NEPAD: role of lawyers in the African Renaissance*

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In a speech at the African Renaissance Festival on 27 March 1999, former President Nelson Mandela said:

'It gives me a sense of personal renewal to share in these African Renaissance celebrations. Too often we converge to discuss our differences, or to organise against one another. Today we celebrate what we share and we affirm our community of interests ... The African Renaissance campaign is also a call to action, to bring about that regeneration of our continent and its countries which liberation has made possible. ... [It] is a call to continue the fight for a better life for all. It is a call to join hands against crime, corruption and AIDS; a call to create jobs, to house those who are still homeless; to bring the sweet taste of clean water to more of our rural people beyond the numbers who gained access to it under apartheid; to bring communications and light to millions more ... Reconstruction brings even greater challenges than defeating apartheid. Out of the destructive divisions of the past we must build a new nation, united in its diversity, and which affirms the human dignity of every woman, man and child. To achieve these goals we must restore respect of human life, for one another and for the dignity of all.'

One of the most crucial pillars of the New Partnership for Africa's Development (NEPAD) has been the establishment of the Pan African Parliament. In his address at the inaugural sitting on 16 September 2004 in South Africa, President Thabo Mbeki said:

'The Pan-African Parliament creates a new space for us as Africans to forge a collective identity and to act together in our interests both within and between our countries, as well as in the many important global engagements with other regions and the rest of the world.

This Parliament has been established on the basis of the continental decisions expressed in the Constitutive Act of the African Union. It is also governed by its own Protocol.

Together these instruments make the unequivocal statement that the peoples of Africa yearn for peace, democracy and respect for human rights. They make the unequivocal statement that the peoples of Africa are determined to extricate themselves from poverty and underdevelopment.

They make the unequivocal statement that Africa must and will unite and that she will take her place among the continents as an equal partner in the human striving for a world of peace, freedom, respect for all human beings and a shared prosperity.

Our continent has decided where it wants to go. We are in the process of establishing the institutions that will help us to that destination. These include this Pan-African Parliament. We have elaborated and are working on the programmes we need to implement to achieve the goals we have set ourselves. These programmes include NEPAD.'

In the speeches of former President Mandela and President Mbeki over more than five decades, there is one recurring theme: there cannot be any development without a respect for human rights and the rule of law. Indeed, in Mr Mandela's statement from the dock at the opening of the defence case in the Rivonia trial on 20 April 1964 he said:

'The Magna Carta, the Petition of Rights, and the Bill of Rights are documents which are held in veneration by democrats throughout the world. I have great respect for British political institutions, and the country's system of justice. I regard the British Parliament as the most democratic institutions in the world, and the independence and impartiality of its judiciary never fail to arouse my admiration. The American Congress, that country's doctrine of separation of powers, as well as the independence of its judiciary, arouses in me similar sentiments. I have been influenced in my thinking by both West and East. All this has led me to feel that in my search for a political formula, I should be absolutely impartial and objective ...' These sentiments were expressed by Mr Mandela in his first court statement in 1962. When accused of inciting persons to strike illegally and of leaving the country without a valid passport, he said famously:

'[I] was developing the point that a judiciary controlled entirely by Whites and enforcing laws enacted by a White Parliament in which we have no representation, laws which in most cases are passed in the face of unanimous opposition from Africans, cannot be regarded as an impartial tribunal in a political trial when an African stands as an accused. The Universal Declaration of Human Rights provides that all men are equal before the law, and are entitled without any discrimination to equal protection of the law ... It is true that an African who is charged in a court of law enjoys, on the surface, the same rights and privileges as an accused who is White insofar as the conduct of his trial is concerned. He is governed by the same rules of procedure and evidence as applied to a white accused. But it would be grossly inaccurate to conclude from this fact that an African consequently enjoys equality before the law.

In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed, a Constitution which guarantees democratic rights to all sections of the population, the right to approach a court for protection or relief in the case of violation of rights guaranteed in the Constitution, and the right to take part in the administration of justice as judges, magistrates, attorneys-general, law advisers and similar positions. In the absence of these safeguards the phrase "equality before the law", insofar as it is intended to apply to us, is meaningless and misleading. All the rights and privileges to which I have referred are monopolised by Whites, and we enjoy none of them ...'

What is NEPAD?

