Chapter 1
The Transition in Context
by Christopher Saunders

The transition from apartheid to democracy, from white minority rule to liberation, is one of the most important turning points in South Africa's history. To establish what kind of turning point it was, and its significance, we must consider what came before and after it. We also have to look at why the change took place, and why it took the form it did. All these are very complex and contested issues. Assessing a turning point in the relatively recent past — in this case only a decade ago — presents a particular difficulty, for we are too close to it to know what its long-term significance will be. Nevertheless, it is possible to make a preliminary assessment of the causes, meaning and consequences of the transition from apartheid to a democratic order in South Africa.

What was the significance of the transition?

The document that perhaps best encapsulates the meaning of the transition is the Interim Constitution of 1993, which took effect at the time of the first democratic election on 27 April 1994. In its Postamble the Interim Constitution remembers "the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge". The new Constitution is presented as providing "a historic bridge". On the one side lies "the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice". On the other is "a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex". These words, although very brief, may encapsulate accurately the nature of the past and the possibilities of the future, but they do not explain why the transition from apartheid to democracy occurred.

The way the particular bridge of the Interim Constitution was built — first in the negotiation process begun at Kempton Park in December 1991 and then through the work of the Constitutional Assembly between 1994 and 1996 — is discussed in detail in Chapter 3. Though these formal negotiations lie at the heart of the process of change with which we are concerned, they are only part of what was a complex, multi-faceted transition. Much political violence accompanied the transition, though, some of it the result of deliberate destabilisation campaigns aimed at subverting the transition. However, the transition occurred relatively rapidly and without the racial civil war that most commentators in the 1980s believed was inevitable. The April 1994 election was an exciting and momentous event for most people in South Africa.

When the new Parliament met, it was no longer a place where white men, the occasional woman and, from 1984, some coloureds and Indians gathered; now for the first time it reflected the whole nation.

Because of its relatively peaceful nature, and because it took the country from one of the most hated systems of rule ever devised to a democratic order, the transition is frequently regarded as so remarkable, unexpected and successful as to warrant the term "miracle". There can be no doubt that the transition meant a dramatic and sweeping transformation. After centuries of ethnic and racial conflict, in the mid-1980s South Africa entered the most repressive phase of apartheid. This was a time characterised by the military occupation of townships, mass detentions, assassinations and
What were the causes of the transition?

No turning point of such magnitude can be explained by reference to a single cause. There is no doubt that remarkable personalities played key roles, chief among them Nelson Mandela himself, but no explanation that turns on personalities alone can be adequate. A purely structural explanation is also inadequate. Attempts at such explanations have been made; they emphasise things like the collapse of the economy in the late 1980s, or the increasing pressures exerted on the apartheid regime by the international community, or the impact of the winding-down of the Cold War from the mid-1980s and the collapse of communism in Eastern Europe in the last months of 1989. No army of liberation marched into Pretoria, but without the decades of armed struggle there would probably have been no transition.

If historians are pushed to establish a hierarchy of causes for the breakthrough to negotiations, most would probably place the mass uprising in the townships during the mid-1980s at the top of their list. It brought home to the government the impossibility of continuing to rule as before, provided the opportunity for Nelson Mandela to begin talks with the government, and led directly to the increased sanctions that helped put such pressure on the regime that it began to negotiate, at a time when the ending of the Cold War provided new opportunities for a breakthrough to a new order. Talks between people linked to the government and members of the ANC began to break down old enmities and establish trust. A combination of interconnected events in the late 1980s, some described in more detail in Chapter 2, provided the parties with new opportunities and possibilities, and helped persuade President F.W. de Klerk to begin formal negotiations.

Why those negotiations were successful is another question that can only be answered through a detailed examination of the events of the early 1990s. However, fear of failure — and the likely consequences became all too apparent in the middle months of 1992, after the negotiations had broken down temporarily — was a major consideration. Political violence helped push the negotiators towards agreement on contested issues. All preferred the compromises to the alternative of greater violence and economic collapse. The founding election of April 1994 was, for all its flaws, sufficiently inclusive to be accepted as legitimate by all major players.

What was the importance of events beyond South Africa’s borders?

The collapse of apartheid and the advent of democracy are often — wrongly — discussed in isolation from the global and African contexts. Without the
assistance that the frontline states gave the exiled liberation movements over the decades, there would have been no transition. While the democratic South Africa created in the early 1990s was largely a home-grown product, the wider context is essential to understanding its transition. That South Africa's de facto colony of Namibia became independent through a relatively peaceful process and emerged as a liberal democracy in March 1990 was an essential preliminary to the South African transition that followed.

The transition in South Africa can be viewed as the fourth and final wave of African decolonisation. The first, taking place mostly in the 1960s, had brought political independence to most of the countries of tropical Africa and the small Southern African countries of Botswana, Lesotho and Swaziland. With the second wave, independence came to Angola and Mozambique in 1975. The third meant independence for Zimbabwe in 1980 and Namibia a decade later. The South African case was different from all these. In other countries, the struggle had been against colonial rule, whereas in South Africa the contest was for the transfer of power from a white minority to an inclusive majority.

South Africa's formal status as a colony had ended with the grant of effective independence by Britain during the earlier part of the twentieth century. Colonial rule survived as white minority rule; the end of that system in 1994 can be seen as a form of decolonisation.

There are some who say that the South African case is an example of decolonisation taking the form of neo-colonialism — one elite surrendered power to another, with the incoming group agreeing to govern in a way acceptable to the outgoing one. In this view the post-apartheid government has been so constrained by the continuing legacies of apartheid rule and the power of global capitalism that it has been unable to pursue the radical agenda that would bring true freedom to the masses. From this perspective political emancipation was little more than a sham. The post-apartheid government did not attempt to change the economic system, but instead became, in the interests of promoting economic growth, even firmer advocates of liberal capitalism than their predecessors.

What was the nature of the negotiated settlement?

Because it was a negotiated settlement the transition inevitably involved a series of compromises. Those who handed over power insisted on some control over the new order — hence the constitutional principles, the provisions for a Government of National Unity and the “sunset” clauses ensuring continuity of personnel. A new, interim democratic constitution was ratified by the outgoing apartheid-era Parliament in December 1993. As in Britain, argues Daryl Glaser, the transition in South Africa “involved a surrender of exclusive political power by a domestic ruling class to its social subordinates, accompanied by an effort to protect social and economic privilege from the newly enfranchised”.

Such an evolutionary transition, based on compromise, represented for some a “selling-out” of the revolutionary cause for which the liberation struggle had been fought. They chose not to emphasise the miraculous aspects of the transition or to see it as bringing real freedom, but rather to play down the significance of this turning point and to stress the limitations of process and outcome. People who took this latter view included those who had hoped not only for an end to apartheid, but also for the overthrow of the capitalist system itself. With their expectations for revolutionary change dashed, they claimed that the negotiated settlement brought little more than superficial political change and did not substantially alter the lives of the poor. While the outcome did restore dignity to those who had previously been unable to vote, South African society remained one of the most unequal in the world. As the country celebrated ten years of “freedom”
How did South Africans respond to the negotiated settlement?

The immediate aftermath of the founding election was a time of euphoria about the success of the “miracle”. For those who wrote about the South African transition at that time, the negotiated political settlement was a triumph of democracy. With the National Party’s withdrawal from the Government of National Unity in mid-1996, it became easier to see that power had passed to the majority. The transition then increasingly began to be interpreted as involving essentially a transfer of power from white minority rule to black majority rule. For a number of black scholars the election of April 1994 represented not so much the triumph of democracy, or even emancipation from apartheid, but rather liberation in the sense of independence from settler rule. The logo of the Pan Africanist Congress explicitly linked South Africa to Ghana as the first country in tropical Africa to win independence in the 1960s and whose leaders had spoken of averting settler rule. Not many voted for the Pan Africanist Congress in the 1994 election, but many ANC supporters shared this interpretation, in which African decolonisation ended not with Namibia’s becoming independent in 1990, but with an ANC government taking office in South Africa in May 1994.

Had the transition been followed by civil strife or anarchy, it would be less easy to see it as a turning point. As it happened, however, the reconciliation policies of Nelson Mandela and his associates successfully defused both the political violence in KwaZulu-Natal and the threat from the white far-right. The outcome was a stable order that faced tremendous challenges, any the legacy of apartheid, but no serious threat from within the country. The Truth and Reconciliation Commission (TRC), set up by the post-apartheid government as a way to deal with the past, played a significant role in achieving this.

The Interim Constitution of 1993 spoke of “a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation”. It also said, “The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.” Therefore, the first democratic Parliament approved legislation that set up the TRC.

Archbishop Desmond Tutu was appointed Chair of the Commission by President Mandela, with Alex Bodaile as his deputy. In 1995 the Commission began its work, with victims testifying in public hearings and perpetrators applying for amnesty. After some 5 000 of the over 20 000 victims who came forward had testified in public, the Commission presented a five-volume Report to President Mandela in October 1998. It took longer than expected for the Commission’s amnesty committee to deal with the over 7 000 amnesty applications, and it was not until early 2003 that the final two volumes of the Commission’s Report were completed. Only then did the government take a decision on final reparation payments to victims.

