

# TWENTY YEARS OF DEMOCRACY AND THE QUESTION OF POPULAR PARTICIPATION

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While numerous political forces contributed to the struggle against apartheid, the focus here is primarily on the African National Congress (ANC), for it became the dominant actor, whose influence shaped the character of the democracy that has unfolded and whose past history bears heavily on many of the practices of the present. The establishment of representative democracy in South Africa comprised an important victory for people who had been suppressed from the first days of white conquest and seizure of land of African and other indigenous people. Whatever the limitations there may be in electoralism, in the context of the history of South Africa, with its multiple forms of oppression and exploitation, the vote represented an important advance. It created the possibility of engaging with issues that had not previously been on the agenda, an agenda preoccupied with the interests of the white minority.<sup>1</sup>

## Popular Struggles Prior to the Onset of Democratic Elections

Important as this achievement was, it was understood by many, in the context of a broader democratic culture, including people's direct participation. In the course of struggle against apartheid, notions of democracy had developed, partly through the actual practice of communities that took ideas of political participation further than periodic voting. In other words, many who helped bring a negotiated settlement into the realm of possibility did not intend their political activities to be restricted to elections (Morobe 1987:81-83). They had, in the 1980s, participated in street, ward and block committees and a range of other ground level organisation that were self-empowering, concerning themselves partly with resistance to the apartheid regime and partly with their own environment, in some cases successfully managing crime control, notably in areas where the police had been driven out or feared patrolling the townships. In other cases such local organisation concerned itself with recreational activities, cleaning the townships, creating peoples' parks and other interventions aimed at improving and managing their environment.

1. While I recognise that political democracy does not fill anyone's stomach, it is beyond the scope of this paper to consider choices, some allegedly conspiratorial, made in relation to broader social and economic transformation after 1994.

In the context of the role of 'the people', the practices led to enriched understanding of the Freedom Charter.<sup>2</sup> It sometimes came to mean not only voting for a democratic parliament, the primary and almost exclusive understanding of the Charter at the time of its adoption, but also people taking control over their own lives in an immediate sense and before the moment of 'seizure' or 'transfer of power.' Weza Made, Uitenhage community leader, declared in 1986 that what they were doing in their local level organisations was implementing the first clause of the Freedom Charter, which reads 'The People Shall Govern!' (Interview in Suttner 1986:12).

That this was to happen immediately and not after 'transfer of power' was also a refinement of the focus on insurrection that was then prevalent, including amongst many United Democratic Front (UDF) activists, which pointed to some time in the future when, after a decisive moment, things would happen that would improve people's lives. What was being built then and there, and had been done for some time by unions, was to engage with the reality that people confronted and find ways of making gains that would better their lives in the interim. This was an implicit critique of statism, the idea that one should look to the state for resolution of all problems and that it is a thing to be used by whoever 'holds power' to do what they wish. The insufficiently articulated alternative was to see power as a relational concept, where the political party 'in power' would have to engage with other sites of power and transform relationships with their distinct class bases, such as big capital and labour, in order to achieve its goals (Poulantzas 1978:257-258).

## Conditions where Popular Actions were Successful

The success of such ventures depended very much on the extent to which they were broad-based, involving the community as a whole, as opposed to the youth acting on their own. It is safe to generalise that youth tend to be relatively impatient compared with older people and are often reluctant to slowly build relationships of trust and organisational structures. Port Alfred is often referred to as a successful exercise of popular power in the 1980s and this was partly because it was based on broad community involvement, with representation of

2. The Freedom Charter was adopted at the Congress of the People in Kliptown on 26 June 1955 after an extensive campaign where demands for inclusion in the charter were collected. The document was subsequently endorsed by the ANC, its allies and many other organisations and individuals. The process is described and the charter analysed in R. Suttner and J. Cronin. *50 Years of the Freedom Charter* (Pretoria: UNISA Press, 2006).

women, community organisations ('civics'), workers, the youth and students. In general, these organs of popular power were conceived as representing the whole community on a non-partisan basis, that is, those who lived in a specific space, irrespective of political affiliations. Consequently, where a decision was taken to have a consumer boycott, there were constraints against the exercise of coercion and mechanisms for building consensus (Suttner 1986:23). That is not to say that such non-sectarianism always applied, for there were many cases of political intolerance in the period.

