities and rights of citizens to participate in policy making, law making and other processes.

Of course, one may then ask what is the state of our democracy from a public ballot perspective as well as from a public reasoning perspective? Over the past twenty seven years or so, the integrity of the ballot has

endured considerably well and free and fair elections have become a significant and regular feature of our democratic order. What must be of concern however is the declining number of citizens who use the ballot – the recent turnout in the municipal elections put the figure at well below 50%. In a society with so many challenges, one would have hoped there is a greater appetite for elections but if the analysts are to be believed, it may represent a cynicism in the view that elections make a difference. It is something we should be concerned about.
Equally when one considers the public reasoning perspective of democracy can we say that participatory reasoning and the ability to respond to such reasoning has become a feature of our democracy? I'm not sure. Despite a sophisticated system of government at the national, provincial and local level including local ward committees, there is more we can do to ensure that the structures of participation results in meaningful and effective public reasoning.

When that system works effectively it deepens democracy, it enhances dialogue between government and citizens and it may avoid or limit the use of litigation as the ultimate resort in the assertion of a constitutional claim.

Simply to illustrate the point, I offer the following example. The provision

of textbooks as part of necessary teaching materials has always been a part of government policy. One must then ask why it was necessary for parents and an NGO in a system of participatory democracy and with many tiers of government to have to go to court to secure an order to compel government to provide textbooks? You would have thought that when the problem arose a local elected councillor would become aware of the matter, raise it with the provincial education department and the matter would be resolved without the need to resort to litigation. That is after all what participatory democracy and being responsive to public reasoning would have achieved.

And so, it must then become evident that in the absence of what Sen describes as the public reasoning perspective of democracy, the Constitution will lack the enabling environment necessary for its proper fulfilment and its ability to deliver on its promises will always be constrained.

Twenty eight years into democracy and at the subjective level, people articulate differently about the state of our nation, and these views range from the cautiously optimistic to the deeply pessimistic, and in a large measure it again relates to the vantage point of the observer. On the other hand the objective facts can hardly be disputed and if one has regard to them, they paint a sobering picture of the challenges that face us.

The Diagnostic Report of the Planning Commission released some years ago a list of key challenges and they include that:

1. "[t]oo few South Africans work.
2. The quality of school education for most black people is sub-standard.
3. Poorly located and inadequate infrastructure limits social inclusion and growth.
4. Spatial challenges continue to marginalise the poor.
5. The ailing public health system confronts a massive disease burden.
6. Public service performance is uneven.
7. Corruption undermines state legitimacy and service deliver.
8. South Africa remains a divided society."

These are formidable, stubborn but not insurmountable challenges, and while most of them have as their resolution the adoption of proper policy and legislative frameworks on the part of government, there is much that can be done by individuals and the organisations of civil society. Of course, there are many who work tirelessly in this direction, and I commend you, but much, much more is required and awaits us.
If we are honest, as we must be, then we will readily admit that the South Africa of 2022 is far from the one we contemplated in 1994. Of course, we set the highest standards for ourselves but we were surely entitled and justified in doing so and while we have

made considerable progress on some fronts, on many others we have hardly done as well as we should have and could have done.

The Constitution was however never intended to be self-executing. Textually it ranks as one of the best in the world but for its provisions to transcend the paper it is inscribed on and be converted into reality requires people and institutions, all who share a common fidelity to the Constitution, to act in unison. Fidelity to the Constitution does not require an uncritical acceptance of the Constitution – we must be able to critique it and revisit its provisions if need be, but this process must be informed and underpinned by asking the right question: if it is not working does the problem lie in its text or does it lie in our inability for whatever reason to give effect to its text?

Of course, a constitution on its own can never be a barometer of the state of democracy. At best it represents a signalling, and an important one at that, of the intent of those who have adopted it. Ours was no different – it was a statement of intent (brave, far reaching and ambitious) but still, no more than a statement of intent.

Let us be reminded of the caution of Prof Thomas Pogge when he says:

"Human rights instruments have become a substitute for real progress. Great battles are fought and glorious victories are won over rhetorical details that in the end make little difference in the lives of real people."

I have noted from the conference programme that you will spend some time talking about grassroots movements, the climate change movement and the women's

movement, and that is commendable because that is the essence of how we retain some measure of control of our lives and our destinies. It is through the agency of people who share common objectives that much more can be achieved, not just in terms of outcomes (important as they are), but in strengthening democracy and constitutionalism.

You will all recall the judgment of the Constitutional Court in the Nevarapine case and, while at the time it was properly celebrated as an important jurisprudential marker carving out a clear delineation of the separation of powers principle, the greater victory was the work of the TAC in mobilising millions of South African around the issue – public education, advocacy and lobbying all put the issue firmly on the public agenda and it could simply not be ignored. And I suppose even if ultimately the victory was not won in the courts (it was), it had already been won in the social and political spaces that mattered and, more importantly, in the public consciousness.

A word about the courts and litigation. The principle that the Constitution is supreme has as its consequence the provision in section 172 that a court must, when deciding a constitutional matter, declare any law or conduct that is inconsistent with the constitution invalid to the extent of its inconsistency.

This is a remarkable, far reaching but necessary provision and what it does is to vest with the courts the power to review and if need be set aside the conduct of the other arms of government when it is inconsistent with the Constitution. While it is a very debated provision it has over the years ensured a fidelity to the Constitution and has also ensured that by and

large we have been able to function within the key operating principle of constitutionalism – that power must be exercised within the constraints the Constitution imposes.

And so the courts have played an important role in this era of constitutionalism, not just through Section 172, but in the interpretive role they invariably play in bringing the constitution to life, in ensuring that it retains the characteristic of being a living document and in interpreting legislation in keeping with the purpose of the constitution.

And so let me raise from the many challenges that face us just three.

SOUTH AFRICA REMAINS A DIVIDED SOCIETY

The spectre of the rainbow nation made us feel warm and good about our country and its people but was it also a beautiful spectre on the horizon. Today we may have become more inclusive in how we have dealt with the demands of diversity and it may have contributed to uniting us at some levels but we still remain a divided society in many other respects. Race, poverty and inequality represent massive fault lines that militate against the idea of a society united in its diversity and we have not done much to address that.
While the answers, I must accept,

But we should be careful that we do not rely too much on litigation as the means to advance rights and there are a number of reasons for this caution. Courts are by their very nature limited in what they are able to do; they are confined to the pleaded issues before them; their findings must be evidence based; there is an evidentiary burden that any claimant must meet; litigation is costly and time consuming and generally operates on the winner takes all principle; courts must and do act in deference to other arms of government in appropriate circumstances; and finally, it has been said that courts are inherently conservative with some even arguing that traditional legal culture has constrained the transformative project.

are complex and sometimes deeply rooted in our psyche, I am not sure that we even speak about race except when some overt public expression of racism temporarily prompts us to do so, and even then the focus is on the incident rather than on the layered and structured form of racism that still runs deep. Did we never think that we needed an anti-racist movement just as we formed movements and campaigns to deal with so many other challenges we encountered ? Were we seduced by the idea that we were in fact the rainbow nation? I may be wrong but I'm not aware of an NGO that focuses substantially on anti-racism. Diversity work is important but it is not anti-racism work.

That we have to debate Black Lives Matter says much about us. Of course, all lives matter but if South Africans do not understand or even attempt to understand the history and context

within which the Black lives matter movement was born then we will forever remain insensitive to what happened in our own country for so long.

On the other hand, we have made considerable strides in becoming a more inclusive society. Through legislation and litigation, we have advanced the idea that difference is valued and recognised and that the idea of equality is not about ensuring that those who are like us should be entitled to the benefits and rights we have, but importantly that those who are different are entitled to the same protection of the law and the opportunity to be who they want to be. Landmark judgments dealing with the right of gays and lesbians, women, children, non-nationals, cultural and religious groups etc. have all advanced the idea of an inclusive society. A Rastafarian child going

to school wearing dreadlocks or a Jewish boy proudly donning his kippa, an Indian girl wearing a nose ring, a Malay woman wearing her headscarf together with her work uniform or a Zulu worker proudly displaying his Isiphandla on his wrist, have become part of how we encourage and celebrate the diversity of who we are. These may not seem significant in the bigger scheme of things but human identity, self- determination and self-expression is such an integral part of human dignity. South Africa has done remarkably as we observe how other societies fight to impose uniformity as part of a dominant culture to their great detriment.

The recognition of diversity, however, also does not come without its challenges.

The 2004 UNDP Report described cultural liberty in the following terms:

"Cultural liberty is a vital part of human development because being able to choose one's identity who one is without losing the respect of others or being excluded from other choices are important in leading a full life. People want the freedom to practice their religion openly, to speak their language, to celebrate their ethnic or religious heritage without fear of ridicule or punishment or diminished opportunity. People want the freedom to participate in society without having to slip off their chosen cultural moorings. It is a simple idea, but profoundly unsettling."

It is unsettling in that if not properly managed the excesses of cultural liberty could result in a polarised society as we focus more on the things that make us different from each other rather than those that we share in common.

GOVERNMENT – OPEN, ACCOUNTABLE AND RESPONSIVE

The kind of government the Constitution contemplated and the relationship between it and its people was likely to take centre stage as it has done for the past twenty five years. The Constitution speaks of open, accountable, transparent and responsive government.

From a legal perspective, much has happened to give effect to that vision. The Promotion of Access to Information Act, Promotion of Administrative Justice Act, the Public

Finance Management Act and the Local Government: Municipal Finance Management Act are some of the laws passed; institutionally are the independent Chapter 9 institutions; and finally, the South African Human Rights Commission, the Public Protector, the Auditor General, and Parliament and its oversight role, have all contributed to a system of greater accountability and one where government is expected to justify the use of the power at its disposal.

Here one is reminded of the eloquent articulation of that concept by the late Prof Etiene Mureinik in his characterisation of the interim constitution when he said:

"If the Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification – a culture in which every exercise of power is expected to be justified, in which the leadership given by government rests on the cogency of the case offered in defence of its decision and not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion."

In the past 25 years there have been periods when that ideal has been held high and shaped governance but there have also been dark periods when there have been attempts to relegate it to an insignificant principle. But even in these periods, the vigilance of civil society and the public at large has seen significant judgments to ensure that the principle of justification or accountability does not lose centre place, and credit must go to government in observing court orders even when they were on the wrong side of such orders or opposed them being granted.

How the rule of law has become a significant feature in regulating power and its exercise perhaps owes much to the jurisprudence of the courts – the principle of legality, the notions of both procedural and substantive fairness and the concept of rationality have all contributed not to the idea that government must be restrained, but rather to the uncontested principle that power must be lawfully exercised.

POVERTY AND INEQUALITY

Universally claimed, the Bill of Rights with its extensive provisions covering not just classic civil and political rights but also a strong commitment to social and economic rights within the framework of advancing social justice, was held up as the terms and scope of the promissory note to a better life and the means through which to free and fulfil the potential of all. Mindful that the transition to democracy was not accompanied by any change other than political, and that the economic and social landscape remained unchanged after 28 April 1994, the Bill of Rights assumed even greater significance.

While there has no doubt been much that is worthy of celebration on this front, including most of civil and political rights – the right to vote, to association, to a free and independent media, to equality before the law, in other areas and, in particular, in the improvement of the material conditions under which people live, progress has been much slower as the Diagnostic Report reminds us. While the rights framework remains important, we have also seen the commodification of rights – those who can afford rights buy them and

so a private system where people buy education, health care, housing, social security, safety and security and even equality before the law in accordance with their means, while others rely on the public system and on the state to provide these. Two parallel systems that deliver common public goods delivering qualitatively vastly different outcomes. The idea that we are all equal before the law is tested daily in our legal system. People who face the risk of the loss of their homes or their livelihoods are not able to invoke the protection of the law because they do not have the resources to do so, while others can litigate in defence of matters that may be regarded as trivial in the bigger scheme of things.

==The promise of equality before the law rings hollow in such circumstances and it is cold comfort to someone who has lost their home to be reminded that indeed they are equal before the law. Hardly the idea of an egalitarian society and likely to entrench the idea of a divided society.==

How do you address massive inequalities in the country with limited resources? I guess you have a conversation between those who have the resources and those who do not. And in this regard it is us those of us who are at this conference, those of us who have been able to flourish

in this democracy and those of us who benefitted from the political and economic order that preceded 1994. Ours is a fragile democracy and its fragility is compounded by the massive inequalities that exist, and it must be the responsibility of all of us to become a part of this conversation. I hope you think about this in your deliberations over the next few days.

CONCLUSION

And so, where to from here? Firstly, the Constitution I believe remains an enduring framework for the ongoing transformation of our society. Its ability to speak to the reality of South Africans irrespective of their situation has enabled the development of, at the very least, a consciousness about the Constitution. Many have deployed it using its provisions, both as a sword to advance their position and dismantle the obstacles that stand in their way, and as a shield to defend them from the excesses of power. On the other hand, many others still wait for its promise to be realised.

We know the challenges that face us are formidable, yet we have the Constitution and still the collective will to transform our society. But real transformation cannot be a matter of lip service. It requires a commitment from all of us and fundamental change to the structure that continues to render us such a disparate and unequal society. It is the inequality and the poverty that represents a significant threat the fragile democracy that is in place. Ultimately, democracy must deliver on the dividends of what it promises, in our case social justice and equality – if it does not, what is the enduring value of having a democratic system? What

is the value in defending it when it is under attack?

Perhaps Gandhi's words ring true at our current time when he said that the rich need to learn to live more simply so that the poor can simply live. As we start the next quarter of a century of the life of our Constitution it is a future that awaits us and we must believe one that is reachable as former President Nelson Mandela reminded us some twenty five years ago in 1996.

Today we ask: how was it possible and how did South Africa and the world allow apartheid to survive for so long? That same question will be asked of us – namely how did a society that suffered and sacrificed so much allow poverty and inequality to endure for so long when we had the means and the ability to overcome it? What will our answer be?

Allow me to wish you well in the deliberations that will follow during this conference and may you emerge with new energy, creative strategies, and a firm resolve to continue to make a difference.

Thank you

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Nilo Batista & Advogados Associados (Brazil)

Aakar Patel
Amnesty International (India)

Tre Murphy
Director of Community Organising NAACP Legal Defence and Educational Fund (United States)

Maurice Mitchell
Leader of the Working Families Party and one of the early leaders in the Movement for Black Lives (United States)

FACILITATOR: Faranaaz Veriava

SESSION SYNOPSIS

THE GLOBAL EXPERIENCE
THE RISE OF POPULISM AND THE UNDERMINING OF DEMOCRACY

While South Africa has problems that are specific and unique to its own conditions, it can also be located within the broader global context. Autocracy, authoritarian and anti-democratic regimes are on the rise globally, led by people who operate in ways that are unjust and which oppose the rule of law. They do so in ways that resort to crude identity politics, through sub-rational appeals and populist messaging that (through disinformation and misinformation) operate in a post-truth alternative reality. This is in relation to the exercise of formal power and authority. They hollow out institutions such as the judiciary and the security institutions of the state, and personalise these institutions.

These tendencies do not suddenly appear overnight. These kinds of leaders do not arise spontaneously. They are the product of politics and practices that gather momentum over time. They pretend to be anti-systemic, anti-establishment and anti-elitist, and blame institutions for continuing inequality and exclusion; yet these populist leaders are very much part of the elite and of the establishment. They are enmeshed in the political and economic system, while pretending to be outside it. They exist within the system to subvert it away from democratic norms and a public purpose. For instance, Jair Bolsonaro was within the Brazilian political establishment and parliamentary system for 30 years before being elected President. In those

years, he made no secret of his distaste for democratic governance systems, expressing authoritarian tendencies and admiration for the military dictatorship that ruled Brazil for a long period (1964-1985). Bolsonaro went on to manipulate procedures and processes within the democratic system, using democratic institutions to engineer undemocratic and anti-democratic outcomes that erode democracy, undermine the proper purpose of institutions, deepen inequality and render public institutions and public resources open to corrupt abuse and predatory accumulation. His abuse of institutions included the false charges against and imprisonment of a political rival, who was subsequently acquitted but precluded from running for political office. Right-wing authoritarian governments, as in Brazil, frequently abuse the system so that a semblance of the proper procedures are followed – decisions are subject to Parliament, and adjudicated by the courts. But these institutions are manipulated; their processes are abused and politicised, and made to serve the interests of those in power without any meaningful democratic restraints or separation of powers and functions. Over time these institutions lose credibility, to the extent that the public loses all trust and confidence in them.

Though such countries maintain a façade of democracy, it can be termed a 'populist democracy', as India has had for the past few years, in which crude majoritarianism characterises the

political environment. Here, minorities are viewed as foreigners and outsiders, despite being indigenous. They are victimised and demonised based on their identity and traits – religious, ethnic or cultural; and this demonisation makes it easier to scapegoat and blame them for social and economic ills. It encourages and enables violence against them, and violence becomes a social instrument of subjugation, marginalisation and oppression.

Minorities face various forms of exclusion, including subtle methods. One such way is through minority exclusion, where individuals from religious, ethnic, cultural or sexual minority groups are deliberately kept away from positions of power and influence. A more severe manifestation of this exclusion is seen in the creation of laws that explicitly target minorities, undermining the principle of evidence-based reasoning. In such cases, the presumption of guilt is placed on minorities, forcing them to prove their innocence in court. This distortion of the rule of law enables customary justice, which promotes communal violence and even sanctions vigilantism. Minorities are often scapegoated and unfairly blamed, even in situations such as natural disasters. For example, in India, Muslims were wrongly held responsible for the spread of the COVID-19 disease.

The Indian government intervenes even in private trade or commercial transactions between Muslims and Hindus. So

districts to give one political party an advantage over the other, which effectively dilutes the voting power of certain communities who have a spatial concentration in some voting districts, by splitting them up.

In addition, the centring of identity – particularly racial identity – has made a crude identity politics prominent and has created a tendency to reduce issues to narrow, single-issue struggles, rather than broad-based progressive struggles rooted in an inclusive cosmopolitanism that focuses on broader social emancipation. Class and income as a social category have been ignored in many of the recent struggles, especially on racial justice, in America and elsewhere around the world. But race and class often intersect; and a more class-based approach, twinned with the racialised marginalisation of blacks and other excluded groups and minorities, must reincorporate income and class as a motivator for struggle. America and other parts of the world have seen the beginnings of progressive social movements becoming more active in rolling back against the tide of authoritarianism in a variety of ways.

ANALYSIS

There should be an awareness that the rise of authoritarian and right-wing movements in America and elsewhere has been influenced by a complex set of factors, including economic inequality. To the extent that globalisation and the rapid spread of new technology have affected traditionally marginalised and excluded groups, they have also had an impact on (and left behind) cohorts of previously privileged groups. To the extent that new modes of organisation and direct action have been used by progressives before, increasingly these tactics are also being used by right-wing populist movements that have tapped into the anger and frustration of exclusion by blaming immigrants, minorities and other groups for the economic problems that people face. Disinformation and propaganda have been fuelled by the rise of social media and the proliferation of fake news, and made it easier for right-wing groups to spread their message and mobilise support. But the self-selecting nature of social media means that public and diverse news sources do not filter out biases; which has led to

egregious is this separation between the majorities (considered indigenous) and the minorities (considered alien or foreign), that dual legal systems exist in parallel to create a fictitious equality for specific and separate communities – as apartheid claimed to have done – which in practice creates unequal parallel legal and economic systems that entrench inequality, exclusion and marginalisation from the mainstream economy, society and government. In India, a dual legal system consisting of both the civil law and personal, religious, or customary law has traditionally co-existed. The civil law is based primarily on common law principles, supplemented by statutes enacted by Parliament.

Personal, religious or customary law applies to issues of personal status and family law for specific religious, customary communities based on religious scriptures, traditions and customs; they cover areas such as marriage, divorce, inheritance, and adoption. Hindu law,

Muslim law, Christian law and Parsi law are typically some of the laws applicable to different communities. The Indian constitution guarantees certain fundamental rights that apply uniformly across the communities and the country, and these override personal, religious and customary law, where these latter laws violate fundamental principle and rights in the constitution. With the advent of an authoritarian, majoritarian government under Modi, Hindu religious and customary laws have taken precedence in instances of conflict between a person of Hindu persuasion and those from another religious community. The noble intentions of the inherited traditions of the dual legal system have been subverted towards exclusively Hindu dominance. Even in America – commonly thought of as a beacon of hope and democracy – for near on a decade, leaders, advocates and organisations in the US have been steadily sounding the alarm regarding the erosion of democratic values and the rise of anti-democratic

activities, long before the ascension of President Donald Trump to the highest office. Despite the passing of the Voting Rights Act in 1965 following the civil rights movement, there continues to be controversy in the US regarding voting rights, with evidence emerging that basic voting rights are under attack, particularly for certain marginalised (especially black) communities in certain cities and some states in America.

Some states have implemented laws that make it more difficult to exercise the vote, such as passing voter identity laws that require people to show certain types of identification in order to vote. This disproportionately affects lower-income, elderly and black voters, who typically have older, standard-issue identity cards, and face obstacles in obtaining the required identification. These regulatory burdens are a hindrance to voting. Variously, some states have implemented restrictions on early voting, mail voting, and on-the-day voter registration, which typically places an additional burden on working voters from marginalised communities. Many have jobs inhibiting compliance with these new requirements, typically because they have difficulty taking time off work and also have transportation and mobility issues – hurdles placed in front of the right to vote that they cannot easily overcome. There are also concerns about gerrymandering, which is the practice of manipulating the boundaries of voting

fragmentation, with many people only consuming news sources that conform to their biases and reinforce their existing beliefs. Continued political polarisation in society has led to declines in trust and confidence in traditional political parties and public institutions, creating the space for more extremist movements that reject the traditional institutions and processes of democracy. Authoritarians have exploited this gap and reinforced their messaging, deepening the fears that ordinary people have regarding job security, the affordability of education and health services, decreasing social support, and even climate change.

Overall, the rise of populist authoritarian and right-wing movements is the consequence of a confluence of economic, political, social and cultural factors. Understanding and addressing these factors is essential for promoting a more just and equitable society that values human rights and democratic values.

That populism is on the rise and democracy is being undermined is a trend that is being observed globally; it appears to prioritise the interests and concerns of ordinary people over those of the elite, using a reductionist oversimplification of issues and the pretence (through using emotive language) that the leaders are speaking on behalf of ordinary folk and the masses. In fact, populism undermines democracy by characterising the just rule of law as oppressive, and encourages behaviours that violate the rights of others. When this occurs on a sustained basis it erodes public trust in the legal system and in democratic institutions. At the societal level, the use of a divisive 'us and them' rhetoric reinforces social divisions and polarisation in society, rather than ameliorating and reducing social antagonism and conflict through public policy solutions that effectively redistribute social goods towards need.

Populism in South Africa manifests it-

self in several ways, including the use of anti-elitist and anti-establishment rhetoric by political leaders who are themselves among the elite and form a part of the establishment. Populism in South Africa is also manifested through the promotion of simplistic solutions to complex problems, and the abuse of emotional appeal, to mobilise popular support. For example, some political leaders in South Africa have used populist tactics to blame economic problems on minorities, immigrants or 'foreign interests', and have promised to restore the country to a mythical unblemished and romanticised past. Additionally, populist movements in South Africa have often called for a rejection of the finely crafted post-transition indigenous democratic institutions and processes. Despite the populist appeals and the rhetoric of populist leaders across the political spectrum, these political leaders have advanced themselves significantly in opportunity, income and social status, yet have left

their supporters behind, languishing in persistent poverty, stubborn unemployment and being on the wrong side of the inequality divide, which widens the chasm between the political elite and the people. Populist movements have delivered nothing of tangible import, and in fact have contributed extensively to the instability and hollowing out of public institutions, retarding social and economic development.
The rise of populism and attacks on democracy are premised on three distinct strands. The first is through the passage and social acceptance of oppressive and exclusionary laws. The second is the subversion of institutions and procedures from their public and democratic mandate, or merely giving them a façade of regularity and functionality while they are manipulated. The third is to encourage popular and cultural demonisation, separation and exclusion from basic rights, freedoms and liberties, as well as government-provided public goods and services.

Notable examples of these three strands have been evident in India, Brazil and the United States
India, as the world's largest democracy, has experienced a shift toward a more assertive and nationalist political agenda replete with right-wing politics under Narendra Modi, whose policies have marginalised minority communities and curtailed civil liberties, fuelling a social climate of intolerance, crude majoritarian politics and xenophobic rhetoric. Modi's government has exhibited authoritarian tendencies by centralising power, suppressing dissent and implementing policies that target specific religious and minority groups. The Citizenship Amendment Act, passed in 2019, provides a path to citizenship for certain religious minorities from neighbouring countries, except for Muslims. This law is both discriminatory and undermining of India's social fabric, as it targets specific religious communities for preferential treatment based on religion. In addition, the Na-

tional Register of Citizens aims to identify undocumented immigrants, specifically targeting Muslims and lower-caste Hindus and potentially leading to their exclusion from citizenship rights.

There have also been criticisms of the subversion of institutions in India away from their codified mandate. The independence and autonomy of the Central Bureau of Investigation (CBI) and the Reserve Bank of India (RBI) have been eroded after accusations of government intervention, alleged interference and manipulation of processes during high-profile investigations carried out by the CBI. Appointment processes for key positions in institutions such as the Election Commission, Central Information Commission and other regulatory bodies have lacked the necessary transparency and due process, leading to doubts about their integrity and independence.

Populist leaders in India have been ac-

cused of using divisive and communal rhetoric that targets specific religious and ethnic communities. Such rhetoric has contributed to the demonisation and stigmatisation of minorities, leading to social divisions, the erosion of communal harmony, and communities at risk having to flee and seek safety elsewhere.