There were numerous flaws in the TRC process. What the government paid as reparations fell far short of what the TRC had recommended. A number of high-profile perpetrators were given amnesty on the grounds that they had made full disclosure and that their acts had been politically motivated. However, many other perpetrators, and those who had given the orders, had not come forward. More people had died as a result of apartheid in the region than in South Africa itself, but much of what had gone on in other countries was not disclosed, for the military in particular did not cooperate in uncovering that truth. Nevertheless, for all its flaws, the TRC did uncover who had been responsible for many horrible deeds, and brought that horrific past to the surface of public discourse.

The extent to which the work of the TRC will promote national reconciliation in the long run remains to be seen. In this respect the transition remains incomplete. Ten years is too short a time for a democratic culture to take root, and the present crises of Zimbabwe and HIV/AIDS pose threats to the consolidation of the new democracy. The full story of this most recent turning point in South Africa’s history can only be told in the future.

References

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euphoria – a feeling of intense happiness
ubuntu – a spirit of fellowship and compassion, especially as associated with African society; (Xhosa and Zulu, literally humanity, goodness)
Chapter 2
Explaining the Miracle
by Max du Preez

More often than not, a group that has the monopoly of power in a country will only lose it through war or violent revolution. It is extremely rare in history to give up power voluntarily, for a group to negotiate itself out of power. Yet that was what happened between 1980 and 1994 in South Africa — the whites-only National Party had had a firm grip on political and military power since 1948 but made a deal with the black majority to establish a democracy and transfer power to the winner of the elections.

On 10 May 1994 Nelson Mandela stood on a stage in Pretoria declaring, “Free at last”. He had just been inaugurated as free South Africa’s first president. The same aircraft which had bombed his followers in neighbouring states did a fly-past to honour their new commander-in-chief. And next to the new president stood one of his deputy-presidents: F.W. de Klerk, leader of the National Party and former State President of apartheid South Africa.

What prepared the ground for the South African transition?

The world, South Africans included, called it a miracle. But what made that miracle possible? How did it happen that those who enjoyed power and privilege under apartheid negotiated it away?

Black South Africans’ resistance against apartheid was consistently quashed by the police, using wide-ranging security legislation. In March 1960 policemen killed 69 people and wounded 180 when they tried to stop a mass demonstration against the pass laws at Sharpeville. The massacre led to a hardening of attitudes on both sides. The government declared the African National Congress a banned organisation, and in the next few years imprisoned several senior ANC leaders on Robben Island. Leading members of the ANC and the South African Communist Party formed a guerrilla army which later became the ANC’s military wing, Umkhonto we Sizwe.

The white government felt secure because neighbouring Zimbabwe (then Rhodesia) was run by a white minority under Ian Smith, Mozambique and Angola were ruled by the Portuguese, and Namibia (then South West Africa) was firmly under South African control. However, after a coup d’état in Portugal in 1974, the Portuguese withdrew from Africa; Angola and Mozambique became independent under the leadership of the former liberation movements. In 1978 the Security Council of the United Nations adopted a resolution demanding Namibia’s independence, a resolution that gained increasing support over the years.

The resistance to apartheid simmered for a few years and burst into the open again on 16 June 1976 when the Soweto students demonstrated against Afrikaans as the medium of instruction in schools; the demonstrations escalated into an open rebellion. In the aftermath of the uprisings large numbers of young people left for neighbouring states to join the ANC in exile.

After a long and bloody war of liberation Zimbabwe became independent in 1980, with Robert Mugabe of the Zimbabwe African National Union (ZANU) as president. It was slowly becoming clear that white minority rule in South Africa could not last forever.

Prime Minister P.W. Botha soon came under strong pressure internally and externally to reform apartheid. His government’s response was to change the constitution to make provision for separate legislatures for coloureds (House of Representatives) and Indians (House of Delegates). These chambers existed alongside the white House of Assembly. Together, they became known as the Tri-cameral Parliament. P.W. Botha became State President, ruling over all three chambers. The continued political exclusion of black South Africans triggered massive resistance and led to the formation of the United Democratic Front (UDF) in 1983.

Between 1984 and 1987 there were almost daily confrontations between security forces and UDF supporters. The Botha government also unleashed clandestine units such as the police.
Why did sworn enemies agree to talk to one another?

It was around this time, most analysts agree, that the leadership on both sides started to realise that neither would be able to defeat the other militarily. The only other option was to negotiate. De Klerk and Mandela both indicate in their autobiographies that this realisation came in the mid-1980s, although Patti Waldmeier suggests that the military leaders of the ANC favoured a military solution until the late 1980s. Senior UDF leader, Mohammed Valli Moosa, told Waldmeier that the UDF had told the ANC leadership during this time that there was a stalemate.

In February 1986 the leader of the Official Opposition in the House of Assembly, Dr Frederik Van Zyl Slabbert, shocked the white establishment when he resigned from Parliament. He said that the country was being torn apart and that Parliament's reactions were irrelevant. A week later he was joined by the chairman of the Progressive Federal Party, Dr Alex Boraine.

To many activists in the UDF and the ANC, Slabbert's resignation suggested that there could be an alternative to a violent conflict between a white power bloc and the black majority. It seriously undermined the rigid distinction between “parliamentary politics” — meaning the Tripartite Parliament where all decisions were made — and “extra-parliamentary politics” — the political activities of the majority of South Africans.

Dissidents among the National Party's main constituency, the Afrikaners, started to voice their protests in the late 1980s. In July 1987 a group of 60 mainly Afrikaans opinion formers had a week-long meeting with the exiled ANC leadership in Dakar, Senegal. The Botha government reacted angrily, accusing the group of making common cause with “terrorists”. The country's Afrikaans newspapers and The Citizen attacked the group for legitimising the ANC.

The group said in an unpublished statement issued in Dakar after the talks had taken place.

*We share a common belief that serious discussions with the ANC must form part of the search for the resolution of conflict and the transition towards a peaceful and just future. We believe that as a result of our conference in Dakar, we have demonstrated that such discussions can take place and that they can be constructive. We hope that what began in Dakar*

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death squad at Vlakplas outside Pretoria and the military dirty tricks team, the Civil Co-operation Bureau (CCB). The country was on the brink of civil war.

In 1985 the National Party government came under such pressure that State President Botha announced that he was going to make a major declaration on a new way forward. The speech was advertised by the Ministry of Foreign Affairs as a crossing of the Rubicon; it was expected to announce an end to the pass laws and the release of Nelson Mandela. When Botha delivered the speech, however, it failed to live up to these high expectations. The disappointment led to a period of international sanctions and isolation that threatened to cripple the South African economy.

The Chase Manhattan Bank in the United States executed its decision, made two weeks earlier, to stop rolling over loans to South African borrowers; other major financial institutions followed suit. This led to a falling of the rand and a flight of capital from the country. In 1986 the United States, the Commonwealth and the European Community imposed stiff political, economic and financial sanctions. Apartheid South Africa stood virtually alone, and experienced its worst financial crisis in decades.
will continue inside and outside of South Africa and will eventually involve the South African government itself. In our discussions, we found that it was possible for South Africans, who are in many ways far apart, to have frank and cordial exchanges on crucial issues facing our country.

Graham Leach, a BBC journalist, said about the Dakar initiative at the time:

There was no major breakthrough towards peace; that had not been the object of the talks. But it was nevertheless a landmark. If one day the South African government does decide to negotiate with the ANC, it may only be possible because the Slabbert delegation, and others following, have paved the way. The mission to Dakar was the beginning of a process which will slowly make it acceptable and respectable for Afrikanders to talk to the ANC.8

Slabbert later wrote, “The fact that the meeting played a significant role to launch the politics of negotiations and to legitimise negotiations with the ANC internally, only dawned on them and on us much later”. One of the important things about the meeting was that it showed both the ANC and the Afrikanders that the stereotypes of each other were just that; it served to ease the prejudices that had been formed over the years.

The Dakar initiative was followed by several similar meetings between the ANC and other delegations from South Africa. Business leaders had more than one meeting, and progressive Stellenbosch students met the ANC in Maputo. The Institute for a Democratic Alternative in South African (IDASA) organised further meetings in Zimbabwe, Zambia, Germany, France and the United States. None of these meetings provoked the hysteria that Dakar had; in fact, they became quite a common part of the political landscape.

By 1988 a new progressive movement among Afrikanders was gaining ground. An anti-apartheid newspaper, Vyre Weekblad, was launched in 1988; it not only allowed Afrikaans-speaking readers access to the views of the black majority, but exposed apartheid's violent excesses, such as the existence of police and army death squads. An alternative Afrikaans music culture, which was overtly political and challenged apartheid and the power of the National Party government, gained popularity from 1989. The movement was referred to as the Volvry movement, after the name of their nationwide tour; it featured rock singers like Johannes Kerkorrel and Koos Kombuis. Prominent Afrikaans writers and academics voiced their support for the new dissident cultural movement.