But when the more seasoned activists were arrested in the swoop of June 1986 and the months that followed (the second emergency of the 1980s, that was repeatedly renewed and lasted over two years), many of the structures collapsed or were taken over by young people who were sometimes infiltrated by gangsters ('*comtsotsis*').<sup>3</sup> They were more ready and able to use violence than had been the case where the presence of older people exercised a restraining influence. This sometimes led to the creation of kangaroo courts, which meted out severe punishments, including necklacing.<sup>4</sup>

## The ANC and the Popular

In the course of the history of resistance to apartheid the ANC was for most of its 102-year existence neither a nationalist movement nor a hegemonic force within the liberation struggle. For much of this period it did not advance the idea of Africans being represented as Africans, the notion of an African political subject, and instead, through the notion of 'loyalism', sought rights as British subjects. It was only in the 1940s that universal suffrage was advanced and not until the period of the rise of the ANC Youth League in 1944 that the idea of African nationalism and African political subjectivity was brought to the fore, though that had been done by the Garveyites and the Industrial and Commercial Workers' Union (ICU) in the 1920s and 1930s (Bradford 1987; Vinson 2012; Suttner 2014:132-135).

In the 1950s, however, the ANC simultaneously advanced the notion of an inclusive African nationalism and a popular political subjectivity that included

3. Gangsters (*tsotsis*) posing as comrades, or comrades who were raised in an environment where it was fairly common to resort to violence when arguments failed, following practices not very different from *tsotsis*, but held in abeyance where political organisation proceeded with an element of order and tranquility undisturbed by the state repression that later ensued.
4. Referring to killing by placing a tyre filled with petrol around an alleged informer's neck and setting it alight.

people of all races, from a range of sectors that together combined in an alliance (the 'Congress alliance') and formulated the Freedom Charter that declared, in the name of 'the people of South Africa' that 'South Africa belongs to all who live in it, black and white.'<sup>5</sup> This became one of the key points of rupture leading to the breakaway of the Pan Africanist Congress.

That period of hegemony was snuffed out by apartheid repression during the 1960s and it was only in the 1980s that the popular subject again re-emerged, in this case, through the actions of the UDF and its affiliates again advancing a political subjectivity, which was multi-racial in organisation and non-racial in orientation.<sup>6</sup> The UDF was not an ANC surrogate though many UDF activists and leaders saw themselves retrieving the traditions of the 1950s and advanced similar goals to the ANC.

The period of transition to democratic elections saw the formation of the Mass Democratic Movement, (MDM) mainly comprising the South African Council of Churches (SACC) and the Congress of South African Trade Unions (COSATU), a structure without direct links to the grassroots organisations, thus severing or failing to re-establish the link between the masses on the ground and leadership (Neocosmos 1998).

The period after the unbanning of the ANC in 1990, saw the UDF dissolve itself, implicitly seeing itself as a 'curtain raiser', prior to the arrival of the ANC, the 'A team.' While the rhetoric of the popular remained in vogue, the pre-eminence of the ANC as leader of negotiations and later of (a 'people-driven') government saw the displacement of the popular subject, the people acting in their own name with direct representation. Instead, with the emergence of an elected government, there was substitution of a supposed 'people's government' for direct action of the popular subject (Neocosmos 1998:210-237; Suttner 2014:140-143).