NEPAD is a vision and strategy for Africa's renewal. The NEPAD Strategic Framework document arises from a mandate given to five States (Algeria, Egypt, Nigeria, Senegal and South Africa) by the Organisation of African Unity to develop and integrate a socio-economic development framework for Africa. NEPAD is designed to address the current challenges facing the African continent by radical intervention, spearheaded by African leaders, to develop a new vision for Africa's renewal.

NEPAD's primary objectives include the eradication of poverty, the placement of African countries, both individually and collectively, on a path of sustainable development, the halting of the marginalisation of Africa in the globalisation process, the enhancement of African integration into the global economy and the acceleration of the empowerment of women.

*Extracts from speech delivered at the IBA conference, Prague, on 28 September 2005.
The principles that underpin NEPAD include good governance as a basic requirement for peace, security and sustainable economic development, and African ownership and leadership, as well as broad and deep participation by all.

In an address to the Hellenic Foundation for European and Foreign Policy in Athens on 24 February 2005, President Mbeki highlighted the relationship that historians and scholars of ancient Greece and ancient Egypt shared for hundreds of years; a relationship noted in the writings of such great philosophers as Plato and Aristotle who made references to the great temples of learning in places such as Thebes and Memphis in ancient Egypt:

"History correctly credits and documents the enormous influence of Greek political development on Europe, wherefrom it spread widely and rapidly to many parts of the world, including Africa. ... While in modern times the nascent systems of democratic participation in Africa could not blossom due to the interventions of the brutal systems of slavery and colonialism, we are however happy that the democratic seeds planted by the ancestors of this ancient land have germinated and developed into sophisticated foundations of modern civilisations, which many of us throughout the world embrace.'

In the three decades before the end of the twentieth century, a number of interventions were made to address the poverty and underdevelopment of the African continent. These initiatives, even though well-intentioned, were designed by outsiders for Africans, with little input from Africans themselves. It was imperative that the African continent and its leadership had to address such important matters as democracy, peoples' and human rights, and other matters that are central to the attainment of a developed and prosperous Africa.

NEPAD was initiated by the African political leadership which made the following commitment:

'The New Partnership for Africa's Development is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and place their countries both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body politic. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.'

Through NEPAD numerous programmes have emerged paying special attention to communicable diseases such as TB, AIDS and malaria, and mobilizing for affordable drugs.

The African Renaissance: the role of lawyers

The Renaissance was the rich period of development that occurred in Europe at the end of the Middle Ages (between 1420-1600). The Renaissance was born out of a new, rapidly evolving civilisation. It implied the point of departure from the medieval to the modern world and, as such, laid the foundations for modern Western values and society, and for the influence of Humanism.

Indeed, the name 'renaissance', meaning 'rebirth', is given to a period of broad cultural achievement spanning three centuries.

The legal system (and we as lawyers) must respond to this 'rebirth.' Historically, lawyers were revered as community leaders, respected for their advice, and called to protect the rights of the accused and the downtrodden.

In spite of all their problems and public scandals, lawyers are still those people turn to in times of trouble – for advice, for advocacy, for public service, and in elected office. People still look to the legal profession for leadership.

Lawyers are, with judges and prosecutors, among the pillars upon which human rights and the rule of law rest. Lawyers play an essential role in protecting human rights and in guaranteeing that the right to a fair trial is respected by providing accused persons with a proper defence in court.

In protecting human rights, lawyers play a crucial role in protecting the right against arbitrary detentions by challenging arrests, for example, through presenting habeas corpus applications. Lawyers also advise and represent victims of human rights violations, in criminal proceedings against alleged perpetrators of such violations and in proceedings aimed at obtaining reparation. Lawyers are in the best position to challenge before courts national legislation that undermines basic principles of human rights and of the rule of law.

The right to be represented by a lawyer constitutes an integral part of the right to a fair trial as recognised by international law. It is lawyers who will challenge the courts' independence and impartiality and who will ensure that the defendants' rights are respected. (In this regard reference may be made to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990.)

For lawyers to carry out their functions and duties effectively, fearlessly, and in an independent manner, international law establishes certain safeguards aimed at ensuring the independence of individual lawyers as well as of the legal profession as a whole. The UN Basic Principles includes a set of provisions that establishes certain safeguards in this respect. These include a commitment on the part of governments not to intimidate, hinder, harass or interfere with lawyers, a commitment to freedom of movement, and a commitment to freedom from prosecution.

Lawyers also have certain basic professional duties, mostly related to their clients. Lawyers have an obligation towards their colleagues 'at all times to maintain the honour and dignity of their profession.' It is also incumbent upon lawyers, due to their fundamental role within the administration of justice, to uphold human rights and fundamental freedoms recognised by national and international law.