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When did the negotiation process actually start?

While the government was condemning groups from inside South Africa for having talks with the external ANC leadership, elements within the government itself were beginning to establish contact with the liberation movement. It really started in November 1985 when the Minister of Justice, Kobie Coetsee, had a chance conversation with Winnie Mandela on a flight from Johannesburg to Cape Town. A few days later, Coetsee visited Nelson Mandela in a Cape Town hospital, where he was being treated for a health complaint. Early the next year Mandela was moved to his own “apartment” at Pollsmoor Prison, consisting of three adjoining prison cells, from where he could conduct “pre-negotiations negotiations” with the government.

Mandela met with Coetsee several times in 1986 and 1987. Then Coetsee appointed Niel Barnard and Fanie van der Merwe, the head of the National Intelligence Service and the Director-General of Prisons respectively, to carry on with the meetings. Barnard and Van der Merwe had regular meetings with Mandela between May 1988 and his release in 1990.

In December 1988 Mandela was transferred to a cottage in the grounds of Victor Verster prison near Paarl, with open telephone lines to his colleagues in Lusaka and elsewhere in South Africa. He was also allowed to meet with the political leadership of the UDF at his cottage. It was, in the words of Minister Coetsee, “a situation halfway between confinement and freedom”.

In March 1989 Mandela presented a memorandum to State President Botha, laying the foundation for negotiations. He said that both majority rule and peace were very important, and that they had to be achieved. The
I must point out that the move I have taken provides you with the opportunity to overcome the current deadlock, and to normalise the country’s political situation. I hope you will seize it without delay. I believe the overwhelming majority of South Africans, black and white, hope to see the ANC and the government working closely together to lay the foundations for a new era in our country, in which racial discrimination and prejudice, coercion and prejudice, coercion and confrontation, death and destruction will be forgotten.

Mandela made it clear that he made this move without consultation with the external ANC leadership. The very next month, however, the ANC committed itself to the same ideas and proposals through the Declaration of the OAU’s ad hoc committee on southern Africa. Known as the Harare Declaration and issued on 21 August 1989, it stated:

We believe that a conjuncture of circumstances exists which, if there is a demonstrable readiness on the part of the Pretoria regime to engage in negotiations genuinely and seriously, could create the possibility to end apartheid through negotiations.... We would therefore encourage the people of South Africa as part of their overall struggle to get together to negotiate an end to the apartheid system and agree on all the measures that are necessary to transform their country into a non-racial democracy.

On 5 July 1989 Nelson Mandela met with P.W. Botha at Tuynhuys, the presidential office in Cape Town, without the knowledge of the South African public or even most senior members of the National Party. They had tea together and had an informal chat about South African history. Mandela said later that he had realised that day that South Africa had reached a point of no return.

On 12 September the first official contact between the exiled ANC leadership and the National Party government took place. Two National Intelligence Agency officers and the ANC’s Thabo Mbeki and Jacob Zuma met secretly in Lausanne, Switzerland.

The key to the whole situation is a negotiated settlement, and a meeting between the government and the ANC will be the first major step towards lasting peace in the country, better relations with our neighbouring states, admission to the Organisation of African Unity, readmission to the United Nations and other world bodies, to international markets and improved international relations generally. An accord with the ANC, and the introduction of a non-racial society is the only way in which our rich and beautiful country will be saved from the stigma which repels the world.”

leaders of the liberation movement would never submit to conditions “which are essentially terms of surrender.” He went on to say:

Many see this document by Mandela as the actual beginning of the negotiations which eventually led to a negotiated settlement. He ended his notes by saying.
Events outside the control of politicians also played a role in changing the South African political landscape. On 18 January 1989, State President Botha suffered a stroke and decided to resign as leader of the National Party. On 2 February the party caucus chose F.W. de Klerk as its new leader. Although Botha made it clear that he had no plans to resign as State President, South Africans and the world knew that De Klerk would soon be the new head of state. He eventually became State President on 14 September 1989.

De Klerk wrote in his autobiography that he knew from the beginning of 1989 that he would have to put forward brave new initiatives “to liberate the Party from the corner into which it had been driven — or where we had landed through our own doing”. When he was chosen as party leader, he wrote, he told the caucus that “a quantum leap” would be needed — and someone shouted, “jump, F.W., jump!”

The first important decision the new State President had to make concerned a request for permission for a march through the streets of Cape Town by the mass democratic movement. Such marches and rallies were forbidden at the time. The request was brought by Anglican Archbishop Desmond Tutu. De Klerk came under pressure from Western governments and South African businessmen to allow the march as symbolic of his new conciliatory approach. De Klerk gave his permission and the peaceful march of tens of thousands of people quickly spread to Johannesburg, Pretoria and then throughout the country. Many of the placards read, “This is People’s Power!”, and that was indeed what it was — a national expression of protest against apartheid and political violence and of anticipation that a new era had dawned.

Many political analysts later agreed with Archbishop Tutu that these People’s Power marches kick-started the transformation process more than anything else, and that De Klerk had not bargained on them creating a new dynamic in the country. De Klerk says in his autobiography that this was not true, that the decision was made to allow marches and protests because they were needed for the kind of democratization the NP meant to introduce.

In November 1989 people’s power in another part of the world led to one of the most important international events since World War II — the fall of the Berlin Wall and with it the Soviet Bloc feared by the West for so long. The main reason given by successive National Party governments for banning the ANC — that it was a “pawn of international communism” — had now fallen away.

On 13 December 1989 the two men who were destined to lead South Africa to democracy — Nelson Mandela and F.W. de Klerk — met for the first time at Tuynhuys. It was a friendly meeting, according to the two men, but Mandela did give De Klerk forewarning that he found unacceptable the National Party’s plans for special rights for ethnic groups.

De Klerk had other pressures on him than simply to end apartheid. In November 1989 Captain Dirk Coetzee confessed that, as the commander of the South African Police death squad at Vlakplaas, he had ordered and committed several murders of political activists. By the end of that year there were also reports of a similar unit in the South African Defence Force (SADF), the Civil Co-operation Bureau, who had in September assassinated SWAPO member, Anton Lubowski. For decades, white South Africans had been told that apartheid was actually a moral and fair policy in which races could develop separately. Now, the violent side of the apartheid ideology was slowly being exposed. In January 1990 De Klerk appointed Mr Justice Louis Harms to head a commission of inquiry into state-sponsored violence.

What is the significance of 2 February 1990?

On 2 February 1990 De Klerk opened the new session of Parliament. It was expected that he would announce major reforms, but few expected him to go as far as he did. He announced the unbanning of the African National Congress, the South African Communist Party and the Pan Africanist Congress, the scrapping of the Separate Amenities Act, the lifting of
On the other hand, some analysts argue, the fact that de Klerk did not back down when P.W. Botha publicly distanced himself from the talks with the ANC and resigned from the party, or when the Afrikaner Weerstands beweging (AWB) threatened a white counter-revolution, strengthens his credentials as a reformist.

Mandela met de Klerk for the second time on 9 February 1990. Two days later he walked out of the gates of Victor Verster Prison, a free man. In the following weeks and months, the exiles from the ANC and PAC started returning home.

What is the Groote Schuur Minute and what did it accomplish?

However, a new scourge threatened to overwhelm the nation and sink the talks — politically-motivated violence, especially in the East Rand townships, the Vaal Triangle and what is now KwaZulu-Natal. On the surface it appeared that the conflict was between supporters of the ANC and Inkatha. However, the ANC maintained that a Third Force, a faceless group of state-sponsored agents provocateurs, fuelled the conflict. This charge was later verified by the findings of the Goldstone Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation and by evidence given to the Truth and Reconciliation Commission.

On 1 April 1990 the ANC suspended all talks with the government to protest the killing of 16 people in Sebokeng; talks eventually resumed. This pattern was repeated several times, but on each occasion Nelson Mandela and F.W. de Klerk would bring the two parties back to the negotiating table.

Then, on 2 May 1990, the ANC and the government met at Groote Schuur, the former official residence of South Africa’s prime ministers in Cape Town. The formal negotiations towards democracy in a unified South Africa had started.

The first days’ talks were exploratory and dealt with obstacles to negotiation. People on both sides were surprised that after so many decades of hostility they could talk to each other openly and straightforwardly, even share a few jokes. By the end of the third day they reached an agreement, called the Groote Schuur Minute. The ANC committed itself to a review of its armed struggle, and the government to

**agent provocateur, pl. agents provocateurs** — a person employed to associate with individuals or groups, usually those suspected of opposing the state, for the purpose of inciting them to commit acts that will make them liable for punishment; (French) literally, provoking or instigating agent
reviewing security legislation and the end of the state of emergency. A working group was appointed to consider amnesty for political offences and the further release of political prisoners.

