

# Editorial

## Debating ANC policy manoeuvres

By Raenette Taljaard

South Africans are currently focused on the intrigue surrounding the succession struggle within the African National Congress (ANC). Ironically, a number of fairly dramatic policy shifts are occurring without being given the attention they deserve.

At least three recent events are noteworthy. First, dramatic changes have been effected to immigration laws that will allow the Joint Initiative on Priority Skills Acquisition (Jipsa) to take root with the two-year limit on the tenure of foreign workers to be doubled. Secondly, prospective changes to Black Economic Empowerment (BEE) Codes will introduce the “once-empowered, always empowered” principle, aiming to ensure that BEE partners are not locked into corporate deals indefinitely. Thirdly, efforts to manage the HIV/Aids pandemic have been bolstered by the candid comments of Deputy Health Minister Nozizwe Madladlana-Routledge, who is now ably assisting Deputy President Phumzile Mlambo-Ngcuka in her new role as the government representative responsible for this critical sphere of healthcare.

These policy alterations point to an important principle: the need to keep a focus on policy more than on personalities in the months ahead. Whilst the ANC national conference, where the next president of South Africa will almost certainly be chosen, is of cardinal importance, the policy conference scheduled for June 2007 has not attracted the same calibre of interest. Whoever emerges triumphant as the presidential successor will largely be constrained by the overall policy choices the ANC makes in the context of the policy conference — an important factor virtually absent from discourses on succession.

Indeed, as Deputy President Phumzile Mlambo-Ngcuka recently told the 5<sup>th</sup> *Economist* Business Roundtable: “*If the ANC wins the election, we will continue. All those who want to be in power are committed to following these policies*”.

It is in this regard that it is important for all intellectuals, political parties, agents in civil society and others to pay close attention to the call by presidential policy guru Joel Netshitenzhe for a “festival of ideas” (Joffe, Hilary, “Debate policies, not people”, *The Weekender*, 21 October 2006). Economic policy, government capacity and the three-tier structure of government are all subject to this “festival

of ideas”. Importantly, Netshitenzhe also noted that the ANC had to decide what kind of party it wanted to be — mooted a possible social democratic trajectory — before it could decide who should lead it. His comments underscore the importance of policy over individual candidates.

Policy has increasingly become an arena of struggle in the succession debate, as was seen recently at the 9<sup>th</sup> Congress of South African Trade Unions (Cosatu) Conference. Fiscal conservatism and the Growth, Employment and Redistribution strategy (Gear) were referred to derogatively as the “1996 Class Project” that was unilaterally adopted in 1996. In addition, Gear’s successor, AsgiSA, was sharply criticised by Cosatu General Secretary Zwelinzima Vavi in his socio-economic report. The South African Communist Party’s Blade Nzimande has called for the Freedom Charter to guide the economy, entirely ignoring the country’s bedrock constitution in the process.

On economic policy in particular a number of interesting, insufficiently debated, challenges are emerging, including:

- ◆ comments on inflation-targeting by key government advisers advocating a focus on the exchange rate that conflicts with recent International Monetary Fund (IMF) advice on monetary policy urging the credibility of the framework;
- ◆ recent IMF counsel that favours continuing a conservative approach to public expenditure despite a projected budget surplus that is largely based on strong revenue performance;
- ◆ the possible use of tax incentives to leverage certain sectors of the economy as part of AsgiSA despite National Treasury arguing that such incentives distort the economy and are arguably against WTO rules.

South Africa’s search for an enhanced macro-economic reform model contains many policy challenges. Crucial decisions will be probed at cabinet level and will further be the subject of contestation among tripartite alliance allies at the ANC policy conference.

Whichever casualties there may be in the succession debate, these casualties must not be policies that are crucial to maintaining the relative economic and political stability South Africa has managed to achieve in 12 years. □

Articles published in *Focus* do not necessarily represent the opinions of the Foundation’s donors or of its patron, Mrs Helen Suzman

# Mayor Zille survives dubious manoeuvres

**Jonathan Faull** dissects political turmoil in Cape Town and concludes the in-fighting in the ANC helped Helen Zille stave off a political coup aimed at dislodging her as mayor

**T**his *City Works for You* pro-nounces the self-satisfied slogan of the city of Cape Town. Just who “You” is, is an uncomfortably important question, not easily answered. Peeling away years of abstruse discourse and unaccountable political manoeuvring reveals the collective political leadership of the city, and its bedfellows in provincial and national politics, as a central player in the city’s malaise. The veritable political football of inter-, and no less importantly, intra-party politics, Cape Town runs the very real risk of becoming the city that good, democratic, accountable and transparent governance forgot; a city where substantive delivery to citizens is forever mortgaged to the whimsical Stalinism of party politics.

Since December 2000 the most salient features of Cape Town’s political landscape have been seemingly perpetual political instability and administrative and bureaucratic turmoil. Five mayors, an acting mayor, four municipal managers, an acting municipal manager, five restructuring initiatives, four governments, two multi-party coalitions, a high turnover of senior civil servants and the contingent haemorrhaging of skills and institutional memory — this is the legacy of six years of “democratic” local government in the city. Cynicism and apathy abound, while political divisions and communal distrust deepen in the midst of a developmental crisis the city has all but failed to address.

Internal political upheaval, fraud, farce and ultimately floor-crossing — an expedient political arrangement initially supported by the official opposition and government alike — scuppered the

Democratic Alliance’s (DA) first tenure in the city. The political effects of the protracted demise of the New National Party (NNP), further floor-crossing conundrums, and the democratic imperatives of the ballot box removed African National Congress (ANC) mayor Nomaindia Mfeketo from office. Member of the Executive Committee (MEC) for Local Government, Richard Dyantyi’s proposal to change the “type” of executive in the city, the latest offensive in the perennial war for Cape Town, sputtered to a damp halt in October this year.

Under the provisions of section 16 (1) of the Municipal Structures Act (MSA) the relevant MEC in any given province is empowered “by notice in the provincial gazette” to “amend a section 12 notice [to *inter alia*] change the municipality from its existing type to another type”. Complementary legislation in the form of the Western Cape Determination of Types of Municipalities Act (2000) frames the “types” of municipalities that the MEC can proclaim; both the Executive Mayoral and Executive Committee systems are included in the designated “types”. Such an action can only be enforced after publication in the Provincial Gazette, a reasonable period for public consultation, consultation with organised local government (the South African Local Government Association — SALGA) and the municipality concerned (MSA section 16 (3)).

In metro municipalities where a Collective Mayoral Committee is implemented the MSA legislates that the committee must comprise ten people and that representation must be in proportion to the broad balance of partisan interests

*Winners all: Western Cape Premier Ebrahim Rassool, his MEC for Local Government Richard Dyantyi and Mayor Helen Zille enjoy a laugh together... while they can*



represented in the given council. In March 2006 the voters of Cape Town delivered an ambiguous mandate: the DA won the plurality of the vote with 41,85 per cent, the ANC won 37,91 per cent, and the Independent Democrats (ID) 10,75 per cent. This translated into representation of 90 councillors for the DA, 81 ANC, and 23 ID, with six smaller parties holding the balance of 16 seats in the 210 seat chamber. The DA has since increased its representation by one seat, having successfully contested the ID's March 2006 Tafelsig victory in a subsequent by-election.

Had the proposal been implemented a literal interpretation of the legislation would have resulted in a collective executive comprising 4 DA, 4 ANC and 2 ID, effectively annulling the DA's executive power should the ID and ANC act in concert. However, a High Court ruling, ironically a consequence of DA-led litigation against the ANC, changed the equation. The ANC had excluded the DA from structures following its divorce from the NNP and that party's subsequent alliance with the ANC. The High Court ruling would have given the mayor, Helen Zille, significant discretionary powers in choosing the composition of the collective. This, no doubt subject to lengthy litigation, could have resulted in the DA retaining a majority, and holding all significant service delivery portfolios on the collective executive, while the ANC and ID could have been relegated to minority positions on the committee with little functional power.

But, suffice it to say, had the provincial fiat been executed, it would have resulted in the effective ousting of the incumbent DA-led seven party coalition, and the shoe-horning into execu-

tive power of both the ID and the ANC.

On the surface the move resembled a crude power grab, exercising legislation created to form governments, not dissolve them. But behind the sound bites and posturing, a very different set of imperatives drove the initial proposal, and the compromise that scuppered its implementation.

The provincial executive committee (PEC) of the ANC in the Western Cape held an extended meeting with provincial government, national exec-

### **Cape Town risks becoming the city that democratic, accountable and transparent governance forgot; a city where delivery is forever mortgaged to the whimsical Stalinism of party politics**

utive committee members, and the president of the ANC, Thabo Mbeki, over the weekend of 27 August 2006. An item only implicit on the agenda was the continuing divisions within the Western Cape ANC.

Former provincial chairperson of the ANC in the Western Cape, Ebrahim Rassool, is premier of the province and is surrounded by key allies, including Dyantyi, in his provincial government. Rassool was ousted as provincial chairperson at an acrimonious provincial congress in 2004 by a faction within the Western Cape ANC coalescing around James Ngcucu (incumbent provincial chair), Mcebisi Skwatsha (provincial secretary), and Max Ozinsky (deputy provincial secretary and chief whip of the ANC in the Western Cape legislature). The press has routinely charac-

terised the central fissure within the Western Cape ANC as one relating to race, or "the national question", as it plays itself out in the context of the province. The truth is far more complex, relating to the strategic direction of the party in the province, but relations between the two factions remain bitter and highly personalised, with key players routinely working to undermine comradely opponents through critical off-the-record briefings to the press.

The "proposal" to change the type of municipality in Cape Town from an Executive Mayoral system to a Collective Executive Committee was first mooted in April following the failure on the part of the PEC, in March, to negotiate with minority parties to form a sufficient bloc of votes in council to win executive power in the city. Advocates of the move cited support from "national office bearers" of the party at Luthuli House.

In the run-up to the August PEC meeting, fearing that the matter would be tabled for the president's consent, opponents of the move agitated for the minister of provincial and local government to brief Mbeki about the move and its implications prior to his visit to Cape Town. Ultimately, for reasons unknown, the president was not briefed. When



*Mayor Helen Zille has proved herself to be tough and resilient*

endorsement of the move, and more evidence of Mbeki's alleged anti-democratic tendencies.

Ultimately, it was another discussion at the PEC meeting that gave the proposal momentum. A central grievance of the ANC rank and file is the relationship between ANC-led state structures and ANC constitutional structures. Aggrieved members assert that government is insufficiently accountable to the ANC as a party, and that it often implements policies at odds with the principles of the movement. The matter is pivotal in the critiques of the Congress of South African Trade Unions (Cosatu) and the South African Communist Party (SACP) of the malaise within the alliance and the ANC more generally. It was central to the grassroots rebellion at the ANC's national general council (NGC) in 2005, and has played itself out as part of the conspiracy theory relating to the abuse of state structures by elements within the state and the ANC to politically neutralise the prospects of a Jacob Zuma presidency.

Given the broader context, and the resonance of grievances particular to the Western Cape with national ANC imperatives, it was unsurprising that the extended committee resolved, unequivocally, that ANC-led institutions of government are directly accountable to ANC party structures. In the context of the Western Cape, it was further asserted that should the provincial government receive a clear mandate from constitutional structures to implement a particular policy or directive, the government is bound to do so. Unsurprisingly, the PEC subsequently issued a clear directive to Dyantyi to exercise his powers to change the type of municipality.

*National Minister of Provincial and Local Government, Sydney Mufamadi, acted as an honest broker*

On Wednesday 15 September 2006, news was leaked to the Cape newspapers that MEC for Local Government in the Western Cape, Richard Dyantyi, was contemplating exercising his prerogative, as per the relevant legislation, to change the type of municipality in Cape Town. Given the enmity with which the Cape media is generally regarded by the PEC, it seemed unlikely that the leak was intended to publicise the move, more likely it was meant to hijack the initiative before its impending announcement.

Concurrent to a vociferously critical news cycle, Richard Dyantyi approached the national minister, Sydney Mufamadi, in Pretoria on 19 September 2006, in the context of a regular meeting of the minister and the nine provincial MECs (MIN-MEC), to urge the minister to intervene to derail the move prior to any formal announcement. The crux of the MEC's prescient argument was that the proposal would likely result in an intergovernmental dispute, which the minister would ultimately have to mediate. Rather have the minister kill the matter now, and mitigate all the tangential mudslinging and critical public perception, than be forced to intervene further down the line. Again the politics of the ANC came into play, and in order to avoid the perception that state power was being abused to undermine an ANC initiative, the minister declined to intervene.

On Monday 19 September, while on government business in Oudtshoorn, Dyantyi formally announced the proposal to change the system of executive power in the city, citing the need for inclusive government in the midst of a deeply divided city, with pressing

the matter was raised at the meeting, Mbeki, despite not knowing the details of the issue, must have been aware that the matter was potentially divisive and would have significant repercussions. As a consequence he avoided participation in the discussion, and did not pronounce on the matter. His presence at the meeting, however, would later be cited by Tony Leon as sufficient proof of the president's



developmental concerns. The initiative put in motion a process of inter-governmental, inter-party and intra-party realpolitik.