Brazil, under the presidency of Jair Bolsonaro, has also witnessed the rise of populist authoritarian politics. Bolsonaro became known for divisive rhetoric, attacks on democratic institutions, and controversial policies that threaten human rights and environmental protections. His administration was known for smearing his political opponents and using state organs to harass and intimidate them. He is alleged to have undermined democratic institutions and democratic norms, curbed civil liberties, and rolled back social safety welfare nets and environmental protections. The rise of right-wing racist

Populist leaders in India have been accused of using divisive and communal rhetoric that targets specific religious and ethnic communities

populism in Brazil has inflamed social divisions and racial tensions have spiralled, threatening the social fabric. Bolsonaro's government introduced policy changes that weakened oversight, sanction and punishment mechanisms in environmental legislation, which has affected indigenous communities, environmental sanctuaries and especially the preservation of the Amazon rainforest. Regulations of the 'Forest Code' – which includes provisions for protecting forests and enforcing restoration of illegally deforested areas – were repealed, and the budgets of environmental agencies such as the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) were cut significantly, leading to their inability to conduct oversight and enforce punishments for violations of environmental protection policy. Under Bolsonaro, Brazil also pulled out of international agreements such as the Paris Agreement, diminishing Brazil's commitment to reducing greenhouse gases.

The Bolsonaro administration also implemented social policies that cut social welfare, and significantly changed labour laws, exacerbating inequality and social exclusion including provisions related to working hours, overtime pay and collective bargaining, thus favouring employees rather than workers. Trade

union activity became restricted, reducing obligatory union fee collection and limiting the use of union funds for political purposes. The Bolsonaro administration also tried to change the retirement age and increase the period for which contributions must be made to the pension fund, disproportionately affecting working-class people. Worse still was the easing of restrictions on child labour to allow children from 14 years old to work under certain conditions.

The judiciary in Brazil was undermined when Bolsonaro made strident criticisms of judges and judicial institutions, with allegations of political interference in judicial appointments. The Bolsonaro government has been accused of attempting to suppress critical media outlets and undermine press freedom, and there have been reported instances of intimidation of, threats to and attacks on journalists and media organisations critical of his administration. Bolsonaro has also targeted indigenous peoples, LGBTQ+ individuals and women, stigmatising them through derogatory, sexist, discriminatory and misogynistic remarks.

Parts of Europe have also witnessed the growth of right-wing populist movements that espouse xenophobic and racist ideologies. These movements exploit fears and insecurities related to immigration, integration and change, often advocating for exclu-

sionary policies and challenging the principles of democracy. The rise of these movements has raised concerns about inclusion, cosmopolitanism, the erosion of liberties and rights, the rollback of welfare, and social protection. This trend was also witnessed in the United States during the presidency of Donald Trump, which marked a period of divisive politics and a normalisation of inflammatory rhetoric in the US that continues in the present. Trump's administration implemented policies that targeted marginalised communities by rolling back welfare benefits, undermined democratic processes and institutions, perpetuated distrust of the climate crisis and displayed open hostility to economic inclusion. The rise of right-wing racist populism in the US exposed deep racial divisions in US society. The Trump administration made great efforts to implement restrictive immigration policies such as the mooted travel ban targeting predominantly Muslim-majority countries and Mexicans, and targeting individuals based on religion, ethnicity and nationality. The Trump administration mooted and supported policies that infringed on voting rights and election processes, even though in the US, voting rights fall largely under State jurisdiction, where changes to voting laws are primarily enacted. But the Trump administration established an advisory commission on election integrity to investigate

■ Voter mobilisation and protection has been an important area of mobilisation, particularly in marginalised communities. Organised legal groups have tried to have unfair laws and restrictions on the easy ability to vote changed, including efforts to register new voters, expand early voting and mail-in voting, and to fight against voter suppression tactics such as voter identity regulations and gerrymandering. Continuous scrutiny of all aspects of the electoral process and electoral administration and management is vital to preserving electoral integrity and basic voting rights.

■ Community organising and activism have rediscovered older tactics in grassroots organising working to elect candidates who support good values and progressive causes into office. Organising also includes protests and direct action aimed at holding elected officials accountable, and promoting good policy through effective lobbying and advocacy. This has been supported by committed and resourced students and academics who provide data and information for campaigns. This is backed up by legal advocacy, and having lawsuits against the Government at different levels. This has expanded to challenge other private organisations in the corporate world, but also the right-wing civic organisations – white supremacist and other more conservative forces focused on lowering taxation and further de-regulation – that are engaged in actions that are unconsti-

tutional and harmful. Some of these 'lawfare' cases are even against certain individuals and corporations involved in the storming of the Capitol, after Donald Trump and his supporters refused to accept the outcome of a Presidential election that Trump lost.

■ An important contributor to this level of organising and lawfare is backing them up with building alternative media networks to challenge the dominance of mainstream media outlets. This includes independent news sources and social media platforms that provide a space for progressive voices to be heard and for marginalised communities to share their stories and perspectives.

■ Working to build a broad-based coalition of organisations and individuals committed to defending democracy, holding power holders to account and carrying out civil oversight over places where authority is concentrated, all assist in promoting social justice and pushing back against authoritarianism and populism. This will involve activism to change laws, policies and regulations, but must focus equally on changing cultures among people. Movements involved in this work must have a class analysis as well as a power analysis to identify their structural underpinnings, so that those structures can be changed.

alleged voter fraud and improper voter registration, which was disbanded without finding substantial evidence of widespread voter fraud. This was largely seen as an intimidation tactic. The administration actively opposed 'mail-in' voting during the 2020 presidential election, and made unsubstantiated claims of widespread mail-in voter fraud. More intense regulatory measures to disenfranchise some voters were evidenced in the Trump administration's support for voter-suppression laws which include stricter voter identification requirements, reduction of early voting periods, limitations on mail-in voting, and purges of voters from the voters' rolls. More restrictive voter identification laws and laws that require voters to show identification at the polls disproportionately impact marginal communities and restrict access to voting for minorities. There were also serious attempts to undermine the independence of institutions and processes in the United

States through repeated baseless claims of widespread voter fraud during the 2020 presidential election, seeking to undermine the legitimacy of the electoral process and the institutions involved in it. Then there was the politicisation of the US Department of Justice and undermining the independence of Federal agencies. Trump, his advisors and senior aides also attempted to interfere with investigations into allegations of tax fraud committed by Trump himself, as well as by other high-ranking officials and influential businessmen. The Trump administration purged independent-minded and critical officials from the administration.

The rhetoric of stigmatisation of Muslim, Mexican and Central American immigrants led to increased social and cultural polarisation that demonised and excluded racial and ethnic minorities from the mainstream political processes, which gave rise to movements such as the Black Lives Matter (BLM)

movement among others, sparking renewed debate about systemic racism and exclusion and challenging the exclusion faced by marginalised groups to ensure equal rights and civil liberties. For a country such as South Africa, this matters. The importation of ideas and struggles from elsewhere, including the Black Lives Matter movement and others – important and deserving of solidarity as they are – found resonance and application without context. This has perverted the actual intent of BLM, in a society in which blacks are a majority and have access to the instruments of state and governmental power, whereas in the US they are both a minority and marginalised from the centres of government power and authority. To defeat this kind of right-wing authoritarian populism, different kinds of interventions are required to defend the gains of democracy. Building sustainable social movements is one such initiative.

BUILDING GRASSROOTS MOVEMENTS
IN AFRICA

South Africa has a comparatively short history of institutionalised democracy, even though democratic practices occurred in the building of anti-apartheid protest activities and resistance movements.

SESSION SYNOPSIS

Street committees, civic organisations, neighbourhood and community safety and security fora, boycott committees, strikes and industrial action were premised on wide consultation and participation – engendering a spirit of democratic organisation. But unlike sister societies on the continent, where the institutional arrangements post-colonisation saw them having 40 or 50 years of experience building democratic organisation in civil society, South Africa's experience of movement building in an era of democratic government is comparatively short. There are consequently many lessons to be learnt and shared from elsewhere across the continent. Though this is true, it is equally true that in some places there has been democratic reversal instead of democratic advance; and in still others, such as eSwatini/Swazi-

land, the basic freedoms and liberties to organise parties, exercise responsible free speech and enjoy freedom of conscience are absent. Worse still, the legal and institutional frameworks necessary for fostering democratic practices within society, and enabling democratic exercises of authority, are conspicuously absent in eSwatini/Swaziland.

Much work is done by civic movements and other organisations in the area in civil society, providing civic education. Often this is replicated and duplicated by many others working in isolation and competition rather than co-operation and complementation. In Kenya, for example, there was a realisation in around 2000 that there was a need to consolidate efforts in civic education – to collaborate, network and

share ideas and resources, but also to collectively pool resources for sharing and for subsidising those who were not well resourced, or who were based in remote areas.

The Kenyan experience was that networking and collaboration between different civic actors ensured that they were able to identify common problems in the political arena, and work towards ensuring that the political fracturing and fragmentation in the political system did not replicate itself in society, especially in identity (ethnic) and political polarisation.

Despite hard work and extensive network building in civil society, the political class prevailed over what was the public interest. Two drafts of the constitution supported by civic actors

were rejected. This shows that democracy work is arduous, and the results are not immediate, but generational. Second, the work of democracy and democratic change or renewal cannot be focused only on large-scale, high-profile, big events. It is usually the small, micro, seemingly insignificant political acts – of threat, violence, abuse, evasion of accountability, or minor incidences of maladministration – that add up to democratic reversal. Thus the focus must be on the seemingly small, insignificant infractions and violations of rights, ill-advised statements by politicians, and seemingly insignificant acts of maladministration in government.

As has been shown by successful movements in the DRC, organisation and struggles in Africa are rarely 'new', or 'breakthroughs'. They are continuations, and built incrementally on the struggles of the past.

Constitutions and laws that ensure stability, good government and justice are generally very well written, but very poorly executed. No matter how well codified constitutions, laws and regulatory systems are in separating powers or distributing authority, the tendency when there is no vigilance is for power and authority to be concentrated, fused and focused on one 'big man' person, party or set of institutions. This happens because society overlooks small infractions which tend to build up and encourage impunity.

While it is important to encourage and support civil society activities through donor assistance, it is crucial to be aware of the inherent risks associated with relying on donor support, particularly from international sources. An illustrative example can be found in Goma, Democratic Republic of Congo (DRC), where a significant concentration of NGOs and civil society organisations led to jests about Goma becoming the global capital of NGOs. The sheer number of NGO personnel, when compared on a per capita basis to the local population, was substantial, including staff from United Nations agencies and other international and local NGOs. This dynamic fostered the development of an industry of its own, with substantial resources flowing into NGOs and CSOs.

However, this influx of resources also had unintended consequences. It created an artificial economy that overshadowed and disrupted local production and distribution, masking the inherent weaknesses of the local economy. As a result, inequality deepened and dependency on aid was reinforced, undermining self-reliance and self-sufficiency. Additionally, the development and civil society sector became vulnerable to demonisation and accusations of being external agents, providing an easy scapegoat for politicians who sought to evade scrutiny and accountability. This situation weakened civil society's capacity for oversight, and limited its influence and advocacy efforts. Nonetheless, it is essential to acknowledge the significant role of resources in providing aid and promoting democratisation and constitutionalism. Aid and development cooperation also facilitate skills transfer and professionalisation within the local civil society sector. However, these gains come with trade-offs. The professionalisation process often creates social distance

SPEAKERS

Dr Mshai Mwangola
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Pro-Democracy Youth Group LUCHA of the Democratic Republic of Congo

Thulani Maseko
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FACILITATOR: Umunyana Rugege

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between well-intentioned CSO workers and the local community, making the sector more susceptible to attack from politicians. Moreover, the involvement of substantial resources can make CSOs susceptible to capture by politicians who seek resources and organisations to act as their proxies.

While there are significant challenges to building grassroots movements in Africa for democratic deepening, and the space is always a contested one, even in countries where delegitimating attempts occur, grassroots movements are at least part of the political process, as undesirable as they might be to those in power. The trappings of a democratic institutional arrangement are present, no matter how limited. By contrast, in eSwatini/Swaziland, even the most rudimentary requirements necessary for democratic competition and contestation are completely absent. Absolute power and authority are fused in one hereditary ruler and government processes are vested in that ruler, rendering governance unaccountable and impervious to scrutiny

and accountability. In eSwatini/Swaziland, the King is simultaneously the law and above the law. For the last five decades eSwatini/Swaziland has had a monarch violently opposed to the notion of de-personalising the rule of law, which he believes aggregates in him. People are denied the fundamental right of being accepted as citizens with rights. Instead, they are seen as subjects of the King. These ideas stem from what is purported to be a 'traditional' system of government, deriving from the fact that eSwatini/Swaziland sees itself as a 'cultural' society. Since everything revolves around culture and tradition, at the apex of this system is the figure of the King as custodian of culture and tradition – the supreme authority. It is one of the last remaining countries on the African continent where multiparty democracy is prohibited, and people are denied the right and opportunity to elect and form a government. Since all power is concentrated in the King, the King is simultaneously the head of state and the head of the executive. The King dominates Parliament. Even though there is some form of election of individuals to Parliament, they are first vetted and sanctioned as contestants by the King and his advisors. The King appoints the Prime Minister, and together with the Prime Minister appoints the cabinet. The King also appoints the judges, through a pseudo-judicial commission which recommends to him who must be appointed as judges. The judicial commission is also appointed by the King, which obviously enables him to appoint people of his choosing.

In 2021 there was a massacre in eSwatini/Swaziland, in which people were killed by the State on the orders of the King. Many more people were maimed or suffered broken bones, and a good many have since been left crippled. No responsibility has been taken for this, and there has been no accountability. This crisis precipitated a degree of unity among social activists and movements around certain core principles and values, and compelled organisa-

tions with different agendas to focus on the protection of children, humanitarian aid, and the rights of women, students and young people. Despite sometimes deep differences, this crisis allowed organisations to come together in a 'multi-stakeholder forum' and lay the basis for finding consensus on the issues that will build momentum for change towards a more democratic form of government.

Pressure must be maintained on the King and his supporters to embrace a process of dialogue. An external party will be required to facilitate this, since relying on an internally facilitated process is likely to be biased and untrusted by all stakeholders. With respect to eSwatini/Swaziland, organs such the Southern African Development Community (SADC) must assert and involve themselves more on the side of the people rather than those in power – especially since actions such as the banning of political parties, the declaration of legitimate political differences branded as terrorism, detention without trial, extra-judicial killings, disappearances, and the forcing of people into hiding and exile is rife under the current arrangement. This is reminiscent of apartheid in South Africa; and the parallels with apartheid run deeper still. The 'tinkhundla' system of government operates in a manner that is in some ways like that of the apartheid system of government and the Bantustan system, in its administrative sense. It has failed society and is opposed to democracy. The system must be dismantled in favour of a democratic constitution, where the King and the monarchy have a properly defined place in a democratic dispensation; as opposed to the current situation, where the King dominates politics, the government and the economy. A 'transitional authority' will be necessary to facilitate a process of dialogue and negotiation towards allowing a competitive multiparty dispensation which allows people the right to choose and participate in the governance of the country.

While it is important to encourage and support civil society activities through donor assistance, it is crucial to be aware of the inherent risks associated with relying on donor support, particularly from international sources

to raise their voices, and especially to request the intervention of the SADC to facilitate a meaningful transition. The King has promised to convene a 'national meeting'; but in the absence of unbiased external mediators this will be slanted towards his interests. What eSwatini/ Swaziland requires is a well-structured, independent, impartial process with a trusted facilitator and an independent secretariat, to facilitate a process of ordered transition.

The current environment is hostile, characterised by fear and intimidation, and not conducive to any kind of civic engagement. Defenceless, innocent, unarmed, peaceful political activity has been limited and even victimised. So hostile is the situation that people are in hiding after expressing views that went contrary to those of the King. Even attempting to conduct civic education that informs, educates and empowers is risky, and susceptible to clampdown. Two members of parliament who are from within the political establishment have been subject to attack and imprisonment for expressing views contrary to the maintenance of the current political system. This demonstrates the extent to which the king and his government are committed to maintaining the status quo.

The king and the current political establishment refuse to embrace any form of peaceful transformation, and in fact actively seek to harm people; tragically, this means that people are compelled to defend themselves. This is ensuring that the people of eSwatini move gradually towards violent confrontation, since even peaceful political activity is being severely limited.

Consequently, it will fall to people outside eSwatini/Swaziland to continue

+SECTION27
catalysts for social justice

CONSTITUTIONHILL

COUNCIL
FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN
CONSTITUTION

ANALYSIS

The building of grassroots movements in Africa faces several challenges that hinder their development and impact. These challenges include a relatively short history of institutionalised democracy in some countries, and limited experience in democratic organisation compared to sister societies on the continent. In some countries democratic reversals have been evident, and in others there is a lack of basic freedoms and institutional frameworks for democratic practices. Among civic actors there is duplication and competition rather than collaboration, which allows the political class to dominate public interest. The arduous nature of democracy and institution building also does not yield quick wins, and momentum can easily be lost without sustained work. The concentration of power and authority, and the poor execution of even well-written constitutions and laws, hinders the advance of democratic government. Then there are the risks associated with donor support and the unintended consequences of resource influx, which breeds social distance between civil society workers and the community. This enables capture by politicians, limits the space for grassroots movements to take root, and allows an environment of impunity and intimidation to fester. Despite these challenges, grassroots movements remain a crucial part of the political process in Africa, and many grassroots movements in Africa have succeeded in mobilising people around important social, economic and political issues, and in bringing about change – demonstrating the power of ordinary people to challenge entrenched authority and power, through protests and resistance where necessary, and in democratic conditions to lobby and advocate for more equitable and just societies.

Political liberties and freedoms are a precondition for democratic government to advance. In their absence,

repression and political victimisation become rife. This is an existential condition across large parts of the African continent. Solidarity networks must be created through multilateral regional civil society bodies, to guard against the narrowing of political space; and pressure must be applied for the creation and preservation of political space, and the lifting of repressive laws and practices, where they exist. Building support for constitutionalism and the rule of law is a multi-faceted activity, and is not the preserve of lawyers, courts and judges exclusively; rather, it is a collectively owned endeavour and resource, which can be used for mutual promotion and protection of rights and to create a culture of collective commitment to the rule of law. Civic education should foreground this understanding of constitutionalism and the rule of law, rather than focusing exclusively on informing and educating people about their rights. Instead, it should be enhanced to enable people to access and use their rights. Without this, societies will be rendered susceptible to falling prey to 'big man' syndrome, or remain the preserve of political and corporate elites who do not equitably distribute power, influence, opportunity and wealth.

Building movements for social change takes time. It requires durability and sustainability, and cannot be done without resources, skills capacity and commitment. The retention of skills in the sector is important, as is their transfer across generations. Over-reliance on donor funding, especially foreign donor funding, can have serious negative consequences; therefore, domestic resourcing is necessary to promote and protect the independence of civil society movements and the sovereignty of countries.

A second danger inherent in relying on external donor funding is that it can

expose civil society actors and movements to accusations of being 'foreign agents' or 'regime change' actors. It is crucial to protect civil society from such slurs, especially when they advocate for responsive and accountable government and aim to deepen democratic gains, regardless of the source of their resources. Authoritarian governments often resort to blaming 'external forces' to discredit those advocating for progressive change, labelling them 'external instigators' or 'enemy agents', especially those governments who have lost credibility due to their poor performance in government. Often, they do this to preserve their access to political office for predatory purposes. Organisations that engage in credible work, openly disclose their sources of support, and clarify their activities, are not involved in secretive or malicious activities, but in legitimate activism for a thriving society, strong democracy and effective democratic government.

The array of activities carried out by civil society organisations are all necessary, ranging from voter and civic education to court action, lawfare, boycotts, strikes, community protests, student uprisings and mass mobilisation. There would rarely be a need for CSOs to resort to courts and lawfare if there were no violations of the law by those in authority. Usually, boycotts, strikes and protests are demands for democratic government to function properly, and would be obviated in the face of democratic government that was responsive and accountable. Building effective movements requires adaptability and responsiveness to the evolving societal, socio-economic, and political conditions. It is essential to establish collaborative capacity, coalitions, alliances and networks across various sectors to foster the sharing of skills, insights and responsibilities, ultimately constructing robust campaigns.

• SIGNPOSTS

It is obvious that across the continent, different societies face very different challenges, because of their specific histories, cultural specificities and traditional practices, period of decolonisation and duration of independence, democratic and institutional arrangements, and stage of historical socio-economic development.

While eSwatini/Swaziland faces peculiarly oppressive and stifling political conditions which may not be shared with other societies across the African continent or even the region, there are certainly common areas of concern and challenge, even where democratic and institutional arrangements are in place.

- The lack of political space restricts political and social activities, and makes it difficult for grassroots movements to operate openly and freely. This leads to a culture of fear and censorship, and makes it impossible to build momentum and sustained pressure for change. The space for free political space is a fundamental precondition for organising and pressurising for change. Without it, any possibility for peaceful pressure and change is closed off.

- In many African countries, governments hostile to grassroots movements respond to challenges to authority with repression, violence and intimidation. This poses a major obstacle to organising and mobilising, as movement leaders can face arrest and imprisonment. To overcome this limitation, it is crucial to establish networks of solidarity, information sharing, protest and activism that span societies, regions and the entire continent.

- Limited resources and inadequate infrastructure pose significant obstacles to operations. However, movement building is still achievable even with limited funds. It involves sharing resources, utilising volunteers effectively, and relying on donations from supporters, particularly within the country. Therefore, network building and resource sharing are crucial for enabling sustainable activities and maximising impact.

- Social traditions and customary practices can deepen social cleavages and divisions based on demographic differences, such as ethnicity, race, language, gender roles, region, religion, sexual identities and tribal affiliations. To build inclusive movements that can mobilise across diverse communities, it is necessary to minimise the emphasis on these differences. While these differences, although socially constructed, have tangible consequences in society, including political oppression, marginalisation, exclusion, and unequal access to public goods and services, the goal is to recognise these differences in order to address and overcome them, rather than highlighting and exploiting them for political or economic gain. Placing excessive emphasis on these divisions as political differences can lead to fragmentation, and hinder the formation of strong movements capable of advocating for social change and a more equitable distribution of resources in society.

However, these endeavours rely heavily on foundational values such as trust, respect and a collective sense of purpose. These values are vital for creating an environment conducive to successful collaboration and collective action. In building momentum for change, a variety of tactics must be employed, such as community organising, direct action, protests, boycotts, legal action and civic education. The choice of tactics should be determined by the specific purpose and context of the movement. To ensure sustainable campaigns, it is crucial to invest in building local support and capacity by providing training, support, advocacy and fundraising. Establishing networks of like-minded individuals and organisations locally, regionally and globally fosters solidarity, knowledge sharing and a stronger collective movement for effective democratic governance. However, there are dangers inherent in collaboration – especially for organisations doing essentially similar work, in that they may compete against each other for funding, profile, resources and prominence. They may replicate activities, and indeed, in some instances actors in civil society may not be progressive, civil or civic at all, but act instead as proxies for political party interests. Along with this caution is the phenomenon that some movements, especially at grassroots level, are premised on having no hierarchy, leadership or formal organisation. This can be a strength; but it can also be fraught with danger, in that they can be unfocused, ineffective and even counterproductive. They may shirk responsibility and accountability, since there is no identifiable organisation or leadership. At certain times this flexibility is necessary; but at others, it may not be. Context, and the objectives and purpose that are to be achieved, should guide the structural aspects of organisation.

Finally – even in contexts where the institutional arrangements for democracy and democratic government may be in place, and constitutions may have an elaborate and well-codified separation of powers and restraints on authority – unless there are active citizens who remain involved and organised, it is easy to lapse into a situation of concentrations and abuses of power, even in the presence of well-developed constitutions, because citizen groups are inactive or focused on parochial issues.

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> The main challenge in building a climate justice movement is in connecting it with broader social struggles.

BUILDING A CLIMATE JUSTICE MOVEMENT

SESSION SYNOPSIS

The main challenge in building a climate justice movement is in connecting it with broader social struggles. This involves transitioning to clean energy sources, protecting the environment and preserving habitats, all while confronting the vested interests that profit from environmental destruction and the use of fossil fuels and pollutants. By forging these connections, the movement can effectively hold those in power accountable for their actions.

The climate crisis and its effects are already happening in the present, contradicting previous predictions that some impacts would occur in the future. This indicates that climate change is progressing faster than anticipated, and emphasises the need for immediate and urgent action.

Climate change is undeniably one of the most significant challenges to human development in the 21st century. This is evident in Southern Africa, where the frequency and intensity of droughts, extreme heat and record floods have risen, posing a threat to food security and the livelihoods of millions of people. This makes already deep levels of inequality even worse; there are estimates which suggest that on average, South Africans have become 10 to 20 percent poorer due to the impact of climate change. With the climate crisis escalating it is becoming more urgent to act and intervene now while the possibility of mitigating some of the worst effects still exists. This requires a rapid policy and behavioural response. Delays may make it harder, if not impossible, to mitigate adverse effects in the future, and the problem may become entrenched and unchangeable. Most urgently, global emissions must be reduced by 50% by the end of

this decade, and then reach a point of net zero emissions by the end of 2050. Should this not occur, the earth will warm up by 1.5 degrees Celsius which will have significant impacts on the availability of water and on extreme and unseasonal weather patterns – all of which will affect food and health systems as well as disaster management capacity.