## Negotiations do not Discuss Informal Political or Social Structures

The character of a negotiated settlement by its nature addresses institutional structures for constitutional government. Insofar as organs of popular power were independent of and often intended to remain independent of the state and

5. On the process leading to the adoption of the Freedom Charter and its content, see R. Suttner and J. Cronin. *50 Years of the Freedom Charter* (Pretoria: UNISA Press, 2006).
6. The UDF, like the Congress Alliance, was not a single non-racial organisation, but comprised affiliates who organised in their own communities, often based in white, coloured or African areas and not involving multi-racial membership, in the main.

focused on self-empowerment of communities, they were not on the agenda of the negotiating table. It was not that the constitution was necessarily intended to stand against popular power, but that negotiations debated the values to be enshrined and the shape of institutions, the way they would operate and relate to one another, whether or not they included one or other mechanism or excluded others at various levels of the state.

The ANC claims to have engaged in extensive consultations with its membership prior to the negotiated settlement, but the issues were intricate and it was impossible for those unversed in all the documentation to make any meaningful contribution.

But many of these constitutional discussions were contentious and ones that all could understand, for example one or other variant of National Party attempts to delay elections or have an extensive period of power sharing or dilute majority rule, through securing privileges for minorities. In order to strengthen its hand the ANC did invoke the power of the masses to break deadlocks. This was described as 'rolling mass action', not to ensure direct popular power but to strengthen the hands of the negotiators and break resistance of apartheid negotiators stalling on democratic constitutional provisions.

In some ways, the organisations, communities and individuals affiliated to the broad Congress movement also contributed to this insofar as they 'relinquished' their control in favour of leadership decisions. This was done on the basis of trust and understanding that the leaders, whoever they may have, would promote the interests of the people and represent them in the best way possible.

The way this notion of the popular was invoked was not then as self-acting, self-initiated action of the masses, although it was, arguably, in the interests of the masses to strengthen the hands of negotiators and government where they wished to see constitutional provisions that best advanced their needs. Thus, while the masses may have been 'used' instrumentally to break deadlocks, in most cases these were situations where they made their power felt in order to secure results that would benefit them.

### **ANC Monopolises Political Arena**

There was never a decision taken that independent organs of popular power would be suppressed by the ANC as government or the ANC as organisation, but the tendency emerged or it became plain that the ANC understood its role in relation to independent organisations as one where it monopolised the political space. The ANC from the outset did not conceive independent organs

of civil society, sectoral organisations or social movements as contributing to its conception of the unfolding of democracy. It saw the ANC itself as the bearer or the 'sole and authentic' bearer of the democratic project and its notion of pluralism was limited to multi-partyism.<sup>7</sup> While the rhetoric surrounding voting for the first elected parliament used the phrase 'people driven and people centred' democratic development there would, as we will see, be limited spaces for popular involvement.

What this meant is that the primary focus of democracy as conceived by the ANC after 1994 was

- ▲ periodic elections where the ANC as popularly elected government would be repeatedly elected
- ▲ The 'people's government' would enact legislation and through its administration see to the implementation of provisions that would provide a better life for all
- ▲ Supportive constitutional provisions would protect individuals and vulnerable groups from abuse, and supplementary law, judicial interpretation and executive action would amplify the broad rights set out in the constitution

In this scheme of things, the ANC and government saw themselves as solely responsible for covering the entire terrain of political activities and were hostile to the formation of independent sectoral organisations. This is part of a more general trend found in national liberation movements (NLMs) throughout the continent where the NLM has depicted itself as equivalent to the nation, manifested in slogans used by liberation movements from Nkrumah's Ghana ('CPP is Ghana, Ghana is CPP') down to South Africa ('ANC is the people').

In the years that followed the first elections the new government did indeed initiate fundamental changes in people's lives, providing water, electricity and health care in areas which had never before seen these. Insufficient these may have been, slow in coming and inadequate in maintenance in many cases, but very many people did see fundamental changes in their lives.