At the Civic Centre, Helen Zille sought legal advice. Advocate Wim Trengove, arguably the finest constitutional mind in private practice, offered his services to the city to contest the issue should it go to court. Legal opinion held that the move was contestable on a number of fronts: while the MSA and complementary legislation enabled the MEC to change the type of municipality, this legislation has to be read in line with the constitution. In this regard, section 139 of the constitution enjoins the relevant MEC for local government to intervene in municipalities only where that entity “cannot or does not fulfill... executive obligation in terms of the constitution or legislation”. The political and sociological imperatives articulated by Dyantyi to encourage more

representative and inclusive government, it would have been argued, did not constitute a failure to implement an executive function.

Moreover, section 41 of the constitution requires that the three spheres of government “must [*inter alia*] respect the constitutional status, institutions, powers and func-

tions of government in other spheres; exercise their powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and co-operate with one another in mutual trust and good faith...” Section 154 (1) requires that “provincial governments... must support and strengthen the capacity

of municipalities to manage their own affairs, to exercise their powers and perform their functions”. Significantly, Section 151 (4) of the constitution holds that “the national or provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions”.

The establishment of ward committees would have been necessitated by legislation and should not be considered a “compromise” as the city was required to do it anyway

The constitution also holds that “an organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute... and exhaust all other remedies before it approaches a court to resolve the dispute” (41(3)).

As a consequence, it was not surprising that the city was confident that, as a final resort, court action would find in its favour. This would

*The DA-organised march for democracy signals its determination to resist the ANC’s dubious motives*



also have the political effect of undermining the ANC, and vacating the moral high ground to the DA. At the same time civil society, the ANC's partners in the provincial tripartite alliance, and domestic and international media all came out in opposition to the move. The effects of two *Washington Post* articles, CNN and BBC bulletins, references to the move in the *Spectator*, the *Daily Telegraph* and the *Guardian*, and disquiet within the diplomatic community, would have been of concern to a national government and ANC leadership proud of their international credibility.

The composite effects of protracted legal action, contingent administrative chaos and uncertainty, and a growing

of the compromise being tailored by three people essentially opposed to the original proposal itself.

The aim of any intergovernmental mediation relating to a potential or real dispute, as per the Constitution, should "settle the dispute". In light of the fact that the DA and the city stood to retain the status quo had the matter gone to court meant that that party was very unwilling to trade any significant concessions. However, the DA was increasingly concerned about the long-term effects of a divisive political battle, and the extent to which this would curtail Zille's ability to visit and address communities traditionally outside of the DA's constituency. Concurrently, the

areas to seven, and a commitment on the part of the city to initiate the foundation of ward committees across the city. Ultimately, the establishment of ward committees would have been necessitated by existing legislation and should not be considered a "compromise" as the city was required to do it anyway.

Everyone walked away claiming victory — the minister avoided an intergovernmental dispute, the DA remains in executive power, and the MEC won concessions relating to sub-councils. The real losers are the original backers of the move, the ANC PEC, who overreached, risked, and lost.

All three of the significant political actors in the province, the ANC, DA and ID, remain internally divided between evenly balanced factions: While the latest battle in the war for Cape Town was comprehensively won within the ANC by those allied to the premier, the PEC retains the mandate of the provincial membership to direct political programmes. The ID fulfilled the role of a comedic sideshow throughout the latest fandangle, executing fabulous political flip-flops and flights of fancy throughout. Disciplinary proceedings are commencing against at least seven of the ID's city caucus on allegations of disloyalty and bringing the party into disrepute. Expect the proverbial explosion from within that party when the municipal floor-crossing window rolls into view next year. Within the DA, Helen Zille remains extremely unpopular with the predominantly Afrikaans-speaking, former NNP activists who deliver power to the party in the province.

For fans of the dark arts of political fratricide, the Western Cape remains the place to be. For citizens wanting efficient, effective, accountable and transparent government, underpinned by visionary and uniting political leadership, another province might be a better option. □

### Aggrieved ANC rank and file members assert that government is insufficiently accountable to the ANC as a party, and that it implements policies at odds with the movement's principles

public relations disaster would not have been lost on Dyantyi and Mufamadi's offices. A compromise would have to be found allowing for the province and the ANC to save face.

A confusing cycle of discourse commenced with off-the-record briefings emanating from ANC national head office that were extremely critical of the move. Yet, a week later the NEC did not engage with it. A cabinet statement to the effect that the province should deal with it followed, but the next day Minister Mufamadi announced his intention to intervene to avoid an intergovernmental dispute.

The move on the part of Mufamadi placed the matter firmly within the ambit of the institutions of state, and relegated party political structures to the chattering classes. Importantly, by initiating a process of mediation between the city and the MEC, the ANC PEC was marginalised from direct participation in the unfolding resolution. This had the ironic effect

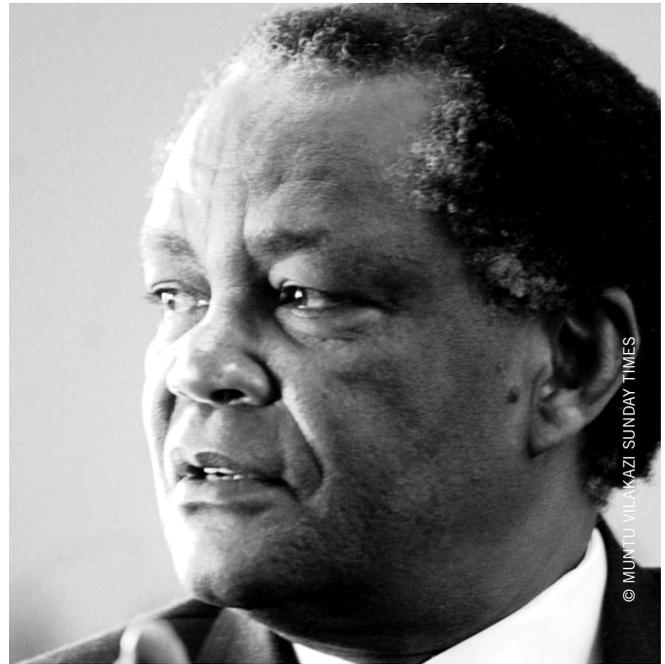
prospect of losing everything in a highly publicised and protracted court case, which would necessarily undermine governance and administration in the city, meant that the ANC and the province were very willing to compromise. For the latter, saving face became the priority.

A subtext to the initial proposal was very valid criticism of the city's demarcation of sub-councils. The nub of the ANC's critique was that sub-councils were overwhelmingly racialised, and consequently would perpetuate the spatial, social and economic perversions inherited from apartheid. A second criticism related to the numbers of wards lumped into "African" sub-councils, which far outweighed the numbers of wards gathered into "white" sub-councils.

In the final analysis, "compromise" on the part of the DA entailed agreeing to add two additional sub-councils in African areas, in turn increasing the number of sub-councils in traditional ANC-supporting

# Questions and answers: Judge Bernard Ngoepe

Judge President of the High Court, Transvaal Provincial Division, and Judge of the African Court on Human and People's Rights



**In an interview in the *Sunday Independent* in July this year you said that the level of crime in South Africa is the greatest threat to the fundamental rights of its citizens. Would you like to elaborate on this view?**

I had in mind the prevalence and gravity of crimes committed. Remember even petty theft, assault or insult violates someone else's fundamental rights; not to speak of say rape, murder and other serious offences. Rape and murder are the worst violations of human rights. Rape violates the victim's dignity and in murder, human life, the most precious thing, is lost. How many of these incidents occur daily in our midst? The security of an individual is fundamental. Is there anyone walking around without any fear of crime? We need to have a zero tolerance for crime.

**Do you believe that the South African constitution strikes the right balance between the rights of the victims of crime and the perpetrators of crime? If not, what additional steps can be taken, perhaps in terms of national legislation, to provide additional safeguards and/or specialised forms of assistance to the victims of crime?**

The constitution itself is fine. The real question is whether we interpret it correctly. Remember that an identical provision in different constitutions is sometimes interpreted differently. That is why you find that in a country in which the right to life is guaranteed by the constitution, they still uphold the death sentence while it is not the case in the other country with a similar provision. It is largely about how or to what extent you apply the limitation clause. I would rather have a bad constitution with

the best lawyers, than the best constitution with the worst lawyers.

Barring perhaps a few instances, I do not think additional legislation is necessary to effect the balance. We must just be careful not to interpret the constitution in a manner that will cause the general populace to blame it for all the problems; we should not alienate the constitution from the people. The interpretation and application of the constitution must be informed by realities on the ground, and not by a need for the oft-repeated flattery that ours is the best constitution in the world. We cannot operate with or under classroom interpretations of the constitution which are devoid of pragmatism.

**Crime in South Africa seems to be accompanied by levels of gratuitous violence and brutality. What do you think the reasons could be**

**for such levels of violence? Are we a brutalised society by virtue of our past or is there more to it?**

Perhaps this question is for sociologists and criminologists to answer. One thing is certain though: unemployment and poverty cannot, in my view, serve as justification for gratuitous violence and brutality; note the use of the word gratuitous. If you rob somebody of a cellular telephone, maybe it is because you are unemployed and poor, and you cannot afford one or you want to sell it to get some money. But why, after taking it, shoot the victim dead? Poverty is not a new thing; it has always been part of the human race. Reacting to comments linking crime with poverty, *The Citizen* newspaper (30 October 2006), under the heading "Poverty is no excuse" in its editorial, remarked: "But there is poverty all over the world without such endemic crime and violence... We can't blame poverty for our society's sickness." Years ago I attended the funeral of a young attorney. Criminals had entered his house and demanded his car keys; he obliged. As they were about to get out of the door, one of them said: "Let us shoot him." They shot both him and his heavily pregnant wife. He died, but the wife survived to tell the story. They took away the car anyway. His murder and the shooting of his wife were acts of sheer gratuitous brutality and violence. Criminals should not get an impression that there is an excuse for gratuitous brutality and violence. No excuse should be found to palliate their conscience.

**You have refrained from commenting on Judge Gerhardus Hattingh's call for a referendum on the death penalty during the recent sentencing decision. Do you have specific views on the matter that you would like to address?**

As the case affected me personally, I think it would be inappropriate for me to comment.

**As a matter of principle, do you believe it was correct for a judge to open up a matter that was categorically decided by the Constitutional Court in 1995? Should judges open areas of the constitution and/or rulings of the Constitutional Court to such appeals for redrafting? Judge Hattingh said: "If all else fails, the constitution should be rewritten. What the people want must triumph." Is this not a form of judicial populism?**

Again, the case was too closely linked to me personally, and I should refrain from commenting directly on what Judge Hattingh said. I must, however, caution against sacrificing a very important judicial practice: it has always been the practice that where a judge sees some injustice or a shortcoming in the application of an existing law, about which they cannot do anything, they would ask the legislature to intervene in order to remedy the situation. I myself have done so in the past. After all, judges are involved in the daily practical application of the law; who is better placed to pick up and point out any injustice which requires legislative intervention? I do not think there should be "no go areas"; as long as the judicial authority (of any court, not only the Constitutional Court) is not undermined by that kind of call. It is not for me to say where Judge Hattingh's remarks fall. Judge Murphy of my court wrote a long article in the *Pretoria News* (6 October 2006) to say that Judge Hattingh's remarks were neither non-judicious nor untimely. As long as there is gratuitous brutality and violence, the debate will go on; I suspect that it is triggered by a sense of revulsion against that kind of brutality and violence. However, I choose not to be part of the debate for obvious reasons.

**The African Court on Human and People's Rights is a regional court that rules on African Union states' compliance with the African Charter on Human and People's Rights. You are one of the first 11 judges to be elected to the new structure that was formed with the merged African Court of Justice, in January this year. What are some of the core challenges and opportunities that the Court faces?**

It appears that a lot of ground work has to be done to, as it were, operationalise the court. It needs its own budget, which it presently does not have. The African Union needs to provide funds, to demonstrate its seriousness and commitment to issues of human rights. The court will have to adopt a robust attitude to ensure effective protection of human rights. It also needs to develop a truly Afrocentric human rights jurisprudence, while no doubt also learning and borrowing from elsewhere. It is an opportunity which the founding judges should make use of to build a solid foundation for a continental human rights jurisprudence.

**You have been appointed for two years. What are some of your personal goals and ambitions for your tenure?**

I would like to be able to say that I have made some contribution towards, firstly, setting up the court and, secondly, meeting at least some of the challenges I have referred to above.

**The Protocol on the Rights of Women is still very new but contains core provisions on the role and rights of women. Will this be a new and exciting area of jurisprudence for the court?**

The Protocol on the Rights of Women will be an exciting area of jurisprudence for the court. But given traditions and cultures on the continent in terms of which women

have been oppressed and relegated to the background for centuries, the court's task is also going to be a challenging one. It would have to reconcile some of these practices, if possible, with the imperatives of the protocol and indeed those of the Charter on Human and People's Rights. The same applies to the protocol on children's rights.

