

The Legislature and the Challenges of Re-imagining South Africa

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Abstract

The demise of colonial-apartheid created a heightened sense of euphoria that was accompanied by great expectations in South Africa. Inevitably, the broad spectrum of South Africans expected the new dispensation to birth a fertile social, political and economic ground for national unity and reconciliation and social cohesion through a just and equitable democratic society. In this regard, various institutional frameworks were transformed to be in sync with the new requirements placed on a democratising society. Historically, racial social engineering had profoundly fractured the South African society and made it difficult for society to cohere. Among these transformed institutional frameworks was the legislature, which is one of three arms of government that works in conjunction with the executive and judicial branches. At the core of the legislative branch is legislation (creating or amending new laws), oversight (control over the executive and custodian of natural resources) and deliberation (representative between the people and government). In this article, we contend that given the centrality of the legislature in driving the direction of the country, this institution has betrayed the hopes, aspirations and sensibilities of South Africans by being ineffective and irresponsible in its functions. Methodologically, the paper uses desktop research, and draws from primary and secondary documentary evidence. Structurally, it covers the following: the role of the legislature during colonial-apartheid; the new dispensation and the new role of the legislature; and the challenges faced by the legislature under new determinant conditions. The article reaches the conclusion that the failure of South Africa to transform into a just and cohesive non-racial, non-sexist society is, to a great extent, a function of the dismal performance of the legislature. Therefore, pursuant on the re-

imagination of South Africa from its colonial-apartheid past, the legislature will have to perform its roles and functions effectively and take its responsibilities seriously in order to ensure social cohesion through inclusive development.

Keywords: Legislature: post-apartheid; social cohesion: justice: reimagination; South Africa

1. South African society and the role of colonial-apartheid legislature

With the colonial expansion in Southern Africa in the late 18th and early 19th centuries, the British not only claimed South Africa as their own but, in addition, imposed and implemented their way of life, morals, values, virtues and systems of education, politics and economy. In pursuit of this colonial project, indigenous knowledge systems, including political systems were undermined and displaced. This should be understood within the context that the colonial project was neither aimed at developing the African continent nor encouraging democracy, fairness and justice. In fact, the colonial administrators were central in facilitating the siphoning of natural resources and sending them to the colonial masters to develop and enrich such erstwhile colonisers as the British, French, Portuguese, Germans and Italians. Africans had no say in running their countries and could not assert or determine their future.

In South Africa pigmentocracy, rule based on racial social engineering, ensured that South Africa lacked a transcendental idea or uncontested national identity and ethics that could define the country and ensure social cohesion. Even among African ethnic groups the pernicious ideology of tribalism was used through the system of Bantustans. Mafeje (1971) articulates a highly instructive role of tribalism in his seminal article “The Ideology of Tribalism”. Colonial-apartheid was implemented and enforced by a matrix of a large number of legislations, laws and acts. These served to institutionalise racial discrimination and the dominance by white people over people of other races, especially indigenous African peoples. While the bulk of these mechanisms were enacted after the election of the Nationalist Party into government in 1948, they were preceded by discriminatory legislations enacted under earlier respective British and subsequently Afrikaner colonial settler governments.

The apartheid era experienced heightened legislative activity in terms of law-

making. In this respect, some of the main laws introduced include: (a) Prohibition of Mixed Marriages Act, Act No 55 of 1949; (b) Immorality Amendment Act of 1950 amended in 1957; (c) Population Registration Act of 1950; (d) Group Areas Act of 1950; (e) Bantu Authorities Act of 1951; (f) Natives Laws Amendment Act of 1952; (g) Bantu Education Act of 1953; (h) Reservation of Separate Amenities Act of 1953; (i) Extension of University Education Act of 1959; (j) Urban Bantu Councils Act of 1961; (k) Bantu Homelands Citizens Act of 1970; (l) The Reservation of Separate Amenities Act of 1953; and others. This system of oppression, and the attendant complex historical and inter-generational implications, resulted in racial exclusion and heightened social conflicts and disharmony. Corruption was commonplace with public funds being used for the benefit of the white minority so that they could have a buy in into the system. This made the presence and persistence of divisions on racial grounds inevitable.