This is what reliable scientific research is suggesting. Consequently, some of the largest and most active protest movements are focused on climate change and dedicated to ensuring climate justice. These are predominantly led by young people who know that they will be left facing the catastrophic impact of climate change if the necessary policy and behavioural changes are not made now. The climate justice movement comes up against the most powerful, wealthy and well-entrenched set of interests in global history – including major industry leaders and corporations in the fossil fuels industry and economies based on fossil fuel mining, production and supply – such as Russia, the United Arab Emirates and Saudi Arabia. Joining this well-established group of interests are the countries whose economies are heavily dependent on and make extensive use of fossil fuel-driven production and industrial processes. This includes countries such as the United States and others in Northern Europe and the developed world, historically the largest economies producing harmful emissions.

This requires the climate justice movement to become one of the most powerful and widespread movements globally, in order for it to challenge the most powerful actors on the global stage and make shifts in the

global system. But as a start, this must happen domestically, within individual countries.

South Africa's economy is a significant emitter of greenhouse gases, rooted in a minerals-energy complex that originated during apartheid. This complex not only perpetuated racial inequality but also made South Africa one of the world's highest-polluting economies relative to its GDP and population size. Climate justice in South Africa must therefore address the economic structures inherited from apartheid, which exploit both people and planet. Despite political changes since 1994, these structures persist, resulting in increasing unemployment, deepening poverty, and the exploitation of marginalised workers (people in part-time, outsourced, casualised work and the 'gig economy'). These same economic structures also contribute to air pollution, land degradation, water depletion and overall impoverishment. Both the old and the new elites, including black elites, benefit from these unjust and inequitable systems. Climate justice work in South Africa must confront this reality, particularly in the mining and extraction of mineral resources sectors.

The climate justice movement consequently links struggles on the environment to broader transformation struggles, since all systems need change and transformation – ranging from energy to industrial systems, buildings and construction, and the very nature of the economy. The climate justice coalition is therefore intersectional, and made up of environmental justice groups, but also those in health justice, education, energy, gender, and other social justice areas, including community-based organisations focused on mining-affected communities, as well as trade unions.

But for any such movement to be successful, its intersectional nature would be insufficient. It must also be intergenerational, since the climate emergency is of such a nature that the decisions and behaviours of today shape the possibilities, opportunities and even potential catastrophes of tomorrow. The climate emergency not only encompasses environmental concerns but also highlights a concept known as 'climate apartheid'. This refers to the unequal impact of climate change on marginalised communities, who have historically faced injustice, continuing to bear the brunt of climate-related disasters and injustices. These communities experience the inflationary pressures of rising costs in essential goods and services, such as food, fuel, energy, water, healthcare and education, which affect them disproportionately due to their limited resources. While the wealthier and privileged can afford adaptation measures, the high costs involved are prohibitive for the poor and marginalised.

The climate justice movement must prioritise the engagement of the poor and marginalised, as they often face barriers to knowledge and information due to limited access to technology, social media and education. Apart from a general understanding of concepts such as 'reduce, reuse, recycle', there is a lack of awareness about the broader impacts of climate change at this level. To address this, more targeted research is needed to deepen our understanding. Additionally, it is crucial to translate this research into accessible information that can effectively communicate the widespread effects of climate change.

Working-class communities face a complex dilemma, not only concerning access to information and education but also regarding the implications of a 'just transition' for their jobs and overall development. There is an argument that developed countries were able to achieve rapid development through production and industrial processes that are now considered pollutants and contributors to environmental degradation and global warming. Developing countries and workers are sceptical, saying that advanced, developed countries are imposing a different set of rules for their own development, while expecting developing countries to shoulder burdensome and unrealistic adaptation responsibilities, thereby perpetuating a cycle of underdevelopment.

Working people harbour legitimate concerns about potential job losses resulting from the shift away from coal and other fossil fuels towards cleaner energy sources. They fear that entire industries – including mining and related sectors – might collapse as a consequence. However, these concerns coexist with the realisation that climate change profoundly affects their daily lives, particularly in terms of food, transportation and access to vital resources such as water. Vulnerable groups such as women, the elderly and the youth bear the brunt of these effects, including agricultural disruptions, water scarcity, floods and droughts. Recognising these realities, the labour movement actively supports a just transition, having witnessed the devastating impact of climate change on various sectors. The labour movement is actively engaged in re-skilling and upskilling workers to adapt to new employment opportunities in renewable energy or to operate new technologies within different contexts, including downstream industries along the mining value chain.

It is crucial to unite the labour movement, community organisations, social

Climate justice work in South Africa must confront this reality, particularly in the mining and extraction of mineral resources sectors.

movements and climate justice activists, because they are all fighting against extractive capitalism. In this shared struggle, climate justice activists should join forces with the labour movement to advocate for a transition to a renewable energy future that is democratically and socially owned. Additionally, the climate justice movement should prioritise the working class – including the poor and unemployed – in its campaigns, instead of focusing on limited victories such as caps on fossil fuel use, or carbon trading. These market mechanisms can be easily exploited by capitalists, who

enter into these agreements readily, because though they seem like a punishment, they are affordable to businesses because of the new business opportunities they bring.

Labour would support a democratic, socially-owned, worker-controlled energy production to stop carbon emissions, replacing fossil fuels with renewable energy sources without the increases in water and electricity tariffs that new renewable and clean technology solutions imply. These cannot be costs borne by the working class and poor.

ANALYSIS

Overall, building a climate justice movement requires an understanding of the complex and interconnected factors that contribute to climate change and social inequality, as well as effective strategies for building movements that in their diversity can mobilise collectively towards action. This is difficult in a global crisis that requires international cooperation and coordination between countries with different and divergent interests and priorities, making it almost impossible to reach consensus on how to address the issue and on who should bear the costs of such action.

Entrenched international actors and powerful developed countries remain intent on pursuing their own interest at the costs of other, less developed countries. Together with the many years of debilitating climate denialism and the refusal of global powers to sign climate-mitigation charters and agreements, this has set back 'just transitions'. Poor countries, and especially poor communities in less developed and developing countries, bear the brunt of this recalcitrance.

Overall, building a climate justice movement can be a complex and challenging process. There are diverse Interests, and a range of different stakeholders with varying and sometimes divergent interests and fears. These include trade unions, low-income, poor and marginalised communities, environmental organisations, corporates and governments. Each of these entities has different motivations and priorities, which makes it challenging to build a coherent approach to climate justice. Frequently this leads to a lack of political will; despite growing awareness of the urgency of the climate crisis, politicians and decision-makers lack the political will to take action. Instead they focus on satisfying their constituencies and servicing the entrenched interests that keep them in power. Coupled with economic interest, powerful countries and corporations have a vested interest in maintaining the status quo and resisting climate action, particularly in industries such as coal, oil,

gas, mining, manufacturing and waste treatment and disposal. These interests can wield significant political influence and financial resources. They are also slow to adopt new, cleaner technologies until they become cost effective.

The poor and marginalised face a triple jeopardy brought about by the climate crisis – firstly, inherited disadvantage; secondly, the increasing costs and therefore unaffordability of necessities and services, due to the impacts of climate change; and thirdly, the prohibitive costs of clean technology, renewable energy and adaptive technologies that are out of their economic reach.

While efforts are being made at international and national level to promote environmental protection and conservation of fragile ecosystems and human habitats, there is a growing need to shift focus to subnational levels.

Local governments have been overlooked in terms of activism, advocacy and adaptive policy regarding climate justice. It is crucial to involve them, as climate change poses a threat to the fundamental responsibilities of local governments, such as providing basic services, energy, managing migration, housing, land use, safety and security. Local governments play a vital role in disaster mitigation, management and post-disaster reconstruction. Excluding local governments from climate justice initiatives would leave them ill-prepared to address future challenges effectively.

To empower local governments to address climate change, there is a need for state institutional reorganisation that devolves and decentralises monetary and fiscal policy powers and functions. This will require enhancing the prominence, profile, capacity and skills of local governments.

Climate change is a complex issue that can be challenging to communicate to the general public. Framing climate justice as a social justice issue and emphasising the importance of collective action across intersecting issues can be difficult. This is especially true because climate change disproportionately affects disadvantaged groups such as the poor, unemployed and marginalised, who are often overlooked in major policy debates unless they serve as political tools. Efforts are needed to bring their voices and experiences to the forefront of climate justice discussions.

● SIGNPOSTS

Building a climate justice movement requires mobilising individuals, communities and organisations to action on climate change, and addressing its unequal impact on the marginalised. This involves raising awareness, advocating for equitable policies and solutions, and supporting affected communities in their efforts to adapt and mitigate the effects of climate change. By bringing together diverse stakeholders and prioritising the voices and needs of those most impacted, the movement strives to create a more just and sustainable future for all. The following actions are required.

■ Raising awareness, and educating the public and communities – especially marginalised communities – about the impacts of climate change and the urgency of action. This can be done through various means, such as grassroots organising, activism, campaigns, events, seminars, guerrilla theatre, direct action, protests, civil disobedience, and leveraging technology and social media platforms combining traditional and innovative approaches.

■ Linking the just transition and climate justice to everyday concerns about inflation, the escalating prices of food, transport and basic services, and access to quality health and education.

■ Building a campaign that ensures that tax breaks and subsidies to companies engaged in climate adaptation and environmental protection through new technologies and renewables are matched by welfare and subsistence transfers to the poor and unemployed.

■ It is crucial to form coalitions that bring together a diverse range of organisations and communities. This involves forging partnerships, fostering collaboration, and leveraging the unique strengths and perspectives of each group.

■ Focusing on solutions that point out to communities the benefits of transitioning to a more sustainable and just energy system, such as clean energy jobs and reduced pollution.

■ Empowering marginalised communities to engage in advocating for policy change at local and national level, to address the root causes of climate change and policies that promote a just transition to sustainable energy use.

■ Building international solidarity with climate justice movements globally, to amplify collective impact.

■ Making durable connections to other social justice movements, connecting climate justice to other social justice issues such as economic inequality, resource redistribution and anti-racism.

■ Advocating for policy changes through lobbying and advocacy while also working to hold corporations accountable for their actions, and advocating for policies that reduce greenhouse gas emissions.

SPEAKERS

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FACILITATOR: Boitumelo Masipa

THE ROLE OF THE MEDIA
IN A DEMOCRACY

The media plays a vital role in a democracy by serving as a platform for information exchange, debate and dialogue.

SESSION SYNOPSIS

The media plays a vital role in a democracy by serving as a platform for information exchange, debate and dialogue. It facilitates the sharing of new ideas and holds those in power accountable, both in public and in the private sphere, in government and in business. The media also influences public opinion and behaviour, making it a powerful instrument for shaping attitudes and promoting various perspectives. While it is impossible for the media to be completely neutral, certain measures, such as reporting accurate information, verifying facts, and distinguishing between fact, opinion and advertising contribute to building trust in the media. By carrying out these functions reliably and robustly, the media can establish credibility and provide accurate information to the society it serves.

The media provides a platform for diverse perspectives and voices, allowing for a range of opinions and ideas to be heard and considered in the democratic process, promoting public discourse by facilitating the exchange of ideas and opinions between citizens, and encouraging debate and discussion. In doing so it protects freedom of expression, providing an outlet for voices that might otherwise not be heard.

It is vital to recognise that the media has an impactful role and function in democracy, including ensuring that citizens are enabled to make accountable and knowledgeable choices through the spread and dissemination of information. It can provide a sense of understanding and an opportunity to participate in activities and policies implemented by government. It serves as a check and balance needed to oversee the functioning of leaders who have been elected, and holding those

leaders accountable for the priorities and promises they made in their manifesto to be elected to office.
The South African Constitution provides a framework for understanding the enshrined rights that ensure that a free media is guaranteed, unencumbered by the intrusion of the powerful. The right to information and the right to freedom of expression are two cornerstone rights that distinguish South Africa today from the South Africa of the past. During apartheid, journalists had very limited freedom of speech, and the right to information did not exist.

In the current era, journalists and the media are free. They exist in a more liberal and liberated space, which enables them to write, report and publish freely on matters pertaining to government.

The media remains central to helping society realise the promise of democracy. Section 195(g) of the Constitution codifies that the basic values and principles that govern public administration must ensure that "transparency must be fostered by providing the public with timely, accessible and accurate information", to ensure that the media can assist citizens, and that citizens themselves are able to assume an effective role when it comes to accessing information required for good government.

In recent years the media landscape has undergone significant changes, with the emergence of new formats and the integration of digital online platforms. Traditional media outlets such as print, television, radio, and newspapers still exist, but they are now accompanied by digital media, which has raised questions about the

continuing relevance of what is now considered traditional media. The advent of social media has transformed the role and impact of the media, and allowed anyone to become a publisher and influence what is considered newsworthy. The ability of individuals to create and share news and opinions through technology and social media is remarkable. This power and potential were evident during events such as the Arab Spring, where these platforms played a crucial role in political organising. The influence and reach of digital media have redefined the scope and possibilities of media in our contemporary society.

In the South African context, social media has played a significant role in mobilising movements such as '#feesmustfall'. Civil society organisations such as SECTION27 have effectively utilised media, including social media, as a tool to promote social justice. They have used these platforms to expose human rights violations and hold leaders accountable. SECTION27 specifically have demonstrated how social media can create awareness about issues such as inadequate sanitation or poor infrastructure in schools, shedding light on the negligence of the Department of Education. Additionally, they have used social media to seek justice for the

Department of Health's negligence in Gauteng, particularly in the case of Life Esidimeni, where patients died under their care. Without SECTION27's active use of social media, our knowledge and understanding of these issues would be significantly limited.

Social media can also have negative consequences. Besides the spread of misinformation, disinformation and fake news, it can be used for malicious purposes. The misuse of social media to organise and incite looting and riots in July 2021 in Gauteng and KwaZulu-Natal, following the imprisonment of Jacob Zuma, is one example. Additionally, the interference of tech and social media bots in the Russian and US elections highlighted the dark and harmful side of social media (ab)use. It is crucial to recognise that while social media

has the potential for positive impact, it also carries inherent risks, and prudent regulation may be necessary. The challenge lies in maintaining the crucial role of both traditional and new media as an integral and central part of South Africa's democracy. This includes its ability to empower, inform and educate society, as well as its capacity to uncover misconduct in government and other spheres of society. By fulfilling this role, the media plays a vital role in holding those in power accountable for their actions and decisions. It is important to ensure that the traditional media remains a trusted and reliable source of information, enabling citizens to make informed decisions and actively participate in the democratic process.

In thinking about the role of South Africa's media more recently in terms

of its breaking the story on 'state capture and corruption' and its subsequent coverage, it would be useful to think back to Amartya Sen's work on "development as freedom"; but to think about it specifically in the context of state capture. During the South African transition from apartheid and in the first years after the election of the democratic government in 1994, the Reconstruction and Development Programme (RDP) was a policy that seemed to have been premised on the ideas that Sen espoused. The RDP was a government programme to roll out of basic services such as water, housing and the construction of new schools and clinics, which would enable better lives and livelihoods. The RDP as a policy document contained a number of targets to do with the extent, spread and accessibility of services, welfare and development interventions, and it is a useful gauge for measuring progress against these targets (even though the RDP has been abandoned

1. 'Development as Freedom' means that development should be seen as a process of expanding human freedoms and capabilities, rather than simply as economic growth or material acquisition. Sen argues that development should aim to increase people's ability to lead lives they have reason to value, including the freedom to participate in political and social decision-making, access to education and healthcare, and the ability to earn a living and support themselves and their families. In essence, Sen's central point is that development should be focused on enhancing human livelihoods, well-being and capability.

as a policy and as a government programme). The RDP is derived from the Constitution; but thinking about these RDP goals during the coverage of the State Capture Commission, it became evident that the idea of development as freedom and the goals of the RDP were under threat from a government that had arguably become criminal. It was the media – first through reporting on and making accessible the research conducted by academics on state performance, and subsequently the pressure of the media (with others in civil society and some people in political parties, including the governing party) – that brought pressure to bear for some action to be taken, culminating in a Commission of Enquiry being established. The media shone a spotlight on proceedings, telling the story of state capture. This matters because very basic rights and liberties, including all the rights enshrined in the Bill of Rights, are threatened and under attack from this criminalisation of the state. Large volumes of public funds and resources are flowing into the coffers of organised criminal syndicates and organised cartels. Many of these leech off the state through government contracts, procurement, tenders, supplier agreements and the like. Prices are inflated, and in some cases the expenditure is unnecessary or resources are simply stolen. In addition, much of the public expenditure that may not always be illegal is unethical in complying with preferential procurement and other distorted empowerment policies.

This should be of grave concern, since it indicates all the constitutional rights, especially the socio-economic rights, are under threat. Media freedom is also under attack. There have been discussions in which media tribunals have been mooted, and greater government regulation and surveillance; thankfully, this has been defeated for now. But the targeting of journalists with threats

and harassment is increasing. With the targeting of whistleblowers on corruption and abuses of power, and people having to go into exile, or worse still, being killed, the chilling and dampening effect on a free media is being felt. Despite this, there is still a robust, independent and vociferous media.

ANALYSIS

During apartheid, journalists and the media faced significant challenges due to censorship and repression by the apartheid government, restricting freedom of speech and the press. During the many states of emergency, journalists and editors had to submit their work to government officials for approval from the apartheid-era publications board, and any content deemed subversive or critical of the government was banned or censored. Harassment and imprisonment were real threats, and many journalists who were critical or reported on resistance or protest politics were harassed or arrested by the police. Some editors and journalists were even imprisoned, tortured and banned. Though the most extreme measures described were a reality under states of emergency, in general there was limited access to information; the apartheid government controlled access to and the flow of information, and restricted access to government records and minutes of meetings. This made it impossible to report factually and accurately. Investigative journalism and reporting were still nascent, since there was a reliance on government sources for information and the cultivation of different sources of information could be dangerous or fatal. Reporters also had a limited audience: the government controlled the distribution of

newspapers and broadcasting, which limited the reach of independent media outlets. This led to a limited audience for independent reporting and made it difficult to disseminate information to the public.

Overall, these challenges made it difficult for journalists and the media to report on important issues and to hold the government accountable for its actions during apartheid in South Africa. Yet within these difficult circumstances, a vibrant oppositional anti-apartheid media was developed through trade unions, NGOs and community and student organisations, which stood the post-apartheid media landscape in good stead. Though society as a whole had to adapt and adjust to a new, democratic, open and transparent context, rapid changes in society made adaptation both unpredictable and difficult – sometimes giving rise to unexpected outcomes, especially with the rapid onset of new technologies and the proliferation of social media. After the deregulation of the post-apartheid media landscape, many new free-to-air, community, commercial and independent media outlets sprang up, with sufficient skills not always being available for quality programming and information. In addition, commercial and business imperatives drove media owners to cut costs, affecting production quality and the quality of reportage because of the juniorisation of newsrooms. This coincided with the advent of social media, which slashed advertising and distribution budgets, affecting the business model and distribution.

Despite the challenges and problems there are still strengths and successes worth celebrating, protecting, nurturing and advancing. The freedom of the press holds firm, despite attempts to destabilise. This is because of the constitutional guarantees of freedom of the press and the right to information. This means that journalists still have the freedom to report on issues without fear of retribution from the government or other powerful actors. The capacity and diversity of investigative journalism has become a tradition after being incubated during the apartheid era, maturing post-1994. The work of investigative journalists has resulted in significant changes and reforms in a country where civil society, unions, opposition parties and others build on the work of investigative journalists. In general, the media industry has a well-developed sense of professionalism and ethics, in the main upholding a high standard of accuracy, fairness and impartiality. Aberrations and fanciful reporting are ridiculed, and outlets of that nature have been isolated. Innovation is a strong feature; and even though digital media mirrors the general inequality in society, adaptation to the digital has been remarkably quick, and innovative, accessible, cost-effective digital platforms have allowed great diversity in voices and perspectives.

But populist politicians with easy access to social media can undermine trust in the media; as can media owners who align their outlets with predatory commercial and political interests that find accommodation with these criminal actors who peddle false information while pretending to articulate alternative narratives – which are generally fake news.

■ It is imperative that the traditional media be strengthened and that society takes an interest in ensuring that the traditional media remains a viable industry and a vital contributor to democracy and democratic government.

■ Promoting literacy and media literacy is a necessary activity, especially in being able to consume critical news and information critically. This can help build trust in traditional media and increase its relevance, provided that robust ethical codes and accountability for factual reporting are maintained, and that a diversity of views and opinions is maintained.

■ Diversity in geographic and spatial coverage is necessary. The media landscape perpetuates the marginalisation and neglect of news, sources, opinion and comment from non-metropolitan areas, and especially from non-metropolitan provinces. It is necessary to increase the diversity of voices and perspectives in the South African media to better reflect the diversity of South Africa's population and increase the media's relevance to different communities. Cultivating a diversity of sources and bringing in voices from the non-metropolitan provinces will also serve to bring marginalised voices into the mainstream debate.

■ Embracing digital platforms and social media is an inevitable reality. Incorporating digital media into their operations to reach a wider audience, engaging with younger generations and cultivating more relevant content can keep the traditional media relevant through compelling content creation and quality, appealing production.

■ Combating fake news, false information, misinformation and disinformation is a complex and ongoing challenge. The traditional media have a role to play, together with the education system, in encouraging and cultivating critical thinking and media literacy, which should be taught in schools and in post-school education and training.

■ Providing resource support and subscribing to fact-checking organisations can play an important role in verifying information and exposing false information.

■ Collaboration with technology companies to help identify and remove false information from the internet requires government and the media industry to collaborate on developing 'light touch' protocols and regulatory guidelines to remove hate speech and harmful content from online platforms.

■ The use of artificial intelligence instruments and tools to detect and remove false information, while also taking steps to ensure that these tools are transparent and accountable, will be required as social media sites proliferate.

■ Building campaigns to address the root causes of misinformation, such as political polarisation and the spread of conspiracy theories, hate speech and harmful speech, should be spearheaded by non-governmental organisations, media outlets and education and training institutions, with the private sector supporting such initiatives.

STRENGTHENING OUR INSTITUTIONAL DEMOCRACY
IN SOUTH AFRICA

SPEAKERS

Gareth Newham
'Rebuilding and reforming the security apparatus' –
Head of justice and violence prevention at the Institute
for Security Studies (ISS).

Ebrahim Fakir
'Getting back to basics and strengthening multiparty democracy' – Director of Programmes at the Auwal Socio-Economic Research Institute (ASRI).

FACILITATOR: Lawson Naidoo

SESSION SYNOPSIS

Strengthening institutional democracy has to be located in the context of South Africa's particular constitutional order; though democracy is about majority rule, there are also restraints on what is termed the "tyranny of the majority", a phrase coined by French political philosopher Alexis de Tocqueville in the mid-19th century, referring to a situation in which through the democratic processes, a numerical majority view exercises its power to make decisions that disadvantage or victimise a minority group, even if unintentionally. Though it is taken for granted that in a democracy the majority has the right to decide – and the power to make decisions and enact policies that affect everyone in society – should the majority consistently ignore the liberties, rights and interests of minorities and use its power to impose its will, it can be a type of tyranny. It is for this reason that the protection of individual liberties, rights and freedoms, even when they conflict with the will of the majority, is included in the Constitution – highlighting the need for a democratic society to have robust curbs on the power of the majority. These include checks and balances such as an independent judiciary, or even in some cases special majority thresholds in a constitution (two-thirds or three-quarters) to prevent the majority from making rules, laws and policies that could deny individual or minority rights. The abuse of numerical superiority can lead to discrimination against minorities in public benefits, employment, education and other public services,

but also in political representation; and may result in the construction of narratives and discourses that victimise and scapegoat others for the failures of Government.

The Constitution in South Africa is premised on avoiding this by enshrining individual rights, and more importantly socio-economic rights, which also creates space for redistribution, through governmental policy, to address the legacy of apartheid. Importantly the Constitution creates a series of checks and balances against abuse of such public power through the separation of powers and functions between the executive, the legislature and the judiciary, and between national, provincial and local government.

Despite this framework, weaknesses in the constitutional system have been exposed, with the Constitution coming under attack, the institutions supporting and giving life to it being undermined, and its procedures and processes being manipulated. This has resulted in a lack of accountability, with institutions not playing their proper roles, leading to a culture and climate of impunity – for example, when those involved in corruption and state capture appear to get away with wrongdoing. This undermines the integrity of the safety, security, crime and justice system. One of the key lessons learned from the Judicial Commission of Inquiry into Allegations of State Capture (a.k.a. the Zondo Commission) is in the contin-

uous references to how institutions of governance established to protect the public from the abuse of power by the executive failed to do so; either deliberately, because they were manipulated and repurposed in a particular way to facilitate corruption and state capture, or simply through turning a blind eye, as Parliament was wont to do.

A key protection would be an effective system of law enforcement, where cases are predictably, consistently and fairly adjudicated by an independent and impartial judiciary.

SYNOPSIS
'Rebuilding and reforming the security apparatus'

The violence that took place in July 2021 recentred and raised questions about whether the South African State plays an appropriate role. Of the many roles of the State, its most fundamental is to provide stability, safety and security for all people, particularly in a state with a constitution founded on human rights. It is vital that the institutions tasked with safeguarding the public and providing security, safety and policing are underpinned by trust. Without trust, they are unable to function effectively; and if this most fundamental aspect of stability, safety and security is missing, then other parts of government cannot function properly because the basic precondition is missing. This is a systemic, institutional, structural and operational problem as much as it is a

cultural, attitudinal and behavioural problem in society.

If it is not possible to have basic safety at local community level, it is difficult to provide the infrastructure and services people require, because the risk of damage, theft and abuse is heightened. In their absence, other forms of authority – such as criminal gangs, cartels, vigilantes and other undesirable groups – fill the gap. Since the interest of local politicians and parties is to retain power, they are incentivised to reach accommodation with these antisocial groupings, in a mutually beneficial embrace. This continues to undermine the ability of the state to provide services and uphold people's rights.