The main achievement of the Groote Schuur meeting, however, was that it generated a groundswell of hope and optimism in South Africa and in the international community that a solution would be possible. The only detractors came from the far-right-wing Conservative Party who said the National Party was selling out the whites, and from the PAC and AZAPO who said the ANC was selling out black South Africans.

De Klerk’s position was supported by the once very powerful Afrikaner Broederbond, by the Afrikaans newspapers and by the biggest Afrikaans church, the NG Kerk. However, in February 1992 De Klerk was shocked when his party lost the formerly safe seat of Potchefstroom to the Conservative Party in a by-election. De Klerk immediately decided to call a referendum for white voters on the reforms he had announced on 2 February 1990. He said he could not continue with negotiations without support for his policies.

In the weeks before the 17 March 1992 referendum, De Klerk and his colleagues held many meetings throughout the country. He promised white voters that he would not conclude any agreement unless it contained assurances that minorities would be protected from domination and made provision for power sharing.

A surprising 69% of white voters voted “Yes” to the question, “Do you support the continuation of the reform process that the State President started on 2 February 1990 and which is aimed at a new constitution through negotiation?” This result was a huge relief to both De Klerk and Mandela.

What were the final stages of the negotiation process?

The stop-and-start negotiations came to an abrupt halt on 17 June 1992 when more than 40 people were massacred at Boipatong. The ANC accused the government of complicity and broke off all negotiations. The ANC’s secretary general, Cyril Ramaphosa, and the NP’s new chief negotiator, Roelf Meyer, were given the task of forming a new channel of communication between the two parties. Following a series of informal meetings between these two men, the breakthrough came at the end of September 1992 with the signing of a Record of Understanding. Meyer explained the turnaround in events in an interview with the author.

The Record of Understanding that came about after three months of one-on-one negotiations between the government and the ANC was actually the birth of the new constitution and democracy in South Africa. The ANC had moved away from their demand for a quick fix and accepted a two-phase process: first there would be an interim constitution agreed to by all negotiating parties and an election with that as a basis; then the elected assembly would draft the final constitution for the country.

We on the government side made a paradigm shift by dropping the demand for minority rights. Up to that point, our emphasis was on the protection of group and minority rights in the constitution, but now we accepted the safeguarding of individual rights and the protection of equal rights for all. Now we and the ANC could start talking the same language.

The negotiations progressed more successfully during 1993, surviving the assassination of Communist Party leader Chris Hani by right-wingers on 10 April and an AWB attack on the negotiating chambers on 25 June. On 18 November 1993 a plenary session of the Multi-Party Negotiating Process ratified an Interim Constitution. In January 1994 a Transitional Executive Council was established to work with the government on matters concerning the transition. South Africa was well on its way to the first open election on 27 April 1994.
shouted down by people who chanted, "We want war!"

In March, Viljoen had a chance to test his military machine. Bophuthatswana leader Lucas Mangope told Viljoen that Umkhonto we Sizwe was planning to overthrow his homeland, and asked him for help. Viljoen quietly moved 3 000 of his men, mostly farmers who were commando members, to Mmbatho airport and issued them with weapons.

However, Viljoen had not bargained on the unruly men of the extremist AWB of Eugene Terre'Blanche entering the fray. Mangope had asked that the AWB not be involved because they would be unacceptable to his people, and Viljoen requested Terre'Blanche to withdraw. Terre'Blanche refused, and his men drove through the homeland wildly shooting at people. Some were shot by Bophuthatswana soldiers, and the sight of three wounded AWB men pleading for their lives on live television and then shot in cold blood had a powerful impact on the country's whites.

Viljoen knew the foray was a complete disaster and ordered his men to go home. He said,

*But the effect it had on me was very important. I suddenly realised that it would be very difficult to conduct a complicated military operation under these fluid circumstances without plunging the country into whole-scale war. I wasn't prepared to do that. The AWB factor and their indiscipline meant that I would not be able to absolutely control our forces. I knew for certain that the political strategy was the only one left.... In that sense Mmbatho was a very important turning point.*

Viljoen phoned two senior members of his party, brothers Pieter and Corné Mulder, from Mmbatho and told them they should register as a political party for the 27 April elections.

Days after Viljoen and his colleagues registered under the name Freedom Front, the Inkatha Freedom Party of Mangosuthu Buthelezi also decided to register and take part in the elections. The threat of war and large-scale confrontation was averted, and the threat of white right-wing resistance was minimised.

On 27 April 1994, South Africa went to the polls for two days of peaceful elections. The miracle did happen.

References
7 Max du Preez has been a journalist for thirty years, first for Die Burger and Beeld, then for the Financial Mail, Sunday Times and Business Day. In 1988 he founded the anti-apartheid newspaper, Vye Weekblad. It was closed down when he lost a defamation suit. He joined the SABC and launched programmes such as the Special Report on the Truth Commission and Special Assignment. Presently, he is a columnist for the Independent Newspapers Group and the Sunday newspaper, Rapport. His memoirs, False Native — Memories of a Renegade Reporter, were published in 2003.

How did the Afrikaner right wing become part of the political process?

Trouble was brewing on the right. In March 1993 some 15 000 Afrikaner farmers attended a meeting to express their fear and anger at the direction the negotiations had taken. They appointed a Directorate of Generals to lead them — General Constand Viljoen, former head of the SADF, and retired generals Tienie Groenewald, Kobus Visser and Dries Bischoff.

Within two months, Viljoen and his generals organised and addressed 155 clandestine meetings countrywide. "We had to mobilise the Afrikaners psychologically, start our propaganda campaigns and stimulate thinking on alternatives to the ANC/NP model," Viljoen told the author in an interview. "But as importantly, we had to build a military capability." Viljoen says he mobilised between 50 000 and 60 000 men countrywide, and assumed that a large number of soldiers and policemen would join him when the time came. "I didn't go from unit to unit recruiting them", he said, "but most officers had a special bond with me. I knew I wouldn't get the support of all the SADF units, but I knew which ones I would get. I had enough men and small arms, but I also needed armoured cars and heavier weapons. I knew I could rely on certain SADF units to supply that."

Viljoen says he knew that if he had to go over to military action, there would have been a bloodbath in South Africa. However, that was not his intention (see box above). In order to send a signal to the ANC and the government that they should be taken seriously, in late 1993 Viljoen's men sabotaged infrastructure such as electricity pylons. The ANC did take notice. Working through Viljoen's twin brother, theologian Professor Abraham Viljoen, they set up a meeting between the Directorate of Generals and Nelson Mandela and Joe Modise, commander of Umkhonto we Sizwe. The meeting took place in August in Mandela's Johannesburg home. A follow-up meeting between Viljoen and the leader of the Transvaal Agricultural Union, Dries Bruwer, and the ANC's Thabo Mbeki and Jacob Zuma was held in Pretoria two weeks later. Viljoen insisted that the ANC incorporate the principle of self-determination in the interim constitution. Mbeki suggested that the April elections be used as a test of support for the idea of an Afrikaner volkstaat.

But Viljoen was becoming unpopular among his own constituency. At a huge meeting of right wingers in Pretoria in January 1994, Viljoen was
Chapter 3
The South African Constitution: Birth Certificate of a Nation
by Hassen Ebrahim

The adoption of our Constitution in 1996 was one of the major turning points in the history of our country. This chapter will seek to explain how we came to adopt this great document that is respected throughout the world as one of the most advanced of its kind. Most importantly, it will try to convey the essence of our Constitution and why it truly is the birth certificate of our young nation.

What is the historical background to our Constitution?

Although South Africa’s Constitution was drafted between May 1994 and October 1996, the ideas contained in it are not new. Many of its provisions are the realisation of years of struggle and speak to the very essence of who we are as South Africans.

Our constitutional history spans nine decades between two major milestones. In a sense, both were peace treaties; one ended a conflict and one gave birth to a new constitutional order. The first milestone was the 1902 Treaty of Vereeniging, which ended the Anglo-Boer War and laid the basis for the adoption of the country’s first constitution in 1910. That constitution was drafted by an unrepresentative convention that expressly excluded the voice of the majority. The second milestone was the 1993 Interim Constitution, which has also been described by some as a peace treaty. The Interim Constitution essentially signalled the end of a long history of conflict and provided the basis for our new Constitution, drafted by a Constitutional Assembly representative of the majority of people in the country.

The signing of South Africa’s final Constitution in 1996 was a milestone in our history. The Constitution was the birth certificate of the South African nation. It is one of the most advanced in the world, establishing a constitutional democracy in which a finely-crafted Bill of Rights enjoys pride of place. It is the product of negotiations between political parties that were at war with each other. It constitutes a political agreement between mandated leaders about what the most basic law in the land should be. In a sense, the Constitution represents a discovery of nationhood because it reflects the soul of the nation.

What is a Constitution?