Following years of a military stalemate but with a tremendous local and international political pressure, the transition to democracy in South Africa was marked by consensus-seeking and the politics of negotiations. The transition to democracy ended legally sanctioned white minority rule, prevented further conflicts from spiraling and extended political rights to all South Africans. However, over three hundred years of brutal colonial rule, which included over forty years of apartheid formalised racial policies left a legacy of racial inequality and made South Africa to be, by any measure, one of the most unequal societies in the world (The World Bank 2018). This unpalatable situation has persisted despite the inauguration of a new democratic dispensation.

2. The new dispensation and the need for re-imagination of society

Inevitably, the hopes and aspirations of many South Africans were that coming out of colonial-apartheid and racial social engineering, the dire consequences of such a system would be urgently addressed with the objective of reversing them. The post-apartheid democratic project was about bringing South Africans together as one people and using the human and natural resources of the country in order to provide quality standards of living for all the people. To this effect, the 1993 Interim Constitution of the Republic of South Africa ends with an epilogue entitled “National Unity and Reconciliation”. Among other critical points it makes is that: “This Constitution provides a historic bridge between the past of a deeply

divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex” (Interim South African Constitution 1993: 1) Subsequently, in the preamble of the 1996 Constitution of the Republic of South Africa the following, among other key issues, is preeminently stated: “We, the people of South Africa, recognise the injustices of our past... (and) believe that South Africa belongs to all who live in it, united in our diversity.” “We therefore... adopt this Constitution as the supreme law of the Republic so as to heal the divisions of the past... (and) to improve the quality of life of all citizens and free the potential of each person.” In its “Founding Provisions”, this Constitution also says that our Republic has as one of its values “commitment to promote non-racialism and non-sexism.” (South African Constitution, 1996:1). Towards these lofty objectives, the constitution envisages ongoing interaction between citizens and elected representatives so as to steer the course of governance. More importantly, it ensured the separation of powers to the executive, legislative and judicial arms of the state.

In his State of the Nation address, then President Jacob Zuma reiterated this position thus: Since 1994 we have sought to create a united cohesive society out of our fragmented past. We are called upon to continue this mission of promoting unity in diversity and to develop a shared value system, based on the spirit of community solidarity and a caring society. Our shared value system should encourage us to become active citizens in the renewal of our country (Zuma 2009). This renewal spoke of the need for positive attitude, moral regeneration, infrastructural developments to provide shelter, and other social services to South Africans.

The democratically elected government was thus cognisant that the country’s legacy of racial division remains unresolved and that class divisions, along with unresolved regional, ethnic and cultural divides and prejudices, brood beneath the national surface. These divisions have the potential to undermine the post-apartheid transition, threatening the nation’s economic, political and social stability. As a result of this concern, the term ‘social cohesion’ became common in South African development debates, featuring in government planning documents, academic panels, media debates and parliamentary hearings (Struwig et al 2011).

Herein lies the relevance of legislative oversight. According to Ndoma-Egba (2012), legislative oversight refers to the power of the legislature to review, monitor and supervise government agencies, programmes, activities and policy implementation strategies of the executive arm of government. This is to ensure that this arm of the government appropriately functions to sustain the principles of good governance, remains responsive, transparent and accountable to the electorates. This premium placed on the legislature is informed by an appreciation that the legislature is essential for ensuring socio-economic development and democratic governance. At the core of the legislative branch is legislation (creating or amending new laws), oversight (control over the executive and custodian of natural resources) and deliberation (representative between the people and government).