**In respect of the protocol specifically, you have commented in the interview with the *Sunday Independent*, referred to above, that, "As it stands, and regarding the protocol literally, I do not see any individual being able to access that court". Will this matter of *locus standi* detrimentally affect the enforcement of the provisions of the protocol if individuals cannot seek redress through the courts?**

The fact that individuals may not have *locus standi* may indeed undermine the effectiveness of the court as a protection mechanism. But a question arises as to whether the court could cope if it were to be accessible in that manner. Presumably, restriction of access is on the premise that there will be appropriate mechanisms in each member state to protect individuals.

**Given the ongoing conflicts and efforts at peace in many AU states, and the interest of the International Criminal Court in some of these conflicts and possible human rights abuses, what role could there be in the future, if any, given the jurisdictional provisions of the Rome Statute, for interactions between the African Court and the ICC?**

While a decision has been taken to merge the African Court on Human and People's Rights with the African Court, the merger has not yet been implemented. The 11 judges appointed are for the former court. I cannot

go into details on possible collaboration or sharing of jurisdiction between the ICC and the African Court; except to say that, obviously, there will have to be some alignment of criminal jurisdiction.

**If you were to be called in as a consultant to review the entire criminal justice cluster tomorrow, what would be the five key recommendations you would make to improve the functioning of the system in order to lower the incidence of crime?**

My knowledge of the criminal justice system is limited to the judicial aspect of it; both as Judge President and, with regard to the lower judiciary, as Chairperson of the Magistrates Commission. If I were to review the entire criminal justice cluster I would therefore start off by calling for a *lek-gotla* of all stakeholders (the police, the legal professions and even Correctional Services) for input. To lower the incidence of crime not only must criminals know that they will be arrested, but also that, if guilty, they will be convicted and appropriately sentenced. The parole system is a necessary mechanism; but it cannot be used solely for the purpose of alleviating crowding in the prisons. That would constitute an ulterior motive coming very close to defeating the ends of justice or undermining the authority of the courts. It is now being suggested that some of the people serving a so-called life sentence will be eligible for consideration to be released on parole after 15 years; much earlier than it is now the case. It is accepted that this would not be done irresponsibly; but how much of the deterrent element of a "life sentence" would remain? Secondly, we must be careful not to undermine people's confidence in the administration of justice. Is "life sentence" to become increasingly less and less of a "life sentence"? Is there, in any case, such thing as a "life sentence"? Remember that one of the considerations for abolishing the death

sentence was that a "life sentence" was there as an effective alternative to remove the criminal from society. As matters stand, there is an impression in the minds of some that it serves no purpose to report a crime, because the criminal would be out soon anyway, irrespective of the sentence. We prohibit people from taking the law into their own hands and, largely, they accept that; but that is on the understanding that the courts would determine an appropriate sentence which will also serve as punishment for offending against society. A particular period or term is determined by the court after very careful consideration, and is also often confirmed on appeal. Thoughts abound. Yusuf Abramjee (*Pretoria News*, 14 November 2006) writes as follows about the importance of the element of deterrence: "Investigating, charging, arresting and convicting wrongdoers are admirable. But ensuring that the punishment meted out is appropriate to the crime and acts as a deterrent is just as important. Part of this is being excluded from society.

South Africa's sentencing and parole conditions must be re-examined. Prison terms, whether 15 years or four, must be that — not a few years or a few months."

As far as strengthening the judiciary is concerned, it is important to make working conditions attractive. We need to attract the best candidates for appointment as judges. Fighting crime successfully is not going to come cheap.

**Is there a way in which the new initiative of Business Against Crime to support government's crime efforts can be of specific assistance to the courts in South Africa and to the administration of justice? If so, in what way?**

I will only speak from the point of view of the courts. I am sure Business Against Crime can, *inter alia*, help with providing resources towards judicial training. □

# “Time for the stalwarts of the UDF to govern”

Since 1994 a prison graduate (Nelson Mandela) and an ANC exile (Thabo Mbeki) have occupied the presidency. It is now the turn of a former UDF pioneer to do so. That view emerged at a roundtable debate organised by The Helen Suzman Foundation. Patrick Laurence pulled together the threads of the discussion and further input from additional luminaries

A member of the old United Democratic Front (UDF) senior leadership may emerge as a strong and even winning candidate in the succession struggle in the African National Congress (ANC), author and political analyst Frederik van Zyl Slabbert predicts.

Reasoning that two of the three components of the ANC leadership, the Robben Island prisoners and the exiled leadership corps, have provided the first two post-apartheid party and national presidents, Van Zyl Slabbert reckons the time is now propitious for a former member of the UDF to fill the top slots. “I have a fascination with the old UDF high command and surmise that mid-next year someone will pop out of the woodwork as a potential candidate”, he says. “Zuma will have to do serious work (to retain his present position as the leading candidate).”<sup>1</sup>

If Van Zyl Slabbert is correct, there are three prime potential candidates from the former UDF: Trevor Manuel, Cyril Ramaphosa and Mosiuoa Lekota. They are, respectively, the minister of finance, a high profile businessman and former ANC secretary-general, and the minister of defence. Each of the three, however, have particular weaknesses as candidates for the presidency of the ANC and/or the nation. The presumption that the ANC and/or national president should be an indigenous black African may unjustly count against Manuel. Ramaphosa may be prejudiced by perceptions that he is a “fat cat” who is too far removed from the grass roots struggle despite being a man who once served as the general secretary of the

National Union of Mineworkers. Lekota may be handicapped by memories of his failure to declare his business interests to parliament, as required by a cabinet minister, despite the fact that he has long since been reprimanded and disciplined.

Sipho Seepe, academic and writer, adds a caveat to Van Zyl Slabbert’s prediction.<sup>2</sup> “It is a gamble for the old UDF... to wait so long to present a candidate... To come at the end is very risky, especially where the trade unions form the core of the [ANC]. They will go to [the conference] saying of Zuma, ‘We know where he stands’. Another [rival] candidate needs to come now in order to gain credibility.”

On the succession issue it is interesting to note that in their discussion paper entitled *Contextual considerations in addressing challenges of leadership*, Joel Netshitenzhe, Enoch Godongwana and Mandla Nkomfe envisage a situation in which President Mbeki is re-elected as ANC president in 2007, subject to a strongly emphasised clarifying statement that there is no intention to modify the constitution to provide for him standing for a third term as national president.<sup>3</sup>

Three further considerations figure prominently in the document: firstly, the person who is elected as ANC deputy president in 2007 can become national president in 2009; secondly, if another person secures the top position on the ANC list of candidates ahead of the 2009 election, he or she will become the ANC candidate for the national presidency and, given the ANC’s political predominance, become the national president;

*Archbishop Desmond Tutu believes a directly elected president would be more accountable to the electorate*

and thirdly, provision may be made for President Mbeki to resign as ANC president in 2009 and for the ANC deputy president to take over as the party leader until the next ANC national conference.

The former National Assembly speaker, Frene Ginwala, is on record as emphasising that the positions of the ANC president and the national president are neither necessarily nor automatically linked. "At one point we had a big debate," she says in an interview published in *Business Day* reporter.<sup>4</sup> "There was a view that we should agree that whoever is elected president of the ANC should be the candidate of the ANC for president. That debate went on for over two years. We decided, no, we're not putting it in [the ANC] constitution. The reason was the view that the president of the ANC may need different qualities than the president of the country and we should not bind the future."

In his Harold Wolpe Memorial Lecture at the University of Cape Town, Archbishop Desmond Tutu launched a strong plea for electoral reform, laying particular emphasis on the need to increase the accountability of elected representatives to the electors who voted them into power. "We need to make those elected more accountable to the electorate than to the party bosses," he said. Referring to the election of the national president by the National Assembly sitting as an electoral college, Tutu adds: "It is high time that our president is elected directly by the people."

Using rhetorical repetition for emphasis, Tutu continues: "It is high time that our constituencies come into their own so that representatives know they owe their primary loyalty and accountability to the con-

stituents rather than to the party bosses... There would be a more vigorous putting-through-the-paces of the executive branch by its legislative counterpart than is now the case. The party lists tend to foster acquiescence and a supine kow-towing... Power is insidious. It can subvert the best of us and we need help to keep its corrupting attributes from corrupting even the best of us."

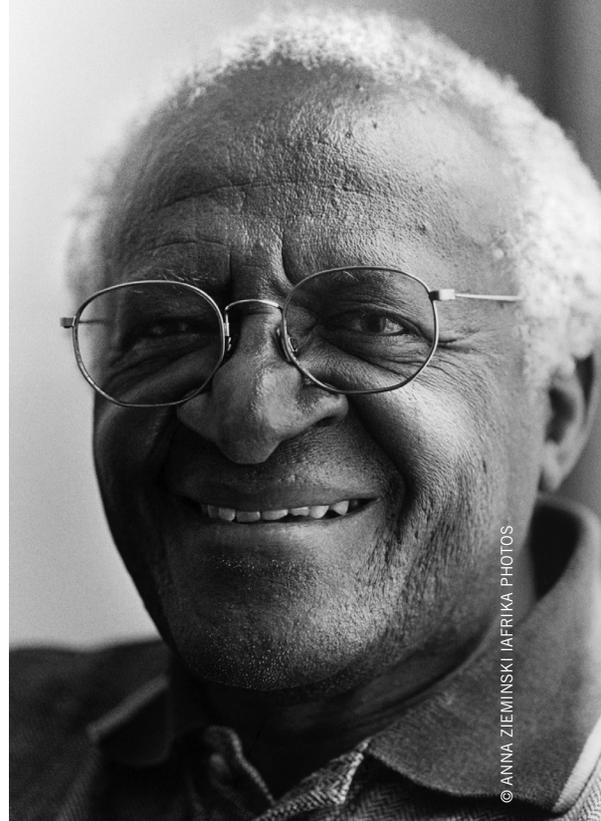
Tutu's plea for electoral reform and, in particular, for the direct election of the national president and the introduction of a constituency component in the election of legislatures, has been put to Van Zyl Slabbert and Seepe as well as to Alf Stadler<sup>5</sup>, emeritus professor of political studies at the University of the Witwaters-

rand, and David Welsh<sup>6</sup>, emeritus professor of African government at the University of Cape Town.

Van Zyl Slabbert is sceptical about whether people in general, and Tutu in particular, are familiar with the complexities of the system under which presidents of the United States are elected, which, he believes, is what they have in mind when they talk about introducing a system of direct election of the South African president.

"I am unsure that people actually know what it means, what it entails and how it would work," Van Zyl Slabbert says. "For Tutu the country would vote between two candidates and from that you would have a directly elected president. The closest comparison... would be the United

*Van Zyl Slabbert is sceptical about whether people are familiar with the complexities of the system under which presidents in the US are elected*



© ANNA ZIEMINSKI IAFRIKA PHOTOS

States. But in essence the process is highly structured, with pledging within the party, election within the party and lobby groups. Only much further down the line [is there] direct election by the broader electorate."

**Ginwala notes that the posts of ANC president and national president are not automatically linked as the ANC president may need different qualities to the president of the country**

It should be added in parenthesis that when Americans vote for one candidate or another, they are actually voting for representatives who will attend the electoral college which will, in the end, formally



© ARNOLD PRONTO THE HELEN SUZMAN FOUNDATION



© ROB WHYTE IAFRIKA PHOTOS



© RODGER BOSCH IAFRIKA PHOTOS



© ZAEEM ADAMS IAFRIKA PHOTOS

elect the president. So, in that sense, even the US president is indirectly elected.

But to return to Van Zyl Slabbert: “As a remote translation, it would seem that the ANC would have to put forward its candidate against all the other party candidates.”

From that the issue arises of whether a directly elected president — or one who is seen as directly elected — is likely to be less party bound than one who is voted into high office by the party that he or she leads.

Stadler replies: “Again you have to ask whether or not that is possible? The party is not an insignificant [force]. There has to be a permanent ongoing structure... In contemporary society you need a politically complex organisation that can match the state itself and [rival] private associations, including businesses... I cannot see a presidential candidacy happening without [a party structure].”

Welsh states that he had the German chancellor in mind, not the US president, when he endorsed the notion of a directly elected South African presidency.<sup>7</sup> The chancellor is directly elected, he explains. He concedes, however, that it would be “difficult to say it would make the [South African] president more accountable,” though he or she, like the German chancellor would be “answerable to the electorate”. But, considering that “the state of democracy has shrunk considerably” in South Africa, Welsh still favours the idea of a directly elected South African president. “It would give the electorate another point of contact with the president” and that could be beneficial for South Africa’s fledgling democracy.

Welsh sees another potential advantage for South Africans of a

directly elected president. It could create the opportunity for a split vote, in which people might vote for one party in the parliamentary election and the candidate of another in the presidential poll. In the US more people vote for the republican presidential candidate while the political configuration of congress is usually more diverse. At the least the split vote introduces a “greater flexibility”. The only caveat Welsh attaches to his endorsement of a directly elected South African president is that the elections should take place on the same day as the parliamentary election.

Seepe seems to concur with Welsh that there are benefits for South African voters through the extra point of contact that participation in the direct election of the president would provide them.