At its very core, a constitution is little more than a set of rules by which a country is governed. More directly, a constitution is about power — what power is to be wielded, who is to wield it, and over whom it is to be wielded in the governance of a country. However, when defining this power, we should also define its limitations and who may need special protection.

This rather simple definition of a constitution suggests that it has two distinct audiences — internal and external to the country. For the internal audience, a constitution represents a compact between those who wield power and those who are subjected to such power. It is in this regard that the rights and duties of citizens (both individually and collectively), as well as the checks and balances against those who wield power, become essential components of a constitution. For external audiences, constitutions define the essential characteristics of a country’s sovereignty, including its national territory, citizenship and the interaction between it and those outside its borders.

Another important dimension of constitutions is the circumstances under which they are adopted. New constitutions generally are a product of turmoil, upheavals and even revolutions. They are an expression of radical changes in society. This becomes clear when we look at the history of most constitutional processes over the past hundred years. They have been characterised mainly by struggles against racial domination, colonialism, abuse of human rights and racial, religious and ethnic prejudices. Many of these struggles also revolved around access to land, natural resources and cheap labour. It is hardly surprising, therefore, that the most prominent features of these constitutions have been self-determination, national democracy, universal franchise, the rule of law, separation of powers, regular elections and basic human rights.

Most importantly, a constitution must be a reflection of a people's history, fears, concerns, aspirations, vision and, indeed, the soul of that nation. While a constitution reflects the will of the majority, it must equally take into account the fears and concerns of minorities. It must provide a common framework within which people of diverse or even opposed views, beliefs and cultures can interact without having to resort to force of arms. What is perhaps more important is that our Constitution limits the government’s ability to pass legislation that in any way compromises a citizen’s basic rights.

**compact** — a formal agreement or contract between two or more individuals or groups

**universal franchise** — the right of all adults to vote in political elections
What historical factors shaped our Constitution?

To understand the essence of our Constitution, one is obliged to journey through history and discover those common values that shaped it. The Constitution also provides the best explanation of who we are as South Africans. This short essay allows us space to deal with only some of these factors.

The first clause of our Constitution boldly declares the founding values of our new nation — the recognition of human dignity and the achievement of human rights and freedoms. It also declares a commitment to non-racialism, non-sexism, the supremacy of the Constitution as the highest law, the right to vote, and a multi-party system of government that ensures accountability, responsiveness and openness. While this may appear to be common sense and somewhat basic today, the history of our country from 1652 until 1994 suggests differently, in fact so differently that the drafters of our Constitution felt that they had to place this commitment in the very first clause.

From the advent of colonialism right through to the development of the apartheid state, the total disregard and violation of human rights was so severe that it stripped away the very dignity of people. This was justified by an ideology that believed that all people were not equal. This made it possible for black people to be regarded as less than human. It even meant that the Boers who resisted British rule could be placed in concentration camps long before the Germans adopted this practice during World War 2. The pain of this experience and the genocide that it brought about is so deeply etched in our psyche as a people that we have committed ourselves as a new nation to live by different values.

Officially, colonialism came to an end with the Anglo-Boer War, when the Boers fought the British for political control over South Africa. The 1902 Treaty of Vereeniging, which brought an end to this war, was followed by the eventual adoption of South Africa’s first constitution on 31 May 1910. This constitution formally denied the majority of the people political expression. It also set in motion a process through which the black majority was restricted to 13% of the country’s land.

The politically-devastating effect of these developments spurred the emergence of the African National Congress (ANC) on 8 January 1912. This saw the rise of African nationalism and resistance to the new political dispensation. Perhaps more importantly, these developments also brought about the first demands for a constitution to be drafted by representatives of all South Africa’s peoples. It took nearly a hundred years for this demand to be realised.

This resistance found expression in an alternative vision — a vision of a democracy and in particular a vision of an emerging constitutional dispensation. It is hardly surprising, therefore, that in 1955 the Freedom Charter was adopted at the Congress of the People. This document was arrived at through popular participation and reflected the vision of South Africa’s majority.

In May 1957 ANC President-General Albert Luthuli made an impassioned appeal to the government for a National Convention. Its function would be to allow the people’s representatives to discuss the conflict in the country and to find solutions. This appeal was ignored.

On 16 December 1960, a Consultative Conference was held in Soweto. Forty African leaders met with liberal and progressive whites. The Conference rejected the establishment of a republic and made a call to the African leadership to attend an All-in Conference. On 25 March 1961, the All-in Conference met and called for the negotiation of a democratic dispensation. At this conference, Mandela’s call for a National Convention of elected representatives to determine a new non-racial democratic constitution for South Africa was adopted.

Despite the banning of all organisations representing the majority and a protracted armed struggle, the ANC in 1989 lobbied the Organisation of African Unity (OAU) to adopt the now famous Harare Declaration that set out the basis for the transition of South Africa to democracy. Central to this strategy was the demand that a representative and elected body should be mandated to draft South Africa’s constitution.

This history profoundly influenced the new Constitution in several ways. It formed the basis of the argument that no government or constitution could insist claim the authority of all its people unless it was based on the express
The most apt description of our Constitution can be found in the Postamble of the Interim Constitution of 1993: it describes this document as:

“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 co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.”

How was our Constitution negotiated?

The general election in April 1994 was the product of a negotiated package of agreements to bring an end to a conflict. This election also ushered in a new process of negotiation — the negotiation of the final constitution. The population of South Africa voted to provide the newly-elected leaders with two separate and distinct mandates — to govern the new democratic society and to draft the final constitution. This election produced 400 political leaders in the National Assembly and 90 in the Senate. In terms of Section 69(1) of the Interim Constitution, a joint sitting of these bodies formed the Constitutional Assembly.

In drafting the final constitution, the Constitutional Assembly had to work within political parameters. These were the requirement of a two-thirds majority for adoption of the text, compliance of the text with 34 constitutional principles agreed to in the Interim Constitution, and the adoption of a new constitution within a period of two years.

Our Constitution is a celebration of the creativity of the South African people. Few countries have been as successful as we in negotiating a political settlement and producing a constitution. This is especially true when one considers the fact that it was a negotiation between parties that held opposing ideological views.

This negotiation went on to produce a constitutional framework within which previously warring parties could co-exist to form a vibrant democracy. From the smouldering ashes of a divided society, the basis of a new South Africa was produced, which is why this Constitution is referred to as the birth certificate of a nation.

The experience revealed the determination of South Africans not to succumb in times of adversity. When political violence and civil strife most threatened the prospect of peace and democracy, parties were able to strike agreements that proved the prophets of doom wrong so that, despite the adversity, it was possible to finalise one of the most advanced constitutions in the world with the greatest possible public participation. Fundamental to the success of the negotiation process was its inclusiveness, which clothed the Constitution with the legitimacy it needed as supreme law. The process was designed to give parties the confidence that they could achieve their objectives through negotiation, and that their success was not entirely dependent on their voting strength.

To produce a “win-win” formula, it was important to recognise and respect the diversity of the interests involved. While not all parties supported each of the provisions, the rejection of certain unacceptable provisions was not sufficient to warrant the rejection of the entire Constitution. Differences that were previously responsible for blood-letting became an asset, and differing political, social, cultural and religious interests were allowed to co-exist. This diversity makes the Constitution the vibrant document it is, for it bears the imprint of all parties and the interest of the constituencies they represented.

What is the importance of the Constitution for our country?

Reflecting the soul of our nation

The Constitution is the birth certificate of a new South African nation, yet the issues it deals with are not new. It is the single most important document in
the lives of South Africa's people, yet it is not perfect or free of controversy. It is a triumph over adversity, yet it cautions us not to be boastful and repeat the mistakes of the past. Indeed, our Constitution does represent the growing soul of a new nation. The Constitution was negotiated mainly by seven political parties, but while it is the product of an agreement between political parties it also represents the interests of the majority of South Africans.

Evidence of the fears and aspirations of various sectors in society abound in the Constitution. Some of these relate to the different forms of discrimination people experienced in the past, the need for affirmative action, the importance of equality, the desire for self-determination, the importance of effective checks and balances, the need to ensure political control over the security forces, and the need for accountability, transparency and respect for cultural diversity.

Of particular significance is the recognition of the role of civil society and the protection granted to individuals and cultural and religious communities. An entire chapter of the Constitution has been dedicated to institutions supporting constitutional democracy. These institutions include the Human Rights Commission and Gender Equality Commission, the Public Protector, the Auditor General and the Commission for the Promotion and Protection of Cultural and Religious Communities. A strong Constitutional Court protects the interests of individuals and communities.

The vibrancy of different interests and ideas can best be seen in the Bill of Rights. The interests of the ANC and its constituency in the reconstruction and transformation of society are clearly reflected in the catalogue of socio-economic rights. The Democratic Party's traditional stance on individual rights such as freedom of expression is also present. The PAC's principled positions on fundamental rights and the rights of those detained and arrested also have a special place. The interests of the National Party were secured by tempering the clauses on property, labour relations, education and culture. As mentioned above, the influence exerted by civil society, especially religious, human rights, business, labour and women's groupings, is clear in the drafting of the various clauses.

