

Dialogue on Development & Rights: The Constitution, Development and Rights

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Concept Note

Cabinet adopted the National Development Plan (NDP) in 2012 as the new development policy framework for Government. President Zuma, following the elections in 2014, announced that the NDP and more specifically, the Medium Term Strategic Framework (MTSF) would be the vehicle for 'radical socio economic transformation' during his next term of office. The overarching goals of the NDP are reducing poverty, unemployment and inequality, and achieving a socially cohesive nation, by the year 2030. These goals and the nine outcomes of the MTSF frame South Africa's national interest and any policy implementation.

The Dialogue on Development and Rights series provides an opportunity to explore how these goals articulate with the rights guaranteed by our Constitution. This will ensure that implementation strategies align not only with the medium and long-term goals of Vision 2030 but with the values and principles articulated in the Constitution. This will enable the social compact implied in the Constitution to be realized through an active citizenry. This concept note outlines the links behind the series of dialogues on development and rights.

Background

Democracy was ushered into South Africa in 1994 by Madiba - Nelson R Mandela. The negotiations leading to the first elections created an interim Constitution which was finalised in 1996. Both had a strong human rights base. Jesse Jackson remarked in 2014 that South Africa has the best Constitution in the world, as he joined in celebrating struggle heroes like Nelson Mandela, Oliver Tambo, Walter Sisulu, and Ahmed Kathrada. The Constitution guaranteed the right to vote as well as the freedom to own land and houses, have access to health, education, electricity, water and social grants to overcome their economic status.

The interim Constitution came into force on 27 April 1994, bringing with it a number of fundamental changes:

- i) For the first time in South African history, political and civil rights were accorded to all citizens irrespective of race. It marked the end of 300 years of colonialism, segregation and apartheid and replaced it with a universal franchise and an electoral system based on proportional representation.
- ii) The doctrine of parliamentary sovereignty was replaced by the doctrine of constitutional supremacy. A Bill of Rights was put into place to safeguard human rights, ending centuries of state sanctioned abuse.
- iii) The strong central government of the past was replaced by a system of government in which legislative and executive powers was divided among national, provincial and local spheres of government.

The Interim Constitution was a transitional constitution but was still binding, supreme and justiciable. It was repealed and fell away when the 1996 Constitution was adopted. The Constitution was signed into law by President Nelson Mandela at Sharpeville on 10 December 1996 and came into effect on 4 February 1997 bringing

to a close a long and bitter struggle to establish a constitutional democracy in South Africa. The basic principles which underlie our constitutional order are discussed below.

Constitutionalism is the idea that government should derive its powers from a written Constitution and that its powers should be limited to those set out in the Constitution so as to prevent that power from being used oppressively. Section 8 of the Constitution provides that the Bill of Rights has supremacy over all forms of law and binds all branches of state and private individuals. The Constitution is a democratic pre-commitment to a government that is constrained by certain rules, including that a decision of the majority may not violate may not violate the fundamental rights of an individual.

The Rule of Law requires all that laws and state conduct must be rationally related to a legitimate government purpose. It has both procedural and substantive components. The procedural component forbids arbitrary decision-making by the Executive and Parliament. The substantive component dictates that government must respect the individual basic rights.

Democracy is the rule of the people within certain predetermined channels, according to certain prearranged procedures. The principle of democracy means that citizens are entitled to pressurize the government to give effect to their rights. Chapter 9 of the Constitution creates a number of institutions to support democracy and the separation of powers such as the South African Human Rights Commission (SAHRC), the Public Protector and others. Further, the Constitution not only provides for the 'formulation of the will of the people', but also requires government to 'respond' to the will of the people, which gives rise to the principles of openness, responsiveness and accountability.

Human rights, morality and the social compact as envisaged in the NDP

While a lot has improved in the country over the past two decades, everyday life for most South Africans remains a struggle. State racism has ended, and the country now boasts what many describe as the most progressive constitution in the world. People have rights, and there are institutions designed to protect and uphold those rights. Yet a struggle prevails that is compounded by the sense of desperation, despair and disappointment, given the gap between the expectations of liberation and the state of abject poverty that the majority continue to inhabit, as illustrated in the recent violent service delivery protests of Bekkersdal (February 2014), and Malumele (February 2015).