“In the United States the fact that the president faces the electorate provides an opportunity to be influenced,” he says. “In a sense the electorate extends external pressure. Candidates are subjected to the electorate in the process of their candidacy and, in some cases, parties do respond to the electorate’s reaction. At the least in that system you are very aware of who the candidates are and what they are likely to offer”.

Another digression is in order: after suffering a stroke in January 1989, the late former president PW Botha resigned as leader of the National Party in an attempt to present himself as the president of all South Africa’s people, but, instead of attaining the status of a statesman, and notwithstanding his meeting with Nelson Mandela in July 1989 when Mandela was still a prisoner, Botha was ousted by his own cabinet in August 1989. It is, of course, necessary to recall that Botha was never elected by all adult

*Three former UDF founder members who might emerge as candidates to succeed Thabo Mbeki. From top to bottom, Cyril Ramaphosa, Trevor Manuel and Mosiuoa Lekota*

*The participants in the Roundtable discussion hosted by The Helen Suzman Foundation were (from left to right): Patrick Laurence, editor of Focus; Frederik van Zyl Slabbert, political analyst and author; Siphon Seepe, political observer and academic and Alf Stadler, emeritus professor of political studies at the University of the Witwatersrand*



© THE HELEN SUZMAN FOUNDATION

South Africans. Even so his quest is a reminder of how difficult it is for a party apparatchik to escape his identity and reputation.

Van Zyl Slabbert seems to concur with Welsh that a multi-member constituency system, through which two or three — or three or four — members are elected per constituency is the best route to go in pursuit of greater accountability to the voters. In the multi-member constituency system the successful candidates are placed in proportion to the votes they have received: the first is the one who garners the most votes, the second the second most and so on until all the allocated seats are filled. The successful candidates are at least as accountable to the voters who elected them as they are to party hierarchy.

Welsh says the present list proportional representation (PR) system places “enormous power in the hands of the party bosses” and “thereby undercuts the independent-mindedness of members of parliament”. The “independent-mindedness” is further undermined by the legislation, which allows representatives elected under

the colours of one party to cross to another party without have to forfeit their seats, as pertained until the marriage of convenience between the ANC and the New National Party under the leadership of Martinus van Schalkwyk. Kortbroek, as Van Schalkwyk is known, now sits in the ANC cabinet and is subject to the ANC caucus whip. The marriage turned into an orgy of cannibalism.

**A directly elected president could create an opportunity for a split vote, in which people might vote for one party in parliamentary elections and the candidate of another in the presidential poll**

Jonathan Faull, of the Institute for Democracy in South Africa, believes there are signs of a thaw in the ANC’s apparently adamant opposition to reform of the prevailing PR list system. He cites a statement by Mbeki that the ANC may be prepared to re-appraise the floor-crossing legislation and debate it. Home Affairs Minister Nosiviwe Mapisa-Nqakula is quoted as having said that she had read the changes recommended by the Van Zyl Slabbert

Commission (for the introduction of a constituency element) and would initiate a process in the cabinet for the “implementation thereof”.<sup>8</sup>

Welsh, however, is openly sceptical. “I want to see the ham in the sandwich,” he declares in a modern idiom that lauds lack of gullibility as a commendable quality. He remembers ANC delegates openly laughing when attending sessions of the Van

Zyl Slabbert Commission and making it quite clear that the present system suited them just fine. He describes the floor-crossing legislation as a “standing negation” of the constitutionally-enshrined injunction to parliamentary representatives to exercise an oversight function in relation to the executive”.

Until such time as the “standing negation” is moved, Welsh will remain sceptical, as will a large segment of the electorate. □

**Endnotes**

- 1 Van Zyl Slabbert was a participant in a round table discussion organised by The Helen Suzman Foundation on electoral reform and succession in the ANC, hereafter referred to the HSF round table.
- 2 Seepe was a co-discussant with Van Zyl Slabbert at the HSF round table.
- 3 The ANC states that the paper does not represent the view of the ANC national executive committee.
- 4 *Business Day* 22 September 2006.
- 5 Stadler was a participant in the HSF round table.
- 6 Welsh, who co-authored a book on power-sharing strategies, was interviewed telephonically.
- 7 Interview per telephone 2 October 2005.
- 8 *Parliament Watch*, 18 August 2006.

# The right to education imperilled by violence

Wanton violence at schools must be eliminated, in the interests of 12 million learners and future generations of scholars

By **Jody Kollapen**, chairperson of the South African Human Rights Commission

Human rights practitioners generally argue against the notion of a hierarchy of rights, asserting that human rights are indivisible and interdependent. Yet rights exist in a context and at any given point in the life of a nation some rights naturally assume a greater significance and importance than others. In the context of South Africa the right to education is seen as central in that it speaks to the development imperatives of the constitution requiring us to “free the potential of each person”. It is a facilitative right whose realisation is key to the enjoyment of other rights and its fulfilment is a pre-condition to creating the conditions for the attainment of substantive equality and social justice.

This recognition of the significance of education finds abundant expression in the various provisions of the constitution and it features prominently in the policy and budget making processes of government. There are in excess of 12 million learners in public and independent schools attending close to 27 000 schools and served by almost 400 000 educators. The budget for education accounts for close to 20 per cent of the total national budget, with spending on education likely to double from R53,2 billion in 2002/3 to R94,9 billion in 2008/9.

Given its centrality in the building of human capital, in advancing social cohesion and in creating the conditions to free the potential of each person, the success of the education system will determine the success of the new, robust and thriving, but still very fragile, constitutional order we have embraced. While considerable success has been achieved over the past 12 years in terms of access, provisioning, curriculum development, teacher development, learner enrolment and equity, there are equally major areas of concern. Significant amongst these are the quality and outputs being delivered by the system (highlighted in a report on the right to basic education released by the Human Rights Commission (HRC) in June 2006).

What is of grave concern is the emergence of trends that suggest that the environment necessary for effective learning and teaching is increasingly being undermined by a growing culture of violence that is impacting negatively on the education sector. In September 2006, the HRC, acting in terms of its mandate, convened public hearings in Cape Town to create the space for a public dialogue on school-based violence to attempt to understand the manifestation and impact of violence in schools and to assist in making recommendations to address

the problem. Over 60 written submissions were received and the commission heard evidence from over 30 witnesses from many sectors of society including government, civil society, academics, teachers and teacher bodies, parents, learners and members of the general public.

What became apparent was that schools have become unsafe places for a substantial number of learners. Statistics presented suggested that schools were the most likely place where children would become victims of crime, including crimes of sexual violence, assault and robberies. In many communities there was an almost anguished acceptance that violence is so deeply ingrained that it has become the norm with children playing macabre playground games such as “Stab me, Stab me” or “Rape me, Rape me”. While in the past bullying was the most common manifestation of violence in schools, now the growing use of weapons, including guns and knives, has seen many fatalities. In many communities the phenomenon of gangsterism has found its way into schools with gangs recruiting and organising among school-goers and using schools as sites for spreading the power and influence of the gangs. The growing use of drugs, especially the notorious

“tik” in the Western Cape, was also identified as a significant contributing factor to the growing phenomenon of violence. The use of drugs by learners as well as their involvement in the drug trade, often on school grounds during school hours, was widespread in some regions. There were also suggestions that the manner in which violence was romanticised in some media as well as in some music genres has led to its easy internalisation by young people, eager to emulate their heroes.

There was considerable debate about the causal link between socio-economic conditions and violence, with it being argued by some that poverty and underdevelopment have rendered the family unit and the broader community so dysfunctional that an environment in which positive values can be imparted is almost non-existent. However, others pointed out the manifestation of violence in many middle- and upper-income schools and questioned the impact of poverty on patterns of violence in the schools.

Notwithstanding its genesis, and even in the absence of reliable quantification of the extent of school violence, there was consensus that it was exacting a significant toll on the education system, its outputs and the

wellbeing of those in the system. Psychologists spoke of the growing number of teachers who experience psycho-social stress and related conditions because of the hostile and insecure environment in schools. Teacher morale is low, as evidenced by a recent Human Sciences Research Council report indicating that most teachers would leave the profession if they had the opportunity to do so. Teacher shortages exact a heavy toll

Most of the arguments heard pointed out that violence in schools could not be divorced from the general violence in our communities and that it was natural that the school would reflect the various fault lines that existed in the society as a whole, violence being only one of them.

The development of an appropriate response to these phenomena has been less than decisive. Even though this problem has been with us for

Psychologists spoke of the growing number of teachers who experience psycho-social stress because of the hostile and insecure environment in schools

on government’s plans to improve education. The characterisation of the school as a dangerous and unsafe environment is unlikely to assist in recruiting new members to the profession. For learners, the fear and insecurity of being a victim, just not of bullying but of a serious crime, also has a negative effect on their self-confidence and ability to function optimally. The environment for effective learning and teaching, for the development of mutual trust and support between learner and teacher, so critical to the effective delivery of education, is severely compromised in an atmosphere where violence reigns.

some time there is no clear national policy in place to deal with school violence. Teachers and administrators were often uncertain of where and when their powers start and end in dealing with disruptive learners and violence in general. The measures that have been adopted thus far relate to school fencing and, in some areas, school safety interventions that seek to involve other government departments and the community. It is perhaps too early to judge the success of these interventions.

A critical issue that arose is whether one adopts a tough school security regime as some have strong-

Learners arriving at school... once a haven of safety but now less so



ly argued, or an approach that addresses instead the broad safety of the community and, in so doing, contributes to safer schools. It does seem that while the latter may well be the right to way to go, its effects will only be felt in the long term. What is required are short-term measures coupled with a long-term vision of a safer society. In this regard there should not be an unwillingness to

corporal punishment, including suspension and expulsion, should be supported more strongly by the department of education. The department's plan to remove disruptive students from schools requires careful scrutiny as the reality in many communities is that the enabling environment outside the school will simply not support any alternative placement.

pline, search and seizure, and dealing with learners who are disruptive as distinct from those who commit crimes on school grounds. The latter is a matter for law enforcement agencies, while dealing with socially disruptive children is something schools, properly supported by the education department, and other agencies, must undertake.

6. It is apparent that both teachers and learners may benefit from conflict resolution and mediation skills. Given that in many instances the immediate cause of the violence is an act of relative insignificance, empowering both teachers and learners to engage in constructive conflict resolution may provide an alternative to the use of violence.

In all of this the tendency to shift the blame has become a matter of concern. Given the complexity of the problem we are facing there must be a fairer and more equitable division of labour. The role of the education authorities has come under the spotlight quite sharply in the past few weeks but the role of parents, the community, law enforcement agencies, other government departments such as social development, as well as the organised structures of civil society are all vital if we are to deal with both the short and the long-term interventions required.

The stakes cannot be any higher in dealing with this sector — arguably the most important for the growth and ultimate success of our thriving but still very fragile democracy. Schools are traditionally places where effective learning and teaching must take place in an environment where there is mutual respect and tolerance and where the role, value and authority of the teacher is respected, as is the dignity of the learner. Much hard work will be required to restore this enabling culture to many schools in our country. It is not only possible, but absolutely necessary. □

### We need to empower administrators with clear guidelines for discipline, search and seizure procedures and dealing with learners who are disruptive as distinct from those who commit crimes

consider tough measures — we cannot be squeamish when dealing with matters so fundamental to our society. Certainly the perspective of the HRC is that rights can be limited; and, provided the basis for the limitation is reasonable and justifiable, such limitations are permissible. We should be careful, however, that limitations are not motivated by emotion, knee-jerk reactions or attempts to win public approval.

Some of the issues that may warrant consideration include:

1. The employment of school safety officers. It is simply unacceptable to expect teachers to be responsible for safety at schools. The employment of suitably trained safety officers to assist with identifying security risks, developing safety measures, assisting and supporting learners with advice and being available as part of the school staff requires serious consideration. It has reportedly worked quite well in many Caribbean countries and, while cost may be a factor, it would be money well spent.

2. Support for teachers in dealing with discipline. The abolition of corporal punishment should not mean a no-discipline regime. Alternatives, and the effective enforcement of such alternatives to

3. Search and seizure. The current legal regime allows search and seizure under circumstances where there is reasonable cause. The employment of school safety officers may well see the greater use of this legal mechanism. The suggestion of random searches may be questionable from both an efficacy and a constitutional perspective. But if there is a clear, well thought out plan in this regard, it must be given the necessary consideration. The same would apply to the suggestions relevant to random drug testing.

4. Greater community involvement and support. If the school is the centre of the community, attempts must be made to involve both parents and the greater community in the affairs of the school. The local police, the police community generally as well as civil society groups active in the community, must be energised to be supportive of school management, assist with the skills and resources at their disposal and take “ownership” of the school as an asset of the community. The level of vandalism and wanton destruction of school property is nothing short of shocking.