A vision for a better future

The constitution of a country is a very important document, for it represents the values and aspirations of the nation. The South African Constitution represents the end of an era and the dawn of a better future. Until 1994, South Africa's Parliament was sovereign, which meant that it was entitled to pass virtually any law it wished. This changed only when the new dispensation became a constitutional democracy.

The Constitution is the supreme law of the land, the yardstick by which all other laws are judged. It sets out the rules by which government is obliged to function and how it will be accountable to the ordinary people who elect it. Any citizen who is aggrieved by any law or any other aspect of the conduct of government is entitled to seek the assistance of one of several institutions, including the Constitutional Court, that have been established specifically to safeguard his or her interests.

Our Constitution is one of the most advanced in the world, with a Bill of Rights second to none. As such, it enables South Africans to create and enjoy one of the most vibrant democracies in the world. However, like any other law, the Constitution is only as good as its citizens allow it to be. The Constitution does no more than set out rights, the rules by which government is run, the structures of government, and the parameters within which laws can be made and government conducted. No matter how dynamic any law may be, unless the government is able to implement and enforce the law it will lose its value. Similarly, no matter how wonderful the Constitution may be, unless it is respected by all — government and citizens alike — it will not be of much value. Laws do not make a better society; people do. Laws can only be of assistance in empowering people to achieve their aspirations.

While a law depends primarily on government to implement and enforce it, the Constitution requires everyone's undivided respect. Democracy thrives on the existence of different ideological, religious or cultural values. No matter what these differences may be, it is critical that the people of South Africa unite around a common respect for the Constitution. This does not in the least suggest that the Constitution is perfect, for it is not. There may well arise a need for improvement and a need to incorporate new values and new rights. The Constitution makes provision for a regular review, and its continuous improvement must be encouraged.

Despite the wonder of our Constitution, it would be foolhardy to become complacent. Like any other organism, the Constitution requires constant nourishment, which can only come from the respect of every one of its citizens. It is vital that we always be vigilant, to ensure that the values contained in the Constitution are upheld. In this regard, the roles of the judiciary, civil society and the electorate are of crucial importance, for unless they carry out their responsibilities scrupulously, the very essence of democracy will be eroded. This need imposes an added obligation on both government and civil society to ensure the continuous education of the public. Ordinary citizens need to be empowered to understand what their rights are and how to access the institutions capable of providing redress to legitimate grievances.
A legitimate constitutional order

Despite the history of conflict in South Africa, the process of constitution making has ensured that the current constitutional order has remained above party political differences. The legitimacy of the order has been placed beyond question or doubt. Hence, despite the robustness of the current political contestation and debate, the legitimacy of the Constitution has never been questioned by any political party or entity of significance.

However, the real litmus test of legitimacy lies in those cases where our Courts are able to reinforce the basic values enshrined in the Constitution and to interpret it in a manner that is seen to reflect the interests of the poor and disadvantaged, even if it is against the interests of the powerful. This was proved, for example, in the case of Alexkor Ltd v Richtersveld Community and Others (14 October 2003, CCT19/03). The people of this poor and disadvantaged community claimed the natural resources and land owned by a diamond-mining company, Alexkor Ltd. The government was the sole owner of the company. The Constitutional Court found in favour of the community’s complaint that they had been dispossessed of the land as a result of racially discriminatory laws and practices. This decision meant that the community had the right to title and the profit from the diamonds mined from the land.

Respect for the constitutional order and the rule of law

According to the Judge President of the Constitutional Court, Arthur Chaskalson, political leaders have generally accepted constitutionalism and they have accepted the decisions of the court, even where it has gone against them. This, of course, has not gone untested. The Judiciary has been prepared to publicly reprimand politicians who they believed made statements that called the integrity of the Judiciary into question.

The celebrated case of the President and Others v South African Rugby Football Union and Others (CCT 16/98, 10 September 1998) illustrates this. This judgement, concerning the basis on which the courts may review the
exercise of presidential powers, touched on the circumstances in which the President could be called upon to testify in a court of law. Former President Nelson Mandela took a deliberate decision to testify and not call on the privileges bestowed on his office regarding appearances in court. Mandela went against the advice of his advisors; he felt it was necessary to appear in court to set an example regarding respect for the rule of law and our courts.

Another issue the Court was required to address was a challenge issued to several judges to recuse themselves on the strength of a belief that they enjoyed a particular relationship with the President. In dismissing the argument, the Court deplored the tendency of those who disagreed with legal decisions to attack the integrity of judicial officers rather than to examine the reasons for their judgements. Decisions of our courts are not immune from criticism, but political discontent or dissatisfaction with the outcome was regarded as no justification for recklessly attacking the integrity of judicial officers. The Judiciary confirmed that they would resist all manner of pressure, regardless of its source. If they deviate from this principle, they argued, the independence of the Judiciary would be undermined.

Domination of the executive

In the case of the South African National Defence Force Union (SANDF) v. The Minister of Defence (CCT 27/98, 26 May 1998), it had to be decided whether it was constitutional to statutorily prohibit members of the armed forces from participating in public protest action and from joining trade unions. The Court found this part of the Act unconstitutional.

In 1999, President Mandela referred a Bill which was passed by Parliament to the Constitutional Court to decide on its constitutionality (Ex parte the President: in re constitutionality of the Liquor Bill, CCT 12/99, 11 November 1999). This was the first time that the President invoked his power under Section 79 to refer a Bill to the Court for such a decision.

In a case involving socio-economic rights, the Western Cape provincial authorities and the local municipal authority voluntarily undertook to provide squatters of a particular community with toilets and rain-proofing material so that their beds would stay dry during winter. This offer was made at the start of a broader case dealing with constitutional rights to housing and shelter. By October 2000, all that had materialised was one tap, a number of meetings and fruitless correspondence. The matter was brought before the Constitutional Court on an urgent basis. The Court severely hastened the government for not keeping its promises. The Court found that the South African state had a duty to show particular regard for people in distress, such as those involved in this case. The Judge President argued that, even though problems could arise in honouring an undertaking, there was a duty to solve these problems.

recuse — to excuse oneself because of possible bias, conflict of interest or lack of impartiality (used especially of a judge)
This is a particularly important case as it also looks at whether and under what circumstances the Court will intervene in official policy to make socio-economic rights a reality. Recently, Judge Vivienne Niles-Duner of the Durban High Court had the opportunity to deal with the question of government officials ignoring orders of court. The Judge complained that she was tired of the problem and intended to order the officials responsible for ignoring the court order to pay the legal costs out of their own pockets rather than with state funds.

What are our challenges for the future?

Our Constitution and democracy are young. They have faced some important challenges and will continue to do so in the future. The value of the Constitution will be measured by how these challenges are met. Some of the challenges which will no doubt be considered over time are discussed here.

The balance of power between the Executive, Legislature and Judiciary is a challenge that all democracies, young and old, face on an ongoing basis. More often than not, the challenge is to ensure that the Executive does not wield its enormous authority without being balanced by the other branches, particularly the Judiciary.

This is a particularly important challenge in South Africa, where the Executive is required to transform society and implement policies that will result in a better life for all. Unrestrained power and authority may be seen as necessary for the Executive to meet the demands made on it by the populace. This is a challenge that has already resulted in several controversies relating to the government policies on growth and economic development, particularly that of privatisation. This challenge will no doubt remain well after the country has made the transition from a developing country to a developed one.

As has been noted by W.J. Breytenbach, while South Africa's constitutional institutions work quite well, especially on a national level, the country still faces enormous capacity problems in some of its provinces and at local level. He concludes that,

A significant feature of state institutions in South Africa today is the centralisation of power through the Presidency. If this is aimed at better service delivery as may be witnessed in some of the provinces then this trend is positive, but if it erodes accountability and transforms the ruling party into a 'one-

opinion party', then this is decidedly negative. Indications about increasing inequality fall in the same category."

While South Africa may take pride in the constitutional framework that it has established and the fact that its policies are based on international best practices, our country has to deal with two very important challenges — developing the capacity to translate these wonderful ideas and policies into practice, and ensuring that the country is prosperous and poverty is eradicated. The point is: what would the value of the Constitution be if it did not mean a better life for all?

Critical to both these challenges is the quality of our future leaders — the young, our learners of today. A critical requirement is the quality of skills we produce and the values we are able to instil.

Conclusion

In the few years since the promulgation of the Constitution, a large number of important challenges have been brought before the Constitutional Court. While it is still too early to pass judgement on the vibrancy of the Constitution, there is little doubt that it has become part of our daily diet of public debate and discussion. Perhaps more exciting is the fact that, despite these vigorous debates, there has been little argument — if any — related to the legitimacy of the Constitution itself.