Despite such constitutional aspirations, there has not been a commonly appreciated national agenda on how to eradicate the legacy of colonial-apartheid or a concerted action to advance the interests of those least capable to defend themselves. As such, South Africa still remains a country of two nations – one with a black face and poor and the other with a white face and rich (Mbeki 1998) and without social cohesion. Struwig et al (2011) identified social cohesion as the process of unifying South Africans across diverse backgrounds. Instead, as Rhodes university academic, Anthea Garman, poignantly points out, “South Africa is going through a moment of quite powerful rupture. This rupture is not so much with the apartheid of colonial past, as much as with the immediate democratic past which has failed to deliver on its promises of equality for all (February 2018).

At the core of such a rupture is the lack of accountability at executive level and in national government departments and SOEs as reflected in rampant corruption. In political terms, we understand corruption to mean misuse and abuse of entrusted power for private gain and personal interests rather than to serve to the people. It is in this respect that service delivery and provision, especially to the poor in society has been undermined. Poor governance, mismanagement and corruption have all contributed to the failure to address the deep scarring inequality. These factors have created public resentment towards the government and cynicism about politics. To that effect, according to the Afrobarometer statistics of February 2018, trust in politicians is low as 62% of South Africans citizens do not trust their politicians and 61% do not trust local government

in general. These low trust levels are due to the daily news of corruption as expressed in the BOSASA debacle, the Public Investment Corporation (PIC) revelations and state capture narrative. In this respect, the public purse has been hugely exposed not only to those who handle the decisions and actions that trigger the flow of money but also to those outside public institutions who have realized that the preventive controls are not at levels designed to protect public money. Hence, from the beginning of the new dispensation, South Africans have been numbed by the staggering numbers of wasteful, fruitless, unauthorised and irregular expenditure at all levels of government.

South Africa is not an isolated case as the literature suggests that the following challenges are typically experienced mostly by emerging democracies such as those found in Africa: (a) entrenched corruption that continues to be a serious problem thus making it impossible to uproot; (b) legislatures are receiving remarkably low levels of public trust and social legitimacy; (c) oversight in many African democracies has been inadequate and driven more by scandals too large to ignore than by a constant pressure for efficiency; (d) high turnover rates of elected representatives, which generally cause losses of institutional memory and result in stagnation of political systems; and (e) lack of political will on the part of the strong presidents and the executive. As African legislatures, each at a different point in the process of becoming truly democratic, continue to evolve as they face most of these challenges. Some are unique to their circumstances and others are shared with parallel institutions in other countries (Bowers-Krishnan 2013).

Clearly, effective legislature that holds the executive to account is a key factor in moving from nominal democracy to substantive democracy that delivers tangible development results for people (Bolarinwa 2015). Legislative oversight is supposed to promote checks and balances, install fiscal discipline, promote good governance, instill accountability and transparency in public offices. It also serves a number of other objectives and purposes such as to improve the efficiency in the economy and effectiveness of governmental operations; evaluate programmes and performance; detect and prevent poor administration, waste, abuse, arbitrary and capricious behaviour of illegal and unconstitutional conduct; inform the general public and ensure that executive policies reflect the public interest; gather information to develop new legislature proposals or to amend existing status; and ensure administrative compliance with legislative

authority and prerogatives (Notshulwana and Lebakeng 2018).

Importantly, rather than immobilising and demoralising citizens, perceptions of widespread corruption have also inspired the demand for accountability in South Africa. The palpable rage against state capture was at its highest level and there was a feeling that we had completely lost our way (February 2018). To demonstrate their grievances and dissatisfaction, voters have used their voting power to punish the ruling party for its cavalier approach to corruption by either staying at home or voting for the opposition as demonstrated by the previous loss of the control of major metros by the ruling African National Congress (ANC) in Tshwane, Johannesburg and Nelson Mandela. There was a general feeling in most South Africans, even the supporters of the ruling ANC, that the legislature has consistently and systematically failed to keep the executive accountable and, instead, the institution has become a major enabler for corruption and bad governance by protecting the executive. For this reason, the legislature in suffered from low perception of their relevance and worth among the generality of the populace.