5. We need to empower school administrators with clear guidelines in a number of areas including disci-

# Fatal neglect in DRC's transition to democracy

**Henri Boshoff** argues that the integration of the various military forces in the Democratic Republic of Congo is far from complete and a major threat to the fledgling democracy

After nearly three years and a number of delays, the transition period in the Democratic Republic of Congo was due to come to an end by 31 July 2006. A new constitution was adopted after a referendum held in late 2005, paving the way for presidential and legislative elections, which were held on 30 July 2006. There was unfortunately no outright winner and a second round of elections took place on 29 October 2006 between the two main rivals, Joseph Kabila and Jean-Pierre Bemba. Mr Kabila won this round of elections with 58,05 per cent of the vote against Mr Bemba's 41,95 per cent.

The violence on 20 August 2006 in the capital, Kinshasa, between the Special Guard for the Protection of the President (GSSP) of incumbent Kabila and the Movement for the Liberation of Congo (MLC) of Bemba again showed the impor-

tance of completing the reform of the Congolese army, the *Forces Armées de la République Démocratique* (FARDC). On 30 June 2006 it was exactly three years after the transition government embarked on its assigned task of guiding the country to national elections.

According to the peace agreement signed by all parties in December 2002, the transition government had a period of two years in which to organise elections, but it could, if necessary, extend this by two additional six-month periods. In early 2005, it became clear that neither the transition government nor the Independent Electoral Commission (IEC) had taken any of the necessary steps to organise elections by the original June 2005 deadline, and the election timetable was postponed. The announcement of the postponement was met with widespread popular disapproval and, for

*Congolese soldiers travel by truck in Kinshasa after the elections*



the first time, there was real pressure on the transition government to take concrete action.

The organisation of elections has not been the only transition objective that has been significantly delayed. Another key task of the transition process was the creation of a new, unified national army out of the various

efforts to cooperate. The failure of disarmament and demobilisation has been viewed as having been counter-balanced by the successful first round of elections. The threat of violence during the second round between the GSSP and MLC soldiers who did not demobilise as part of the national demobilisation, is becoming more of a

and some progress has been made, a number of serious problems persist: ongoing conflicts, competing loyalties, spoiler armies, human rights abuses and regional instability.

It was not until May 2005, nearly two years after the inauguration of the transition government, that the FARDC elaborated on a strategic plan for the military integration process. In its first phase the plan envisages the creation of 18 light infantry brigades that will help to secure elections. The second phase will involve the formation of a rapid reaction unit, and the third phase, due to be finalised by 2010, will see the formation of a new defence force.

During phase one troops are transported to one of six integration centres in the country: Kisangani (Orientale province), Kitona (Bas Congo province), Kamina (Katanga province), Mushaki and Nyaleke (North Kivu) and Luberizi (South Kivu) where they are disarmed, undergo retraining and are regrouped into standard-size brigades composed of 4 200 troops. According to the May 2005 plan, a total of twelve integrated brigades were to have been formed by late 2005: three were to be deployed to Ituri, three to North Kivu, three to South Kivu, one to Kinshasa, one to Bas Congo province, and one to Mbuji Mayi, the capital of Kasai Occidental province. Since June 2006 two more brigades have been trained. One brigade was trained as a reaction force and one still needs to be deployed. Although nearly all brigades were deployed before the 30 July 2006 elections, only three were operational.

In addition, the entire integration process has been severely abridged as a result of organisational and financial constraints. According to the original plans, combatants were supposed to be regrouped in 25 cen-

armed groups that had fought one another during the five-year war. While it was consistently stressed that this was a priority, in reality the transition government did almost nothing to move this process forward until early 2005. Although the former belligerents have been part of the same government in Kinshasa the animosity between them remains largely intact, and they have made few real

reality. The GSSP has a force level of about 11 000 troops and the MLC has an estimated 2 000 troops in Kinshasa. This is a failure in terms of the development and execution by the transitional government of good governance principles, as is the fact that disciplined and effective integrated brigades have not yet been developed.

The FARDC remains an army that commits human rights abuses and is ill disciplined. This is not really surprising; for as long as it maintained its military power in the areas it controlled during the war it could happily play at ruling the country for the sake of the international community and the Congolese general public without relinquishing any real power.

The legacy of this inaction and unwillingness to create and support a new national army is far more dangerous than any delay in holding national elections. If the demobilisation, disarmament and reintegration (DDR) process is not completed and a new defence force is not established it could once again become the breeding ground for a new war. Although the military reintegration process has now been in motion for close to a year,

### The regroupment centres were severely under-funded and lacked basic hygiene and medical facilities. Several thousand troops deserted from the Mushanki and Luberezi camps in 2005



*Heavily armed soldiers stand guard at the last political rally of Congolese President Joseph Kabila before the first round of elections on Sunday 30 July 2006, at a stadium in the capital, Kinshasa*

*Election volunteers throw stones at riot police as they march towards the Independent Elections Commission office in Kinshasa, in August 2006, after Congo's first democratic election in over 45 years*

tres around the country, where they would have undergone an orientation and selection process. As a result of capacity constraints, however, the orientation centres were never set up, and combatants have instead been channelled directly into regroupment centres. These centres, which the FARDC has been gradually setting up since 2004, were severely under-funded and lacked basic hygiene and medical facilities, as well as food and proper shelter. As a result, several thousand troops deserted from the Mushanki and Luberezi camps alone between March and August 2005.

Since then, the Belgian and Dutch governments and the European Union (EU) have provided funding for upgrading facilities. South Africa, Angola and Belgium are providing military training. Additional training will be provided by the United Nations Mission to the Democratic Republic of Congo (MONUC) once the brigades have been deployed to their areas of operation. MONUC will engage in six-week training exercises with the integrated brigades, which will subsequently engage in joint operations with MONUC. This has already been the case in Ituri, where the first integrated brigade is now regularly involved in joint operations with MONUC against recalcitrant militia. It is hoped that the training and subsequent joint operations will enhance tactical skills, as well as improve overall respect for the civilian population. At the same time, however, the FARDC faces serious logistical and organisational hurdles which further complicate the integration process and negatively affect military operations. These problems include inadequate



© JEROME DELAY/AP PHOTO

food distribution, poor water supplies, poor medical care, inadequate shelter, insufficient vehicles and the irregular or non-payment of salaries.

It was clear from the evaluation of the current status of the FARDC and the integration process that the DDR process to 18 brigades would not be completed before the October election. As of 8 September 2006, 76 614 ex-combatants had been demobilised, including 19 000 children. Some 85 000 combatants must still be disarmed, demobilised and reintegrated. The budget of \$200 million pro-

tures of the DDR process are in place and must be completed after the election. The SSR is one of the most important outstanding reforms that any country emerging from conflict should implement to align all security related structures and instruments with government's vision of building peace.

The generic strategy of SSR is more easily explained than implemented, but a proper understanding of SSR reform and what it entails is required. A strategy for SSR in the DRC must be addressed using generic business principles to evaluate the

**The unwillingness to create a national army is more dangerous than delaying elections. If the demobilisation and reintegration process is not completed the possibility of a new war is real**

vided by donors has been exhausted. It is expected that the process will be assessed and more funding made available by November 2006. Given the level of training and equipment available, only a maximum of three of the integrated brigades created to date can be deployed. In the interim the rest must be kept at their bases and under control.

The daunting task after the elections will be to complete the process of DDR and security sector reform (SSR). For this to happen there needs to be political will and commitment from the new government. The coordination between all role players needs to improve. The FARDC must assume responsibility and take the lead in the process. The planning for and struc-

current and future situation internally as well as externally. Beyond that there is a need to plan and design an appropriate and affordable solution, to implement, coordinate and monitor progress and finally to evaluate progress and to implement change where required.

These activities must take place in an environment in which the DRC government departments accept responsibility and the donor community provides technical and financial support to enhance capacity and to establish international principles. □

Boshoff is military analyst for the Institute of Security Studies

# Suzman: fighter for human rights

*“I hate bullies. I stand for simple justice, equal opportunity and human rights. These are the indispensable elements in a democratic society and worth fighting for.”<sup>2</sup>  
“My desk is the sad harvest of the seeds of apartheid.”<sup>3</sup>*

**Raenette Taljaard**  
chronicles  
Helen Suzman’s  
pivotal role in  
defending liberal  
democracy and  
human rights  
against the  
invasive intrusions  
of apartheid  
ideologues and  
apparatchiks<sup>1</sup>

**H**elen Suzman takes pride of place among those liberals who devoted their lives to the fight for human rights and the rule of law in South Africa. From the start of a political career that spanned almost four decades, she challenged the iniquity of apartheid and used the privilege of parliament to expose the inhumanity of a system that came to be defined as a crime against humanity.

Her struggle against the National Party, both inside and outside parliament, was relentless and often lonely. For thirteen years (1961-1974) she was the only Progressive Party member of parliament, confronting the apartheid government against all odds. Notwithstanding an enormously heavy parliamentary burden, she tirelessly investigated the often tragic consequences of apartheid legislation.

Although she represented an affluent white constituency, she saw herself as an “honorary ombudsman for all those people who have no vote and no member of parliament”. Within months of her retirement in 1989, she had the pleasure of witnessing the collapse of apartheid and the introduction four years later of parliamentary democracy.

As South Africa begins to grapple with a contested past, it is imperative that the contribution of Helen Suzman be acknowledged.

Her courage and dedication won her worldwide recognition. She was the

recipient of twenty-seven honorary doctorates as well as honorary fellowships from some of the world’s most prestigious universities including Oxford, Cambridge, Harvard, Yale and the London School of Economics (LSE).

In 1978, she received the United Nations Award of the International League for Human Rights in recognition of the unremitting struggle that she had fought for social and political justice.

She also received various prestigious awards from Jewish organisations in the United States and has been nominated twice for the Nobel Peace Prize. In 1989, Queen Elizabeth conferred on her an Honorary Dame Commander (Civil Division) of the Order of the British Empire. In 1997 Helen Suzman was awarded the Order of Merit of South Africa — Gold. As former president Nelson Mandela and Graca Machel remarked in celebrating her 85<sup>th</sup> birthday in 2002: *“It needs not for us or anyone [else] to sing your praises, your place is ensured in the history of this country. Your courage, integrity and principled commitment to justice have marked you as one of the outstanding figures in the history of public life in South Africa. On your 85<sup>th</sup> birthday we can but pay tribute to you, thank you and let you know how fortunate our country feels for having had you as part of its public life and politics. Now, looking back from the safety of our non-racial democracy, we can even feel some sympathy for the*

*Helen Suzman today... no longer an active politician but still a vigilant defender of liberal values*

*National Party members who shared Parliament with you. Knowing what a thorn in the flesh of even your friends and political allies you can be, your forthright fearlessness must have made life hell for them when confronted by you".<sup>4</sup>*

Helen Suzman was drawn into politics as a result of a body of research she carried out for the Fagan Commission into the vicious effects of the migrant labour system. On 15 April 1953 Helen was one of 57 United Party candidates elected to the eleventh union parliament. Even before Helen entered parliament, it was evident that there were deep divisions within the United Party (UP). Its support in Parliament for the "Whipping Bill" which contained savage penalties to quell escalating popular resistance to apartheid measures shocked Helen. However, after meeting the other newly elected backbenchers, she believed that she, with the support of senior UP members such as Harry Oppenheimer and Harry Lawrence, would be able to constitute a "reform core" within the caucus. Helen's maiden speech was on the 1953 Matrimonial Affairs Bill. Women's rights (and in particular those of black women) became part of the larger fight for human rights. Equal matrimonial property rights for black women, divorce by consent and the reform of abortion laws were issues she would raise in the future.

Tensions surfaced early in Helen's parliamentary career when the UP caucus supported the second reading of the Separate Amenities Bill which provided for separate (but effectively unequal) facilities for blacks, coloureds, Indians and whites. When the vote was taken, Helen and another UP member refused to vote and walked out of the house. Helen was a UP member

between 1953 and 1959 at a time when pressures within the UP built up partly as a result of increasing levels of state repression, described by Helen as: "... a deluge of ideological legislation that jangles the nerves of everybody who has a care or thought for democracy".

A decisive issue in the tensions between the UP and the liberal faction was the refusal of party leader JGN Strauss to commit the UP to restoring the common roll franchise to coloured males in the Cape. With the liberal wing of the UP increasingly at odds with the party's equivocal stand on apartheid legislation, a distressed Helen became more and more disillusioned. The split, and subsequent formation of the Progressive Party, occurred at the Bloemfontein Congress of the UP in

1959. Within two months of the progressive members taking up their seats in parliament, mounting discontent over the pass laws and other discriminatory enactments had spilled over into a passive resistance campaign that led to the indiscriminate shootings at Sharpeville on 21 March 1960.

The state's reaction to the widespread unrest that followed was to stifle all protest by declaring a state of emergency, banning the African National Congress (ANC) and the Pan Africanist Congress (PAC) and arresting their leaders. The government called an early election in October 1961 and Helen went back to parliament alone: "I was the only one who really wanted to get out. Politics made me sick. I saw no hope for the future but I thought I might as well



© ARNOLD PRONTO

*go down with flags flying. And no — one tiny flag fluttered on by some 500 votes — and it was me!*"

And so Helen Suzman embarked on the road less travelled — her dramatic 13 solo years in parliament (1961 to 1974). In the face of unremitting hostility, she never lost her courage or compromised her principles in her fight against apartheid's racist agenda and the erosion of civil liberties and the hollowing out of the rule of law.