### **Statism Hostility to Civil Society**

This was done within the paradigm of statism. Instead of the earlier idea of self-empowerment of communities, they were to expect and wait for government to deliver the good things of life and where they did not, many communities were

7. 'Sole and authentic representative' is the terminology that was used by the OAU and UN to refer to recognised liberation movements, in South Africa's case the ANC as well as the PAC.

initially very patient, understanding with the political maturity that seasoned resisters had developed that it would take time for all things to be put right.

Where there was impatience, groups that were part of the ANC or broke away from the ANC or had never been in the ANC formed social movements to attend to electricity cut offs or water shortages, housing problems and other basic needs. These movements included the Soweto Electricity Crisis Committee and the Anti-Privatisation Forum. They encountered considerable hostility from the side of the ANC, which believed there was not place for multiple players in a terrain which it saw itself as occupying on its own. This hostility endured, as illustrated by the ANC's open attack on a civil society conference called by COSATU in 2010 (Roussouw 2011).

There are at least two understandings at work in limiting the character and scope of democracy. On the one hand, the notion of statism or reliance on state delivery, and fetishizing the state as the place from which lives are improved or through whose interventions problems are addressed. This removes community initiatives, which had in many cases served people well in the 1980s.

Reference to the local is not a romanticisation of 'small' being beautiful, but a sense that something is being lost. In some of the townships that are now in uprisings over inadequate services, police meet them with teargas or bullets. In the 1980s while they did not have power to provide water and electricity, amongst other basic needs, in many cases they did create important systems that had a measure of success in the control of crime (Suttner 1986). That possibility is diminished insofar as the building of local level organisation, aimed at representing not just ANC supporters but communities as a whole, is not pursued.

The second element of the problem relates to pluralism; the need to accept that the ANC and government cannot occupy the entire terrain of democratic self-expression. There are interests that need manifestation in a way that the ANC or any ruling party on its own cannot provide. It cannot represent the needs of carpenters or informal traders or football players or domestic workers in the way that these sectors can themselves do. It is important that pluralism becomes embedded in democratic development; otherwise a range of interests will not be adequately defended and advanced, if at all.

### **Constitutional Democracy in Crisis and Uprising**

While the constitution provides for a number of enabling provisions that ought to see government take actions that improve the lives of citizens and prevent power being abused, not all institutions have been adequately resourced to carry

out these duties. Equally, some crucial institutions have been undermined in ways that prevent their core functions from being performed.

In general, it may be true that the ANC-led governments have abided by the decisions of the courts. In recent times, however, there has been a disturbing tendency to pack the Judicial Service Commission, responsible for the appointment of judges, with those loyal to the current faction leading the ANC. This has led to appointments that have raised eyebrows, notably a Chief Justice with question marks over his commitment to parts of the constitution (de Vos 2011).

One of the areas where evidence shows that constitutional duties are not being performed is in policing. It is commonplace for police to ignore complainants, especially when they disapprove of their identity or the work they do, for example, commercial sex workers, or their sexual orientation, notably lesbians who experience 'corrective rape.'

There are other cases where the law is not enforced. Despite domestic violence being a crime, police tend to treat it as a family matter and the complaint is often not investigated. In these and other contentious or controversial cases police may not take statements or if they do, investigations tend to be tardy and it can take years before a case reaches court if it does at all. In many of these, the evidence is not properly managed and prosecutions that ought to succeed fail, both because the police are not keen to pursue offenders or the prosecution is insufficiently diligent or the bench is also unsympathetic to the complainant. Much evidence corroborating these observations is currently being presented in evidence to a commission into policing in Khayelitsha in the Western Cape.

It has become apparent that while all rights in the bill of rights are of equal status, in practice, there is a more powerful constituency behind some rights, like combating racism, than others, for example freedom of sexual orientation and gender equality. Consequently, there is less pressure brought to bear to police those rights, which enjoy less organised support.