In the July 2021 riots, the state security architecture – police, crime intelligence and others – were completely unaware of what was about to happen, and were unable to prevent, stop or police it once it started. To date we have seen little to no accountability for the events, since very few of the instigators, planners and participants have been held to account.

Part of the problem here is the conception of what constitutes 'national security'. Discussions of national security should not be the preserve of a small group of faceless people in a state security agency, with all the information they have classified 'Top Secret' and no one else having any access to it in order to take preventive measures or perform proper, informed and accurate risk assessment and mitigation. Naturally, some information must remain classified so as not to compromise investigations or alert instigators and conspirators; but the closed nature of who and what is involved in 'national security' must be broadened.

There should be greater collaboration with the public, incorporating some public input, so that everyone in society can have input into national security and strategy. The plans must also be in the public domain, so that there is scrutiny from civil society, academia, business and communities. They must know what exactly the state is spending money on, and what it is doing to address key challenges; and how these plans are being adapted to changing needs and priorities in society, as society changes and new risks and threats occur. In the absence of this transparency, large amounts of resources go missing and are unaccounted for, but are said to have been dedicated to 'national security'. This opacity opens the space for corruption. The testimonies and findings of the Zondo Commission highlighted concerns about the inadequate scrutiny, monitoring and accountability mechanisms in place – in the security and justice cluster within the executive; in the command, control and supervisory structures within the police services; and through parliamentary committees such as the Portfolio Committee on Police and the Joint Standing Committee on Intelligence – to conduct effective oversight in holding the security agencies accountable for their actions. It pointed out instances where this lack of oversight contributed to potential abuses of

power and corruption. During the hearings, instances were revealed of alleged state capture and corruption involving high-ranking officials within the security agencies, raising questions about the effectiveness of existing oversight mechanisms in preventing and detecting such misconduct. The Commission emphasised the need for stronger oversight to ensure transparency, integrity and accountability within the security sector.

It is also necessary is to rethink the role and function of security agencies outside of being technocratic and securocratic structures that exist in a vast and murky bureaucracy, away from the sphere of popular democratic control. If this is not done, the security agencies can be used and abused by governments, parties in government and other influential and powerful structures in society. This compromises the stability of society, and importantly, also the ability of people to exercise their rights once political actors become enmeshed with antisocial and criminal elements.

It is unsurprising that there is a crisis in the police services. Society must rethink what it expects from its police. For example, one of the top priorities of the South African Police Service's (SAPS) current five-year strategic plan is to "stamp the authority of the state". Does South Africa need a police organisation that thinks it must go around enforcing the authority of the state? Or would society be better served by a police organisation that sees its fundamental goal as improving trust in the police in order to improve community safety and curb violence and crime?

In late 2021 a report was presented to the President by a high-level panel which had reviewed the July 2021 riots, and made some quite far-reaching findings; one of which suggests that ultimately, it was the Cabinet (the executive arm of government) that was responsible for the failures in intelligence, policing, and risk mitigation and management. There are also reports of conflicts between the Minister of Police or the political heads responsible for police and the National Commissioner of Police, both of whom have power, authority and influence – from different sources and in different areas, but it appears that the political and executive heads conflict with the operational and administrative heads. This reveals much about the incoherence within the Police and security services.
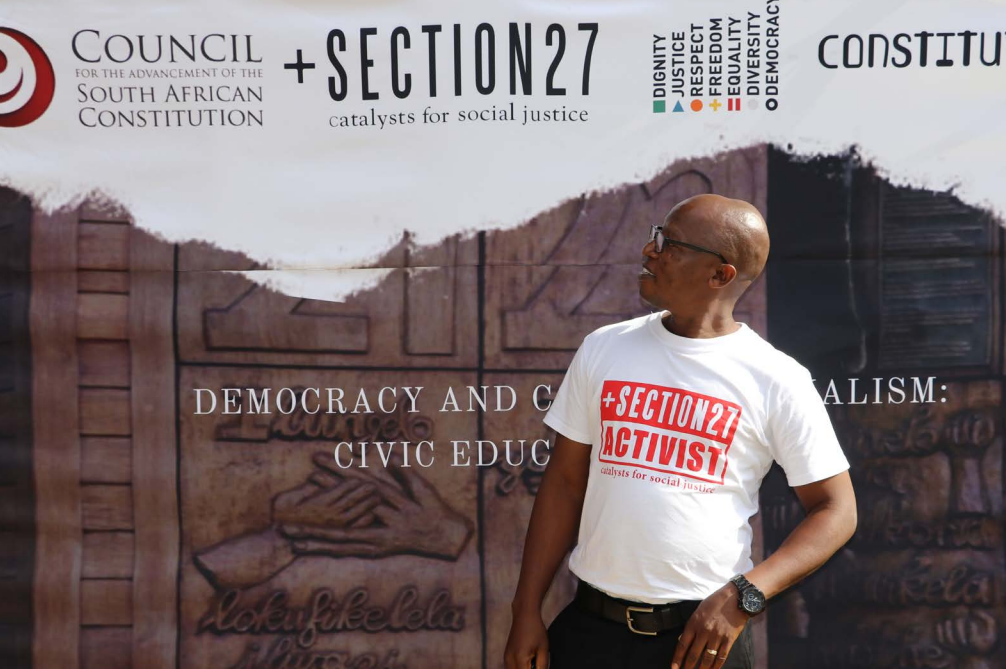
The challenge of security sector reform globally is that it is a political process. Those who have power and authority want to influence what security agencies do to protect themselves or their interests. And it is people in power and authority who appoint the heads of security services; they are also part of the group that decides what the strategic focus must be, allocates the budgets, and determines the overall approach and policing doctrines that are adhered to in practice, regardless of what is on paper in the Constitution.
It is unsurprising that the high-level panel investigation into the July 2021 riots found that all the components of

the security services and the government administration were in dereliction of duty, and had failed in their legal and constitutional obligations. They were distracted by other things, or they were complicit, or they were simply incompetent. A more cynical reading is that many remained silent since it furthered their own political interests, in a government made up of factions of a fragmenting governing party. The truth lies somewhere in between. Clearly the security services were not fit for purpose. And this fitness for purpose is determined by the political authority of the day, which means that the cabinet ministers and the party they come from have a determining role in influencing who is appointed to be the head of the Police Service or the State Security Agency, the extent to which stringent oversight is conducted over them, and the degree to which they are held accountable for achieving their constitutional mandates.

With insufficient transparency, how is it possible to ensure that they fulfil their mandates? This is potentially a problem across the security services; but for the police there is an additional problem – the lack of co-ordination and cohesion. When disasters such as the July 2021 riots occur, or in the maelstrom of daily levels of crime and violence, there is a shirking of responsibility and a game of blame. It is evident that collaboration and co-ordination is lacking across the criminal justice system, and the system

can only be as strong as its weakest link. Unfortunately, the system in South Africa has too many weak links; and one of its biggest problems is political.

The South African Police Service (SAPS) has an annual budget in excess of R100 billion; the criminal justice budget is around R140 billion; and in the eight years until 2020, the SAPS budget swelled 65.5%, from R58.5 billion to R96.8 billion. Despite this considerable growth in budget, there has been a decline in performance on every indicator over that nine-year period. Despite the budgetary increase, spending priorities have been skewed in favour of retaining a bloated, expensive and ineffective senior management, while slashing thousands of operational posts. The SAPS has almost 200 generals and more than 600 brigadiers, collectively earning around R1 billion annually. These skewed spending priorities and the inverse relationship between budget allocation and performance outcomes is evidenced in the statistics regarding the police's ability to solve murders, which has dropped by almost 40%; their ability to solve robberies and interpersonal crimes or attacks on people in their homes or businesses has dropped by 25%. Murders have increased by 37%, and robberies by 43%. Large increases in the police budget appear to have resulted in a major reduction in effectiveness; yet no one has been held accountable for this. It also demonstrates that there is a dis-

Those who have power and authority want to influence what security agencies do to protect themselves or their interests.

connect between what is happening at a political level, and SAPS operational capabilities.

This too is unsurprising, in that political conflicts between political and administrative office bearers have been prevalent in the SAPS for almost all of post-apartheid South Africa's history. Since the President appoints both the national Minister of Police and the National Commissioner of Police, they both believe that they must be responsive and accountable only to the President. And they may often be tasked with other duties by the President, who has the executive authority to do so. These additional deployments may distract them from their core responsibilities.

Perhaps there should be a system of clarifying and codifying the distinct roles and responsibilities of political and administrative officials in law, such that every instance of an instructional directive must be made in writing and reported on annually to Parliament, so that the public can scrutinise who has overstepped their mandate or who did not carry it out.

Given the challenges in South Africa over the last decade, it appears that toxic institutional cultures have taken root and become entrenched. There are people in these institutions who have been appointed for reasons that have very little to do with their abilities, experience or passion for improving public safety. At some level it is not just political oversight that has

broken down, but management and supervisory capacity and ability – along with compliance to requirements for the job. For instance, how do firearms, ammunition, vehicles, dockets and evidence disappear from police stations, since there are inventories, records and systems of supervision and responsibility? And yet they go missing, without anyone being held accountable or responsible.

ANALYSIS
'Rebuilding and reforming the security apparatus'

The veil of secrecy that shrouds the security sector creates space for undue influence and conflicts of interest. When it comes to closed sessions of meetings on issues of national security, for example, a small, elite coterie of people become extraordinarily influential, behind closed doors; and they are lobbied by the wealthy and well-connected – typically, those who have resources and connections that can help them buy influence. There are many instances of the wealthy and well-connected buying themselves the influence that enables them to determine what constitutes national security. For example, there have been instances of private companies getting the police to escort and protect their private delivery trucks, in the name of the national interest.

In addressing the public safety crisis in

South Africa, it is important to broaden the understanding of what constitutes public safety. Relying on policing alone is not sufficient. In many countries the majority of crimes are not reported to the police, as the police are typically seen as a measure of last resort. The role of the police should be viewed as that of highly trained professionals who aim to uphold and restore people's dignity. They should be skilled communicators and problem solvers, and should only intervene when other measures and mechanisms for resolving conflicts have failed, and their involvement is necessary to restore social order and harmony.

The size of the South African Police Service grew at an unprecedented rate between 2002 and 2012, from 130 000 to approximately 200 000. Despite these increases in personnel, crime did not go down, but instead increased. Murder rates increased, as did house robberies, and society is generally less safe.

As a comparison, had the country employed 70 000 more teachers and social workers, for example, instead of police, working with young children, with caregivers or with primary school teachers, then children and young adults with a greater propensity for crime – or just those who are out of school, for any of a variety of reasons – would be able to access care workers who could help them to navigate through social responsibility, building relationships and dealing with conflict; and the result would have been a safer society.

One of the myths about the criminal justice system is that it is the only way to deal with safety and security. While it is an important and necessary component, the criminal justice system should be dealing with the most dangerous and repeat offenders; other systems should be dealing with simple theft and other petty crimes that happen on a day-to-day basis, before they become out of control.

- South Africa faces significant challenges with its policing and security apparatus, including issues with co-ordination, cohesion and compatibility between different organs and agencies. Incompetence and the failure of political oversight and management supervision is harming safety, security and stability.

- Community policing must be strengthened through establishing trust and credibility.

- Rethinking and reforming the mandate of the police, and thinking of the police as a service rather than a force, could change the orientation of the SAPS.

- Corruption is a significant problem within the police force, with some officers accepting bribes and engaging in criminal activities themselves. This has undermined public trust in the police, and contributed to a lack of cooperation between the police and the communities they serve.

- A necessary and immediate task for a clean-up operation is to address corruption through tackling the interface between politics and criminality, and unravelling the interests of criminal cartels that have found accommodation within the political system.

- There is an urgent need for a functioning disciplinary system in the SAPS. "The SAPS internal disciplinary system has largely collapsed. Internal disciplinaries dropped 71% between 2012/13 and 2019/20. In half of the hearings, the case was withdrawn because witnesses failed to appear or evidence went missing. In only 7% of hearings do police officers get dismissed or suspended without pay".². The Independent Police Investigative Directorate (the external police accountability agency) has not performed much better. Of the 47 984 cases opened against police officials between 2012 and 2020, only 16% were referred to the SAPS for disciplinary action, with a paltry 3.2% ending in a disciplinary conviction. Only 0.4%, or 194 police officials, were dismissed as a result. The effect is widespread police brutality and corruption, resulting in declining public trust and support for the police.

- There must be better collaboration between different agencies and departments involved in law enforcement and security. This should include improving information sharing and coordination, as well as encouraging joint operations and partnerships between different agencies.

Corruption is a significant problem within the police force, with some officers accepting bribes and engaging in criminal activities themselves.

- Roles and responsibilities must be codified in law and include the requirement that every directive should be in writing, and should be reported on annually to Parliament, so that the public can scrutinise who has overstepped their mandate and who did not carry theirs out.

- Strengthening accountability mechanisms and creating a culture of transparency in the national security apparatus and in security risk management and mitigation, especially regarding budgeting and expenditure

- Improving training and resources to improve competence and capabilities. Providing better resources for equipment and technology, and ensuring that officers are adequately trained in human rights, community policing and taking a social crime-prevention approach.

- Keeping track of the statistics recording the proportionate reductions in crimes in relation to increased financial and human resources dedicated to policing

- Improving internal management controls and supervision over inventory and equipment.

2.   Newham, Gareth, 'The problem isn't funding or expertise – it's a political one that President Ramaphosa cannot allow to fester', Institute for Security Studies, ISS Today, 28 July 2021 https://issafrica.org/iss-today/sa-police-failures-demand-urgent-reform-before-its-too-late

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catalysts for social justice

CONSTITUTIONHILL

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FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN
CONSTITUTION

SYNOPSIS – 'Getting back to basics and strengthening multiparty democracy'

Many of the seemingly most intractable governance problems in South Africa, whether in policing, safety and security service provision or the provision of basic services, or even in other areas of public life, are political problems. Processes of governance and the constitution of government are post-political facts. They occur after a process of politics. Thus, if the processes of politics – the processes of acquiring power – are poor, then the process of governing afterwards is also likely to be poor.

There appears to be a problem with how politics as an activity is conceived, and what its purpose is. There seems to be a general idea that the purpose of politics is merely to capture power, and power is captured merely for the purpose of predatory interest. And in some ways, predatory interests can only sustain themselves by exploiting the cleavages and artificial divisions in society as instruments of political capital. Society, it appears, incentivises and rewards this behaviour.

When examining the process of politics and its relationship to government, three questions arise. Firstly, do the weaknesses in government processes stem from a flawed politics? Secondly, has a corrupted and manipulated politics resulted in distorted government, a product of state capture, in which the malevolent and manipulative nature of politics has led to deformities in governance processes? Thirdly, is poor government simply a result of incompetence and lack of capacity?

By considering these questions, we can explore the underlying factors contributing to deficiencies in government and governance processes. This brings us back to the foundational question: what is democratic politics, and why is it preferable to any other kind of politics?

In essence, democratic politics involves capturing the state to a certain extent. This is because democracy enables citizens to collectively exert influence over public decision-making processes, and shape the allocation of public resources. By engaging in democratic politics, citizens exercise their agency to participate in the governance of society, and determine how public

Democracy therefore facilitates some form and type of capture. But democratic government places restraints and constraints on the use (and abuse) of power and authority

resources are distributed and spent. Democracy therefore facilitates some form and type of capture. But democratic government places restraints and constraints on the use (and abuse) of power and authority, so that capture in the sense that democracy facilitates is not complete. Equally, what matters is the nature and quality of the capture, and its purpose: does it serve the pursuit of redistribution, proper government and social justice? Or is it for purposes of using the instruments of government for predatory raiding, and the accumulation of public resources for private gain?

To return to the question of democratic politics, multiparty democracy and democratic government, the founding provisions of the Constitution state: "The Republic of South Africa is one sovereign, democratic state

founded on the following values: (d) Universal adult suffrage, a national common voters roll, regular elections and a multiparty system of democratic government, to ensure accountability, responsiveness and openness."

The issue of multiparty democracy is not entirely settled. Although multiparty democracy is generally seen as a positive concept, the Constitution highlights that it serves a greater purpose, which is the establishment of effective multiparty government. The emphasis is not solely on the existence of multiple political parties, but rather on the importance of accountable, responsive and open government within a multiparty system. Popular debate, especially among the political class, is largely restricted to talking about multiparty democracy – in deliberate erasure and neglect of the more important imperative of accountable, responsive and open government.

This wilful disregard for accountable, responsive and open government is not innocent. It appears to be a deliberate rejection; not just of democratic politics, and democracy as a system of government, but a rejection of the Constitution itself.

And this situation has been the consequence of the detached nature of South Africa's political parties, aided by the existing electoral system. The current pure, proportional representation system has indeed produced a great diversity of parties. The National Assembly currently has 17 different political parties represented in it. But with all this diversity of parties, there has been (and still is) very little transparent, accountable and responsive government. The failure of accountability is due to the failure of three forms of oversight. The first is management failure, where managers and executives in the civil/public service fail to oversee or effectively manage and

supervise public/civil servants. There is either a wilful disregard or an inability, incapacity or politicisation that leads to the reluctance or failure to execute the basic management functions of supervision. The second is a breakdown in the political interface: the institutional oversight exercised by Parliament over the Executive. The third is the systemic inability of citizens to hold elected public representatives to account. The pure proportional representation (PR) system has incentivised elected officials to be completely beholden, answerable and responsive solely to their political parties, to the exclusion of any other consideration. And within this system, because the public service is so deeply party-politicised it inhibits the internal organisational supervision interface, which also breaks down.

There is a degree to which it must be accepted that party loyalty will be important for elected representatives. However, the pure PR system enables the complete and utter neglect of and disregard for answerability, to the electorate and to the citizens. It must be

said that the PR system has been good in bringing about a multiparty democracy; in 2014, at the bottom of the pile there were nine political parties, which shared only 6.5% of the vote – that is, 42 seats out of 400. In 2019, 12 political parties shared around 20% of the vote, and shared 86 seats out of 400 between them. While this may have enabled a great degree of diversity in the multiplicity of parties represented, it certainly has not enabled multiparty government; it has merely allowed for the multiplication of political parties, and the proliferation and fragmentation of them. It also enabled the emergence of new 'shadow' parties: proxies for one or other organised faction inside a dominant political party, as an organisational insurance should there be a need to exit from the main party; or to exert pressure on the dominant party from within the political system, in order to be a vehicle enabling access to political office if precluded from it in the main party for disciplinary reasons, or by not winning internal party elections. If there is no move away from this pure proportional representation

system through meaningful electoral reform, it will continue to encourage this predatory behaviour in political parties. Public representatives will remain responsive and answerable exclusively to political party concerns, rather than public or community concerns.

Any electoral reform proposals that maintain a predominantly proportional representation system will continue to weaken and obliterate any potential for the oversight, accountability and responsiveness nexus, the ignoring of which has been identified as the root cause of poor government and a lack of progressive social and economic development. It will continue encouraging the absurd fiction that Parliament, Members of Parliament, Members of Provincial Legislatures and Councillors are less powerful and influential than Ministers and holders of executive office in provincial and local government. The opposite is true when it comes to the power of scrutiny and oversight. It encourages contempt for the Constitution, and enables the crude abuse of a majority in Parliament to shield power-

ful members of political parties holding office in government from scrutiny. It also conveys the message that genuine competition of ideas in the contest for power at localised levels does not matter, or that there must be institutional competition which will incentivise oversight and responsiveness. Maintaining the current electoral system with major elements of the PR system will weaken the restraints on the abuse of authority and the limits on the exercise of unfet-

tered power. The PR electoral system has hindered Parliament's ability to exercise its powers of restraint on the executive. Had it done so it may have obviated the need for a commission of inquiry into state capture, as Parliament would have been able to stem the tide of executive abuse. The PR system has not promoted a genuine competition of ideas in politics, despite the proliferation of parties.

The kind of electoral reform that South Africa needs is one that uses the system to facilitate a change in both the structure of politics – the use of power and distribution of resources – and in the behaviour and attitude of political culture that will force elected representatives to feel answerable to their party, if they belong to one, and answerable to the public. A mixed system with a bias towards spatially well-defined constituencies is neces-

sary, even though it may also produce fragmentation and proliferation of different small parties, micro-parties and independents. At the very least, elected representatives will feel invested in communities and constituencies of support; and in turn, the constituency members will have a direct stake in the representative's election or re-election.

ANALYSIS
'Getting back to basics and strengthening multiparty democracy'

The current electoral system has led to much inclusivity and diversity, but has also resulted in the proliferation of political parties, excessive fragmentation, and consequently a degree of ineffectiveness. It has been good for consociation but not good for effective oversight, accountability or responsiveness. The problem of politics in South Africa is that it is populated by parochial, insular parties pursuing self-referential policies in public institutions detached from public concerns. Unsurprisingly, this renders them unresponsive to

changes in society's needs and priorities.

The result has been declining rates of participation in elections. At the same time, the level of popular protests, court cases, civil disobedience, strikes, and tax and rates boycotts have all increased. This has reinforced the divisions and cleavages inherited from apartheid and perpetuated them. Social solidarity across income and race divides has declined, and same-group solidarity has increased, unwittingly reinforcing and reifying apartheid divisions. Finally, crude populist politicians have used these cleavages as instruments of mobilisation; but more importantly, to destabilise institutions tasked with serving the public. It will be difficult to recover from the destabilisation and weakening of public institutions that has occurred. Institutional and process manipulation, procedural obfuscation and the abuse of authority have all led to the abuse of rights and the undermining of socioeconomic rights. This situation exists precisely because political parties and public representatives from the parties were allowed to do as they please, without restraint, pursuing self-referential

policies in public institutions which were themselves detached from public concerns.

The state's main responsibility is its regulatory capacity, which includes making laws, policies and rules that maintain order in society. This could involve curbing and controlling crime, ensuring community safety, regulating economic activity and disciplining private capital. However, if this regulatory capacity is ineffective and disconnected from public concerns, solely serving the interests of a political party, it renders the state vulnerable to predatory capture, and the state and its resources to exploitation by private interests. To address this, a shift away from the dominance of party politics is required in favour of a decentralised approach to political decision-making that allows competition and influence at the local level. This way, ideas can flourish within communities, giving individual voters the power to choose their representatives. This shift has the potential to rebuild the eroded trust in the political system.

SIGNPOSTS

'Getting back to basics and strengthening multiparty democracy'

- Strengthening multiparty democracy in South Africa is necessary to provide people with a diversity of choices to represent them, and to act as an effective voice for them in processes of government. It is also critical that through effective representation, the government is held accountable for its actions; and that both elected representatives and executive authorities are responsive to public concerns.

- Democratic politics must ensure space for political participation and multiparty democratic government for three purpos-

es: (a) for competition and the contestation of ideas; (b) to place restraints on the use of power and authority; and (c) to enforce a separation of powers and functions.

- More policy-based political parties with a more mature political culture, rather than insular, myopic political parties detached from public concerns.

- Promoting electoral integrity and ensuring that elections are free, fair and transparent is critical to the legitimacy of the democratic process.

- Encouraging citizens to participate in civic activities, such as voting, engaging in public debate, and holding elected officials accountable. These will be essential to the functioning of multiparty democracy. This includes creating spaces for public debate and deliberation, supporting civil society organisations, and providing citizens with access to information.

- Enhancing political representation through electoral reform that ensures that all groups have representation in the political process, which would underpin its legitimacy.

- Strengthening institutional checks and balances by enforcing checks and balances on the power of elected officials and the executive, which is essential to prevent abuse of power and ensure accountability.

Stemming the tide of divisiveness and exploitation, by addressing political polarisation and social division and the abuse of narrow and crude identity politics as instruments of political capital.

- Electoral reform that will advance the power and influence of individual voters to enhance accountability, responsiveness and openness, as well as dignity, equality and freedom.

- Responsibility, responsiveness, Inclusivity, diversity, representativity and proportionality in the system that is designed to facilitate oversight and accountability in executive/legislative relations, between party representatives, party organs, leaders and members, and between elected public representatives and the public, their communities and constituencies.

- Simplicity and transparency in the electoral and governance system.

REFLECTIONS ON SOUTH AFRICAN CONSTITUTIONAL DEMOCRACY

TRANSITION AND TRANSFORMATION

There have been significant attacks on the foundations of South Africa's constitutional democracy

SESSION SYNOPSIS

There have been significant attacks on the foundations of South Africa's constitutional democracy – much of it, located in populist rhetoric centred on the failure of the South African Constitution to deliver the promise of transformation and socioeconomic change. The question that remains is whether the failures in delivering change are due to the Constitution's inability to do so, or whether these are attributable to failures of politics, policy and government. The attacks have not been merely rhetorical and political. There has in fact been physical damage to the Houses of Parliament and the physical building of the Constitutional Court,[3] in what could be construed as symbolic acts of attack on the institutions safeguarding constitutional democracy.

It is important to acknowledge that many of the criticisms targeting the Constitution as an impediment to change may be driven by opportunistic motives. However, it is still necessary – despite this opportunism – to raise challenging and uncomfortable questions regarding the legitimacy of certain grievances against the Constitution, and the underlying issues they represent. By engaging in thoughtful and critical discussion, it may be possible to reach a better understanding of the complexities surrounding these concerns and work towards meaningful solutions.

It is crucial to recognise that transformative constitutionalism aims to challenge and overturn people's entrenched perceptions that were fostered by the oppressive apartheid regime. Apartheid was a system constructed through a deliberate network of laws that systematised and institutionalised racism in the state, society and economy. To dismantle this system, a fundamental question arises:

Can the law be employed in a similar manner to undermine the foundation of a racist state, and simultaneously reshape society and the economy according to the vision outlined in the Constitution? The Constitution envisions a society based on principles of freedom, dignity and equality for all. Through legal interpretation, jurisprudence and the reconstruction of society, which has been scarred by more than 300 years of colonial, racist and apartheid laws, it is possible to reverse these injustices.

