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## We must build a caring and people-centred society

OUR HUMAN RIGHTS DAY, March 21, was born in struggle. Lives were lost in a struggle against what the oppressed had described as "the badge of slavery" - the reference book or "the pass".

"The pass" meant that those who carried this badge of slavery were African. It meant that those who were African had to live with the reality that they would be treated as a lower class of citizen of South Africa, humans who were less than human.

It meant that the lower class of citizen had to accept a life of subservience, intentional impoverishment, denial of human rights and human dignity.

The struggle against the badge of slavery was therefore a struggle against slavery itself. It was a struggle for human rights and human dignity, for an egalitarian and humane South Africa.

If our national Human Rights Day was born in struggle, a struggle that led to the birth of a new South Africa, the extension of the frontiers of human rights demands that we sustain the struggle for human rights.

### LETTER FROM THE



### PRESIDENT

And yet some in our society believe that the days of struggle are over. They believe that to talk of struggle today is to create an atmosphere that does not help us to achieve national unity and reconciliation.

Indeed the accusation is repeatedly made that the ANC has so far failed to transform itself from a liberation movement into a political party - from an organisation of struggle into a machine for the conduct of parliamentary politics.

Nevertheless, we have continued to insist that the struggle continues! The reason we have done this is because not all the objectives for which our people died in Sharpeville in 1960 have been realised.

The victory of 1994 which ushered in our democratic victory was a giant step forward towards the accomplishment of the goals of the Martyrs of Sharpeville. It created a new and strong platform for us further to pursue the cause for which they died.

The victory of 1994 meant that even as we said the struggle continues, we had to take new decisions about how to conduct that struggle. This was so because tyranny had been defeated. Political power had passed into the hands of the people.

The question that the successors of the Martyrs of Sharpeville had to answer was how they would use the political power they had acquired further to advance the agenda of those who had perished, to address the still outstanding goals of the national liberation movement.

This question had to be answered within the context of the fact that the democratic power had a responsibility to govern not only in the interests of the formerly oppressed but in the interest of all the people of our country, including the former oppressors.

Accordingly, the continuing struggle would no longer have the objective to defeat and destroy the contemporary state power, which had been put in place by the people themselves. It would no longer aim to make the country ungovernable as the interests of the people are best served by good governance.

No longer would there be need for an armed struggle, for sanctions, for a mass-based insurrection.

Despite all this, we have seen people from among the formerly oppressed conduct themselves as though they define the democratic order as an enemy of the people.

These have also acted as though they believe that the democratic freedoms we won through a costly struggle give them the freedom to create as much chaos and anarchy as they choose, to advance their cause.

In this context, in the recent past we have seen such incidents as the burning of a railway station in Pretoria as well as railway coaches, vandalism and looting in Johannesburg, the beating up of people during demonstrations and the thrashing of public highways.

None of this has anything to do with the struggle of which we are speaking. Chaos and anarchy cannot be part of the process by which the people further the cause of the restoration of their own dignity.

Therefore they can neither be part of the means we use in struggle nor the outcome of that struggle.

The outcome of this struggle must be the eradication of the legacy of the racist system against which the Martyrs of Sharpeville fought. That legacy includes poverty, underdevelopment, the continuing racial and gender disparities in our society and criminal violence.

Poverty and underdevelopment mean that millions of our people do not have the possibility to lead decent human lives. Many still go to bed hungry. Many still live in shacks. Many cannot afford proper health care.

Many cannot afford to clothe themselves and their children adequately and have no means to ensure that the children have access to education



and training. Many are unemployed and are therefore unable to earn their own means of livelihood.

The restoration of the dignity of all our people, which is itself a fundamental human right, does not only mean that the people should enjoy full democratic rights, important as these rights are. We have achieved these rights and must do everything to protect and use them for the benefit of the people.

But the full achievement of human rights also means that we must also succeed in the struggle for freedom from want, freedom from hunger, freedom from disease, freedom from ignorance, freedom from fear and freedom from the humiliation caused by poverty.

It was because we recognised the central importance of these freedoms that we included them in the Bill of Rights in our Constitution as part of the objectives towards which the democratic state must work.

That Constitution also enjoins us to work towards the objective of the transformation of ours into a non-racial and non-sexist South Africa.

Accordingly, apart from the realisation of the socio-economic freedoms we have just mentioned, we have an obligation to end the racial and gender imbalances and inequalities in our society as part of the process of ensuring that ours is a society in which all our people enjoy human rights.

Similarly, the important human right of freedom from fear means that we have to ensure that all our people live in conditions of safety and security. The fight against crime, including rape and violence against women and children, is therefore part of the struggle we have to wage to realise the objectives of the Martyrs of Sharpeville.