At the same time, those who may have engaged in illegal activities but are favoured by the powers that be, may find that they are able to circumvent regulations for a considerable time and that prosecutions collapse through inadequate policing or losing dockets or inadequate preparation of state cases, as in the prosecution of those who killed Andries Tatane, in full view of television cameras. This is also evident in policing around shack dwellers in KwaZulu-Natal, and repression against the shack dwellers' movement, *Abahlali baseMjondolo*.

Most seriously, constitutionalism has been undermined at the highest level, as in the withdrawal of multiple fraud cases against President Jacob Zuma

on grounds which leading advocates, who were part of the prosecution team, considered unfounded (Tregrove 2009).

The result of the multiple cases of lack of enforcement of the law is that the rule of law has been undermined and it is widely believed that there are wrongdoers who are untouchable and complainants who will never see their complaint heard in court.

## Constitution and Enforcing the Bill of Rights for the Vulnerable

Whether or not the full promise of the constitution is realised depends not only on judicial officers or prosecutors but also, as indicated, on the extent to which constituencies or communities can harness their strength in order to secure their own interests.

All organisations require funds, for members of an organisation to be transported in order to meet, possible hiring of a venue, accommodation, refreshments and similar expenses. Churches sometimes assist but NGOs tend to be better able to access specialised experts. There are cases where litigation has been instituted with the assistance of NGOs or research institutes in order to advance or defend the rights of communities. The availability of this expertise is a powerful resource in support of constitutionalism. But it needs to be unpacked.

Insofar as the poorest communities, most in need of remedial litigation do not have the expertise or the resources to secure this on their own, they value outside expertise. But how they relate to NGOs and other institutes can follow more than one pattern. There are some NGOs that employ lawyers or have their own in-house lawyers who take legal action and present the communities and the state with a problem that is resolved in the interests of the communities. While it may strengthen constitutionalism, to have a judicial interpretation that is empowering to communities or protects them, the process of achieving this will then have been without involvement of those who are most affected.

There are other NGOs and specialised organisations that work with vulnerable communities, who ensure that these communities are part of discussions on how they understand their interests and how these should be advanced. In this context, they arrange workshops and other fora where issues can be unpacked and every person can articulate their understanding.

If it is decided that litigation is the best option, members of such communities often themselves present evidence in court or if it is decided to make representations to parliament, members of the affected communities present evidence to parliamentary committees. That way the process of

constitutional development or remedies is not reduced to technical expertise but is a way of invoking the voices of the people most affected. In the course of opposition to the Traditional Courts Bill and related legislation, organisations like the Centre for Law and Society and the Legal Resources Centre worked closely with the Alliance for Rural Democracy in a series of consultations about ways of waging resistance to the Bill and ultimately ensuring that it lapsed during the 2014 session of parliament.

## Undermining of the Constitution by Patronage and Corruption

Constitutionalism is being challenged in multiple ways, one of the most serious being the widespread practice of patronage and corruption. Patronage is not unlawful but the loyalties deriving from patronage may lead to appointments of people who are not best suited to hold positions or granting of tenders to those who are not best able to deliver what is required. The loyalties relating to patrons and clients have also converged with illegality as in the steps taken to prevent the prosecution of former police commissioner Jackie Selebi, ultimately convicted of corruption. Patronage is antagonistic to democracy because it relies on loyalties that create bonds that may be tighter than those that bind people to parties or even the constitution. Insofar as loyalty to a client is on the expectation of a reward it has the tendency to lead to irregularities, sometimes resulting in allocation of tenders which have resulted in loss of life and other damages to people's wellbeing.

While there were irregularities prior to Zuma's presidency, his very rise to the highest office required the undermining of legality through the suppression of hundreds of charges.<sup>8</sup> These have never been addressed by a court of law and while legal actions currently being pursued could conceivably lead to re-institution, for the moment the evasion of these charges creates a sense of impunity. Indeed, all around Zuma there is an image of irregularity and corruption, notably in the 'security upgrades' around his country home, costing the tax payer over R 240 million, compared with considerably less spent on previous presidents (Parker 2012).