However, it appears that early efforts in legal interpretation and constitutional jurisprudence may have underestimated the impact of poor politics and ineffective governance. The political project that emerged after 1994 appears to be at odds with the foundational principles of establishing a non-racial, non-sexist society built on freedom, equality and dignity for all.

As a result, the historically disadvantaged population continues to experience present-day disadvantages, highlighting the discrepancy between the aspirations of the Constitution and the realities in society. The main question revolves around the challenge of effectively reconstructing society to move away from a racist, sexist and homophobic worldview; and in pursuing this shift, it is worth questioning whether there was an over-reliance on the Constitution, without sufficient social and political activism, commitment and consciousness from different actors in society to reach this goal. The Constitution and its interpretation by the courts are vital instruments for transformation. However, it is essential to consider whether placing excessive hope and aspiration solely in the constitutional framework has overshadowed the need for broader societal engagement and activism. Simply relying on legal mechanisms may not be sufficient to bring about the desired societal shifts. Addressing deep-rooted inequalities and discriminatory attitudes requires active participation, awareness and mobilisation from individuals, communities, civil society organisations and political actors. It is the collective responsibility of society to foster the necessary social and political consciousness to drive meaningful change beyond what the Constitution alone can achieve.

Political transformation requires a redefinition of relationships among the elite, both old and new. It also requires a deep understanding of the marginalised and excluded, and that marginalisation and exclusion are not solely historically inherited. Those who find themselves in that position are not in that position due to their inherent qualities or characteristics of inability; rather, they are there due to socio-economic and political processes, bad government, poor policy choices, and the power differential in dynamics between those with social and economic influence and those without.

Transformation processes aim to create a new South African identity and reality that departs from the dominant system of the past 300 years. This new reality should embrace principles of diversity, non-racialism, anti-racism, non-sexism, and equal distribution of resources such as basic services, education, health and access to livelihoods – irrespective of race, class or gender. However, it can be argued that in practice, South Africa has not fully embraced a genuine conception of transformation.

Although the constitutional text of South Africa draws on concepts and ideas from various Eurocentric sources, such as Germany, the European Convention of Human Rights, America, and Canada, this is not in itself fundamentally significant. What essentially matters is that South Africa has the opportunity and ability to reconstruct and reconfigure society according to the vision outlined in the Constitution. The primary hindrance to achieving this transformation is politics; specifically, the nature of current politics in South Africa. The existing political landscape is fundamentally opposed to any form of progressive social change. It promotes rent-seeking political behaviour that perpetuates and exacerbates inequality, fosters various forms of anti-progressive populism, and excludes the

SPEAKERS

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majority of people from meaningful political and economic participation. Ultimately, this is the nature of politics; and because of politics, the Government in South Africa has failed to drive the desired transformation. Has the law contributed to these failures of social transformation and change? To a certain extent, it has. One reason for this is that the courts have often struggled to engage effectively with the normative political and economic framework embedded in the Constitution. Instead, they have opted for a process-driven, objective approach that does not account for the substantive purpose of the law, and they have frequently been overly constrained by the technicalities of legal interpretation. Equally, it is important to acknowledge that there have been notable instances of jurisprudence that have made progressive contributions. Cases involving the right to education, housing and healthcare, such as the renowned Treatment Action Campaign case concerning access to anti-retroviral medication, have highlighted the potential for combining politics and the law to facilitate transformative opportunities that protect the most vulnerable from further marginalisation. While the law has had its shortcomings in driving social transformation, there have been instances where it has played a commendable role in promoting progressive change, and safeguarding the rights of the marginalised and vulnerable.

In general, the law – particularly in areas such as property law and contract law, as well as in private law as a whole – has been heavily influenced by legal terminology inherited from the apartheid era. Consequently, the prevailing thought patterns and approaches to law have seen limited conceptual changes. The interface between politics and the law, in terms of jurisprudence, lacks coherence in interpretation; which hinders the promotion of a unified vision of transformation. For instance, if the criticism that the Constitution is Eurocentric is considered valid, it raises the question of what a different conception of the world would produce, in terms of

constitutional values such as rights, separation of powers, limitations on power, and the scope of authority? Exploring alternative conceptions could lead to envisioning a constitution that reflects different cultural and societal perspectives. One area where a different imagination can be applied is in reconfiguring the notion of property based on a communitarian vision. This suggests exploring alternative approaches to property ownership and usage that prioritise community well-being and collective interests over individual rights alone. This sharply raises the distinction between a liberal constitution and a transformative constitution. A liberal constitution typically emphasises individual rights and freedoms, separation of powers, and limited government intervention. It aims to safeguard individual liberties and provide a framework for a democratic society. A transformative constitution goes beyond the protection of individual rights and seeks to bring about substantial societal change and address historical injustices, by restructuring power relations and promoting social and economic equality.

South Africa's Constitution is often regarded as a liberal one, since it guarantees a range of individual rights and promotes democratic principles. However, the question arises whether a liberal, Euro-centric constitution can truly be transformative in terms of fundamentally reshaping society, or if its potential for promoting transformation is limited, because the current constitutional framework may serve as both a sweetener and a dampener to transformative political agency. While the Constitution grants rights and privileges, it may have unintentionally disarmed and pacified transformative political movements, by providing a legal framework that can potentially mitigate radical challenges to the existing power relations. Diagnosing poor government performance – and the ineffectual 'implementation' of policy and government programmes – as the issue that retards social and economic transformation is appropriate. It is equally important to

question the notion that the Constitution alone can fully address limitations in the implementation of policies and government programmes. Even with a more radical Constitution, there is no certainty that South Africa would be in a different position than it is currently. It is essential to recognise the limits of the law, no matter how radical the law might be. The very idea of transformative constitutionalism is to acknowledge the pitfalls of unguided euphoria and unrestrained optimism in the capacity of law and transformative constitutionalism to bring about radical transformation in South Africa. The law and the Constitution cannot guarantee that people will not subordinate the instruments of government for evil; neither can it guarantee that people in power will not use the law and instruments of government for illicit wealth accumulation. The law and the Constitution itself cannot stop corruption, or engender trust and solidarity between people.

Despite the limitations of the law and the Constitution, they can have a positive impact when utilised skilfully and innovatively. If a rights-based framework is established, the law and the Constitution can contribute to the humanisation and progress of society. Even if the law is not implemented perfectly, it can still bring about tangible material benefits to individuals. Constitutions and laws have the potential to provide a foundation for moral agency and civic dignity, empowering people and fostering a sense of collective responsibility.

ANALYSIS

South Africa's constitutional democracy is a remarkable achievement. Emerging from a fractured past of division, segregation, exclusion and exploitation, it underwent a challenging transition to a society that is free, inclusive and equal. The Constitution ensures that all individuals are equal before the law, enjoy equal rights, and are provided with socio-economic rights. It also implements policies to address past injustices through resource redistribution.

This transition and transformation, though not complete, is not without potential. Some of this potential may have been squandered through inappropriate and contradictory policies and poor government performance. Despite this, it is significant that the principles of equality, human dignity and freedom are enshrined, together with a robust framework for protecting the rights of all South Africans and limiting state power and its abuse.

This may be ensured through an independent judiciary and a nominally accountable government. The origins of the emancipatory ideas in the Constitution do not in any way inhibit its emancipatory and transformative potential. Failures in government performance do.

Though the transformation of South Africa's political system has been thoroughgoing, and the dismantling of apartheid-era institutions and the establishment of a new, more inclusive political system have moved society forward, the limits of the law and the mentality and consciousness required to infuse the law with a transformative interpretation have been lacking. Deep-seated inequality is perpetuated through a focus on the procedural aspects of the law and constitutionalism, at the expense of more substantive interpretations. Concerns about corruption and political interference in the judiciary remain rife.
To effectively address poverty and inequality, constitutionalism should prioritise a shift towards transformative principles, rather than relying solely on liberal constitutionalist ideas. This requires moving beyond a procedural focus on institutions, and allowing politics to play a role in resolving societal conflicts through deliberation, accountability, fair elections, and a balance of power between government branches.

If the Constitution and the law were given a more purposive and less procedural interpretation, it could play a role, facilitative of transformative political agency, for greater resource redistribution and the reduction of inequality.

● SIGNPOSTS

■ An independent judiciary remains an important signpost for effective constitutionalism, ensuring that the rule of law is upheld and that government actions are subject to judicial review. This is critical in protecting the rights of all South Africans.

■ An independent judiciary is also critical for providing the space for a more substantively, socially and economically transformative interpretation of the law. Without an independent judiciary this space immediately closes, and the process orientation of legal interpretation will continue.

■ A robust system of checks and balances remains essential for effective constitutionalism – to allow for a separation of powers and functions, but also to enable active citizen participation through engaging in public debate on court findings.

■ Effective government and proper politics through resilient institutions are necessary for constitutionalism to survive. The critical role of constitutional institutions such as the Public Protector, the Auditor-General, the Human Rights Commission and the Electoral Commission ensure that government officials are held accountable, and that the rights of all South Africans are protected.

■ Effective constitutionalism requires addressing inequality and poverty. This includes implementing policies that promote economic growth and development, as well as policies that address the historical legacy of apartheid.

■ Ensuring socioeconomic rights – including the rights to housing, education and healthcare – is fundamental to a transformative constitutionalism.

LAWFARE:
THE ROLE OF THE COURTS IN UPHOLDING DEMOCRACY

SPEAKERS

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SESSION SYNOPSIS

There is growing concern in South Africa over the decline in respect for the rule of law; a situation exacerbated by the government's criticism of judges, and their perceived alignment with political agendas.

This tension between the executive and the judiciary is not unique to South Africa, but poses a danger to the laws passed by Parliament. Despite facing criticism, the judiciary has demonstrated independence and upheld the rule of law, making landmark judgments on important political and socio-economic rights and issues. However, attacks on the judiciary by politicians have consequences that should not be overlooked. The Constitution of South Africa recognises the importance of an independent judiciary, and provides protections for its functioning. In navigating their role in a democratic society, judges should exercise prudence in what they express publicly. While there are challenges posed by populist messaging, judges can ensure constitutional fidelity by speaking forcefully and providing clear and logical reasoning in their judgments. To maintain constitutional sustainability, a broader context beyond anecdotal instances should be considered, including the impact of court cases and judgments on affected communities. The law is both a political act and a means to bring about justice and societal transformation, requiring not only reliance on the law but also political action. Oversight and accountability functions are distributed across different representative institutions, and reform is needed for the Judicial Services Commission to operate independently and transparently. Addressing these issues is crucial for upholding the rule of law and upholding constitutionalism in South Africa.

But for starters, there is a need to move away from the term 'lawfare', even though it carries a feeling of excitement and drama. It has an interesting and complicated – and for progressives, even controversial – history. As a combination of the word 'law' and the word 'warfare', it was first used in the context of South Africa by the Commonwealth, to describe how the law was used to oppress indigenous peoples in South Africa. It was also used by an American military lawyer in the US Air Force, who complained about how international human rights law was being used to block US military objectives. Additional usage centred on pro-Israeli Zionist groups, who used it to complain about how Palestinian movements were resisting the Israeli occupation of Palestine by using the law and legal instruments. More recently it has been used in Latin America, to describe how the law and the courts have been used to remove democratically elected Latin American leaders in the post-dictatorship period. The term carries predominantly negative connotations, with three ideas really embedded in it. The first is that litigating political cases threatens judicial independence and imperils our courts. The second is that it debilitates democratic politics, by taking political disputes into the courts. The third implication is that lawfare involves abuses of the legal process, in which tactics of delay and procedural obfuscation are employed and the courts are abused for illegitimate purposes. It is evident that with these ideas ingrained in the term, its usage de-legitimises the legal struggles of progressive forces in society, and posits the idea that there is something to be worried about when social movements, activists, poor people or anyone else approaches the courts in political disputes. For these reasons it is an unhelpful and counterproductive term. The terms 'strategic litigation' is more neutral; and

"…judges of the Constitutional Court see themselves as outside the masses, unaccountable to them, and not inspired by the hopes, dreams and values of the masses"

in instances where there is justifiable litigation, the term 'public interest litigation' would be preferable.

The role of the judiciary in a democracy is very topical. Everyone appears to have a view, but few really think clearly about it, or really assess the impact. To better understand the courts and their role in a democracy, it would be useful to move away from an anecdotal focus on single cases from which dispro-portionate generalisations about the state of the judiciary, its independence and its impact may be drawn. Though anecdotal instances can be powerfully illustrative, they cannot provide the larger context that detachment can. When focusing on high-profile but an-ecdotal instances, objectivity is lost; because the focus is on a single outcome, rather than the enduring constitutional principles that are necessary to ensure constitutional sustainability.
South Africa's judiciary has received praise for delivering landmark judg-

ments on various issues, such as socio-economic rights, accountability, and civil and political rights. Despite facing criticism from politicians and dissatisfied litigants, the judiciary has demonstrated the necessary inde-pendence required to uphold the rule of law and constitutionalism, which are essential for maintaining a func-tioning society and collective social life. However, the risks and potential consequences of such attacks on the judiciary are evident.

On 14 February 1995, Nelson Mandela proclaimed that the future of democra-cy hinged on the Constitutional Court. A short 10 years later, in 2005, the ANC argued that "… judges of the Constitu-tional Court see themselves as outside the masses, unaccountable to them, and not inspired by the hopes, dreams and values of the masses". The ANC went further; they warned the judiciary that if it continued on this trajectory, it would inevitably result in popular

antagonism towards the judiciary and the courts, and have serious negative consequences for the democratic system.

This raises serious concerns about the way in which politicians view the function of 'adjudication' in society as carried out through the judiciary. Judg-es are suddenly placed in an invidious position by politicians, in that they must navigate their role in a demo-cratic dispensation in which populism is a very common feature of political life. This populism is partial to a crude and extreme-majoritarian version of democracy, which claims absolute and unlimited majoritarian power in which people tend to disappear into the back-ground, and are claimed to be 'repre-sented' by politicians who are in fact, a parasitic class dependent on the very liberal democracy they vilify to survive. Yet they proclaim their disdain for insti-tutions of democracy which constrain power, because it limits their authority.

They express disdain for institutions and processes that oversee their actions and decisions, and they are as dismissive of concerns about corrup-tion as they are of concerns about the misuse of power and the abuse of public resources. Politicians are usually opportunistic in claiming to represent the 'common person', while paradoxi-cally undermining the very institutions of democracy that promote the com-mon good, and engaging in haphazard and chaotic forms of government in which impunity becomes the norm. This is the antithesis of constitution-alism, and renders judges vulnerable; because politicians specifically target the judiciary as one of the institutions that must be rendered subservient to an unrestrained majoritarian impulse.

It is worth noting that the authors of the Constitution were aware of this

danger; and in recognition, they carved out chapter eight, which marks off the exclusive terrain of the judiciary, making them independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. No person or organ of state may interfere with the functioning of the courts, and there is a positive obligation on organs of state (through legislative and other measures) to assist and protect the courts to ensure independence, impartiality, dignity, accessibility and effectiveness. Moreover, an order or decision of a court binds all persons, including the state and the President.

Despite these powers and functions, what can judges do when faced with populist messaging from politicians? Apart from having a protective consti-tution, judges should not inflame the

political
climate by
making political
statements in support of a political cause. That includes judge's comments outside their adjudicatory role. One of the problems faced by judges in this respect is that legal arguments in pur-suit of freedom, equality and dignity – which are all contested in meaning, politically – are easier to express in po-litical rather than constitutional or legal language. Judges should be prudent here, in ensuring that their own public expressions while being political are not partisan, and are political only to the extent that they give contextual interpretation to politically loaded terms. After all, the constitution is not valueless, colourless or purposeless: it expressly invites judges to promote social and economic transformation, which means that each matter a judge

hears must be deliberately situated and viewed through the lenses of accountability, transparency and the transformative impulses of the Constitution. This is possible through judges speaking forcefully, clearly and plainly in judgments by providing clear and logical reasoning based on accountability and responsibility.

South Africa exists in an age of misinformation, disinformation, rising inequality and extreme poverty. In this context, the populist and political stakes are high; but it is also a time in which the greatest possibility to exert judicial prudence exists, and the surest way to do this is to return to the basics of constitutionalism, in which judges pay fidelity exclusively to their oath of office.

To contribute to constitutional sustainability, it may be worth considering the impact of court cases and judgments on the communities that are directly affected by them. What is necessary are socio-legal studies, and cataloguing beyond written judgments and theoretical reflections on them, to the extent of documenting, cataloguing and careful investigation of the legal, material and political effects of court cases and judgments. The legal impact is the impact in terms of a judgment's decisions on the rights and obligations of the parties, and the way in which law develops materially and cumulatively rather than in and through individual and isolated cases. A cumulative appraisal of the Constitutional Court would only be possible, and its material impact tangible, when power shifts in society and the obligations imposed on a party by the courts are carried out. The adjudication function of the judiciary is a political act in the sense that the law is an expression of political will, in the sense that apartheid was legal – codified in statutes, regulations and laws – to ensure that the political project was legal. The subsequent post-apartheid state must use law, regulation and legislation to dismantle, re-

place and reconstruct society. So, the law post-apartheid should have reconstructive content to give effect to justice – the kind of society that is based on equality, non-discrimination and development. These require the law to underpin them, but political action to give them effect. In other words, the law should give a specific kind of moral and developmental content to political action. Reliance on the law itself would be inadequate, as the law is cumbersome, lagging behind changing social realities with which it cannot keep pace. It is unfortunate that thirty years after the end of apartheid, one's race and background remain largely determinate of one's life prospects. The law (and the Constitution, despite its laudable content) cannot change this reality – even if the Constitution describes the changes to this reality on paper by envisioning a decent and caring society. The Constitution only creates the possibility of a decent and caring society, by creating a framework for oversight and accountability for the decision-making and resource-distribution responsibilities it imposes on the government to bring about the Constitution's vision. This change in the law and the Constitution also requires a change in politics. A regressive politics cannot bring about a progressive constitutional vision. Another broad area of change required is that the Constitution can no longer serve as a constraint to more radical change, particularly radical change whose possibilities have historically been squandered. In this respect, society has done very little to address and implement the findings of the Truth and Reconcil-

iation Commission (TRC), or in actively prosecuting apartheid-era criminals, or in engaging in a meaningful redistribution of resources, or in serious discussion about policies such as Black Economic Empowerment (BEE) in its current manifestation, which has been an obstacle rather than an enabler of redistribution and development.

The oversight and accountability functions in the Constitution are distributed across different representative institutions. So, for example, the National Council of Provinces (NCOP) – the second house of Parliament, which represents provincial interests at national level – has never fully utilised the extensive oversight and accountability potential it has; largely because eight out of the nine provinces that constitute the NCOP have a clear majority from one political party. Should this representational profile change, and the composition of the NCOP change similarly, this second house of Parliament has the potential to become a much more active site of debate, robust oversight and accountability, bringing in a much wider range of political voices and political perspectives. Finally, there is a requirement that the composition, operational mode and overly politicised posture of the Judicial Services Commission, the institutional custodian of the judiciary, should be subject to change. This implies a need for reform to ensure that the commission operates independently, transparently and free from undue political influence, in order to maintain the integrity and credibility of the judiciary.

ANALYSIS

One of the reforms required for the radicalisation of the legal system, in addition to conceptual and interpretive radicalisation, is radicalising access to justice. There is a foundation for it in the Constitution, which section 34 makes explicit in guaranteeing the right to a fair trial, or a fair hearing in all civil matters. This may require free state legal representation, or civil legal aid. Legal aid bodies must be held accountable for widening access so that all people are able to enforce their constitutional rights, not just those involved in sporadic cases that donors and others consider worthy of support.
The State Capture commission of enquiry has become paradigmatic in showcasing the constitutional health of the country. It is also a phenomenon broad enough to provide an understanding of what has happened in the governing process, as enabled or inhibited by the Constitution. It brings a special focus to bear on the security cluster and its governance,

since there have been about twenty cases and judgments that collectively provide insight into mal-governance in that portfolio.
South Africa does not need a raft of new laws. South Africa has an extensively developed regulatory and legislative architecture for accountability, oversight, responsiveness, transformation and redistribution. But there are insufficient drivers of these processes.

South Africa also appears to have a fixation with high-profile constitutional and high court cases that are politically salacious. Obscured from view is the lack of capacity and lack of operational efficiency in the routine, everyday, seemingly mundane elements of the administration of justice – which enable and facilitate ordinary life. For example, if the Master of the Court's office does not function well it will not be possible to get a deceased person's will and testament administered, or to get a custodian appointed for a child who needs assistance. The everyday

work of the legal system is obscured from view, but has a material impact on people's daily lives, in terms of divorces, custody battles, property disputes and transfers, breaches of contract, compensation cases and the like. The satisfactory resolution of these cases is hampered by incapacity and unwillingness.

While the adjudicative function of the judiciary is political, it should be made clear that judges are not politicians in courts. It is crucial to understand that judges may give political content to accountability or transformation to interpret those concepts so as to guide parties in court cases; but it should be clear that the judicial function is occupied primarily with the law. Though the law exists outside of politics, it is also a product of politics, which is the paradox of constitutionalism, where it sometimes restrains politics or gives it agency; but the law and the Constitution are not themselves another version or variant of politics.

● SIGNPOSTS

- **'Lawfare' as a term is inappropriate in characterising litigation that seeks social justice. It is preferable to label it 'strategic litigation' or 'public interest litigation'.**

- **The use of legal processes and institutions as a means of arbitrating political conflict has played a significant role in South Africa in recent years, and has sometimes led to their abuse. The courts have been called upon to uphold democracy by resolving disputes between different branches of government, and by interpreting and enforcing the country's Constitution.**

- **The use of legal actions as a tool for social and political change**

has played an important role in ensuring socio-economic rights in South Africa. Following the end of apartheid in 1994, the South African government began a process of transforming the country into a more just and equal society. Part of this process involved enshrining socio-economic rights in the country's Constitution, including the rights to housing, healthcare, education and social security.

- **The realisation of these rights has been a slow and difficult process, due in part to limited resources and competing demands. In response, civil society organisations have used the courts to hold the government accountable for the implementation of these rights, to protect**

vulnerable groups such as poor communities and informal settlers.

- **Using the law is an important instrument for socio-economic rights. Civil society organisations and activists have used litigation to hold the government accountable for failing to provide access to basic services, such as water and electricity, and to challenge discriminatory policies and practices that perpetuate poverty and inequality. While progress has been slow, it has helped to ensure that the government remains accountable to its citizens, and that the rights of marginalised communities are protected under the law.**

SIGNPOSTS CONTINUE

- Political interference in the justice system can undermine the impartiality of the courts and the independence of the judiciary, which are essential for the rule of law.

- The slow pace of the judicial system and the high cost of accessing justice can undermine the rule of law by limiting citizens' ability to uphold their rights. Costly litigation, which is often prohibitively expensive, can restrict access to justice for those who cannot afford legal representation. This can lead to a lack of accountability for rights violations and erode trust in the justice system. Moreover, the time-consuming and resource-intensive nature of using the courts can disproportionately affect marginalised communities and civil society organizations, hindering their ability to utilise the law effectively.

- While using the law can be an effective tool for holding government accountable, it can also be limited and counterproductive, in stubbornly reinforcing the lack of political will to implement court decisions. In some cases, court decisions that favour marginalised communities have been ignored by the government, which can undermine the effectiveness of the use of the law.

- Litigation is perceived as an adversarial approach to social and political change and can lead to negative public perceptions, limiting the effectiveness of litigation as an instrument for promoting social justice and undermining efforts to build broader public support for social and political change.

- One of the risks of strategic litigation is that it can be used to advance narrow interests or to undermine broader social and political change. In some instances, powerful interests can use litigation to protect or advance their interests, or to undermine efforts to promote social justice. This can undermine public trust in the justice system.

- Strategic litigation, or public interest litigation, can be susceptible to the abuse of legal means to achieve political ends.

- One of the main dangers of too much litigation is the potential for the legal system to become politicised. When legal action is used solely as a means of achieving political objectives, it can undermine the independence and impartiality of the judiciary, eroding public trust in the legal system and ultimately weakening the rule of law.

- Litigation can also be turned on its head and used as an instrument of repression rather than transformation. Governments and other powerful entities abuse legal means to suppress opposition and dissent and to silence critics, leading to a chilling effect on fundamental freedoms – of speech, expression and conscience.

There is no space for politics inside a court – Tembeka Ngcukaitobi

Ngcukaitobi says judges should not inflame any situation which involves political populist: "A judge must not enter the political frame. There is no space for politics in the court."

READ THE FULL ARTICLE HERE

City Press

INCLUSIVE GROWTH AND THE REALISATION OF SOCIO-ECONOMIC RIGHTS

SPEAKERS

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SESSION SYNOPSIS

Populist postures from the political arena have spilled over into economic policy discussions in South Africa, leading to unrealistic and misguided proposals on social support, economic growth and land redistribution. In a significantly divided and highly polarised context a common understanding of 'inclusive growth' is necessary, since without any general agreement on a few commonalities – on what inclusive growth is – such a lack of understanding is likely to impede meaningful debate, and hinder the ability to find a solution that will bring economic growth and inclusivity. This common understanding is missing.