Helen Suzman was no blind ideologue. For her, people, and what an inhuman system was doing to their lives, came first. Her forthright critique and condemnation of the government's apartheid policies exposed the harsh realities of life for the majority of South Africans. These exposures were critical in a fear-ridden time of censorship and heavy

penalties for disobeying the law; and the support of the English language press for her liberal views allowed her fearless criticism to reach the outside world. Sustaining such a prolonged and solitary liberal stance in parliament was both physically and emotionally exhausting. It entailed great personal sacrifice and many threats to her safety, including a number of instances of anti-Semitism.

declared after Sharpeville, and thereafter prison visits became an important part of her work. After these visits, including key visits to Nelson Mandela and others on Robben Island, starting in 1967, Helen raised all kinds of issues with the relevant authorities and managed to secure some improvements in conditions for both common law and political prisoners.

As Nelson Mandela has remarked: *"It was an odd and wonderful sight to see this courageous woman peering into our cells and strolling around our courtyard"*.<sup>5</sup>

Helen Suzman worked relentlessly to oppose the erosion of the rule of law and against the banning orders and detentions without trial imposed by the Terrorism Act. She spoke at funerals and other opportunities for mass protests when restrictions were

members in 1977 and by 1989 the PFP had merged with the National Democratic Movement and the Independent Party to form the Democratic Party.

Helen Suzman's adage of going to see for yourself was pertinent in analysing the dreadful consequences of government policies. She visited sites of forced removals and resettlements, saw for herself the heartless destruction of squatter communities, visited schools, prisons and places of banishment to which black activists, including Winnie Mandela and Dr Mamphela Ramphele, had been confined: *"These honourable members sit here passing laws, but they never have the slightest contact with the individuals who suffer as a result of these laws"*.

Helen campaigned against the establishment of the tri-cameral parliament in 1983 and worked tirelessly against further steps that reduced core human rights across campuses in South Africa, and against aspects that warped the education system on racial grounds, and was herself prohibited from speaking at her alma mater, Wits, in 1987.

As the mass defiance campaign grew in ferocity and successive states of emergency were called between 1985 and 1990, there was again a fracturing between those liberals who stayed in parliament, and those who opted for extra-parliamentary options.

But, to her very last days in parliament, Helen had fundamental respect for the institution itself. She respected the importance of parliament as a core institution of the people despite concerns about the diminishing oversight role of the legislature over the executive: *"I respect the institution of Parliament, for properly used it is the premier forum of the land, both for the dissemination of alternative policies and for the preservation of values pertaining to civilized, democratic coun-*

placed on meetings. Helen was asked by Robert Sobukwe's widow to speak at his funeral in 1978 but was prevented from doing so by a group of radical youths.

Helen's deep concern for the victims of apartheid made her a tireless worker on behalf of those affected by discriminatory laws, security legislation and the actions of a harsh and uncaring bureaucracy. Even those who accused her of giving legitimacy to the government by her participation in a white parliament solicited her help: *"My desk is the sad harvest of the seeds of apartheid"*, she wrote.

After the 1974 election, more progressives were elected to parliament, including René de Villiers, Gordon Waddell, Colin Eglin, Alex Boraine, Rupert Lorimer and Frederik van Zyl Slabbert. After more mergers and name changes, the Progressive Federal Party (PFP) acquired more

penalties for disobeying the law; and the support of the English language press for her liberal views allowed her fearless criticism to reach the outside world. Sustaining such a prolonged and solitary liberal stance in parliament was both physically and emotionally exhausting. It entailed great personal sacrifice and many threats to her safety, including a number of instances of anti-Semitism.

But Helen's focus was unrelenting: *"I put hundreds of questions... most concerning treatment of Black, Coloured and Indian people — on housing, education, forced removals, pass law offences... detentions, banings, whippings, police brutality and executions"*. These answers were widely used by the global anti-apartheid movement, and the ANC, to further the liberation cause.

Helen started visiting prisons in 1960 during the state of emergency

tries... It is a major channel whereby one can elicit valuable information and it provides the opportunity for a direct means of confrontation with the government of the day".<sup>6</sup>

On 18 May 1989, in what amounted to a farewell speech in parliament, Helen turned to FW de Klerk, acting state president in place of PW Botha (derisively known as Die Groot Krokodil — the Big Crocodile) who had suffered a stroke. Now that Botha was no longer a force to be reckoned with, Helen stressed the necessity of announcing imminent changes that would create a climate for negotiating a new political dispensation: "As an old African saying has it; 'You should not argue with the crocodile if you are still in the water'. The State President designate is, I believe, no longer in the water. He has both feet on the bank of the river and he is in no danger of being dragged down by the crocodile. He should now go for it. He should take the gap, so to speak. He should tell us and the world what he definitely will do, as soon as he takes office, to restore peace at home and the respectability of South Africa abroad".

How prophetic these words proved to be. There can be no doubt that Helen Suzman's retirement from South African politics came just a bit too soon. Too soon for her to witness first-hand, from her bench, the dramatic changes that followed on the second of February

1990, when newly elected state president FW de Klerk unbanned all political parties and announced the release of Nelson Mandela. Too soon for her to see the core human rights values she so aggressively protected and promoted during her long and lonely political path entrenched in a bill of rights as part of a democratic constitution. Too soon for her to vote down every piece of offensive legislation she opposed and exposed by "going to see for herself".

But she remained very actively involved in various capacities in a newly democratic South Africa beyond

the benches of the house where she spent so many dark and lonely days.

In 1991 she attended the first Convention for a Democratic South Africa and served as president of the South African Institute of Race Relations (SAIRR) from 1991 to 1993. She was appointed to the Independent Electoral Commission which supervised South Africa's first democratic elections in 1994 and served as a member of the Human Rights Commission from 1995 to 1998.

South Africa owes Helen Suzman a great degree of gratitude. A slowly

evolving culture of respect for human rights is indebted to the flame she kept alive when an immoral system sought to extinguish it forever.

Helen Suzman remains committed to the cause of individuals whom she believes are unjustly treated, and retains her uncompromising stand on the inviolability of human rights. She has experienced the satisfaction of seeing the removal of legislation that she fought so vigorously over many decades; but she remains as vigilant as ever in her defence of democracy and human rights.

Indeed, this is the growing focus area of the foundation that bears her

"It is hard to say one has achieved anything, except, I think, to keep certain values alive in this country — certain democratic values"

name. The Helen Suzman Foundation was established in 1993 to promote and protect liberal democratic values under the new constitutional democratic dispensation, and to broaden support for liberal democratic philosophies and policies. These remain the marching orders of the Foundation.

Helen is as self-effacing as ever in her final words in the exhibition catalogue: "It is hard to say one has achieved anything, except, I think, to keep certain values alive in this country — certain democratic values". □

## Endnotes

- 1 This article is a précis of a publication that accompanied the exhibition of the same title — Shain, M. (2005) *Helen Suzman — Fighter for Human Rights* Exhibition Catalogue. Kaplan Centre: University of Cape Town. The exhibition was housed at the Jewish Museum in Cape Town during 2005 and at the Rabbi Cyril Harris Centre in Houghton, Gauteng during 2006. The exhibition was mounted as a collaborative effort between the Isaac and Jessie Kaplan Centre for Jewish Studies at UCT and the South African Jewish Museum.
- 2 Extract from a speech by Helen Suzman delivered on accepting the 2002 Liberal International Prize for

Freedom awarded to her as "the courageous champion of human rights who, in the dark days of apartheid, did much to keep liberal values alive in South Africa... During her thirty-six years in parliament, she was a 'hands on' politician and tenacious fighter for the causes in which she believed".

- 3 *Helen Suzman — Fighter for Human Rights* Exhibition Catalogue.
- 4 Message to guests at Helen Suzman's 85th birthday dinner 7 November 2002, Nelson Mandela and Graça Machel.
- 5 Nelson Mandela, *Long Walk to Freedom*.
- 6 Speech, parliament, 18 May 1989.

# Voices from the left... a liberal-left encounter

**Patrick Craven**

**National spokesperson for the Congress of South African Trade Unions**

**Patrick Craven**  
and  
**Jeremy Cronin,**  
respond to an  
article written by  
Patrick Laurence  
in the September  
issue of *Focus* in  
which he  
challenged the  
conventional view  
that a withdrawal  
of leftists from the  
tripartite alliance  
is inevitable

**I**t was refreshing to read Patrick Laurence's article in the September issue of *Focus* about the future of the alliance between the African National Congress (ANC), the South African Communist Party (SACP) and the Congress of South African Trade Unions (Cosatu). For many years all three organisations have been strenuously denying that their alliance is on the point of collapse. But no matter how often and how categorically we deny it, reporters, editors, commentators and academic experts have insisted that we are wrong or merely spin-doctoring, to obscure the alliance's terminal crisis.

At least one commentator has now accepted that we could be right!

Speculation about the death of the alliance was aroused once again when, in a pre-congress discussion paper, Cosatu floated five possible scenarios for the next few years, and the SACP, in its discussion paper, also looked at alternative perspectives. The fact that one of these options was for Cosatu and the SACP to break with the ANC and support a separate workers' party was seized upon as proof that the alliance must indeed be on the rocks.

When that scenario was unanimously rejected by the Cosatu congress delegates, in favour of remaining in alliance with the ANC, the media was much less interested because that was out of line with their ongoing version of the story. It is quite possible that the SACP congress delegates next year will adopt a similar view.

What most of the media, apart, now, from Laurence, have failed to under-

stand are the powerful bonds which unite the alliance components at every level — bonds rooted in a deep sense of shared history, a large overlapping membership and a feeling of solidarity among people who struggled together in a national democratic revolution, which remains to be completed.

Although the three components have always shared a great deal of common ground, they have also always been proud of their political and organisational independence and have always differed on some political questions. Many members of the three bodies feel themselves to be an integral part of all three, even though they may have major disagreements with the current policies of one or other of them.

For many years now, the alliance partners have conducted a vigorous debate around concerns about government's economic policies that favour a wealthy minority more than the poor majority, and about the way the alliance partners are being marginalised in the policy-making process.

But this is a debate within *all* the components of the alliance. As a resolution passed at the recent Cosatu congress noted: "A lack of democratic participation exists at all levels, with Cosatu, the SACP *and even to some extent the ANC itself*, sidelined from policy development, due to the levels of centralisation of power and authority in the Presidency, which has been a driver of policy development. This situation goes hand in hand with the dominant influence of big business on the

*Patrick Craven... Cosatu has rejected the breakaway option*

policy direction of our country and the marginalisation of representative institutions from decision-making” (my emphasis).

The resolution does not go on to argue that this should lead to a breakaway from the ANC but, on the contrary, says: “There is no alternative political organisation with the mass support of the ANC, which remains the only political party capable of fighting for a non-racial, non-sexist and free democratic society in South Africa.”

But it does argue that “the ANC is however a contested terrain that is lobbied by different strata in our society. This has caused conflict within the ANC and the Alliance and a shift from the ANC’s earlier working-class bias as adopted in its Morogoro Congress of 1969.”

This argument is developed in another resolution, which notes: “... while the historical constituency of the ANC remains the black working class and poor majority, the national leadership of the ANC is increasingly becoming capitalist and middle-strata in composition and character. Furthermore, the organisation is also dominated by cadres drawn from the state and there are far too few cadres from outside of the state. Working-class leadership has been weakened within the national leadership structures of the ANC.”

This, it argues, has rendered the ANC ineffective in relation to the mass movements and in connecting with the masses of our people. It concludes: “... working-class cadres must ensure that activities of the ANC structures... are dominated by working-class issues and concerns... Working-class cadres must contest for leading positions of the ANC to ensure that business personalities do not dominate the ANC and... must



© TEBOGO LETSIE SUNDAY TIMES

expose the post-1996 class project, its limitations and its crisis. This must not be done in a factionalist manner, but in a manner that encourages debate and discussion *within* the ANC structures” (my emphasis).

These resolutions reflect a strong view that power has shifted to government departments and to what Laurence describes as “comprador capitalists” or “bourgeois national-

I have no evidence that such a move is on the cards, but it makes more sense than the media’s usual left secession scenario. The reason is that the bourgeois right, unlike the SACP and Cosatu, have virtually no mass base in any of the alliance components. They could not wage a political battle to regain their dominance in the ANC because they lack the troops. Their

**The media fail to understand the bonds which unite the alliance — bonds rooted in a shared history, an overlapping membership and a sense of solidarity among those who struggled together**

ists” whom he identifies as the currently dominant force within the ANC leadership.

He speculates that it might be they, rather than the left, who withdraw from the alliance and form a separate party. This, he says, could happen if the “unyielding socialists gain the upper hand against the bourgeois nationalists” and win the political debate at the ANC political and leadership conferences next year.

power rests in their use of the media and in lobbying government ministers behind the scenes.