These successes, however, provide little cause for complacency. The South African public, and particularly civil society, has come to understand the essence and value of a participatory democracy and are beginning to demand just that. South African democracy is young and the process of transformation it has embarked upon is difficult. We are thus confronted with exciting challenges for both government and civil society. Government needs to ensure greater interaction between departments of government and the public. It must also decide how to prioritise available resources to realise a true and lasting participatory democracy. At the same time, civil society needs to ensure that it actively mobilises the public around matters that defend the gains made and that nurture democracy. In the final analysis, it is the ordinary citizen's respect for democracy and the Constitution that provides the best defence we can possibly have.

References

13 Hassen Ebrahim qualified as a lawyer in 1986 and entered private practice. In April 1994 he was elected as a member of the Gauteng Provincial Legislature and later became the Executive Director of the Constitutional Assembly. After the Constitution was promulgated he was appointed to the Executive Management within the Department of Justice and Constitutional Development. Currently he is the Managing Director of Information Management Systems in the Department of Justice and Constitutional Development.
14 Much of the research for this contribution has been drawn from the author's book, Soul of a Nation — Constitution-making in South Africa. Cape Town: Oxford University Press, 1998.
Chapter 4
The Fruits of Freedom
by Eddy Maloka

The first ten years of South Africa’s democracy brought dramatic and rapid change. South Africa is respected as an example of an inspiring transition from the oppression of apartheid to the freedom of democracy. The transition, however, also unleashed hope, and with hope came new expectations. Even after a decade of freedom, some of these have not been met. The end of this first decade of freedom presents an ideal opportunity to take stock of the progress South Africa has made as well as the challenges the country still faces.

The transition in South Africa over the last decade has included changes in the economy, government, agriculture, media, criminal justice system, delivery of critical services such as water and health care, race relations, institutions of the state, education system, big business and even sport, as well as in the thinking and beliefs of ordinary people. This chapter will examine and describe the changes that have occurred in the country’s economy, in the way the country is organised politically, and in the way social development has unfolded.

What has been the nature of transformation?

With the adoption of the Interim Constitution in November 1993, South Africa shifted towards the construction of a new political, social and economic order. The transition involved political freedom for the black majority who had been subjected first to colonial oppression and then, from 1948, to apartheid. At the same time, the transition was also about ridding South Africa of an authoritarian system of government and building a democratic system. There is also a third dimension of the post-apartheid transition — it was accompanied by opening the country’s economy to global competition and introducing policies consistent with the way in which capitalist economies are managed in other parts of the world.

“Transformation” became the response of the new government to this triple challenge. This involved changing the appearance, content, orientation and direction of the state, society and economy that the country had inherited from the apartheid period. Indeed, the 2000 United Nations Development Programme (UNDP) report on South Africa notes:

The central challenge is whether South Africa’s transformation will attain the objectives of human development for the majority of those who have been excluded from mainstream society. South Africa travelled a remarkable path in the 1990s. It avoided the civil war many had thought inevitable and, in six short years, established a new, democratic political order, buttressed by social and political stability. The rights and liberties enshrined in its Constitution have justifiably earned envy and admiration all over the world. Only a shadow of the legal edifice that supported the apartheid system remains."

This chapter will not try to cover all aspects of the political, social and economic changes that have taken place since 1994. The focus will be on the impact of these changes on ordinary people.

What kind of obstacles did South Africa face in 1994?

The South Africa inherited by the post-apartheid government in 1994 presented both challenges and opportunities. At the political level, the apartheid state was not simply designed to service and maintain the apartheid policies of exclusion, segregation and oppression of the majority. Its institutions and leaders were not representative of all South Africa’s people. The apartheid state machinery was incredibly cumbersome, stretching from the central government in Pretoria to black local authorities and the Bantustan system, as well as the various departments responsible for coloured and Indian “affairs”. Although certain parts of the state were efficient, this very decentralised system of government was very inefficient. Furthermore, the workings of the government were not at all transparent, with little room for freedom of information, a free press or open debate.

The provision of and access to basic social services were skewed against the black majority. The economy failed to provide for the basic needs of citizens; millions of people were not supplied with accessible water, adequate sanitation or electricity. The same can be said about the state of the educational and health systems on the eve of 1994. Jakes Gerwel wrote about the challenges that the new government had to address in the area of education:

The challenges of educational reconstruction are enormous, since effective schooling has virtually collapsed in large sectors of the system. While parts of the racially fragmented education system have highly developed infrastructure and quality
The health system was in no better shape. Besides the deep racial inequities in the quality and quantity of health care available and the crisis in the administration of health facilities and personnel, South African health care was focused on the provision of curative medicine and capital-intensive technology rather than preventive medicine and primary health care.

The economy was also in shambles, having experienced no or negative growth for several years prior to 1994. In the 1960s, South Africa’s economic growth had ranked as one of the best in the world, but in the early 1970s this growth started to decline, falling into a recession in the late 1980s and early 1990s. The problem of unemployment was beginning to manifest itself, and inflation ran into double figures for most of the early 1990s.

The apartheid system also gave rise to one of the most unequal societies in the world. Most studies of the extent of poverty in pre-1994 South Africa agree on one thing — the distribution of poverty in the country was primarily along racial lines, with women and people in the rural areas the most affected. The South Africa of 1994 was populated by what President Thabo Mbeki referred to as “two nations” — one white and privileged with a standard of living comparable to that of the industrialised countries, and the other black and poor with a standard of living comparable to that of developing countries.

Economist Sampie Terreblanche contends that the poorest 60% of the African population became 50% poorer between 1975 and 2000. While the formal economy employed 5.3 million Africans (34% of all Africans) in 1970, by 2000 only 4.7 million (14% of the total African population) were employed. These statistics clearly demonstrate that the direct actions of the government, as well as the changes in the economy towards less labour-intensive production and the general decline of the economy, resulted in increasingly dire levels of poverty among African South Africans.

Compounding all these problems were a number of threats posed to the transitional process. These threats fell into two categories. On the one hand, there were threats by white Afrikaner extremists who wanted a separate state for their volk. These extremists organised themselves into armed militia groups and were preparing for a civil war. On the other hand was a spate of violent clashes, particularly in parts of KwaZulu-Natal and the Witwatersrand. There were different explanations for this violence. Some attributed it to ethnic hatred among Africans; others blamed it on the work of a government-sponsored Third Force which was manipulating political differences in African communities with a view to destabilising the negotiations and the transition process itself.

Although these are only some of the obstacles post-apartheid South Africa faced, it is clear that the challenges were serious. There was certainly a need to change the laws, institutions and leadership of the government.

How did the new government plan to transform South Africa?

The political freedom that the 1994 elections brought to the majority of South Africans created hope and an expectation that life would improve for everyone. The changes intended to benefit ordinary South Africans after 1994 can be grouped into three categories — political, social and economic.

The new government came into office with a transformation plan which became known as the Reconstruction and Development Programme (RDP). This plan intended to:

- create 2.5 million jobs in ten years;
- build one million low-cost houses by the year 2000;
- provide electricity to 2.5 million homes by the year 2000;
- provide water and sewage systems to one million households;
- redistribute 30% of arable agricultural land to black farmers within five years;
- shift the health system from curative services to primary health care, with free medical services at state facilities for children under six years and for pregnant mothers;
- provide ten years of compulsory, free education as well as revising the curriculum, reducing class sizes and instituting adult basic education and training programmes; and
- democratise and restructure state institutions to reflect the racial, class and gender composition of society.

The RDP was translated into government policy in the form of a White Paper. Two years later, in 1996, the Growth, Employment and Redistribution (GEAR) programme document was released as a strategy to be employed in the implementation of the RDP goals. The essence of GEAR lay in an attempt to find a balance between meeting the basic needs of the people and finding the resources to finance those needs. The argument of the government was that one could not borrow money to meet the people’s basic needs because the country would be indebted and forced to adopt stringent measures that would bring hardship to the poor. The country, they argued, should generate enough resources by growing the economy and maximising the collection of tax revenue. However, the critics of the GEAR strategy argued that the plan was a departure from RDP goals and was going to cost the country a great deal.

What have been the fruits of freedom?

A democratic political framework

How has the country changed since 1994? One of the most important political changes in post-1994 South Africa was the translation of the 1993 Interim Constitution into a final Constitution, complete with a Bill of Rights that guarantees economic and social rights such as the provision of land, adequate housing, education and health facilities.

A framework was built within which the needs and interests of the majority are heeded, primarily through Parliament. The protection of the freedoms and rights of individuals can be guaranteed through mechanisms such as the Human Rights Commission and the Constitutional Court. At the same time, the move from an authoritarian to a democratic system involved the creation of opportunities for popular participation in the politics of the country. This included the lifting of restrictions on political parties and the freeing of political prisoners, as well as the chance for civil society organisations to become actively involved in mainstream political life.