In simple terms, inclusive growth means growth which benefits and includes everybody, and which reverses the structural problems inherited from apartheid; pre-1994, certain racial groupings were not allowed or enabled to fully participate in the economy, and thus its benefits did not accrue to them. Now that all South Africans are allowed, and to some degree enabled – through opportunity, skills, training and education – the sharing of its benefits must be intensified. Currently, however, meaningful participation is inhibited by the legacy of inherited structural problems and exclusion from the past, which means that ownership patterns in the economy remain concentrated in a select few, typically a minority of a particular racial demographic even though there is multiracial participation in the economy. To a large extent, those who were previously disadvantaged remain disadvantaged and excluded from meaningful economic participation. Inclusive growth would thus mean that when there is economic growth, ideally it would benefit everybody in society; with a specific slant and bias to benefit particularly those who have been structurally excluded from participating in the mainstream economy.

The relationship between socio-economic rights and inclusive growth highlights the dependency of individuals' ability to enjoy socio-economic rights and economic goods on their participation in the labour market or their access to financial resources. To achieve inclusive growth, it is critical to establish a minimum floor below which no citizen should have to live. This entails implementing measures such as a meaningful minimum wage and providing basic social assistance. From a workplace perspective, it is necessary to develop frameworks that facilitate the fair distribution of benefits and risks in economic activity, ensuring that the value created is relatively fairly and equitably shared. Without these measures, economic growth is likely to perpetuate income inequality and fail to enable meaningful economic participation for all.

Although there has been significant focus on creating a new society and new institutional architecture since the transition from apartheid, there has been less emphasis on building a new and distinct economy. This disparity can be attributed to a mixed attitude towards allocating the same level of energy, dedication and resources to economic transformation. It is also influenced by the presence of established and newly vested interests in various markets, not only within the private sector but also within the public sector, which actively participate in key sectors of the economy. In several product markets and sub-sectors such as electricity, transport, agri-processing, and wholesale and retail agriculture, there are high levels of concentration and monopolies, with parastatals acting as dominant players.

A second problem is that the post-apartheid institutional architecture has been well established, but alongside this institutional development has been the contradictory development that social dialogue and negotiation in these institutions are not meaningful. There has been an increase in the rate at which unilateral decisions – even on the determination of wages, for more than half of South African workers – are determined by employers alone, which undermines the point of having social dialogue institutions. There is consequently no real basis for social dialogue in the workplace.

Unless the concentrated interests of the incumbent players and actors in the economy – particularly the monopolies and oligopolies, in sectors ranging from energy and telecommunications to mining and infrastructure, including retail – are opened up, significant barriers to entry will persist, hindering progress towards a more inclusive economy.

Changes in these areas cannot occur by chance; or even through action, if it misguided. Any frameworks for economic development, and the compacts negotiated around them, must understand the clear trade-offs that the incumbents must make to ensure longevity and sustainability. One of the problems in economic debates and negotiations is that much discussion has happened, but very little meaningful action has focused on the trade-offs required to achieve growth outcomes in a shared and inclusive fashion. Trade-offs are necessary for sustainable growth and inclusivity; but there have been few meaningful discussions of these trade-offs in economic debates and negotiations. Ultimately, everyone benefits from the trade-offs required, even if compromises are necessary initially.

> To a large extent, those who were previously disadvantaged remain disadvantaged and excluded from meaningful economic participation.

> **Attention must also be paid to redesigning and resolving the contradictions of existing social care and welfare instruments.**

ANALYSIS

The socio-economic landscape in South Africa is undergoing rapid changes, due to technological advancements and shifts in social and economic relations. Unemployment and advancements in technology, mechanisation and digitisation have transformed the nature of work, with automation favoured over physical labour. In addition, poor government performance hinders the achievement of shared and inclusive economic growth, through unchecked corruption and impunity, inadequate infrastructure maintenance and a lack of infrastructure development, which undermine poverty alleviation and relief efforts. Inefficient government systems and failures at local government level further contribute to hindrances in economic development. The extensive set of grants provided to local governments from national government transfers, such as conditional grants for water services, infrastructure grants, neighbourhood partnerships, district improvement grants and upgrading of informal settlements – all are aimed at mounting an effective response to insufficient livelihoods, and are intended to give effect to infrastructure-led economic recovery. These are wasted, because of corruption and incapacity at local level. With this waste comes the wasted potential of sub-sectors of the economy in steel, cement and other sectors that benefit from infrastructure development. This also affects job creation for those with limited or no skills who can work in construction, maintenance, repair and operations.

The complexities of South Africa's political and social history further complicate matters relating to shared and inclusive growth. The incorporation of the former (nominally) independent homelands into the post-apartheid state brought with it distinct, separate public administrations and corruption. These regions were economically uneven and heavily dependent on transfers and budget support from the apartheid government. Integrating these areas has proven more challenging economically than politically, exacerbating spatial disparities and limiting economic activity. A large part of dealing with the inclusive growth challenge is thus having to deal with the spatial composition of where economic activity is located. As an example, with the onset of the renewable energy programme, many of the investments in solar and wind generation and their downstream industries are located in and focused on only one part of the country, and all of the other value chains and product and service markets linked to that sector then effectively position themselves in relation to that primary sector. Spreading these benefits by cultivating sector hubs based on their advantages is a tangible way of employment creation through intentional and deliberate planning, rather than being a residual outcome of haphazard economic activity and

short-term investment decisions. Addressing the challenge of inclusive growth requires intentional planning and investment attraction to maximise employment creation. The repurposing of wasted infrastructure, for example in the manufacturing and mining sectors, can contribute to job creation and sustainable economic development. Additionally, monetising and incentivising work that meets basic social needs, such as care for the elderly and subsistence agriculture, can be achieved through public employment schemes and mass social employment initiatives. Redesigning social care and welfare instruments, as well as developing alternative supply chains for neglected areas, can further alleviate burdens and stimulate economic activity.

Attention must also be paid to redesigning and resolving the contradictions of existing social care and welfare instruments. Massive social assistance programmes have been designed without critical awareness of how these assistance programmes create a cycle of resource flows to an oligopolistic, concentrated retail sector, in which – after all this time – there have been no alternative supply chains for food, basic clothing and other necessities outside of the mainstream systems of supply and centres of consumption. Effectively, grants and other means of social assistance are directed into the monopoly food and clothing retailers and their eco-system, contributing fur-

ther to their bottom line without improving or even linking supply and production with the realities of neglected but economically active areas on the periphery. For example, many rural and semi-rural areas are producing at subsistence levels, but at a scale beyond their consumptive needs. This surplus beyond immediate subsistence is wasted, since there is no scope for value addition; nor any scope to sell the surplus, because market development has been neglected.

Finally, despite low economic growth, increasing inequality and unemployment, executives in the mining, banking and financial services sectors, as well as executives and senior management in retail and other sectors of the economy, maintain disproportionately large salaries, bonuses and incentives as well as top-line profit margins; yet their companies fare poorly on environmental, social and economic governance (ESG). This is a conundrum that South Africans must think through, especially if South Africa is interested in an inclusive economy. Having executives and senior managers who receive substantial compensation while their organisations neglect ESG considerations signifies a misallocation of resources and priorities. Financial resources that could have been used for sustainable and socially responsible initiatives are instead directed towards excessive executive pay. This deprives the economy of investment that could contribute to redistribution, environmental preservation, social welfare and inclusive growth. Within business organisations, the concentration of wealth among top executives widens inequality, undermines the very idea of an inclusive economy, and signals a lack of accountability. It indicates that businesses and shareholders prioritise short-term profits over long-term sustainability and do not take responsibility for their actions, undermining trust in corporate governance systems. This hampers efforts to foster an inclusive economy built on ethical and responsible practices. But it also simply makes bad business sense, in that it inhibits the opportunities for innovation and growth on which inclusive economies thrive. Instead of resources being directed to research, development & innovation, they are channelled to excessive executive pay, bonuses and incentives.

● SIGNPOSTS

- Promoting inclusive growth and the realisation of socio-economic rights in South Africa requires a multi-faceted approach. Primarily, a new economic framework is required; one in which the distribution equation is changed, and in which workers and producers share the benefits of profits and growth more equitably.

- Investment in ensuring that local government, co-operative government and inter-governmental relations systems work, so that the failure to provide basic services does not become a tax on the poor, who bear the costly burden of procuring these services elsewhere, as an alternative to failing government. Promote access for all citizens to basic services, including healthcare, education and housing.

- Develop and strengthen alternative markets and supply chains and foster market development, by dealing decisively with monopolies and anti-competitive behaviour in the economy.

- Provide subsidies and stimuli grants to develop rural markets and markets on the periphery, to bring them into the mainstream.

- Strengthen the labour market by promoting decent work and ensuring that workers are enabled to participate in the benefits of growth, and that they have access to social protections.

- Address inequality and poverty through targeted social protection programmes and measures that address the underlying drivers of inequality.

- Foster genuine social dialogue between government, employers and workers, to address common challenges and to promote inclusive and shared growth

- Reduce inequality by implementing policies such as more aggressive progressive taxation, a wealth tax, effective social assistance and minimum-wage laws, to reduce income inequality and provide a safety net for the most vulnerable.

- Strengthen labour laws, including collective bargaining rights, and promote worker ownership and cooperatives to ensure that workers have a greater say in their workplaces and a greater share in the benefits of economic growth.

- Increase tax rates on the wealthy and corporations, and ringfence that revenue to fund social programmes and infrastructure development, with a focus on historically marginalised communities.

- Address infrastructure gaps by developing and upgrading infrastructure, such as roads, ports, telecommunications, digitisation, robotics and mechatronics, to upskill, provide jobs, facilitate trade and improve the overall competitiveness of the economy.

- Remove barriers to women's participation in the economy, including discriminatory laws, attitudes and practices, and introduce socialised care services.

- Expand access to financial services to assist low-income individuals and small businesses to participate in the economy.

- Moderate excessive executive remuneration, and use the resources saved to cross-subsidise entry-level employment and jobs through a jobs fund.

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PROGRESSING THE
WOMEN'S
MOVEMENT

Progressing a women's movement and a women's agenda is always relevant and urgent, but women's ability to express their needs and interests is limited by political, social, economic and legal contexts.

SESSION SYNOPSIS

Progressing a women's movement and a women's agenda is always relevant and urgent, but women's ability to express their needs and interests is limited by political, social, economic and legal contexts. Both political structures and political discourses determine what is allowed for women. In many struggles, even discourses emphasising feminism and intersectionality using a gender lens and being gender-responsive are often afterthoughts, or deemed optional; consequently, male thought experiences and even physical spaces normalise and universalise other issues, in the way dominant cultures tend to do. The contemporary women's movement and the feminist movement find themselves in quite hostile circumstances, in both obvious and insidious ways. Undoubtedly, while the role of women in society is understood (although not entirely respected), and though they are recognised as important contributors to the national agenda, when women or feminists raise concerns about gender oppression beyond discussions of race and class, they often face isolation and are left to fight for their rights alone.

In consideration of advancing and progressing a contemporary woman's movement, what is meant by this, who needs to be part of it, and what needs to be done better?

The concept of a women's movement differs from that of a feminist movement. While a movement can be focused on women without necessarily being feminist, there are implications to distinguishing between the two. For example, the ANC Women's League can be considered a women's movement, but not necessarily a feminist one. In contrast, a feminist movement fearlessly holds patriarchy accountable in all its forms. It embraces an intersectional approach, recognising how different systems of authority, power, exclusion and oppression intersect. It acknowledges that oppression, violence and inequality are multifaceted, requiring comprehensive and multidimensional responses.

It is critical to address gender inequality together with addressing capitalist inequality and exploitation. For example, many corporations involved in unethical practices try to gain favour by sponsoring and donating to seemingly worthy causes. An instance of this is ABSA, a bank sponsoring this same event, which directly sponsored and prolonged the negative effects of the apartheid state. Therefore, intersectional feminism and the feminist movement must acknowledge these realities and the role capitalism plays in marginalising women, just as we recognise the roles of patriarchy and white supremacy in perpetuating injustice. This recognition should also extend to considering issues of disability justice. This in a nutshell is the progressive, intersectional feminist movement.

The South African feminist movement should focus its efforts and criticism primarily on the state. It must direct its demands to the state, because the state is responsible for protecting women, promoting their rights and improving their lives – just as it should for everyone. However, the current state has been failing in these aspects, despite women's significant contributions to democracy. The majority of women experience poor living conditions. Women, particularly black women, bear the brunt of unemployment, and have been disproportionately affected by the COVID-19 pandemic. Women lost the most jobs during the pandemic, and generally lose jobs during economic downturns; yet they shoulder the largest burdens for care-giving, subsistence and livelihoods. Women face rape, abuse and various forms of sexual and intimate partner violence. In all these respects, the state fails women.

When considering a feminist movement, rather than just a women's movement, it is important to focus on the specific type of feminism that is necessary and significant. South Africa has become a bit of a poster child for the success of a certain kind of 'liberal feminism' in the sense that there is 'legal' and 'constitutional' procedural equality, and a national women's agenda that is written into many policies. So, women are recognised; but what substantive gains does this recognition bring, and what is the purpose of it? It is arguable that this recognition is limited, and is also conditional on not challenging

When considering a feminist movement, rather than just a women's movement, it is important to focus on the specific type of feminism that is necessary and significant.

the status quo too much.

In South Africa, women constantly face violent attacks, creating a harsh reality for them. Instead of the women-friendly and empowered society envisioned during the transition from apartheid, there exists a 'Female Fear Factory' where women live in fear. This rapid deviation from the expected norms was unexpected, especially considering that it came from the ANC, a party previously seen as supportive of those values.

The most visible rupture became evident from about December 2005, when Jacob Zuma was charged with rape. During the ensuing trial, it became evident who was supporting feminists and the rule of law and who was not, who were the allies of feminists and the rule of law and who were not. The trial, described by Professor Shireen Hassim as "a form of public theatre, with qualities of both the carnival and the circus"[4]

highlighted the divide between women who supported the accused and feminists who stood with the survivor. Feminists emphasised that allowing the perpetuation of violence against women by powerful men contributes to the overall violence in society. This is unacceptable, due to the shameless inequality that it represents.

In the lead-up to the signing of the South African Constitution in 1996 there was a surge of optimism. However, around a decade later, during Jacob Zuma's rape trial in 2005, a significant division occurred between the women's movement and the feminist movement. Women within the ANC Women's League supported Zuma, while feminists outside the league stood with the victim. This division marked an important moment for feminists, prompting them to reconsider their strategies and methods of organisation and activism, and thinking of new,

creative ways of engagement. One such new approach that emerged was the creative silent protest during the announcement of the 2016 local government election results by President Jacob Zuma.[5] This event represented a historic rupture, and a powerful but peaceful confrontation with those in power.

During South Africa's transition from apartheid, older feminists were hopeful but not naive. They believed that explicit feminist agendas, specifically a socialist feminist vision, were necessary to bring about real change for women. They warned that without addressing the social and economic conditions that women face, the inclusion of women in positions of power would be superficial and inadequate. Unfortunately, many failures to uphold the values of the Constitution have disproportionately affected women.

Despite promising policies and efforts

towards women's empowerment, the actual allocation of resources often does not prioritise the areas that would significantly impact women's lives. When healthcare systems fail, or governance and policing are ineffective, women bear the brunt of these shortcomings. To advance the feminist movement, feminists should collaborate with other movements concerned with broader issues, such as healthcare, governance and social welfare. It is crucial not to isolate gender issues from the larger social context. It is important to acknowledge that the socio-economic rights clause in the

Constitution, which was driven not only by unions but also by women, has its origins in the women's charters of 1954 and 1994. Women played a significant role in advocating for socio-economic rights, although their contributions are often overlooked or not properly attributed.

The current Constitution of South Africa includes elements influenced by the feminist agenda, such as the recognition of non-sexism and the establishment of Chapter 9 institutions such as the public protector and the human rights and gender commissions. The impact of feminists is visible in

popular culture, civil society, the media, academia and business. Presently, feminist organisations play a crucial role in addressing issues such as violence against women and children, providing shelters, advocating for basic rights, and ensuring access to safety and shelter services, especially when the state fails to fulfil its obligations and responsibilities. During the COVID-19 period, feminist activism – notably the 'pay the grants' campaign – was instrumental in securing continued support for families through the continuation of the COVID-related relief grants.

ANALYSIS

The Women's National Coalition is an excellent example of feminists successfully getting gender equality issues placed on the national policy agenda. During the South African negotiations from 1990 to 1994 and the democratic elections in 1994, feminists recognised that women in South Africa could face similar disadvantages to women in other post-colonial societies. These societies often excluded women from the negotiation process when creating new democratic systems. Women and feminists from various sectors, including the anti-apartheid movement and academia, came together to form the Women's National Coalition. It consisted of more than 70 organisations representing a wide range of backgrounds. They developed a women's charter that advocated for socio-economic justice and ensured that women's voices were heard during the negotiations. When women were initially excluded from the first rounds of negotiations in the Convention for a Democratic South Africa (CODESA), members of the Women's National Coalition protested, and travelled across the country to gather demands and push for inclusion. Their efforts resulted in a larger number of women being included in the negotiation process, through lobbying and direct action.

Many major civil society movements were initiated and sustained over long

periods by the work and struggles of black women. The Treatment Action Campaign (TAC) and other significant civil society movements owe their success to the dedicated work of black women, even if men were more visible in the campaigns. For example, black women played a crucial role in leading and fighting for the TAC, advocating for improved access to HIV treatment and other health access issues. The 'women on farms' project fought for fair wages and successfully brought an end to unfair payment systems such as the 'dop' system on wine farms. In more recent times, black women were instrumental in sustaining the 'Fees Must Fall' or #Fallist Movement. While universities and colleges were shutting down, these women ensured activists' well-being, provided support, and secured bail and legal representation for arrested students. Women were integral to the committees that collectively ran the #Fallist Movement.

The current national strategic plan on Gender Equality, as well as the gender-based violence and femicide plan, are significant policy developments in South Africa. These plans emerged directly from the activism and actions of the total shutdown movement. Feminist activism has a widespread impact across all sectors of society. However, it has often been

co-opted, distorted or neutralised by those in positions of power and authority. An example of this appropriation is the National Strategic Plan on Gender-Based Violence, which initially originated from the grassroots through the #Fallist movement. Unfortunately it has now been taken over by the Presidency, resulting in limited tangible outcomes. It is disheartening; drafting the National Strategic Plan on Gender-Based Violence took many years, and it should have been a top priority for the Women's Structures within government to secure funding and devise implementation processes. Instead it remains effectively unfunded, hindering its progress and impact. After 1994, South Africa participated in a global effort to incorporate gender sensitivity into budgeting. As a pilot country, South Africa implemented the 'women's budget initiative' in collaboration with the Treasury. The aim was to consider the gendered effects of the budget and public spending, ensuring that funds were allocated in a way that addressed the specific needs and challenges faced by women. Unfortunately this initiative was eventually dismantled, resulting in the loss of a potentially powerful tool to reshape budgeting and prioritisation in public spending. Currently there is minimal attention given to the differential impacts on women during the budgeting process. Public spend-

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4.   Hassim, Shireen. 'Democracy's shadows: Sexual rights and gender politics in the rape trial of Jacob Zuma'. *African Studies* 68.1 (2009): 57-77.
5.   Mavuso, Amanda. 'My personal journey: Being a black woman student activist on Tshwane University of Technology Soshanguve Campus'. *Agenda* 31.3-4 (2017): 5-9.
       Hassim, Shireen. 'How Jacob Zuma Revitalised Feminism in South Africa'. *Politics & Gender* (2023): 1-5.

ing often fails to address the disproportionate burdens faced by women, and overlooks the social impact and development outcomes that could be achieved by directing resources where they are needed most.

A large quantum of social grants in South Africa are held by women, especially through the child support grant. These grants were initially established during a period of optimism, when there was hope that the state could promote social justice. Although the grant system has been vital in helping mothers and women sustain their families, the grants are not able to fulfil their intended purpose, due to the lack of inflation-related increases. This means that the grants are unable to effectively support families as they should.

The 'women's movement' does not necessarily require a specific organisational form. Historically, the lack of a centralised organisation has not hindered the progress of women's issues, in South Africa or elsewhere. Women-led organisations tend to be dispersed throughout society, working in collaboration with other justice or public interest concerns.

It is common for a political party or a specific structure within it to claim representation for all women, but no single women's organisation can genuinely represent the diversity of women's experiences and concerns. Women's issues intersect with various other concerns, making it challenging to have a singular representative body. However, there are strategic moments when diverse movements unite, as

seen in the Women's National Coalition, which holds significant potential. Such movements may be necessary in addressing specific issues such as gender-based violence, where a powerful unified entity can have an impact.

Moreover, within every institution, organisation or movement, feminists and gender issues naturally arise. It is the responsibility of individuals within these entities to consistently consider how they can advance the idea of equality, and challenge patriarchy. In this sense, addressing gender issues becomes a societal concern embraced at all levels and across various organisations.

● SIGNPOSTS

- Revitalising the 'women's budget initiative' to monitor the budget and public spending for their impact on women, and engaging in advocacy for prioritising spending and allocations towards programmes that alleviate the socio-economic burdens borne by women.

- Activate a network or coalition of organisations that deal with gender-based violence and its effects.

- Address the high levels of gender-based violence in South Africa by strengthening laws and policies, providing support to survivors, and promoting awareness and education.

- Promote gender equality in all aspects of life, including in the workplace, in politics and in the community.

- Ensure that social assistance, grants and welfare continue to benefit women and keep pace with increases in inflation and the cost of living.

- Education is key to raising awareness about feminist issues and promoting gender equality. Education can be provided through workshops, conferences and other forms of outreach, in a society-wide approach.

- Providing education and training opportunities for women and girls can also help empower them to advocate for their own rights.

- Addressing systemic issues together with individual rights while challenging systemic issues that perpetuate gender inequality, focusing on gender pay gaps, sexual harassment, rape and assault, violence and intimate partner violence, as well as other issues that disproportionately affect women.

- Overall, advancing a feminist movement in South Africa will require a multifaceted approach that involves education, advocacy, community-building, and addressing systemic issues while being mindful of intersectionality.

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ACCOUNTABILITY

In simple terms, 'accountability' means the ability to adequately answer questions in relation to assigned roles and responsibilities. Secondly, it requires the person or institution bearing responsibility to be responsive to the questions asked, in relation to the performance of designated or assigned roles and functions.

Accountability is thus related to responsibility. It means that a person or office that has been tasked with carrying out a responsibility will do so and be able to report on their progress periodically; and when it is completed, on how, when and at what cost they carried out their responsibility.

In policy terms, accountability is the extent to which decision-making or a budget allocation is responsive to the needs of the target group or constituency that a policy is meant to serve. It operates along four axes: (a) Who is accountable? (b) For what is that person accountable? (c) To whom is that person accountable? And (d) How can that accountability be enforced?

Accountability involves establishing systems to detect deviations from a course of action, identify potential wrong-doing, and recommend and implement corrective action. This may not necessarily be punitive, but can be remedial. In instances where a person or office is repeatedly unresponsive, unwilling or unable to report on their progress or explain their actions, it may be necessary to impose discipline and sanction on them.

Those responsible for policy implementation and policy target groups should be able to assess the degree to which those responsible for implementing policy have done so.

Broadly conceived, accountability in a policy context implies:

- The responsibility to be answerable for policy implementation;
- A mechanism through which individuals or groups are held responsible for their actions;
- An obligation to report on one's activities.

Accountability is especially important because it keeps people in power and people who have authority in check, dissuades them from abusing their power and authority, and helps to ensure that power and authority is exercised responsibly and in accordance within the parameters of the law and regulations. The South African Constitution delineates both Governmental accountability and the accountability of the Public Service, as an organ and instrument of the Government. The summative purpose of the extensive accountability processes defined in the Constitution is to ensure the transparency, efficiency and responsiveness of Government. Specifically, in Section 195, on the Public Service, the Constitution establishes a public administration that is accountable, efficient and transparent, through which public officials are mandated to act in the public interest and fulfil their responsibilities diligently and without bias, transparently and through the promotion of a high standard of professional ethics. On Government accountability, the Constitution establishes a system of Government based on the separation of powers and functions, in which the executive arm of Government is answerable and accountable to both Parliament and the public for its actions, decisions, and distribution and use of public resources. This requires access to Information, which is a guaranteed

right, for information held by the state or any other person or entity, where that information is required for the exercise or protection of any rights. In addition, **Section 33** enforces administrative actions by the government that are proper and just, and that cannot be arbitrary. The section guarantees the right to just administrative action, which includes the right to lawful, reasonable and procedurally fair administrative action that is open, transparent, and subject to review. Processes of review and oversight extend to establishing **Chapter 9 institutions** – such as the Public Protector, the Auditor-General and the Human Rights and Gender Commissions – who have the mandate to investigate and report on maladministration, corruption and improper conduct in Government. Where these processes prove insufficient, there is provision for the judicial review of Government/Executive actions, decisions and legislation to ensure compliance with the Constitution and the law.

Various forms of accountability:

- **Representative accountability:** emphasises a representative's accountability to their constituency or supporters. This is also referred to as **responsiveness**.
- **Vertical Accountability:** the answerability of superiors to subordinates, and subordinates to superiors.
- **Horizontal accountability:** accountability between peers, to each other.
- **Social accountability:** Citizens who come together to act or form an interest group or social movement in order to influence and hold accountable authorities with public power, such as elected leaders and government officials.

The term includes citizens or interest groups and their organisations who are accountable to each other.

Social accountability can lead to increased citizen organisation and mobilisation for change, and can promote significant changes in the behaviour of decision-makers.

See Oversight

APARTHEID

'Apartheid' was a system that was a continuation of colonialism and became an institutionalised system of racial segregation, racial separation and legalised discrimination on the basis of race and identity.