Accordingly, when we say the struggle continues, we mean that the struggle continues to achieve these freedoms which are additional to the political freedoms we have obtained to fulfil the task that the people shall govern.

It means that in the same way as they were involved in the struggle to defeat the apartheid system of white minority rule, the people must be mobilised to participate in the process of the reconstruction and development of our country.

As the people were not spectators and by-standers in the struggle against apartheid, so should they not be spectators and by-standers in the struggle against poverty and underdevelopment.

As we celebrate our Human Rights Day on March 21, we must therefore focus on the tasks of rebuilding and transforming our country to create a caring and people-centred society. We must ensure that all our people understand these tasks.

We must also ensure that we reaffirm our commitment to work together to meet those tasks. Those who are fortunate to have better means than others should also see it as their responsibility voluntary to use those means to assist in the extension of the frontiers of the human rights of those who have not.

All organisations truly representative of the people should therefore accept that it is their responsibility to be involved in the process of educating and mobilising the people to be involved in the reconstruction and development of our country.

Accordingly, March 21st, our Human Rights Day, should be celebrated not only by political parties and in political rallies. All those committed to the perspective of human rights for all must be part of the process of defining this important national holiday as a day on which we all commit ourselves to work together for a better life for all.

This is the tribute we should pay to the Martyrs of Sharpeville, of Soweto and the countless others who died in the long struggle to ensure that all our people enjoy full human rights.



Thabo Mbeki.

## HUMAN RIGHTS

# Progress made on the road to human rights for all

THE PEOPLE of South Africa have experienced a long and tragic history of colonial domination, racial domination, social injustice, political oppression, economic exploitation, gender discrimination, and judicial repression. One of the main casualties of this history was human rights. In every sphere from housing to education to health care, the apartheid government took control over black peoples' lives with a view to reinforcing their allotted role as 'temporary of sojourners', welcome in 'white' South Africa solely to serve the needs of the employers of labour. The international world witnessed this systematic violation of human rights of the entire black population with much dismay. This abhorrent form of discrimination was later institutionalised in the policy of apartheid solely based on racial discrimination. Apartheid was seen by the international community to be a breach of fundamental human rights and freedoms and the United Nations responded to this atrocity by declaring it as a crime against humanity.

In response to the institutionalised gross human rights violations, the black people of South Africa fought a long and hard struggle for the protection of basic fundamental human rights for all, social justice and the respect for human dignity. This struggle was fought by the many women, men and children, which often led to the tragic loss of life. Historically children have played a pivotal role in the fight against apartheid. The apartheid era constructed children as victims as well as perpetrators of violence. The killing of Hector Petersen most commonly represents the image of children in the struggle against apartheid.

South Africa's new democracy was ushered in on 27 April 1994 with the first democratic elections and the ANC led government has since moved from strength to strength. A significant milestone of this historical period was the outstanding and exemplary constitution-making process, which produced the first democratic Constitution entrenching fundamental human rights and freedoms as a guarantee for every citizen in South Africa. The second democratic election held on 2 June 1999 saw the ANC increase its majority just short of two-thirds majority of the total vote. This reinforced the greater need of the people for a nation guaranteed of their basic human rights and freedoms.

Human rights as entrenched in Chapter Two of the Constitution, bind all legislative and executive bodies of State at all levels of Government. This Chapter on Human Rights finds application to all laws, administrative decisions taken and acts performed during the period in which the Constitution is in force. In terms of the Constitution, every person has the right to:

### MORE INFORMATION:

- [Bill of Rights](#)
- [Constitution of the Republic of South Africa, 1996](#)
- [National Conference on Racism 2000 Report](#)

- Be treated and protected equally by the law
- Freedom from discrimination
- Life
- Respect for and protection of his her dignity
- Freedom and security, including the right not to be detained without trial
- Not to be subjected to any torture
- Not to be forced to work against his her will
- Personal privacy
- Freedom of conscience, religion, belief, and opinion
- Freedom of speech and expression
- Freedom of assembly and to demonstrate peacefully and unarmed
- Freedom of association
- Freedom of movement
- Choose freely his or her place of residence
- Free political activity
- A secret vote
- Have judicial disputes settled by a court
- Have access to all information held by the State, in order to exercise his/her rights
- A fair trial
- Do business and to earn a living
- Fair labour practices
- Own property
- A healthy environment
- Freedom of language and culture
- A basic education
- Be taught wherever possible in the language of his or her choice

The National Constitution, which entrenches democracy, also makes provision for the establishment of a Constitutional Court and National Institutions to protect democracy and promote human rights. Among these National Institutions are:

- The office of the Public Protector
- The South African Human Rights Commission
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Commission for gender equality
- The Auditor-General
- The Electoral Commission

These Constitutional Institutions are independent and impartial, accountable to Parliament and committed to, inter alia, promoting and protecting human rights.