Insofar as there is daily evidence of individuals close to Zuma or the ANC

8. On 28 December 2007, the Directorate of Special Operations [Scorpions] served Jacob Zuma with an indictment to stand trial in the high court on various counts of racketeering, money laundering, corruption and fraud. See Staff reporter, "Zuma Charged With Corruption, Fraud," *Mail & Guardian*, 28 December, 2007. Available at <http://mg.co.za/article/2007-12-28-zuma-charged-with-corruption-fraud>, accessed 5 April 2014.

leadership implicated in bribery and often evading prosecution, there is a general atmosphere that suggests a high tolerance of illegality.<sup>9</sup> This undermines the foundations of the constitutional state and democracy established after 1994.

### Crisis of Leadership and Ungovernability

In recent times a number of features of the present system of governance have coalesced to create seething discontent, which has seen almost daily protests all over the country. The elements of the crisis relate, amongst others, to the following features of the current situation:

- ▲ A crisis of violence. While earlier police ministries sometimes saw police use of force as necessary, this has been a more marked feature of the Zuma administration, manifested in the Marikana massacre, but also in multiple shootings of often unarmed or scantily armed protesters. In January 2014 alone police killed eight protesters. Police have tended to use force as a first resort and not tried to negotiate with the crowds. There are also numerous cases of gratuitous police violence and murder, as in the dragging of Mozambican taxi person, Mido Macia, handcuffed, behind a police van, followed by his beating to death in a police station (News24:2013).
- ▲ In many cases, the police meet the crowds, without mediation or intervention from the political authorities at any level. Those who bear responsibility for the issues that have provoked the protests do not make an appearance, or, if they do, it is later and often not at the level requested. Consequently political issues are reduced to questions of law and order and grievances are not addressed
- ▲ In many cases the protests are related to internal ANC disputes where disgruntled aspirant councillors help stoke up protests, not because of broad political goals, but because politics and holding office has become a source of enrichment.<sup>10</sup>
- ▲ The level of protests has reached such intensity that it has been difficult to

9. In the earliest months of the Zuma administration, General Siphwe Nyanda then Minister of Communications was implicated in a tender irregularity, a later Minister of Communications, Ms. Dina Pule, was implicated in irregular tenders which benefited her partner. A deceased minister, the late Minister Sicelo Shiceka was implicated in numerous irregular flights, including visiting a girl friend who was imprisoned in Belgium. This is a brief reference to a much wider phenomenon.

10. The New Age (2011), refers to the role of disgruntled former ANC councillors in allegedly fermenting unrest.

sustain governability in many parts of the country. This ought not to come as a surprise to government because they have long known of many of these problems, as in the Madibeng municipality of North-West province where fraud and dysfunctional local government has been reported on for years, but not seriously addressed.

### How do South Africans Re-Empower themselves to Recover Democratic Gains and Advance on an Emancipatory Route?

Despite all the flaws that have been referred to in current ANC leadership, there is little likelihood of it being voted out of power in the foreseeable future and there is no alternative political party offering a clear programme that will defend constitutionalism and advance a broad programme to meet people's basic needs. Parliamentary opposition parties, notably the Democratic Alliance, while sometimes taking legal action around issues like a vote of no confidence in the president, do not generally lend direct support to popular grievances around meeting basic needs or land rights or other issues of concern.

One of the most critical issues of the moment is to reconnect representative democracy with direct participation of citizens, formal political actors and their constituencies, listening and learning from one another.

If one is to find a way out of the present morass, it may be that one should try to identify agreement on a range of core issues, like constitutionalism, clean government and non-violence, and build a coalition of forces, on a non-sectarian basis to clamp down on the violence and illegality, the corruption and abuse of the dignity and attacks on the very lives of people. There can be no quick fix, despite the urgency of the situation. There needs to be patient building of a broad coalition, bringing together people who may previously not have considered working together, around a programme whose content and scope can be developed as its cohesion increases.<sup>11</sup>

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