Apartheid was given **legal manifestation through a complex system of laws and regulations** that institutionalised racial segregation and discrimination. It created inequality before the law and established white people as enjoying more rights, freedoms and equality before the law, while black people had inferior status before the law, enjoyed few and limited freedoms, and had few rights. The laws effectively restricted the rights and freedoms of black people, including their ability to move about freely and choose the work they would like to do. They also restricted where black people could live, and limited their access to education, healthcare and other basic essential services.

This was backed up by an **apartheid political system** established on the basis that only white people, though a minority, were able to form an exclusively white minority government that held power and authority over all aspects of South African life; including severe restrictions on the life and livelihoods of the majority, without giving them a say in government at all. Only white South Africans were allowed to vote, and political power was concen-

trated in the hands of a small minority. Though there was competition among white political parties, they were essentially variants of a similar inclination and outlook, especially when it came to the equality, rights and freedoms of black South Africans. Moreover, it was a system of parliamentary sovereignty, in which the majority party – though drawn from a minority – held sway. In effect the white parliament was only nominally independent, and was often subjected to and made subservient to the whims and wishes of the dominant party, which from 1948 to 1990 was the National Party. Parliamentary oversight was weak, and accountability non-existent. The system was propped up by a brutal police force and abusive military intelligence that infiltrated protest and resistance movements that promoted rights, liberty and freedom for blacks. All of this was maintained through a raft of oppressive laws, including successive states of emergency which suspended already limited rights and freedoms, and in which the police and other security organs were given extensive powers with no restraints. Detention without trial, harassment, torture, imprisonment, banning, clampdowns and restrictions on the media were some of the political instruments used by the apartheid state.

This was entrenched by the **apartheid homelands system,** which separated and segregated white from black people, and further divided black people themselves along the lines of ethnic or tribal groups. Each tribal group was given its own territory, and the apartheid government designated certain areas of the country as 'homelands' or 'Bantustans', intended to be exclusive territories for specific ethnic groups deemed to be 'tribal' or 'traditional'. The homelands were created soon after formal apartheid in 1948 and established in the 1950s and 1960s, and

were given limited self-government and nominal independence. However, they were severely underdeveloped and economically unproductive, and were not recognised as independent by any other country. In fact they were mere puppet 'states' controlled by the apartheid government. This policy of **'separate development'** was intended to divide the population along racial and ethnic lines, and to strip those who apartheid terminology referred to as 'non-whites' of their full South African citizenship. Under this separate development policy, the apartheid government forcibly relocated millions of black people (specifically Africans) from urban areas to designated homeland territories. Other 'non-whites', such as so-called 'Indians' and 'coloureds', were also relocated to designated townships, alongside African townships, that were created along with the hostel system to provide cheap, accessible labour proximate to the major South African cities and towns. Both the 'independent' homelands and the townships within South Africa were impoverished, and lacking in infrastructure, facilities, amenities and resources.

During the apartheid era, in tandem with the separate development ethos and the Bantustan system, the apartheid government created separate government departments for each race, including for public services such as health and education.

What has come to be known as **Bantu education** was introduced in 1953, deliberately providing separate and inferior educational facilities, content and curricula to black people. The primary purpose was to prepare black students for a life of manual labour and limited opportunity, reinforcing both the racial hierarchy of apartheid and economic exclusion and marginalisation. In an ob-

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vious and deliberate way, this shaped the persistent racial inequality that continues to persist today.

Under the Bantu education policy, black schools received significantly fewer resources than white schools. The curricula were designed to limit the education and opportunities available to black students, with a focus on manual labour as well as vocational, clerical and administrative training, and limited access to higher education. In part, the Bantu education argument was that blacks should go to their tribal and ethnic homelands where they would be able to flourish fully, despite the fact that in the 'homelands' the schools were equally under-resourced, the teachers ill-equipped and the curricula skewed and stunted. Higher education for blacks was limited and separate universities designated for different racial groups; those located in the homelands were inferior in the quality of their academic offerings and general standing. The aim was to perpetuate the dominance of white people and ensure the continued subjugation of black people.

A policy of **separate amenities** further cemented this inequality, in that under this policy not only educational facilities but health facilities such as hospitals, and all other public facilities such as parks, beaches and public transport, were segregated based on race. Facilities designated for white people were of superior quality and well maintained, with high-quality infrastructure, compared to the very limited provision of poor-quality facilities for blacks.

The policy of influx control was fundamental to the creation of this entire system. Designed to regulate and restrict the movement of black Afri-

cans specifically, it aimed to entrench racial segregation and white minority rule. Influx control was implemented through various means, including pass laws for Africans and a permit system for Indians and coloureds. This was to control and limit the number of blacks residing in urban areas – even in their own designated townships. Influx control required blacks to carry passes or permits which identified them. These documents contained personal information and authorisations from their employers, sanctioned by the apartheid government, for the individual's movement and residence. This served as a means to monitor and control the movement of blacks, particularly Africans, and regulated access to urban areas, designated as 'whites-only' places. The aim was to limit the number of black Africans in urban centres and prevent them from settling permanently, but at the same time enabling a steady and constant supply of cheap, accessible labour.

Influx control limited freedom of movement and created a system of enforced segregation and economic exploitation. It perpetuated social and economic inequalities, as black individuals faced significant barriers to accessing employment, education, healthcare and other essential services in urban areas.

Economically, and derived from its legal and political system, apartheid created a highly unequal society, with most wealth and economic power concentrated in the hands of a small white minority. Black South Africans were largely excluded from the formal economy and were subjected to exploitative working conditions and low wages. This was enforced through job reservation for white people, as well as

limits to acceptance into the professions, limited entry into industries, and poor education, skills training and development for black people.

Economic apartheid created and enforced policies that favoured white South Africans while systematically excluding and marginalising black South Africans.

Job reservation ensured that skilled and high-paying jobs were reserved for white South Africans. Black people were generally relegated to low-paying jobs and subjected to discriminatory working conditions and practices. The apartheid government also established a system of racial segregation in residential areas, which resulted in the creation of separate and unequal neighbourhoods for different racial groups. This segregation had a significant impact on economic opportunities, as black South Africans were often relegated to impoverished and underdeveloped areas with limited infrastructure. This increased their cost of living, as limited and poor transport facilities, housing and basic services meant that they either lived without access to these or paid exorbitant amounts for them.

From a social and community viewpoint, apartheid had a profound impact on South African society, perpetuating deep-seated social inequalities and creating a culture of fear, mistrust and division; all of which have persisted and been exploited by populist politicians as instruments of political capital, rather than as social and economic problems that can be solved through prudent public policy and effective government.

CLIMATE CHANGE

'Climate change' is a complicated and multifaceted issue that refers to long-term changes in global climate patterns that are primarily caused by human activities, including the burning of fossil fuels in pursuit of economic, commercial, manufacturing and industrial production processes. It is also influenced by the overuse, abuse, extraction and exploitation of natural resources, leading to resource depletion, deforestation and global warming, rising sea levels, depleted water resources, and impacts on fauna and flora.

The impacts of climate change are not only environmental and climactic but also social and economic, and they disproportionately affect developing and less developed countries and poor and vulnerable communities, including low-income and marginalised people. Addressing climate change requires reducing greenhouse gas emissions, transitioning to renewable energy sources, protecting and restoring natural resources and ecosystems, and promoting sustainable practices and policies through behavioural and attitudinal change. *See: Just Transition*

This requires both adaptation and mitigation strategies. As a country, South Africa has taken on the obligation to fund adaptation and mitigation in relation to climate change through its fiscus. Adaptation entails making changes in order to cope with the changing climate and reduce the vulnerability of people and systems, through investment in building climate change-resilient infrastructure, flood defences, disaster mitigation and management capabilities and drought-resistant ag-

riculture, and supporting the research and development of technologies that will help the economy and communities adapt to the changing climate. For mitigation – that is, reducing or preventing the release of greenhouse gases, protecting natural resources and habitats, and slowing down warming – South Africa uses resources to promote renewable energy sources such as solar and wind power, and implements policies, subsidies and grants that encourage energy efficiency and sustainable practices in industry, transport, agriculture, manufacturing and mining.

Climate change has the potential to affect all people and communities, but the impact will not be felt equally. The poorest countries and most vulnerable communities will most probably be the hardest hit by health, housing, food and infrastructure costs, and the worst affected by natural resource extraction and depletion by multi-national corporates. The question of responsibility for addressing the problem and determining how the costs and benefits of mitigation and adaptation measures are distributed is controversial and complex, especially as climate change is a major global issue. One controversial and complex aspect of climate change concerns the differing interests of countries. Developed or wealthy countries often have greater resources and technological capabilities to address climate change and adopt mitigation strategies. Apart from their greater resources, they also have competing domestic priorities such as economic growth, high employment and continued development and advancement. In pursuing these interests, they can be slow to adopt the required mitigation measures, leading to delays in taking decisive action.

Developing and poor countries, on the other hand, feel the pressure to develop and advance, and thus face their own unique challenges. One of the conundrums of climate change mitigation and adaptation strategies is that while developing and poor countries may have contributed less to global emissions, they not only remain the most vulnerable to the impacts of climate change, but are also required to adopt the burden of costly and technologically advanced mitigation and adaptation strategies. It places on them the onerous burden of solving a problem they had little to do with creating.

It appears that developed countries are imposing the costs of adaptation and mitigation on less developed, developing and poor countries. It is thus not just a scientific but a highly politicised matter, with debates about the role of governments, international institutions and private actors in addressing the problem being framed as a global issue that requires collective action, cooperation and coordination between developed and developing countries. Some activists in developing countries feel that the burden of change should lie with developed and wealthy countries in terms of reducing production and consumption.

Developing countries have thus campaigned for support and assistance from developed countries towards climate adaptation and mitigation. This support is based on the principle of common but differentiated responsibilities, which recognises that developed countries have historically contributed more to greenhouse gas emissions, resource extraction and exploitation; and because of their greater financial and technological capabilities, they are obligated to provide support and

assistance through financial resources to finance climate adaptation and mitigation projects in the form of grants, preferential loans and fair investments in renewable energy infrastructure, climate-resilient infrastructure and the just transition. This is complemented by technology transfers in sharing clean and environmentally friendly technologies in renewables, clean energy generation, waste management, and resource use and preservation. These expectations of support are codified in international agreements such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. However, some wealthy and powerful countries have not signed or committed equitably to these agreements.

Discussions about climate change are caught in the complex web of domestic national considerations, international politics and geopolitical considerations. Thus, public opinion within countries plays a role in shaping climate policy, as citizens' concerns and demands compete with those of political parties, who all adopt different positions on climate change based on their ideological perspectives; and those in turn conflict with those of other domestic actors such as the fossil fuel industry, which conflict with those of the renewable energy sector. This is further complicated by international politics and geopolitical considerations. It thus makes it very difficult to establish the cooperation and collaboration between countries that is essential for effective climate change policy. *See: Net Zero.*

The debate on climate change is closely linked to other political issues, including energy security, economic development, and national security,

which can create tensions and trade-offs in policy decisions. Climate change has significant economic implications, with debates around the costs and benefits of mitigation and adaptation measures, and their potential impacts on economic growth, job creation and competitiveness. This presents opportunities for technological innovation, investment and job creation in clean energy, renewables and the circular economy or repurposing, reusing and recycling industries.

CONSTITUTIONALISM

'Constitutionalism' refers to the idea that government power should be limited by a written or unwritten constitution and that individual rights should be protected by the rule of law. Democracy refers to a system of government in which power is held by the people and exercised through elected representatives. Though the elected representatives have the power to make laws and policies, these cannot conflict with the values enshrined in the Constitution. The Constitution is the supreme law in South Africa; and any law or conduct that is inconsistent with it is invalid, and the obligations imposed by the Constitution must be fulfilled.

In a democratic society, constitutionalism is important because it provides a framework for protecting individual rights and limiting the power of the state. A strong constitution and an independent judiciary help to ensure that democracy is maintained and that the rights of all citizens are protected. Constitutionalism is a type of government in which just laws guide and ratify the use of power and authority,

and make it difficult for those with power or authority to abuse it. Elected politicians and appointed officials must use their authority legitimately and not transgress the limited powers and functions (the responsibilities) that they have been given. If they do, it should be possible to remove them from office if they were elected, or fire them if they were appointed.

This does not mean that elected representatives do not have the latitude, power and authority to make decisions in whichever way they feel. Nor does it inhibit majority views from prevailing. A just constitution ensures only that the laws, policies, decisions and actions of government conform to certain just values as enshrined in the constitution, and that those who have power and authority are unable to abuse it or use it to oppress, marginalise or exclude people or a group of people unjustly or without a just cause.

It is thus a form of government that establishes the rights and choices of people, rather than the wishes and will of the people, with power and authority.

In contrast, parliamentary sovereignty in apartheid-era South Africa was characterised by a system in which power and authority were fused. Though there was a nominal separation of powers between Parliament and the Executive, Parliament acted merely as a rubber stamp for the decrees of the Executive. While Parliament held supreme authority on paper and in theory, the Executive had the power to make, enforce and implement laws without significant checks and balances. During the 1980s this power and authority were concentrated over successive states of emergency, in

which the powers of Parliament were formally reduced and some functions were even suspended. In any event, the old National Party held the majority in Parliament, and the Executive was drawn almost exclusively from the National Party – hence both Parliament and the Executive were under the absolute control of the party, without any restraint or constraint on it. This heavily concentrated power enabled the National Party to implement and maintain, unabated, the apartheid system of racial separation, segregation, oppression and discrimination.

The transition in 1994 ushered in a constitutional democracy, dismantling apartheid, and established a system based on the principle of a just constitutional supremacy and the rule of law, rather than the dictates of solely the majority in Parliament.

In South Africa's constitutional democracy, while the power of Parliament is quite extensive, it is limited by the Constitution and the fact that the fundamental rights and freedoms of all individuals, and the separation of powers, cannot be violated. The Constitution provides for an independent judiciary to interpret and apply the law, ensuring that legislation is in line with the constitutional rights and principles. It also establishes a system of checks and balances, with the executive and legislative branches subject to judicial review.

In a constitutional democracy Parliament remains an essential institution, but its power is constrained by the Constitution and the judiciary. Parliament is responsible for making laws, representing the interests of the people, and overseeing the executive branch of government. Its only limit is

that it must operate within the framework of the Constitution, and respect the fundamental rights and freedoms enshrined in it.

DEMOCRACY

There are various definitions of 'democracy'; but we will use the definition that says democracy is 'rule by many', or the rule of the people, as the most basic departure point with which to begin to understand what democracy is. People's ability to influence decisions that affect them and society is a key indicator of democracy. This alludes to participation, and the freedom of people to be part of influencing decisions that affect them.

Democracy has many different elements:
- fundamental rights
- freedom and equality – balanced by obligations and responsibility
- a system of rules that allow for balance, order and stability
- separation of powers and functions, accountability, oversight and transparency
- popular sovereignty - the right of the majority to decide
- the right of a minority to be heard
- codified values and ethics
- constitution, laws and regulations
- 'Responsive, Representative, Inclusive'

It is also important to distinguish between the concepts of **'democracy' and 'democratic governance'.**

Democracy refers to a type of politics in society and includes the conduct and free contestation of political ideas, free & fair elections, the ability to exer-

cise fundamental political rights and freedoms and the liberties afforded to individuals, as well as the ability to participate freely in public affairs and the agency to exercise voice & choice.

Democratic Governance includes all of the aspects of democracy above, but incorporates the way in which power and authority are used in institutions of Government, and focuses on the dimensions of separation of powers, limits on authority, separation of functions, oversight, accountability, transparency in decision-making, and responsiveness to citizens and groups in society.

INCLUSIVE GROWTH

'Inclusive growth' means growth that benefits everybody and that reverses the structural problems inherited from apartheid; pre-1994, certain racial groupings were not allowed or enabled to fully participate in the economy, and thus its benefits did not accrue to them. Now that all South Africans are allowed – and to some degree enabled, through opportunity, skills, training and education – the sharing of its benefits must be intensified. However, currently meaningful participation is inhibited by the legacy of inherited structural problems and historical exclusions; which means that ownership patterns in the economy remain concentrated in a select few, typically a minority of a particular racial demographic even though there is multiracial participation. South Africa has a complex socio-economic landscape shaped by a history of apartheid, which created significant racialised disparities and deep-rooted structural inequalities. Inclusive economic growth aims funda-

mentally to reduce racialised inequality by providing opportunities for people to participate in economic activities. This includes access to quality education, training, employment, entrepreneurship and financial services. It seeks to address structural barriers and systemic discrimination that can limit opportunities, especially for the historically disadvantaged, through transformation and empowerment initiatives for black South Africans involving policies and programmes that promote black economic empowerment, ownership, and representation in various sectors of the economy.

Empowerment and transformation must be underpinned by employment creation and skills development to reduce unemployment and underemployment, with a robust labour regulatory regime protecting workers and empowering employers through bargaining and compacts, and supporting entrepreneurs and small and medium-sized enterprises.

In South Africa, inclusive economic growth also requires bridging regional disparities and promoting balanced economic and infrastructure development across urban and rural areas, especially the former Bantustan and township areas, through intensified investment in infrastructure and basic services.

Given the ravages of the COVID-19 pandemic, coupled with the structural deficiencies inherited from apartheid and slow economic transformation, social protections and safety nets are necessary to promote social inclusion and support vulnerable people, the unemployed, children, the elderly, and people with disabilities. This would include grants, healthcare services and other initiatives that help reduce poverty and improve social well-being.

We must remain vigilant; inclusive growth must include sustainability and environmental protection that balances economic growth and opportunity while accounting for environmental challenges. This requires transition to low-carbon and green economy initiatives where possible.

INTERSECTIONALITY

'Intersectionality' is a concept that refers to the interconnected nature of social identities, such as race, ethnicity, gender, class, sexuality and disability (and others), and how they intersect with each other to create unique social and economic experiences. It is closely associated and related to identity politics, with which it shares similarities, but it also has distinct differences. Identity politics as commonly understood is usually associated with activism, mobilisation and advocacy based on the shared experiences and interests of specific social groups, seeking the recognition and empowerment of excluded or marginal racial or ethnic groups, or of women, LGBTQ+ individuals, disabled people and others. It seeks to address and challenge the systemic inequalities and discrimination faced by marginalised or oppressed groups. But identity politics can also be regressive, in that it can organise or mobilise for white supremacy, for example, or other extremist views; or for groups to attain or maintain privileges based solely on their identities. Intersectionality, on the other hand, uses identity as a marker for political mobilisation; but advocates for marginalised groups based on shared experiences with other marginalised groups, by adding both a progressive politics and an additional layer of analysis to identity politics. Intersectionality recognises the interlocking nature of different forms

of oppression and the complexity of individuals' lived experiences. Intersectionality can be a valuable framework for understanding and addressing the intersecting dynamics of power, privilege and discrimination.

Intersectionality highlights how different forms of oppression and discrimination on the basis of identity – such as racism, sexism, classism, ableism and homophobia – intersect and overlap in shaping individuals' experiences and identities. It recognises that individuals embody multiple identities and that these identities interact with one another, creating unique experiences and challenges that cannot be fully understood or addressed by focusing on a single axis of identity, and it emphasises the interconnected nature of systems of privilege or oppression. It seeks to address the ways in which different forms of discrimination intersect to create complex and compounded forms of marginalisation. It recognises that people can face multiple forms of discrimination simultaneously, and that this complexity must be accounted for when working for change.

Intersecting identities shape either discrimination and prejudice, or privilege. By recognising and analysing such intersecting identities and their impacts, intersectionality aims to draw attention to and address the complex and unique forms of discrimination and privilege experienced by individuals in different social groups. For example, a black, working-class woman may have social and economic experiences specific to her intersectional identity as a black person, a worker and a woman combined (what is commonly referred to in the South African context as the triple oppression of women). She could of course experience discrimination on just one these singular identity categories – for example as a black person,

or as a worker. Intersectionality, in this case, would refer to the combined oppressions or discrimination based on the three intersecting identities. Regarding race, this would differentiate this person's experiences from those of a white person; but they may share a working-class perspective, if the white person happens to be a worker. Similarly, they would share certain experiences with a white woman regarding gender, but not race; and if the white woman were a manager or business owner, then they would not share a class experience. Similarly, the working, urban black woman will have similar experiences to those of a working black woman in a rural area, but their spatial location will define their experiences differently. A gay white male in South Africa from a professional background may enjoy both class and race privilege, but face discrimination on the basis of his sexuality. From a purely political perspective, the gay white professional male would be expected to use their privilege to counter the discrimination they might feel as a gay man, and also use their privilege to understand, empathise and work towards unravelling the oppression or marginality of other groups. This is known as **'allyship'**. Allyship requires that individuals belonging to privileged groups have a responsibility to use their privilege to challenge and dismantle these systems of oppression, through education, listening to and learning from the marginalised, and using their platforms, influence and resources to amplify the voices and concerns of the marginalised.

The concept of intersectionality, and the language associated with it, can become quite complex and unwieldy. While the concept of intersectionality highlights the importance of considering the various dimensions of identity when addressing issues of social justice

and equality, it must be recognised that while it can be a useful concept, it also has some serious problems. The most obvious one is the lack of clarity, and the difficulty experienced in the simple articulation and application of the concept. Intersectionality can become complex, as described in the examples above, and difficult to navigate when considering the interactions of multiple dimensions of identity.

Conceptually and politically, intersectionality lacks clarity and precision, making it difficult to apply with any consistency. It also tends to oversimplify, by reducing identities to essential characteristics and assuming a shared experience for everyone within that identity group. This oversimplification neglects the differentiation, diversity and individuality found within identity groups. While recognising the overlapping oppressions – and overlapping privileges – that come with intersectionality, it can create tensions and conflicts within social justice movements based on the concept by not recognising the differing experiences and priorities of the diverse groups involved, which can lead to disagreement on strategies, goals and policy priorities.

Intersectionality overemphasises identity categories, leading to fragmentation and breakdowns in solidarity by emphasising differences in identities; this creates division, making it harder to build coalitions and alliances across various groups to challenge larger systems of power and inequality. It is easy to demobilise and depoliticise intersectionality, since it places an exaggerated emphasis on individual identities and their intersections which can obscure broader structural and systemic issues that contribute to inequality, exploitation and oppression. In addition, it often promotes token gestures to

inclusivity and representation because of the overemphasis on identities, rather than addressing the root causes of exploitation and injustice. It downplays income and income inequality as a key source of social division and exclusion, and often overemphasises or essentialises other, narrower markers of identity in terms of race, ethnicity, religion, sex and sexuality.

Intersectionality is at its most nebulous politically, and in policy terms. While it may be a useful concept, and important as a theoretical framework for understanding multi-layered systems of oppression, it has limited potential in terms of concrete political applicability, or for translation into policy recommendations that are necessary to create effective social change. The academic discussion about intersectionality is useful and helpful in understanding privilege and oppression, but its applicability in activism makes it inaccessible to grassroots activists and hinders the potential for creating practical change.

JUSTICE

'Justice' is one of the oldest concepts in philosophy. In fact, the famous ancient Greek philosopher Plato begins his *Republic* with the question "What is Justice?" Plato's concept of justice encompasses various elements. At its core is the belief that it is not only about individuals treating each other fairly, but also about the proper organisation and functioning of society. Plato argues that the just state is one in which the rulers are wise and virtuous, and rule for the benefit of all rather than their own personal gain. In the ideal state, the rulers have the knowledge and understanding necessary to govern justly and make decisions that

are in the best interests of society. In modern society, justice relates to what is considered fair, and to governments' impartial treatment of individuals and groups in society. Justice takes the view that everyone is equal before the law; it involves giving people what they deserve and are entitled to, and punishes those who wrong others, or act unfairly or unlawfully. In essence, justice is about upholding the rights and freedoms of individuals while maintaining social order and protecting the common good.

Modern ideas of social justice include ideas about fairness, impartiality and equality before the law, but also incorporate the equitable distribution of goods, opportunities and benefits in society. This is referred to as **'distributive justice'** or **'substantive justice'**, which relates to the fair distribution of resources and benefits in society in terms of wealth, income, education, healthcare and other basic services. Distributive justice aims to ensure that everyone has a chance to access these resources and that they are distributed fairly based on people's needs and abilities. It also includes the recognition of the rights of different non-mainstream groups in terms of ability, sexuality, lifestyle preferences and so on, and prohibits discrimination and prejudice against them.

Distributive justice is distinct from **procedural justice**, which is concerned with the fairness and impartiality of legal and political processes and includes following due process in courts and legal proceedings, so that public officials act in accordance with the prescribed regulations and procedures. Procedural justice also refers to equal treatment under the law, and the right to a fair trial when you are accused of having done something wrong. Procedural justice ensures that legal and political

decisions are made fairly and impartially, without prejudice, discrimination or bias.

In addition to distributive and procedural justice there is also **retributive justice,** which is concerned with punishment and retribution for wrongdoing. Retributive justice aims to ensure that those who have broken the law or harmed others are punished, in a fair and proportionate manner, through an effective criminal justice system that is fair, consistent, predictable and efficiently administered.

Overall, justice is a complex and multifaceted concept that involves both the fair distribution of resources and benefits in society as well as the fair and impartial application of legal and political processes. It is essential for creating a just and equitable society that upholds the rights and freedoms of all, regardless of their background or circumstances. It involves recognising and challenging inequalities, discrimination and oppression.