One of the biggest challenges facing the Government is the successful transformation of the administration of justice within the context of fundamental human rights and freedoms. The Department of Justice and Constitutional Development in its mission statement sets out its purpose and nature, which is to administer justice and to oversee state legal and legislative services. This mission is based on the values of the Constitution and the Government's policies on reconstruction and development. As democracy and equality form the cornerstones of these values, the vision of the Department is to move away from rigid law and order paradigm towards a human rights-based rule of law paradigm. The focus must shift

to the affirming of diversity and the equal worth of all people and towards greater efficiency, customer service and results.

The Department's mission and vision are based on values that seek to administer the law and legal affairs of the state in an open and accountable way, in keeping with the ideals expressed in the Constitution, such as human rights, democracy, equality, human dignity, freedom and non-discrimination. Significant changes based on this mission and vision of the Department has been made to the justice system. These include:

- **National Action Plan on the Promotion and Protection of Human Rights (NAP)**

The NAP was developed in response to the recommendation of the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in Vienna, in 1993 requesting that 'each state consider the desirability of drawing up a national action plan identifying steps whereby the state would improve the protection and promotion of human rights'. The department led an intersectoral process to develop the NAP, which was deposited with the United Nations on 10 December 1998. The NAP provides a barometer to monitor the implementation of human rights in South Africa and is an integrated and systematic national strategy to help realize the advancement of human rights in South Africa. It can therefore be seen as:

- An Audit of the human rights situation in our country that identifies areas in need of protection and improvement.
- A commitment to concrete measures that can be adopted to build and entrench a culture of human rights for the enjoyment of all
- A framework for sustained and coordinated ways for the country as a whole to protect and promote human rights and
- A serious effort on the part of government to address the legacy of apartheid.

- **International Criminal Court Project**

Following the signing of the Statute on the International Criminal Court in July 1998 the Department set up an Inter-departmental Committee on the ratification of the Statute, which is presently being considered by Parliament. The main purpose of the Committee is to discuss and agree on the domestic legislation required by the Statute and to contribute to the process of negotiating and concluding Rule of Procedure and Evidence, Elements of Crime and Definition of the Crime of Aggression.

In view of the constitutional obligations the Department is constantly required to meet the changing circumstances in a dynamic and developing society. Enacted legislation and legislation in the pipeline have important bearing on the prevention of crime, transformation of the justice system and family, gender and child-related issues. Some of the important legislation includes:

- *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)*  
Against the back drop of South Africa's political history, the drafters of the Constitution deemed it necessary that Parliament enact national legislation that gives effect to the constitutional right to equality contained in the Bill of Rights by February 2000. The Act was adopted by Parliament on 28 January 2000. The objectives of the Act include the prevention and prohibition of unfair discrimination, redress for discrimination, the promotion of

equality and progressive eradication of discrimination. The Act also deals with the elimination of unfair discrimination in specific sectors and makes provision for the establishment of Equality Courts to deal with cases of such unfair discrimination.

- *Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)*  
This Act is aimed at the provision of lawful reasonable and procedurally fair administrative action as contemplated in Section 33 of the Constitution. It also ensures the right to written reasons to those adversely affected or any decision or any failure to take decision.
- *Domestic Violence Act, 1998 (Act 116 of 1998)*  
This Act came into operation on 15 December 1999 and unlike its predecessor applies to unmarried couples living together, partners in homosexual relationships, children, and the elderly suffering at the hands of their children and dating couples. Police are now obliged to remove survivors of domestic violence from the area of abuse to a shelter. Domestic Violence includes all forms of abuse and controlling behaviour. *Maintenance Act, 1998 (Act 99 of 1998)*  
This new Act was heralded as a great relief mechanism for most of the problems identified in the administration of the maintenance system. The Act has heralded changes to the old law with emphasis on a sensitive and fair approach in line with the Department's Gender Policy document, the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination Against Women. The main objective is to reform systems and laws that still indirectly and systematically discriminate against women and children.
- *Promotion of Access to Information Act, 2000 (Act 2 of 2000)*  
The President assented to and signed this Act on 3 February 2000. This Act which gives right to access generally promotes transparency, accountability and effective governance of all public and private bodies by, among other things, to understand their rights in terms of the Act and to exercise them in relation to public and private bodies, understand the functions and operation of public bodies and scrutinize and participate in decision making by public bodies that affect their rights.
- *Draft Bill on Child Justice*  
South Africa does not have a coherent child justice system. Limited provisions providing specifically for the management of young people caught up in the criminal justice system are spread throughout a number of separate statutes such as the Criminal Procedure Act, 1977, the Probation Service Act, 1991, the Child Care Act, 1983, and the Correctional Services Act, 1959. The drafting of composite juvenile justice legislation was identified as a priority in the National Plan of Action for Children and a report accompanied by a Draft Bill entitled Child Justice provides for comprehensive system to deal with young people in a manner that is appropriate, taking into account the age of the child.
- *Draft Bill on Sexual Offences*  
The aim of the Draft Bill is to address huge public concern about the high level of rape and other sexual offences against women and children. The Draft Bill proposes that all types of sexual penetration should be considered unlawful when they occur under coercive circumstances, including the application of force, threats, abuse of power or authority or the use of drugs.