As we celebrate 20 years of freedom and democracy, we need to be aware of the country's challenges in order to reflect on how far we have come, and where to from here. We need to heed the lessons of failed states, and policies, and not repeat them. The triple challenge of poverty, unemployment and inequality have amplified in the last 20 years (1994 unemployment stood at 13%, today, 2015 it stands at 25%). Oxfam recently released a report (October 2014), indicating that 2 South Africans own the equivalent amount of wealth owned by half of the population. The

levels of violent crime in the country have reached explosive proportions of violence and brutality forcing citizens to cry out – “Is our justice system effective?”

Some claim that that the human right of access to justice for the marginal and vulnerable people is under threat and in its wake lies a state of lawlessness, and moral decay. In short, the situation in South Africa over the past 20 years opens up interesting questions about democracy, development and rights. What is democracy if it doesn't allow people to determine their own economic destiny or benefit from the vast wealth of the commons? What is freedom if it serves only the interests of the country's elite?

Remembering the hostilities and prejudices that characterize our past, we recognize the fragility of social relations in our new democracy. This requires the affirmation of the values to which all peaceful South Africans can aspire as a basis for reaching out to one another. Active and informed citizens can challenge bribery, corruption, nepotism and abuse by demanding that the rights of all are protected and actualised.

Where to from here?

A series of dialogues that explore the tensions, contradictions and links between development and rights will build a better understanding of how to address poverty, unemployment and inequality. The series is titled: “Dialogue on Development and Rights” will be launched on the 19th March 2015 by the Wits School of Governance in association with the Delegation of the European Union to South Africa, Oxfam and LeadSA. The inaugural Dialogue is entitled: “The Constitution, Development and Rights” is honoured by our special guest, struggle stalwart and human rights activist **Mr Ahmed Kathrada**.

The panelists are :

- Ms Yasmin Sooka (FHR)
- Mr Zwelinzima Vavi (COSATU)
- Ms Sipho Mthathi (Oxfam)
- Lord Michael Cashman (EU)
- Mr Roger Jardine (Primedia / LEAD SA)
- Ms Yenani Madika (Lead SA YOUTH)
- Deputy Minister Andries Nel (COGTA)

Objectives of the Dialogue Series

The objectives of the dialogue series are to:

- Lead and stimulate discussions across the spectrum of stakeholders, about the development and rights in South Africa, focusing on challenges, policy and implementation, and the importance of a social compact in building a capable state in South Africa.
- Focus on the interaction between state, economy and society, thereby reaffirming and reclaiming the democratic values of human dignity, equality and freedom.

- Build knowledge and understanding about the evidence decision-makers and policy implementers have and need to identify the opportunities and constraints of policy implementation in the human rights contexts.
- Define the building blocks on how we collaborate as a society to achieve the goals of the NDP.

Approach to the Dialogue Series

8 public dialogues spanning a period of 2 years will take place. The dialogues will be hosted by a knowledgeable and versatile personality. The dialogue panel will comprise a suitable mix of representatives of government, civil society and business. The dialogues will be facilitated to ensure engagement on the practicalities of upholding the values in the constitution, and thereby building a social compact, to facilitate development.

Panelist Questions:

- Is there a link between development and rights?
- Can a focus on human rights improve how citizens monitor implementation?
- What does a decent standard of living mean from a human rights perspective?
- The NDP articulates a vision of where we as South Africa would be in 2030. Do rights have anything to do with getting there?
- What is the role of local, regional and international organisations supporting democracy?
- The NDP articulates a vision of an active citizenry and a social compact is key to us achieving Vision 2030. How do we envisage this ?
- What are the next steps that ensure that we address and reduce poverty, unemployment and inequality in a sustainable way ?