Reconciliation and nation building

Reconciliation and nation building were also important parts of the transition. The new Constitution, one unifying flag and one national anthem became the building blocks of this important mission. Through sport, and in particular soccer and rugby, South Africans who had previously been divided by apartheid began to see themselves as one nation. When President Nelson Mandela and Francois Pienaar — the victorious white captain of the national rugby team — jointly lifted the World Cup in 1995, South Africans of all races celebrated a national victory. When asked about the event, Pienaar echoed the view of many South Africans, “Destiny brought South Africa the Rugby World Crown”.

The Truth and Reconciliation Commission (TRC) was established in 1996. The TRC revealed another side of life in South Africa. Radio and television stations broadcast the stories of abominable human rights abuses into households across the country. More dramatically, it gave all South Africans a very clear picture of the inhumane nature and extent of abuse under apartheid.

The TRC ensured that the conspiracy of silence and denial was forever broken. Suppressed truths about the past were brought into the open and acknowledged. At the same time, these hearings provided many victims with an opportunity to make their voices heard and to have their personal torment recognised. Undeniably a traumatic ordeal, the process proved a truly healing experience for many individuals. For a small minority of these victims, the truth about the suffering of their families came to the fore, while for others locating the bodies of loved ones finally allowed the ghosts of the past to be put to rest.

While many of those responsible for apartheid atrocities will never be identified, and while some have managed to evade sentence either through the amnesty process or failed prosecutions, the TRC did proclaim apartheid a crime against humanity. The TRC also recognised various structures of the apartheid state as the primary perpetrators of gross human rights violations. Furthermore, the controversial sector hearings of the TRC drove home the notion that responsibility for apartheid human rights violations rests with all those who contributed to the creation of an environment in which human rights were violated.

The TRC managed to assign some responsibility, determine some truths, and document a large part of the gross human rights violations that
existence of many South Africans ten years after the first non-racial elections is
told by the words of Emna Makhaza, who spoke at the 1998 Poverty Hearings:
I make seven children and nothing to depend on. I am making bricks and sometimes it
I can't do it. And I collect food and take it to people. I fetch wood and collect
I think and sell them. When I am without food then I go next door and if they
then the children will have empty stomachs and I cry. Yesterday I left with my
I sleep because they will ask me what we are going to eat. I am very thin
I bought a bucket of millet meal. I won't eat at all if I am thinking of the
I say: "Mom, you are going to die."


happened during apartheid. It also awarded reparations to some victims and
granted amnesty to some perpetrators. Most importantly, though, it
provided South Africans with an opportunity to reflect upon and engage with
the country’s past. In doing that, it opened the dialogue to finding ways to
face the future.

**Equity and social justice**

The contributions of the TRC and various other initiatives have allowed
South Africans to travel a considerable way down the road of reconciliation.
However, reconciliation and nation building had to be accompanied by
processes aimed at correcting racially-motivated imbalances of the past
through the application of the principles of equity and social justice. It is here
that social development becomes crucial.

Measures were put in place to address the backlog in the provision of
water, electricity, health care, housing, land, education and employment
opportunities for African, coloured and Indian South Africans. The two-
pronged strategy involved increasing the resources available for the
 provision of these services, while at the same time improving the efficiency
with which they were delivered. The responsibility to provide these services is
shared among the national, provincial and local spheres of government.

In its 2001 Mid-term Report to the Nation, the government summarised
the progress as follows:

- **Water:** A free basic water policy has been introduced. Since 1994, more
  than seven million South Africans have been given access to free basic
  water.
- **Electricity:** Since 1994, 3.48 million electricity grid connections have been
  made.
- **Land:** The pace of land restitution has dramatically increased. By the end
  of 2001 the number of claim settlements was 29 000.
- **Housing:** A total of 1.2 million houses have been built or are under
  construction.
- **Education:** In 2001, over 20% of the national budget was allocated to
  education. Combined with improved learning and teaching, one result is
  that the matriculation pass rate increased to 61% in 2000.
- **Social grants:** The number of people benefiting from the Child Support
  Grant went up from 28 000 in 1999 to more than 1 million in July 2000.
  About 65 000 more children gain access to the Grant every month.
  Government planned to register three million children for the Grant by
  2005, but thanks to more awareness and improved efforts by the public
  service it was estimated that this target would be met by the end of 2003.

There is no doubt that there has been a significant improvement in the living
conditions of many ordinary people; yet the recently-released 2001 Census
figures reveal that only 32% of the population have access to clean water in
their homes. 13% of the population have no toilet facilities, while 20% still
use wood for cooking. Only 64% live in formal dwellings. Moreover, 53% of
the South African population still accounts for less than 10% of total
consumption, while 15% of the South African population owns 85% of the
land. It is clear that inequality continues to exist in South Africa.

**Economic transformation**

As part of a larger strategy to reduce levels of poverty among previously-
disadvantaged South Africans, the government under President Mbeki
introduced black economic empowerment (BEE) policies. A central objective
of these policies was the deracialisation of business ownership and control.
This was to be achieved by increased access to capital for business
development, while ensuring that no discrimination occurred in financial
institutions. Emphasis was also placed on training, upgrading and real
participation in ownership. A number of organisations have been formed to
monitor and promote the process of black economic empowerment.

The success of the black economic empowerment and affirmative action
policies in reducing inequality in South Africa is still hotly debated. While
supporters of these policies proclaim that a great deal has been achieved,
critics argue that the policies have only served to enrich a very small
percentage of Africans and that there has been a negligible trickle-down
effect to the poorest of the poor.

While a growing body of research, notably by Natrass and Seekings,
contends that the racial composition of the middle class is rapidly
diversifying, there has not been sufficient economic transformation. The
2002 report of the Commission on Employment Equity revealed that, while
Africans constitute 77% of all employees, they constitute only 25% of top
management. According to Statistics SA, the average annual household
income for African South Africans was R28 816, while the average income
for white households was R134 489.28 Racial divisions aside, South Africa’s
GINI coefficient, which is a measure of the degree of inequality in a nation, is
one of the worst in the world, suggesting that while the rich may be
in terms of serious crime. It would developing a culture of respect for institutional framework have been just and support. Overcoming this large South African citizens and their
to triumph over lingering and subtle sectors of South African society stagnation, experiencing South African point of their racially homogeneous villages, gated security complexes and crime of the townships more poorer black urbanites, the majority e themselves voluntarily. A SA ve revealed that 26% of South act with members of other races on claim they do so only rarely.
Challenges facing South Africa

The biggest challenges facing South Africa appear to lie in the realm of economics. The most pressing economic challenges lie in combating poverty and inequality, rapidly increasing foreign and domestic investment, growing the economy to the 6% per annum target set by the GEAR strategy, and reducing unemployment.

The task of overcoming poverty and inequality and of attaining sustainable development is encumbered by a number of challenges that have arisen to confront the nation. The rapid influx of masses of largely uneducated, unskilled and poor rural South Africans into the country’s sprawling informal settlements around the major cities not only places a heavier burden on the infrastructure, but also on employed community members. The sad reality is that few of those in search of a livelihood will find one.

Uneven access to quality education presents yet another challenge to realising the human capital needs of a labour market that has little room for the under-educated and under-skilled. At the same time, the consequences of the rapid rate at which the environment is being destroyed are not adequately understood and may prove to be phenomenal.

Among the most ominous of challenges facing the nation is the problem of HIV/AIDS. A recent Department of Health report estimates that the number of HIV-positive people in South Africa grew by 12% between 2001 and 2002, and scientists warn that a cure is probably more than ten years away. The spread of HIV/AIDS impacts negatively on the country in many ways, ranging from increased pressure on government and individual family resources, to reduced work productivity, to potential prevention of investment and the threat of reversing the social advances made over the last decade.

On the eve of a decade of democracy, both state and private stakeholders have embarked on far-reaching prevention campaigns, and the government has agreed to make antiretrovirals available for the prevention of mother-to-child transmission of HIV/AIDS. Despite these measures, the HIV/AIDS epidemic will still have dire consequences for generations to come.

Conclusion

The above are among the major challenges South Africa will have to confront in the second decade of its freedom. The country’s success in facing these challenges will depend on a number of variables — the availability of resources, policy choices and constraints imposed on the country by global developments such as recession and war.

South Africa has made remarkable progress in the past decade, but efforts to improve the conditions of ordinary people have to continue.

References

16 Eddy Maloka obtained an MA at the Institute of Development Studies in Geneva and a PhD at the University of Cape Town (UCT). He has lectured in history at UCT, and taken up research fellowships at Princeton University, Brown University and the School of Oriental and African Studies. After 1994, Dr Maloka worked as a political adviser to the premiers of Gauteng and Mpumalanga provinces. In 1999 he was appointed Chief Executive Officer of the Africa Institute of South Africa. He also advises government on matters pertaining to African affairs. Dr Maloka is vice-president of Southern Africa of the African Association of Political Science, President of the South African Association of Political Studies, and a member of the Organisation for Social Science Research in Eastern and Southern Africa.


20 This and all other government reports mentioned in this chapter are listed in the Bibliography under Republic of South Africa. For the most part, they are taken from government web sites; useful web sites are listed in their own section of the Bibliography.