Cosatu, for its part, has now spoken decisively. It will continue to support the ANC but will also repeat its call on workers to swell its ranks, “to reclaim ownership of the ANC so that it becomes a true instrument of people’s power and plays a positive role towards the achievement of a free, just and equal South Africa”. □

# Voices from the left... a continuation

**Jeremy Cronin**

**Deputy general secretary of the South African Communist Party**

Since 1990 there has been media speculation about the future of the South African Communist Party (SACP) and about the durability of our alliance with the African National Congress (ANC). We have often noted, with a mixture of amusement and irritation, that stories in the commercial media about the SACP have tended to come under one of only two possible headlines. “Looming split in Alliance” is the one headline. “Growing irrelevance of SACP” — or a similar variation — is another.

In 1990, emerging from the deep underground, prison and exile, the sit-

uation was paradoxical for the SACP. The international communist legacy of which we had been part since our launch in Cape Town in 1921 was in free-fall with the disintegration of the Soviet bloc. On the other hand, within South Africa, the SACP found itself enjoying greater popular support and prestige than at any time in its history. Opinion polls showed that after Mandela, SACP general secretary, Chris Hani, was by far the second most popular politician in our country.

So how do things stand now? What are the likely scenarios? Patrick Laurence’s article in the September issue of *Focus* turns conventional media wisdom on its head. Why, he asks, should we assume that any forthcoming split from within the ANC-led alliance would see an SACP (or workers’ party) breakaway, leaving the rump of the ANC to the unchallenged dominance of a new black, nationalist bourgeoisie? Perhaps, Laurence suggests, another scenario might play itself out. The left might win hegemony over the ANC and any walkout would be by

bourgeois nationalists. After all, he notes, there is a precedent for this in the 1959 Pan Africanist Congress (PAC) breakaway from the ANC.

I was involved in a recent public debate with prominent businessman and fellow ANC national executive committee member, Saki Macozoma. In the course of the debate I listed a series of major government-led projects that, in my view, indicate that key decisions around spending billions of rands of public money are often motivated less by macro-economic rectitude and rather more by the avaricious interests of established big white capital and its emerging black partners — R50 billion plus on arms procurement; R20 billion (and increasing) on an elite Gautrain rapid rail project; the bungled restructuring of Telkom. Macozoma, who has business interests in some of these, was clearly irritated by my argument. “If you are so critical of the ANC-led government, why don’t you walk out and launch an independent SACP electoral effort?” he asked.

Communists in South Africa, shoulder to shoulder with non-communists, have helped to build the ANC over decades. Communists have gone to prison and even died for the

*Saki Macozoma... If you are so critical of the ANC-led government, why don't you walk out and launch an independent SACP electoral effort?*



*Jeremy Cronin... communists contributed substantially to the ANC's triumph and will not wilfully undermine it*

cause of forging a broad-based liberation movement. We certainly have no intention of carelessly abandoning the ANC, however annoyed we might, on occasion, be.

The ANC is not just an electoral preference for millions of black township residents, it is “who they are”. It provides a sense of identity, of belonging, and of collective power. This is a reality that confounds many media commentators. The very same townships that are in open revolt against local ANC politicians one moment, are voting for the ANC in local government elections the next. “We are an ANC family,” many working-class households will tell you, and then they will proceed to level all kinds of criticisms against government, or ANC councillors, or the ANC branch. This is not irrational behaviour. Millions of ordinary South Africans know from a protracted struggle that minority forces of one kind or another might wield great coercive, economic and cultural power. But they also know that the most powerful of minority-based authoritarianisms can be defeated by their own unified, organised and collective strength. Neither the SACP nor the great majority of South Africans is about to abandon the ANC any time soon.

However, there are indeed very real intra-ANC, and intra-Alliance, debates, struggles and differences. Most of these relate to strategic policy choices, particularly economic. I am not sure if Saki Macozoma was speaking polemically, or whether he would genuinely like to be rid of the SACP once and for all. But would the SACP, for its part, like to purge the ANC of black (or for that matter white) capitalists?

The SACP has always understood that the ANC is a multi-class forma-

tion. We have never sought to transform the ANC into an organisation in which adherence to socialism is a prerequisite for membership — although we certainly expect the ANC not to be hostile to the socialist aspirations of its alliance partners.

Our commitment to the ANC is not a short-term tactic, it is strategic. Despite important progress since 1994, we remain one of the most unequal societies in the world. Despite some stabilisation in the past year, unemployment is at crisis levels. Half our population lives in poverty. The wage gap has widened. Over five million South Africans are living with HIV/Aids and 400 000 are dying annually of Aids related illnesses. Despite some black advancement into upper and middle class strata, overwhelmingly social inequalities in our society are determined by race.

In the view of the SACP, these dire realities are not just a diminishing apartheid legacy. They have been actively reproduced during the post-

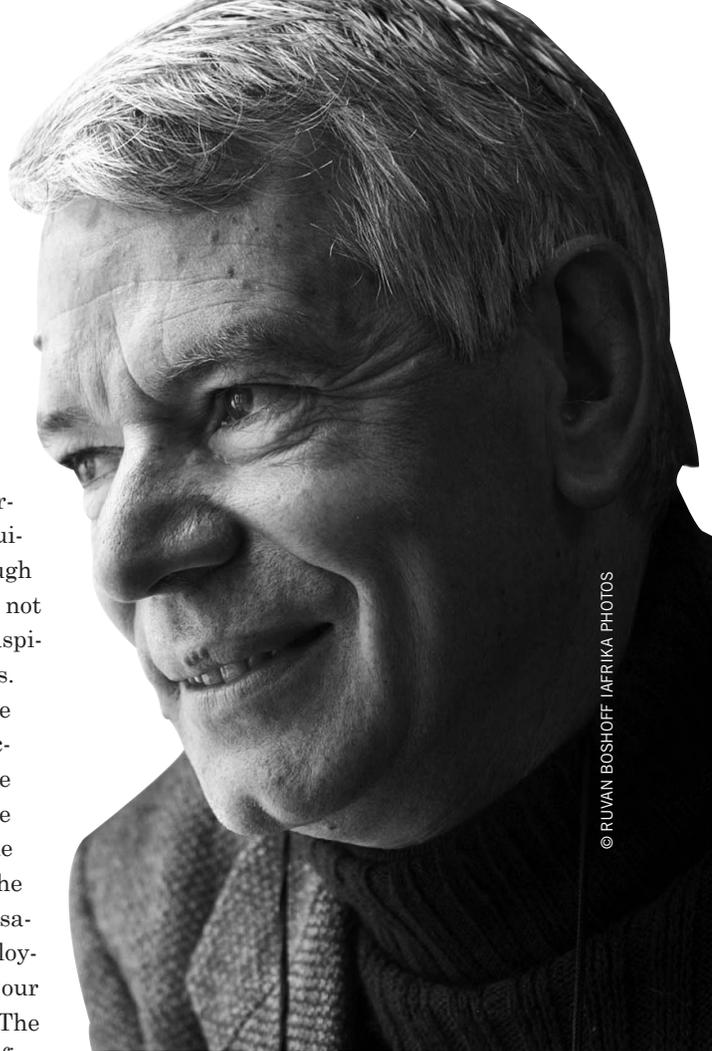
1994 period in pretty much the same way as they have been since the last quarter of the 19<sup>th</sup> century. There is a path of accumulation that produces excessive export orientation and import dependence. It is both capital intensive and reliant on a mass of cheap (now often casualised) labour. It constantly reproduces a narrow national market, a devastated region, and it is neglectful of broad skills development. Over more than a century, growth along this path has

been actively complicit in the simultaneous reproduction of abundant wealth for some and grinding underdevelopment for others.

Transforming this path requires a broad, patriotic, multi-class front of forces. It requires a strong developmental state led by a government with a considerable degree of stable majority support (so that it is not weakened by narrow electoral short-

Unemployment is at crisis levels. Half our population lives in poverty. The wage gap has widened. Over 5 million South Africans are living with HIV/Aids

termism). The SACP believes that the ANC is an appropriate organisational means of forging this kind of strategy. It is not a question of purging black bourgeois nationalists from the ANC. But it is imperative that we do not allow the short-term acquisitive interests of this stratum (and their white counterparts) to hegemonise the strategic direction of the ANC and government — and that has often been the problem in the last decade. □



© RUVAN BOSHOFF IAFRIKA PHOTOS

# Democracy: bastion of liberty & human rights

In a recent roundtable discussion at Unisa, Chief Justice Pius Langa reflected on tensions between democracy and national security. Extracts follow

**T**he question is not really whether democracy is a “good thing”. This is assumed, with good reason. The question is rather whether, and to what extent, we can afford all that goes with democracy.

In particular, are there times when we can say that we cannot afford democracy — it is too open and too expensive, or that some among us are not yet ready for it? Are these attitudes ever justified? Are there places and countries that can justifiably be excused from the application of democratic practices?

Democracy is an essentially contested concept. Although there is widespread agreement that democracy is a good form of government, there is disagreement on its substance, form and content.

## **The elements of democracy**

In my opinion the fundamental elements of democracy are the protection of human rights, free and fair elections, separation of powers, the rule of law, and citizen participation in government.

The fact that democracy, human rights and justice go together means that we should all claim these benefits and rights, not only for ourselves as individuals, but also for everyone in our country. These are attributes of democracy that have a positive effect not only on the whole country, but also in enriching the concept of democracy itself.

## **Criticisms against democracy**

Two of the main criticisms that have been levelled against democracy are that, firstly, it is not always the most effective way to bring about economic development and stability, particularly in the developing world. Secondly, it is said that

adherence to democratic principles might need to be discarded when dealing with attacks on national security.

## **Democracy v economic development and national stability/security**

The rise of China as an economic powerhouse proves the point that there can be economic prosperity without democracy. The question is whether undemocratic systems of government, though economically viable in the short to medium-term, can maintain stability in the long-term.

A related question is “at what cost” and “to whose benefit” is economic development achieved in an undemocratic system.

However, is this situation really different in other supposedly more enlightened democracies? Many people, especially those of African and Hispanic descent, living in these foremost democracies, still live in poverty and are still subject to exploitation. We all know the beguiling attraction of cheap labour and other exploitative practices that put economic gain above human rights considerations.

Coming nearer home, the emphasis today in Africa as it is elsewhere, is on democracy and development.

In the past, there have been, even in Africa, examples of failed attempts to divorce democracy, or should I say a brand of democracy, from development. I say a brand of democracy because some of the experiments in the past proceeded from a philosophy that sought economic development while at the same time believing that multi-party democracy was inimical to it. A form of democracy or governance that excluded multi-partyism was accordingly pursued.

On the basis of economic development and national stability and security, some

nationalist leaders proclaimed that Africa either did not need or was not ready for western-style multi-party democracy. Felix Houphoet-Boigny, the first leader of Côte d'Ivoire, was quoted as saying "Democracy is a government for virtuous people. In young countries such as our own we need an all powerful chief for a specific period of time".

The philosophy seemed to be that the western-style multi-party system was a product of western society which was not relevant in Africa. The supreme task of the new independence governments, it was argued, was to build up the economy and in this there could be no room for difference or division. Opposition politics was described as "a sophisticated pastime which we in Africa can ill afford" and it was argued that a one party system could provide for democracy based on unity, rather than on opposition.

The problem is that in many countries, this state of affairs set off a chain reaction of coups, counter-coups and civil wars from which the continent is still trying to recover.

My own view is that democracy itself is an imperative. The responsibility for a nation's governance must always be with the people. Proceeding from that view, I would suggest that the problems that we see in some countries today, which put human rights at risk because of considerations of national security, are not really about democracy at all. Perhaps they arise from other problems in society like intolerance, racism, religious prejudice and refusal to accept different cultures, values and norms. I would suggest that the best way to deal with the threats posed is to address the underlying issues rather than to close down democratic space with repressive laws, as that would only breed more problems.

What is clear is that a balance has to be struck between the maintenance of national security, on the one hand, and ensuring human rights, on

the other. It seems to me that more democracy rather than less is what is required in order to decrease threats to national security, for example, by including marginalised groups within government, trying to find an equitable solution to their problems and giving them a voice instead of trying to silence them.

Democracy is not about agreement — it is about respect for disagreement. The goal of a democratic society is not a system with which everybody agrees, but a system within which we are free to disagree and in which that disagreement is taken seriously. In our globalised society it is also necessary to look beyond democracy within countries; true democracy can only benefit from a globalised approach which encompasses democracy between countries.

The question is not whether democracy is a "good thing". The question is whether, and to what extent, we can afford all that goes with democracy: what are its elements and objectives?

As far as the view that democracy does not necessarily result in economic equality is concerned, it seems to me that an emphasis on the advancement of human rights and equality in development offers the best route for success.

What needs to be borne in mind is that democracy comes as a package that includes human rights, the rule of law, good governance, development programmes, the fulfilment of international and domestic obligations of various shapes and forms. The concept of human rights cannot, in my view, be divorced from that of democracy.