In contemporary times we view justice as advocating for marginalised and oppressed communities and fighting against systemic injustices that perpetuate inequality and discrimination, requiring recognition that historically, harms have been committed and that these need to be reversed through appropriate policy which is restorative. This is termed **restorative justice**, and it aims to address historical injustices through deliberately advantaging those who have been neglected, marginalised, excluded and/or oppressed. This requires policy or practice that aims to address past or current discrimination by providing preferential treatment to individuals or groups who have been historically disadvantaged. This is called **positive discrimination**, and it aims to promote inclusivity by

intentionally giving opportunities (such as work, education or other benefits) to individuals who belong to formerly or currently marginalised, excluded, oppressed, exploited or discriminated people or groups of people, to assist them in overcoming the effects of past discrimination. Positive discrimination can be a controversial issue, as it could lead to reverse discrimination against those who do not belong to the groups mentioned and its implementation. It must be carefully calibrated, after careful consideration, to ensure that it achieves its intended goals without ushering in new forms of discrimination, or creating dependency on the advantages that can accumulate over time to the previously oppressed, marginalised, excluded and exploited groups.

JUST TRANSITION

The concept of a 'just transition' emerged in the context of addressing the challenges associated with climate change and the need to reduce greenhouse gas emissions. It recognises that certain industries and regions of the world that are heavily dependent on fossil fuels, such as mining (specifically coal and oil production), may experience significant economic disruption as the world moves towards cleaner energy sources and more sustainable economic, industrial and social practices. The term 'just transition' thus refers to a set of principles aimed at ensuring that the shift to a more sustainable economy and society is fair and equitable, recognising that transitioning to a low-carbon and environmentally sustainable future will have significant social and economic implications, including potential job losses, economic dislocation, and increased inequality. It seeks to limit and minimise or com-

pensate for the negative impacts on a country's workers, their families and affected communities, by providing support and opportunities for alternative employment, reskilling, retraining and social protection. It emphasises the need for inclusive decision-making processes, ensuring that the voices of workers, marginalised and exploited communities who might face an existential threat because of this transition, and other stakeholders are heard and incorporated into policy and the planning process.

The just transition seeks to achieve a sustainable and equitable future, where environmental, social, and economic considerations are integrated and the benefits are shared. The transformation would be both about the systems of extraction, production and exchange and about the distribution of the benefits and resources brought about through this system change. Predictably, while a laudable goal, it suffers from a lack of political consensus; and potentially risks sparking conflicts. There is a lack of clarity on what constitutes a just transition, and lack of consensus on who should do what and how. Different stakeholders have varying interpretations and priorities, which can lead to disagreements and delays in decision-making processes.

Transitioning away from fossil fuels and certain industries can result in job losses and economic disruption, particularly in regions heavily dependent on those sectors. Finding alternative employment opportunities and ensuring a smooth transition for affected workers can be costly. The lack of equity in the starting points of society, the disproportionate burden on developing countries and the marginalised deepens inequality, and the calculation of a fair distribution of the benefits and costs of transitioning societies and

economic systems has proven to be complex. There is a risk that the transition could worsen existing inequalities. Implementing a just transition requires significant resources for measures such as reorienting industries and societies, developing new and adaptable technologies, funding innovation and retraining programmes, social safety nets, and investment in new and sustainable production cycles and industries. It is obvious that vested interests will mount resistance in order to protect their existing advantages and economic systems, which hinders progress towards a just transition. Scaling this up to relationships between countries, we see that global inequalities, power dynamics and disparities place an additional burden on developing countries, who face challenges in their limited resource base and technological capabilities, while developed countries will have to take greater responsibility for paying a larger share to account for their historical emissions. They may provide more support for the transition in less developed countries; but their domestic population may resist such moves, pressuring for those resources to circulate domestically.

Addressing these challenges requires effective collaboration and coordination between the different governments, businesses and workers, whose interests frequently diverge.

NET ZERO

'Net zero' means a state of existence in which there are few or no greenhouse gas emissions. It requires reducing the amount of greenhouse gas to as little as possible, and then balancing remaining emissions by removing an equivalent amount of greenhouse gases from the atmosphere through carbon

capture, afforestation and reforestation, for example through planting new trees and restoring degraded forests to assist in absorbing carbon dioxide from the atmosphere. Carbon capture and storage technologies aim to capture carbon dioxide emissions from power plants and industrial processes and then store them underground; they also assume the increased use of renewable energy.

The most common greenhouse gas emission is carbon dioxide (CO_2), mainly generated by the burning of fossil fuels such as coal, petrol, oil and gas, as well as methane, nitrous oxide and fluorinated gases, which are byproducts of agricultural, manufacturing, processing, manufacturing and industrial production processes.

Achieving net zero is seen as important for limiting the impact of climate change and keeping global warming below 1.5 degrees Celsius.

To achieve net zero, a range of measures are needed; including reducing energy consumption, switching to renewable energy sources, adopting low-carbon transport, improving energy efficiency in buildings and industry, and implementing carbon capture and storage. However, some argue that more transformative changes are also necessary, such as transitioning to a circular recycle-reuse economy, and changing societal values and behaviours away from consumption.

OVERSIGHT

Simply put, 'oversight' means the asking of questions to guide the proper functioning of institutions. Oversight is the systemic and institutional responsibility to monitor,

supervise and ensure that individuals, organisations or systems adhere to established operating procedures, rules, regulations, standards or policies. It involves the responsibility of reviewing the activities, operations, conduct, expenditure, resources and behaviour of other institutions or people in order to ensure accountability, compliance, and effective and efficient proper functioning in carrying out delegated and mandated responsibilities.

In the context of governance processes, oversight typically involves the scrutiny and supervision of government departments, institutions, agencies and the public officials who staff them. Typically, a legislative body such as Parliament, a Provincial Legislature or Municipal Council will check on or monitor and scrutinise the functioning and work of the implementing arm, usually in the Executive. Oversight assists in ensuring that government actions and decisions align with legal frameworks, ethical standards, and the best interests of the public. Oversight processes include questions asked of officials in the executive, audits of their performance and financial statements, visits, inspections, inquiries, investigations, reporting requirements, hearings, and the power to enforce corrective measures or sanctions when necessary. Basically, it is about monitoring and evaluating the actions, practices and performance of individuals, organisations or systems, to promote transparency, compliance and effective management.

It is a crucial mechanism for maintaining checks and balances, preventing misconduct, promoting accountability, and safeguarding the integrity and proper functioning of individuals, institutions, organisations, systems and regulatory frameworks.

Oversight can be said to comprise two elements:

- The power to direct (policy oversight, decision-making and/or providing guidance)
- The power of review (supervision and/or asking questions)

Oversight is the management of the implementation of a policy – and of the individuals, structures and organs involved with it – by supervising and checking on the performance or operation of a person or group responsible for policy implementation. Oversight is also a system for addressing questions of potential risk in the implementation and administration of projects, through establishing guidelines and regulations or other processes.

It involves reviewing and monitoring the activities and work of those responsible for implementing and administering the projects. Oversight involves extracting a commitment from those who are responsible for doing certain things that those things will be done in the context of the guidelines that the policy prescribes.

Those responsible for performing certain tasks and activities have the responsibility to report on what is being done, and if it has not been done, why not.

Oversight functions can be internal (managerial oversight) or external (legislative/policy/ regulatory/bylaw oversight). Oversight is related to but not the same as responsiveness (the degree to which the needs of the target group are responded to), and transparency (the degree to which information is available and decision-making is explained and justified).
See Accountability

POPULISM

There is no complete political ideology to which the term 'populism' applies. Its politics are so indeterminate and its meaning is so vague that it is not really of great use as a category of analysis; yet it is important to understand the term, as it is frequently thrown about – and more dangerously, used by unscrupulous politicians and movements. Populism is suggestive of (and applicable as a label to) a variety of political currents that position themselves as siding with 'the people' against the establishment, or what populists refer to as the economic, political, cultural, social and business elite. Populist leaders and movements pretend they stand outside these elites and that they are not a part of the establishment, when in fact they are very much drawn from the elite and are an integral part of the establishment. Populist leaders and movements posit themselves to be outside of the establishment or the elite when their own interests are threatened or are at stake, and use the idea of siding with 'the people' to shore up their own bargaining power inside the elite and within establishment circles to secure their positions or achieve what they otherwise are unable to achieve.

The most obvious problem here is the invocation of 'the people'. Populists use the term 'the people', in cynical ways, to suggest that governments can be guided by the 'will' or 'spirit' of 'the people' if it can be properly tapped into. Although populist politics is quite divisive of people and polarising in society, it usually uses that divisiveness as an instrument of political control, much in the same way that colonialists 'divide and rule'.

Populism typically appeals to emotions and popular grievances based on narrow identities (such as race, ethnicity, tribe, religion, gender and sexual orientation), or tap into frustrations around seemingly intractable social problems such as inequality, crime, immigration, land, corruption and government performance, and presents simplistic solutions to what are complex problems. It thus takes issues that are popular problems and deals with them by populist means, by discussing them in an unmediated, dishonest, uncritical and expedient way and posing solutions to them which have no basis in evidence. By contrast, the way in which the national minimum wage discussion and decisions were made is an example of a popular issue that was not dealt with in a populist way. This is primarily because it was a consultative process that was inclusive. It was driven by evidence-based considerations that accounted for the moral consideration of fairness, thorough empirical research on business realities and the economic impacts of a minimum wage, with social and redistributive considerations taken into account and comparative analysis with the labour regulatory regimes of other countries. In gathering the evidence, the process also ensured that substantive mass consultations through public hearings were balanced with the relevant expert consultations. The policy was designed to address income inequality, poverty and exploitative labour practices, with the goal of promoting fair wages and social justice. In addition, it was underpinned by an extensive legislative process, including several parliamentary consultations, debates and consideration of evidence. The process allowed for scrutiny, transparency, thoughtful deliberation and the opportunity for amendments and adjustments.

While no policy debate is immune from political influences, the national minimum wage discussion in South Africa demonstrated a commitment to evidence-based decision-making, stakeholder engagement, and the pursuit of a balanced approach. These factors contribute to differentiating it from populist discourses, which tend to prioritise simplified and emotionally charged narratives and polarisation over careful analysis and consensus-building.

Once popular issues are exhausted and all the popular issues remain unresolved by populist solutions, there is a self-reinforcing spiral of more populism, which eventually leads to political and social organisation based on racial, ethnic or other narrow identity interests. This leads to a natural progression to self-organised networks of politics for predatory purposes and vigilantism for protection of these networks. Populism takes on various forms, ranges from left-wing to right-wing, and can be found in many contexts; but it is often associated with tendencies that have a disregard for the limits on authority and power, are sceptical of the separation of powers, suspicious of the common interest and wanting reward only for a selected group, reject the rule of law, launch attacks on independent institutions and reject political pluralism and democratic competition. Populists first gain power through representative multiparty democratic processes, but aim to retain power permanently by erasing democratic competition. They disguise their aims through the use of democratic language but veer towards authoritarianism. They maintain a surface and superficial fidelity to democratic norms, processes and institutions, but aim to reconstitute them in a way that in reality distorts or erases their democratic function. Populists aim to capture all centres of power and influence in society in the name of the people, but aim to control them centrally from the party.

Populist parties and movements differ from popular parties in four respects:

1. Their use of unmediated claims based solely on belief rather than evidence or rational policy;
2. Being unthoughtful, and making claims targeting one or other group in society based on identity or income features;
3. Being evidence-insensitive;
4. Not being orientated towards solution seeking and problem solving, rather using problems as an instrument of political capital to sow division in society.

The increase in populist politics globally has contributed to the growing rise of authoritarian government in other countries. In recent years there has been a concerning surge in authoritarian governments fuelled by populist politics around the world, with notable examples in the United States, India, Hungary, Brazil and parts of Europe. This trend has been closely linked to the ascent of populism and right-wing racism, which poses a significant threat to inclusivity and democratic government and threatens human rights, freedom, accountability and pluralism. India, as the world's largest democracy, has experienced a shift toward a more assertive and nationalist political agenda replete with right-wing politics under Narendra Modi, whose policies have marginalised minority communities and curtailed civil liberties, fuelling a social climate of intolerance, majoritarian politics and xenophobic rhetoric. Modi's government has exhibited authoritarian tendencies by centralising power, suppressing dissent, and implementing policies that target specific religious and minority groups.

In Hungary, the government led by Viktor Orban has gradually undermined the country's democratic institutions by imposing restrictions on press freedom, targeting civil society organisations and branding them traitors, implementing unilateral changes to the electoral system without recourse through Parliament, and generally blunting the separation of powers. Brazil, under the presidency of Jair Bolsonaro, has witnessed a rise in populist authoritarian politics. Bolsonaro became known for divisive rhetoric, attacks on democratic institutions, and controversial policies that threaten human rights and environmental protections. His administration was known for smearing his political opponents and using state organs to harass and intimidate them. He has undermined both democratic institutions and democratic norms, curbed civil liberties, and removed social safety nets and environmental protections. The rise of right-wing racist populism in Brazil has inflamed social divisions and racial tensions and threatens the social fabric. In the United States, the presidency of Donald Trump marked a period of divisive politics and the normalisation of inflammatory rhetoric. Trump's administration implemented policies that targeted marginalised communities by rolling back welfare benefits, undermined democratic processes and institutions, and perpetuated a distrust of the climate crisis. Trump's administration displayed hostility to economic inclusion. The rise of right-wing racist populism in the US has exposed deep racial divisions within US society. Parts of Europe have also witnessed the growth of right-wing populist movements that espouse xenophobic and racist ideologies. These movements exploit fears and insecurities related to immigration, integration and change, often advocating for exclusionary policies and challenging the prin-

ciples of democracy. The rise of these movements has raised concerns about inclusion, cosmopolitanism, the erosion of liberties and rights, and the rollback of welfare and social protection. The rise of authoritarian governments and politics in these regions is indicative of broader societal anxieties, economic disparities, and identity-based politics. Populist leaders often exploit these grievances to mobilise support through rhetoric that fuels divisions within society.

The rise of authoritarian governments and politics in these countries and elsewhere can be attributed to various factors. Economic anxieties, social divisions and a sense of political disillusionment have created space for populist leaders who promise quick solutions and strong leadership, but espouse a crude and extreme form of racial nationalism, xenophobia, and the exploitation of identity politics. The misuse of technology and social media platforms and the spread of misinformation have helped these leaders to shape public opinion.

South Africa has repeatedly been warned of the fragility of social peace and democratic institutions, and the constant vigilance required to safeguard them.

RULE OF LAW

The 'rule of law' is a fundamental principle in governance embodying the idea that everyone – including both individuals and institutions – is subject to and accountable to the law. It establishes a framework in which laws are applied consistently, impartially and without discrimination.

It is a type of government in which power and authority are exercised in a way that complies with the laws, policies, principles, procedures and constraints prescribed by the law; in South Africa, the highest of which is the Constitution. It is a form of governing in which if there is a contravention of the law, a person can seek review and redress for actions and omissions by the state or government and its officials. This applies to whether a contravention of the law is committed by a politician, a public official in government or another public authority, or even when it is committed by any other body in private business or just an individual person.

The rule of law embodies the idea that the law is above all individuals, including government officials and institutions. No one is exempt from the law, and everyone must abide by it. This is known as the supremacy of the law. The principle of equality before the law subjects all people equally to the law, and it applies to all people in the same way, irrespective of their status, wealth, or power. In addition, all persons are entitled to equal protection and treatment under the law. This means that the administration of the law and of justice is fair and impartial, through independent and unbiased courts which function transparently and in accordance with established rules and procedures. Fundamental to the just rule of law are the protection and promotion of freedoms, rights and liberties. It is dependent on certainty, predictability and the fairness of its proceedings, in which the law is clear, accessible and enforceable; in which it can be readily understood; and in which the consequences of either contravening the law or not doing something that is required by it are foreseeable.

This is a safeguard against the arbitrary use and abuse of power by government, corporations or people, ensuring that government actions especially are lawful, accountable and subject to restraints.

The rule of law should be distinguished from rule by law. The two are closely associated, but have very different political approaches, and therefore different political consequences. Rule by law is a way of governing that appears to be compliant and respectful of the law, but the content of the law may be unjust or unfair, and the resultant government may use the law to oppress and discriminate. Alternatively, government may be coercive and authoritarian. The legal framework is used as an instrument to legitimise the abuse of power, rather than governing by the values, spirit and principles of fair and just laws. In rule by law the government or ruling authority usually passes laws that serve its own purposes and interests in maintaining power in society, even if those laws are unfair, discriminatory, or contradict basic principles of justice. In such cases, the legal system is used to advance or entrench the interests of those in power, without working towards promoting and protecting freedoms and rights or pursuing equality. In contrast to the rule of law, rule by law does not ensure equal protection, treatment or accountability before the law, and the law may be selectively applied, disregarded or manipulated to suit those in power and those with influence. This results in obvious unfairness, inequality and a lack of legal certainty, impartiality, predictability and protection of rights.

It is important to distinguish between the rule of law and rule by law; the former upholds the principles of justice, equality and accountability, while the latter may undermine them, perpetuat-

ing inequality, impunity and the abuse of power.

SEPARATION OF POWERS

The principle of the 'separation of powers' is fundamental to constitutional democratic government, and creates divisions in government powers and functions between the separate branches. Its aim is to prevent the concentration of power in a single authority, and to create a system of checks and balances. The powers of government are divided into three branches. The legislative branch is responsible for making laws and debating policies. It consists of a parliament, provincial legislatures and municipal councils – all bodies that represent the interests of people. The executive branch is responsible for implementing and administering laws and policies, and typically includes the head of state and head of government, such as a president or prime minister, together with the ministers, government departments and other administrative bodies. The third branch is the judicial branch, responsible for interpreting and applying laws and ensuring that the values of the constitution are abided by. It comprises the courts, judges and legal system, and is involved in the proper administration of justice, the resolution of disputes and the safeguarding of rights.

Because of the separation of powers and the system of checks and balances, oversight by public representatives over the executive and administrative arms of government is made possible. In turn, both are overseen by the judiciary; when a dispute arises between the other two branches of govern-

ment, the judiciary adjudicates and arbitrates between them.

The **separation of functions** within each branch is a different aspect of this doctrine, and emphasises the division of roles, functions and responsibilities within each branch to avoid the accumulation of power and authority. In the legislative branch, instruments such as portfolio committees, question time and debates, as well as provisions for removal of the executive, are in place to conduct oversight and demand accountability. Similarly, within the executive branch the different ministries and departments take responsibility for specific functions such as health, education, welfare, finance and defence. The separation of powers and functions is intended to develop and maintain a system of checks and balances, preventing any one branch from becoming too dominant or abusing its authority. By distributing powers and functions among separate entities, the doctrine aims to safeguard rights, promote oversight and accountability, prevent impunity and limit the misuse and abuse of power and authority.

TRANSFORMATION

'Transformation' simply refers to change. But it implies change that is fundamental to the system, structure and function of something, changing its nature. In a social and political context, transformation means significant changes in societal structures, norms, values and power relations.

Social transformation specifically refers to a process of deep and sustained change that affects the cultural, economic, political and environmental situation in society, requiring changes in the values, beliefs and attitudes of

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people and their behaviours, and leading to changes in social structures and institutions as well as changes in the distribution of resources and power. It is a necessary response to major social and environmental challenges such as inequality, injustice, conflict and environmental degradation. It involves grassroots movements, community organising, lobbying, advocacy and activism aimed at creating a more equitable, just and sustainable society.

Social transformation also requires broader systematic changes in political systems, economic structures and legal frameworks. These changes may be driven by movements for social justice, environmental activism, or other forms of collective action.

In South Africa, **economic transformation** requires that policies, strategies and regulations that promote job creation, poverty alleviation, reductions in inequality through redistribution and empowerment will bring about meaningful and sustainable livelihoods for the largest number of people in society. It is a critical component of reversing the effects of the history of apartheid economic exclusion and marginalisation.

Because South Africa's economy is still largely characterised by deep inequalities and a legacy of racial and social inequality that was entrenched under apartheid, it is necessary to have economic transformation policies aimed at redressing these historical inequalities and promoting greater economic participation and opportunity for all South Africans.

The key elements of economic transformation include policies aimed at promoting black economic empowerment (BEE) and increasing access to

finance and business opportunities for historically disadvantaged groups. This can involve a range of measures, such as preferential procurement policies, affirmative action programmes, and initiatives to promote entrepreneurship and small business development.

Other important components of economic transformation in South Africa include efforts to address infrastructure deficiencies, such as improving access to electricity, water and transportation, as well as promoting greater regional integration and cooperation. Policy measures such as import substitution, higher corporate tax rates, and the imposition of capital controls to grow investment resources and capital formation locally are also part of the economic transformation agenda. This would include subsidies and grants to stimulate local manufacturing, production and industrial processes.

However, many of these initiatives and policies require there to be an environment of trust, and that government enjoys the confidence of people that it will be able to carry out its mandate for the common good rather than for predatory or patronage purposes, and that there will be low levels of corruption and rent-seeking. Transformation also requires high levels of state capacity, with an efficient and effective bureaucracy.

THE EXHIBITION
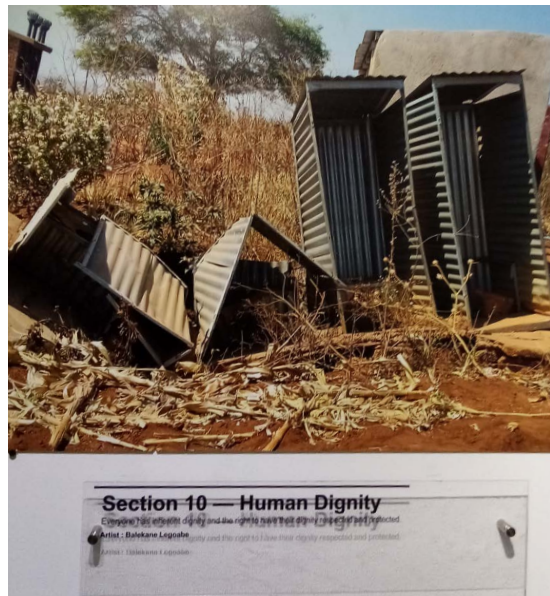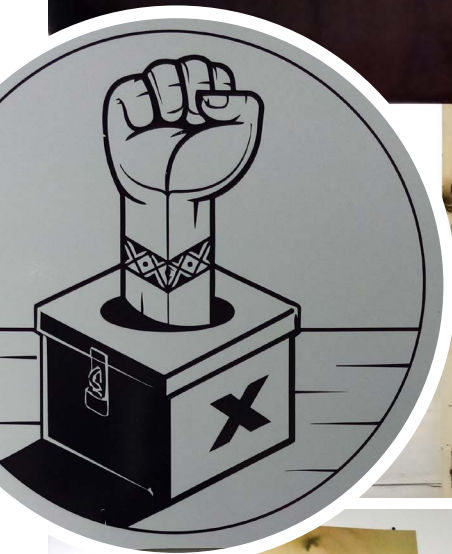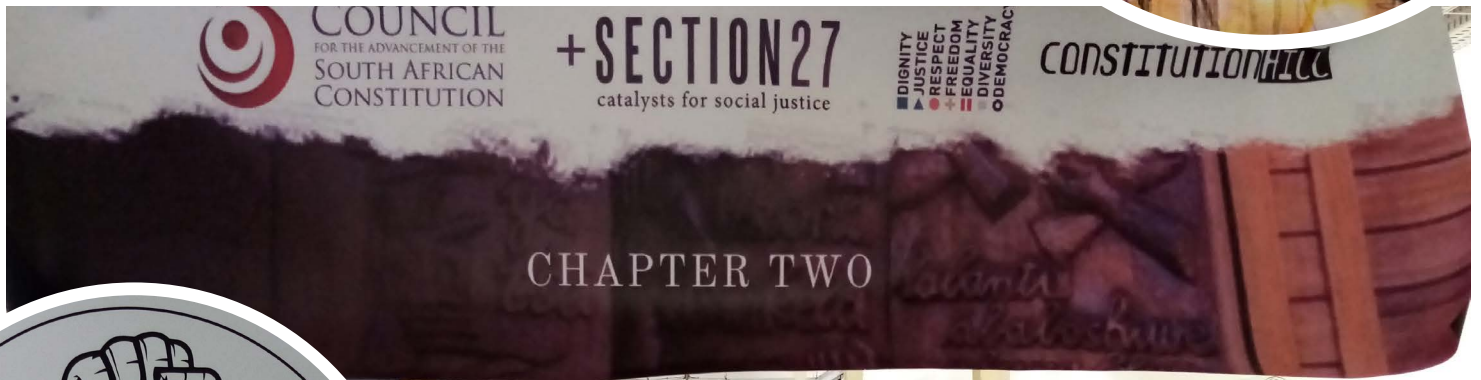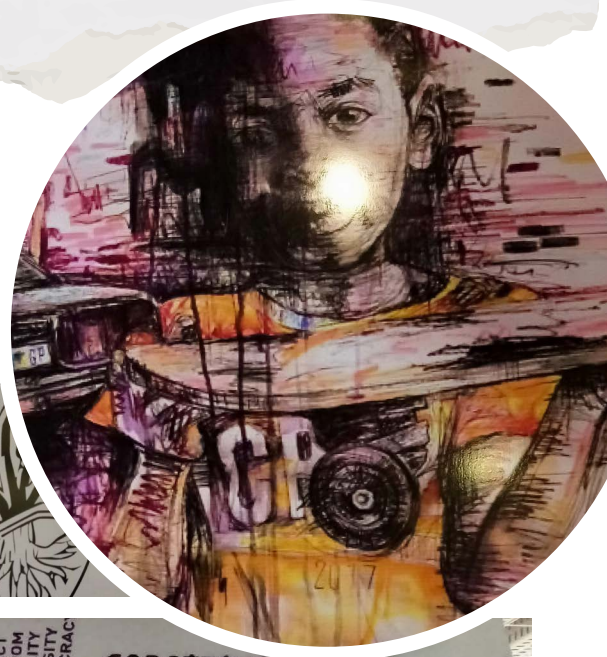
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