Since 1994 the democratically elected government has ratified a number of significant international and regional human rights treaties. These include:

- The United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
- The United Nations Convention on the Rights of the Child
- The African Charter on Human and Peoples' Rights
- The Hague Convention on Civil Aspects of International Child Abduction
- The United Nations Convention on the Status of Refugees
- The United Nations Protocol on the Status of Refugees
- The African Charter on the Rights and Welfare of the Child
- Organisation of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa
- The International Convention on Civil and Political Rights
- The International Convention on the Elimination of all forms of Racial Discrimination
- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

To date the Government has submitted the following reports to the United Nations and Organisation of African Unity:

- The first national report to the UN Committee on the Elimination of all Forms of Discrimination Against Women, December 1998
- The first national report to the UN Committee on the Rights of the Child, November 1997
- The initial national report to the African Commission on Human and Peoples ' Rights.

Government delegations led by the Office of the President and the Department of Justice (in the case of the African Commission) have already made oral presentations to the respective committees on the national reports submitted. Overall the response by the international and regional watchdog committees to the reports have been good but all three Committees have recognized that the implementation of these international and regional human rights instruments remain a challenge for the Government.

## **CHALLENGES FACING THE NATIONAL AGENDA TO IMPLEMENT HUMAN RIGHTS**

This article is intended to provide an overview of the development of human rights in South Africa with emphasis on the Constitution, which provides an institutional framework, policies, programmes and the actual provision of services, which endeavour to collectively improve the quality of life of all our people.

Within this framework we as a nation face some serious challenges. The HIV/AIDS pandemic is one such example. Its impact on our women and children, on caregivers, and others affected, is a challenge, which government is addressing through ensuring the partnership against HIV/Aids and the various public education campaigns actually result in change.

Other significant challenges include the development of a human right's culture, a change in attitude towards human rights, the strengthening of partnerships with non-governmental organisations, community based organisations and civil society that protect and promote human rights, policy development, especially in relation to the development of and commitment to inter-sectoral processes in order to



ensure well-informed and well-co-ordinated management of issues relating to human rights, infra-structural development and resource allocation and most importantly responsible and informative media coverage on matters relating to human rights.

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## CHOLERA

# A challenge to the realisation of human rights

THE RECENT CHOLERA OUTBREAK in KwaZulu Natal underlines the importance of the 'socio-economic' rights contained in the constitution.

The bill of rights declares that everyone has the right to have access to, among other things, sufficient water and health care services. "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights," it says. The cholera epidemic illustrates why.

Since August last year, KwaZulu Natal has been experiencing a cholera epidemic. Cholera cases have since been reported in other provinces, including the Free State, Gauteng, Mpumalanga, Northern Province, Northern Cape, North West, and Western Cape. The recent rains and mobility of migrant labourers contributed to the further spread of the disease.

In response to the outbreak all provinces in South Africa have been alerted and are implementing interventions for control and prevention of the epidemic. Major identified interventions aimed at dealing with the outbreak include among others provision of safe drinking water and adequate sanitation in affected areas; improved case management by health personnel; and health education programmes including personal hygiene. Intersectoral and multidisciplinary approaches are being used in the affected provinces.

Cholera is caused by a micro organism that spreads mainly by contact with contaminated drinking water. People start developing symptoms after a few hours up to 5 days. People most at risk of contracting cholera are those who do not have access to portable or safe water and proper sanitation facilities. Oral rehydration and fluids are recommended treatment to correct the effects of the diarrhoea and resultant dehydration. In this manner 90 per cent of cholera patients can be successfully treated.

Figures released in late February showed more than 54,800 cholera cases since last August. However, the death rate in the whole country is at 0.22 per cent, indicating good management of patients generally.

Short-term measures that have been undertaken include:

- the establishment of Outbreak Response Teams at national and provincial level;
- revision of notification procedures and activation of surveillance and early warning systems;
- health promotion and education programmes at all levels of care, including the distribution of chlorine for purifying water to affected areas;

- revision of proper case management strategies.

The long-term intervention strategies to curb the cholera epidemic in the country must however involve provision of safe water and adequate sanitation primarily to the most affected areas and under-resourced communities. Provision of portable water and sanitation will be complemented by on-going health education and health promotion programmes in the country.