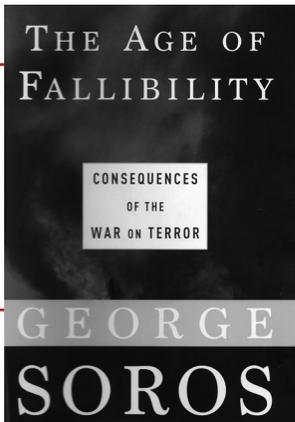
There is a problem, though, and it is this: South Africa played one of the leading roles in the formation of the United Nations which in turn adopted the Universal Declaration of Human Rights and a host of other instruments which have, as their basis, developing a culture of democracy, justice and human rights. Yet it was South Africa

that became one of the most serious offenders against human rights and democracy. Could it be that it considered that the country was unique, with unique problems and that it was therefore entitled to be exempted from the rules it had itself helped establish? Democracy and fundamental human rights, flowing from the Universal Declaration, were flouted in the worst possible way, largely on the purported grounds of national security.

I now ask you, is there a danger that those who have historically fashioned and championed the cause of democracy, justice and human rights may take the attitude that because they are "the good guys" they are entitled to be trusted when they break the rules which bind everyone else? Should they be allowed to change those rules or to be exempted

from them simply because they no longer suit them?

If that is happening, I can think of nothing that is more damaging to the ethic and the culture of democracy and human rights. I am referring to the flouting of international protocols, conventions, statutes and widely accepted standards which were designed to make this a better world. And yes, I am referring to domestic constitutions which start off with the highest of ideals. I am referring to those of us who feel that the rule of law must be upheld only when they themselves are not on the receiving end of it. As a judge, I grow quite weary when the judiciary is blamed for all sorts of things simply because it has proved that no one is above the law. Is it correct to change definitions of democracy and human rights simply because they collide with our personal ambitions or international aspirations — and then we seek to change the rules? □



## George Soros *The Age of Fallibility*

Public Affairs 2006 ISBN 1-58648-359-5. Exclusive Books R184.00.  
<http://www.exclusivebooks.com>

**FOCUS BOOK REVIEW** By Raenette Taljaard

George Soros heads Soros Fund Management and is the founder of a global network of foundations dedicated to supporting open societies. He is the author of several best-selling books including *The Bubble of American Supremacy*, *Underwriting Democracy*, and *Open Society*.

This is a book that one would want to read in the new Enlightenment Room of the British Museum, which is a magnificent restoration of the former King's Library dedicated to housing an exhibition on the age of enlightenment.

There is, after all, a clear link between this age and the additions that Soros seeks to make to Popper's concept of an Open Society. It is a unique contribution to an understanding of the factors that lead policy-makers to have cognitive limits to their rational decision-making and is an appeal to them to understand the inherently flawed sense of "reality" — the concept of "reflexivity" piloted in this book.

Whether it is a market bubble or a policy-maker's "bubble" of advisers that feed a flawed reality — the risks of misconceptions and their relationship with reality in the policy realm are worthy of future elaboration and further exploration. Themes related to how political reality was "remade" in a dangerous manner by the current US administration are dealt with in detail. Soros seeks to further a discourse on what challenge the world, and US policy-makers, will face in the future in trying to move us away from this "remade" reality.

The book is divided into two parts — one more philosophical, building on the concepts of "reflexivity" in the context of an open society, and one more context specific, dealing with the ongoing challenges posed by the fact that the USA, which has always prided itself on providing a beacon for good governance around the world, has lost its direction. This is most recently evidenced by the adoption of a draconian new Military Commissions Act which will overturn existing legislation that upheld international standards on detainee rights and interrogation.

This gradual erosion of the moral high ground and the institutional and legal vagaries of waging a near-endless "war on terror" are effectively explored. The author advocates a revision of US policies which takes into account the need for international cooperation in solving the problems of terrorism, globalisation and energy.

Significantly, for South Africans, the introduction notes the importance of the role of civil society in ensuring that open societies do not only abide by the formalistic criteria of "democracy": "I realized that the foundations do have a mission which they could continue to fulfill without me. That mission is to support civil society in monitoring the

performance of governments. That is an essential function of civil society in a democracy, but it is difficult to get support for it from other philanthropists, particularly in less-developed countries. I gained this insight in South Africa, where the ruling party has an absolute majority; nevertheless, the conditions of an open society are preserved by an independent judiciary and a civil society that is willing to hold the government accountable".

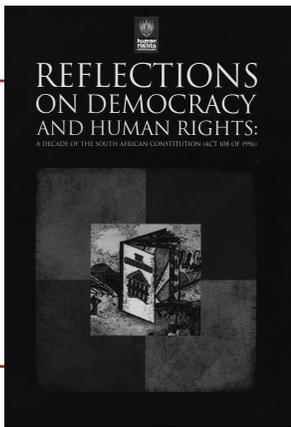
This is a very specific challenge for South African civil society as we experience a degree of societal turbulence.

*The Age of Fallibility* is a powerful compendium of the collective thoughts and experiences of a man who has left his own footprint on history not to mention the global currency markets — a man who has been described by some as "Noam Chomsky with a war chest", having spent considerable sums of his private capital in support of efforts to dislodge the current US president in the 2004 presidential poll.

Soros' mentor at the London School of Economics, Karl Popper, would have been proud that Soros is seeking to further the dialogue about the longer-term consequences of the trajectory of policies and multilateral institutional maladies our world faces. □

### Additional sources

- ◆ Byrne, J. *A man in full: George Soros*, Rawstory, 18 September 2006.
- ◆ Public debate, LSE, 4 July 2006 (George Soros, Professor Lord Giddens, Professor Mary Kaldor, Professor David Held, Shami Chakribarti (Liberty)).
- ◆ Bright, M. Book review — *The Age of Fallibility*, *The Australian*, 26 August 2006.
- ◆ "Soros on goose eggs, elections and money", *Observer*, *Financial Times*, 14 September 2006.
- ◆ Dombey, D. "The billion-dollar memory lapse", *FT Weekend Magazine*, 5 August 2006.
- ◆ Various interviews with George Soros after the launch of *The Age of Fallibility* including National Public Radio, the Council on Foreign Relations, the New America Foundation, Google etc.



## *Reflections on Democracy and Human Rights: A Decade of the South African Constitution*

Edited by Professor Nasila Rembe, Wordsmith Publishing Services

**FOCUS BOOK REVIEW** By Fayeza Kathree Setiloane  
director of Werksmans Media and Communications (Pty) Ltd

To commemorate the 10th anniversary of our constitution, the South African Human Rights Commission launched *Reflections on Democracy and Human Rights: A Decade of the South African Constitution (Act 108 of 1996)*, which seeks to review the extent to which the provisions of the constitution and, in particular, the bill of rights have been translated into reality for the many South Africans that require their protection. It also attempts to assess the extent to which the constitution's transformative agenda has been implemented by government and civil society, to improve the lives of the poorest South Africans.

Through its exploration of key issues such as equality, employment, land reform, social security, education, political participation, freedom of expression and the right to development, the book reflects on democracy and constitutional development, their progress and achievements, the many challenges encountered and the lessons for the future.

In their article, which looks at the nature of the post-apartheid state, the challenges of transformation and the changing nature of civil society, political analysts Chris Landsberg and Shaun Mackay describe South Africa as a “schizophrenic society” which performs well on first-generation civil and political rights but still has a long road to travel on second-generation socio-economic rights. They conclude that South Africa remains a democracy with deep-seated poverty and inequality.

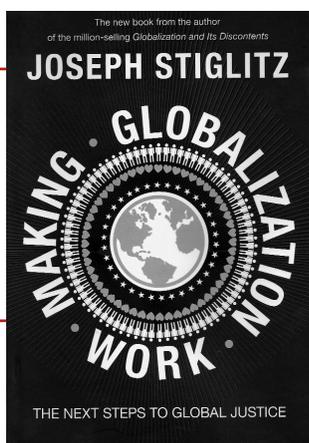
Likewise, whilst applauding the Constitutional Court for its outstanding equality jurisprudence and its progressive approach to discrimination, Professor Ronald Louw notes that South Africa remains challenged by deep divisions and extensive poverty and that unless government adequately addresses the pressing issues of unemployment, education and housing, “no jurisprudence of whatever high standard can hope to bring about equality in the country”. Similarly, Dr Neva Makgetla and Robin Aury, from the Policy Unit of the Congress of South African Trade Unions, explain that whilst government has made some progress in securing socio-economic rights, considerable obstacles to universal access still remain. This, they argue, suggests the need for government to make a sustained and coordinated effort to treat both the causes and outcomes of inadequate access.

On the issues of land reform, education and housing, the review raises pertinent questions about whether government's policy and legislative approach remains appropriate: Faranaaz Veriewa of the Centre for Applied Legal Studies (Cals), asks if the government's fees exemption policy is the best approach for the provision of affordable education; Nick de Villiers of the Legal Resources Centre asks whether government's approach to social security and sustainable development is appropriate to the high levels of poverty in the country; and Professor Pierre de Vos

suggests that the “pay as you go” approach to housing excludes many people from access.

In summarising the many challenges that emerge from the review — for both civil society and government — Professor Cathy Albertyn of Cals suggests that the bill of rights has not translated into reality for the many South Africans who are in need of its protection. She explains, in her realist voice, that South Africans “are so concerned with their daily survival that the constitution is little more than an abstract promise” and the rights therein are meaningless. For many people, democracy and human rights have not taken root to effect change in their lives. Hence, building a human rights culture across communities remains an ongoing challenge for South Africans within both government and civil society.

The book identifies the many gaps and problems in implementing the constitution in the first phase of our democracy and makes recommendations for its implementation in the present phase. It is hoped that the SAHRC will use the opportunity created by various contributions in the book to consult with government and other stakeholders on the many challenges raised therein. Dealing frankly with the many criticisms raised in the book is crucial to advancing the human rights discourse in South Africa — without which the constitution will remain “little more than an abstract promise”. □



## Joseph Stiglitz *Making Globalization Work*

Penguin Allen Lane 2006 ISBN 0-713-99909-8. Exclusive Books R254.00 <http://www.exclusivebooks.com>

**FOCUS BOOK REVIEW** By Raenette Taljaard

Joseph Stiglitz is one of the world's best economists. He was chief economist at the World Bank and chairman of former US president Bill Clinton's Council for Economic Advisers. Mr. Stiglitz won the Nobel Prize for Economics in 2001 and teaches finance and economics at Columbia University. Other recent titles by this author include *Globalization and its Discontents* and *The Roaring Nineties*.

I had the privilege of hearing Joseph Stiglitz address a conference on globalisation at Yale University in 2003 and he has developed a powerful ability to weave together academic analysis and clear-cut policy proposals. This ability is on display once again in *Making Globalization Work* with the addition of lively anecdotes that bridge the gap between theory and practice.

A core element in the book is the disparity between the promise and the reality of globalisation and between the pace of economic globalisation and the pace of the globalisation of politics and mindsets.

Stiglitz points out that one of the key fault lines is the fact that economic globalisation has outpaced political globalisation. Through his cogent analysis, and recent global events, it becomes clear that globalisation can only carry promise if the institutions on which it has built its core foundations are reformed.

Only solid multilateral institutions that escape the malaise in which many currently find themselves and are capable of articulating and voicing the concerns of the global community in an equitable

and fair manner can succeed in making globalisation work for everyone — developed and developing countries alike. This principle was on stark display at the recent International Monetary Fund and World Bank meetings in Singapore where tentative steps were taken to reform the decision-making processes that inform the actions of these bodies. Given the sheer scale of challenges the global community faces, there can be no doubt that the world requires international organisations that have moved beyond the confines of their post WWII strait-jackets and can guide economic, political and social policy and craft global consensus about the core challenges of our time.

Among a plethora of policy proposals contained in the book are proposals for ways of dealing with the crippling indebtedness of developing countries (including suggestions that they be allowed to borrow in their own currencies or a basket of currencies), a system of global reserves to overcome international financial instability, an economically incentivised framework (a common tax on carbon emissions) for dealing

with energy pollutions which create global warming, a medical prize fund, financed by industrialised countries, that can incentivise research to discover cures for diseases that disproportionately afflict the poor, and a single international legal standard to govern the use of “anti-dumping” or to “safeguard” tools to block imports.

Whilst realpolitik engenders a growing sense that the doctrine of US-exceptionalism may prove to be a formidable hurdle to some of the global policy measures Stiglitz has proposed, the proposals are cogent and could have an impact on the future of globalisation and the perceptions of its respective benefits and costs.

Given the role that South Africa has already played in moving forward the discourse on global multilateral institutions and the spirit of multilateralism, and the newly acquired UN seat that South Africa will occupy in these debates, Stiglitz's new publication is a worthy addition to the shelves of South African policy-makers who have a keen understanding of the dynamic link between local challenges and global currents. □

### Additional sources

- ◆ O'Neill, J. “Globalisation should be praised – not diminished”, *Financial Times*, 14 September 2006.
- ◆ Stiglitz, J. “We have become rich countries of poor people”, *Financial Times*, 8 September 2006.
- ◆ Beattie, A. “The Global Gadfly”, *FT Weekend Magazine*, 16 September 2006.
- ◆ “Joe has another go”, *The Economist*, 7 September 2006.
- ◆ *Making Globalization Work*, Yaleglobal [www.yaleglobal.yale.edu](http://www.yaleglobal.yale.edu)