This points to the fact that the involvement of ordinary people in policy decision making and implementation processes is an extremely important aspect for the promotion of democracy and good governance and is key to the promotion of development in substantive democracies, particularly at this time when there is need to marshal all its available resources for economic and social development. However, for the moment, the involvement of the wide spectrum of people in decision-making processes, including governance, is rather limited in South Africa. We contend that this is partly because the South African legislature is not strong in involving people in policy and decision-making processes and the oversight of implementation.

3. Challenges of re-imagination and the crisis of leadership

A pertinent question is: How did a people who so gallantly fought to ensure that there is no further bloodbath in their country reduce themselves to so dominated by a corrupt and incompetence political leadership? We contend that context and historical appreciation are necessary in this regard. The various contexts are periodised through the characters of the presidents since the democratic dispensation. For instance, the first five years were characterised by high moral

ground and the country was revered as a nation of hope, promise, wisdom and influence. This was informed by the fact that the country emerged out of horrific history of despair and was heading in what was supposedly a right direction. But Nelson Mandela's focus on reconciliation sought peace at the expense of justice. The Mbeki period was more instrumentalist and displayed very little moral gravitas. This instrumentalist approach was accompanied by intellectual representations and pronouncements on Africa's future. In South Africa Thabo Mbeki focused on growing the economy but this was hardly inclusive growth. A handful of blacks benefited from Black Economic Empowerment (BEE), while the rest were left behind. Although quite technocratic in posture, Mbeki's administration did not prevent emerging corrupt practices, instead corruption germinated under his leadership. One only needs to follow the orgy of commissions underway in South Africa and its disturbing revelations to see that the "nine wasted years" of corruption under Jacob Zuma were not the beginning of corruption in South Africa.

Notwithstanding his highly controversial background, including lack of economic aptitude and moral rectitude, Zuma presidency was presented by the "coalition of the unhappy-with-Mbeki" as a man of the people, a unifier and a man of integrity. But Zuma's realpolitik approach meant that policies are formulated based more on practical personal and geo-strategic rather than lofty ideals or intellectual heft. Upon taking over, Zuma created a shadowy state by weaving a complex web of patronage and engineered a widespread support through such. His support came through juniorising very senior positions by placing inexperienced and incompetent loyalists. At the same time, song in the absence of political and intellectual rigour became a dangerous weapon. Song can be soothing but is also non-reflective and Zuma understood its intoxicating nature. Although the landscape of corruption did not start with him, Zuma's tenure corrupted South Africa's body politic and through plunder bent the country's trajectory of political and economic development sharply downward. Zuma used the rhetoric of populism and enlisted pseudo-intellectuals and unscrupulous political demagogues to justify the plunder of the economy, popularise identity politics and narrow nationalism, promote political inaptitude, destroy moral and ethical rectitude. Under his administration politics and personality adversely affected procedures and results and the country was left teetering on the edge of financial ruin.

It is not possible to have a corrupt leadership without it being at the same time corrupting. The road to plunder was paved for many opportunists within the ruling African National Congress (ANC). According to Claude-Frédéric Bastiat, “Men resort to plunder when plunder is easier than work...neither religion nor morality can stop it” (Bastiat 1850). In this regard, when plunder becomes entrenched those who plunder protect themselves by creating a legal system that authorises, condones and morally codifies and glorifies it. Hence, the ruling elite in South Africa established a huge and corrupt reward system (Business Day 27/11/2012) and compromised state institutions.

Although patronage is not new under determinate conditions of post-apartheid, South Africa became highly vulnerable to corruption, abuse of power, patronage, the use of state resources for private gain and, indeed, decline. A careful analysis makes the case for the following discernible trends of inappropriate control of state systems through a power-elite that was pivoted around Zuma and thus systematically siphoned the assets of the State. They did this by, among other means, securing (a) control over state wealth, through the capture of state-owned companies by chronically weakening their governance and operational structures; (b) control over the public service by weeding out skilled professionals; (c) access to rent-seeking opportunities by shaking down regulations to their advantage, and to the disadvantage of South Africans; (d) control over the country’s fiscal sovereignty; (e) control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes; (f) a loyal intelligence and security apparatus; and (g) parallel governance and decision-making structures that undermine the executive (Helen Suzman Foundation 2013). Essentially, this meant that political interference at the highest level rendered accounting officers and those responsible for service delivery and management unable to ensure internal control mechanisms, hence poor audit outcomes in the form of unauthorised, irregular and wasteful expenditures are commonplace. Maladministration and corrupt practices characterised most of the national government departments with a number of Ministers facilitating rather than preventing such practices. Too many executives, senior officials and close friends had “smallernyana” skeletons for either being profoundly corrupt or facilitating corruption. Exacerbating this was the fact that monitoring and evaluation was dysfunctional

SOEs more often are used to pursue public purposes and good and they

do so through wide use of public funds. However, they were highly vulnerable and were deeply implicated in most fiscal problems. They were compromised and became inefficient, faced losses and budgetary burdens and, provided poor products and services. This is partly because the legal system/environment in which they are designed and operate, their regulation, public purpose and accounting mechanisms render them easy to abuse. This is unfortunate given their strategic importance to the economy to provide a conducive environment for educating the nation, lowering unemployment and increasing per capita income to help drive inclusive economic growth.

According to January, Achille Mbembe calls this a “negative moment” in South Africa’s history. Essentially, it is a culmination of the Zuma years that were marked by a lack of openness and transparency, by increased securitisation of the state and marked inequality, economic paralysis as well as the abuse of democratic institutions (January 2018). Vested interests were so pervasive in the ruling party to the extent that those who were supposed to hold the executive to account found themselves compromised and thus compromised democratic practices. There was generalised lack of accountability and there was no independent and transparent parliamentary oversight (Notshulwana and Lebakeng 2019). According to Pillay (2004), the effect of corruption in South Africa has seriously constrained development of the national economy and has significantly inhibited good governance.

A number of scholars argue that corruption hinders development and erodes the gains of democracy by destroying trust in state institutions (Mauro 1997; Wei and Kaufmann 1998; Kaufmann 2000), jeopardises the democratic credentials and objectives of the state (Warren 2004), poses a major challenge for good governance (Pillay 2004), prevents radical economic transformation (Notshulwana 2017) and leads to low income and breeds poverty (Andvig and Moene 1990). Herein lies the relevance of legislative oversight. Effective legislature that holds the executive to account is a key factor in moving from nominal democracy to substantive democracy that delivers tangible development results for people (Bolarinwa 2015). However, there is a general feeling in South Africa, as in many African countries, that legislature has consistently and systematically failed to keep the executive accountable and instead this institution has become a major enabler for corruption and bad governance by protecting the executive (Notshulwana and Lebakeng 2018). Due to the culture of the institution to

abdicate its constitutional responsibility with impunity, legislature suffer from low perception of their relevance and worth. Therefore, despite the provisions of section 89 and 102 of the South African constitution, the exercise of this power has been in abeyance of the intendment of its drafters.

Legislative oversight must be seen as one of the central tenets of the South African democracy because through it the legislature can ensure that the executive is carrying out its mandate and is accountable. After all, accountability encompasses the obligations to report, explain and to answer for consequences. But this is undermined in South Africa where parliamentary committees who have to practice oversight, are composed of the majority members from the ruling party. What we see transpiring in South Africa persuades us that the present parliament has lost legitimacy as it has continuously defended the executive despite all evidence pointing to very serious violations of the Constitution. This is critical since effective parliamentary oversight is essential to the quality of democracy and democracy cannot be experienced if those in power cannot be held accountable in public for their acts, omissions, decisions and expenditure

Despite South Africa having made a remarkable progress in the transition from the vile and anachronistic system of colonial-apartheid to a democratic dispensation, the role of oversight particularly of SCOPA, as parliament's watchdog over public finances, has remained extremely difficult and challenging. In fact, it has been compromised. Therefore, tracing South Africa's journey since democracy, there are several pitfalls in terms of policies and leadership judgement. What is clear is that by the end of Zuma's two terms the once promising nation was at the precipice of collapse characterised by blatant corruption. Critical factors that are identified to be negatively correlated with social cohesion such as poverty, service delivery protests and perceptions of crime are commonplace in South Africa. It is thus shocking that in her opinion piece in the Daily Maverick, Jessie Duarte, the Deputy Secretary General of the ANC, asserts that: "What sets the ANC apart from other parties is that it has a track record of keeping the South African ship afloat. In the last decade, we have proven that despite a tough and volatile global economy we have been able to manage the economy well. Yet, more than anyone else, the ANC is aware that serious changes are needed to transform our economy. We are asking South Africans to once again trust us with this tremendous task just as you trusted us to steer the ship during the choppy waters of economic recession. Be assured, the ANC will dock South Africa safely"

(Duarte 2018).

What is clear is that it is not because the country is highly heterogeneous but because of the history of colonial-apartheid, absence of radical socio-economic transformation, and contemporary failed policies and pervasive corruption in the public and private sectors that social cohesion remains a pipedream. In this regard, there is a need to turn around the toxicity of the rotten culture of looting with impunity in the public service (and private sector), dire need to rehabilitate SOEs and to drastically improve service delivery to citizens. It is noteworthy that social cohesion is not only premised on how well the economy performs but also on reduced reckless populist rhetoric that seeks to divide people.

4. Concluding Remarks

In conclusion, it is relevant to point out that South Africa remains a socially disparate and economically unequal society, without social cohesion and not reconciled. However, since 2009 the country has been losing the war on corruption, poverty and unemployment (Malala 2015) due to irresponsibility on the part of the legislature as it failed to perform its functions. The country squandered and thus missed a great opportunity to make the requisite progress towards creating a non-racial society, building a non-sexist country, healing the divisions of the past, achieving the peaceful co-existence for all its people, creating development opportunities for all South Africans, irrespective of colour, race, class, belief or sex; improving the quality of life of all citizens. The actions of the leadership seem oblivious of the injustices of the past and have not displayed genuinely attempt to promote the integrated Constitutional objectives of national unity; the well-being of all South Africans; peace reconciliation between the people of South Africa; and the reconstruction of society.

The democratic political dispensation of post-apartheid South Africa inherited a country facing numerous challenges, especially in the public service and governance issues. Unauthorised, irregular and fruitless expenditures due to government corruption at national, provincial and local levels have prevented the reduction of inequalities and this has gravely and seriously undermined social cohesion. This primarily because parliament did not provide legislative oversight to stop the excesses by the executive. Rather than being watchdog it was instead a lapdog with the result that Zuma's presidency has been characterised as

a costly “season of madness” or “wasted nine years”. The extend of the damage and havoc wreaked is still unraveling with the orgy of commissions.

As South Africa begins to appreciate the unfolding scary details of state capture in terms of its history, scale and impact, South Africans are left with the reality of a dream deferred, a hope dashed and a nation imploding. To undo all this would require a bold, exemplary and visionary leadership with quality characteristic. What is clear is that Zuma was not a transformational leader but a corrupt one. Transformational leaders are currently in short supply within the leadership in South Africa. What he is leaving behind is a legacy of indifference rather than caring, dishonesty and division rather than of integrity, dignity and honour, and of arrogance, boastfulness and excuses rather than humility and service. That the chickens have come home to roast is a function of our lack of vigilance and due diligence. The many fault-lines make it easy for populism.

The mistakes of the past should inform the politics of the present to ensure transformation, equity and inclusive economic growth. But this would require organisational humility in the governing party. The task of transforming South Africa and the country’s institutions at all levels will require rigour, expertise, knowledge and skills and some of these ingredients are currently in short supply. Social compacts are sustained by social cohesion and material gains can be an added factor. All social partners must experience the tangible socio-economic benefits of agreements. As long as sectarian needs are prioritized (and the legislature is compromised), moving forward to a fully inclusive and developmental country will be elusive (Mabasa 2018), national unity and reconciliation unachievable and social cohesion unrealisable.

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