Lastly, lawyers must at all times act freely and diligently in accordance with the law and the recognised standards and ethics of the legal profession. Lawyers must not be identified with their clients' causes and have the right freely to express their opinions and to form associations without any interference. Lawyers must discharge their professional functions according to ethical standards and are accountable for violations of their rules of professional conduct.
Constitution was enacted, it signalled on the precepts of equality and freedom. As Justice Langa (now Chief Justice) remarked in S v Makwanyane 1995 (3) SA 391 (CC) at paras [220-225], it may well be that for millions in South Africa the effect of change has yet to be felt in the material sense, but for all of us, though, a framework has been created in which a new culture must take root and develop. The culture of respect for human life and dignity, based on the values reflected in the Constitution, has to be engendered, and the State must take the lead. The South African Constitution is described as a 'bridge' between the past and the future; from 'the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and the future founded on the recognition of human rights, ... for all South Africans'; and finally, it suggests a change in mental attitude from vengeance to an appreciation of the need for understanding, from retaliation to reparation and from victimisation to ubuntu. The concept is of some relevance to the values we need to uphold. It is a culture which recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community of which such person happens to be part. It also entails the converse. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. It is perhaps best illustrated in the following remarks in the judgment of the Court of Appeal of the Republic of Tanzania in DPP v Pete [1991] LRC (Const) 553 at 566b-a, per Nyalali CJ, Makame and Ramadhani JJA:

'The second important principle or characteristic to be borne in mind when interpreting our Constitution is a corollary of the reality of co-existence of the individual and society, and also the reality of co-existence of rights and duties of the individual on the one hand, and the collective of communitarian rights and duties of society on the other. In effect this co-existence means that the rights and duties of the individual are limited by the rights and duties of society, and vice versa.'

Announcement by Nedbank

Nedbank renews its sponsorship of the GCB's pupillage programme

Nedbank Professional together with the Nedbank Foundation is proud to renew their joint sponsorship of the Pupillage Training programme conducted by the General Council of the Bar of South Africa, to the value of R100 000.

Douw van der Walt, head of Bancassurance and Nedbank Professional, says, 'Our judicial system depends on good quality advocates upholding the laws of society. Not only will this investment contribute to ensuring a better future for us all but also no banking industry can function without a credible and fully functional judicial system.'

Currently, the GCB pupillage programme is the only recognised and structured source feeding new advocates into the profession. Nedbank views the pupillage training programme as an extremely important initiative in helping pupils prepare for the Bar examination and for future practice as advocates. It provides pupils with practical instruction and guidance by senior advocates and judges. 'As many pupils come from different backgrounds and universities, the programme aims to "level the playing field" for newly qualified advocates entering the profession,' says van der Walt.

Nedbank also recently sponsored the Pupillage Symposium hosted by the General Council of the Bar at the Sandton Convention Centre. The objectives of this symposium were to assess the pupillage and examination system, address its strengths and weaknesses, and with such input, decide upon ways to develop and improve the programme.

Judicial soul-searching required

'If the highest court in all matters is now to be the Constitutional Court, does that not require a reconsideration of its composition? I mentioned earlier contract, admiralty, insurance, copyright, pure economic loss, company law and insolvency. We need to ask, and perhaps this calls for a substantial amount of judicial soul-searching and honesty, whether the appropriate balance of expertise, experience and skill is located in what is to be our highest court. A fundamentally important aspect of South Africa's current economic success, the willingness of foreigners to trade with us to invest in this country, all things which are absolutely essential to the economic transformation which must lie at the heart of an ultimately successful South Africa for all its people, is a legal system that is independent, that is accessible, that is reliable and that is predictable, and that is able to cope with the demands placed upon it.'


As South African lawyers we have all been encouraged by the degree to which the South African government and the courts have promoted and respected the rule of law. This stands in stark contrast to what is happening in Zimbabwe.

It is trite that the rule of law is incapable of being promoted, protected or upheld if governments do not guarantee lawyers the fundamental protections and freedoms demanded by law. Lawyers in turn have corresponding duties towards civil society, the judiciary and government. Lawyers have an obligation to ensure the existence of a responsible, responsive and rigorous legislature, ensuring that it plays its proper role within the concept of the separation of powers. Bars and law societies have a duty (heightened in societies traditionally wracked by abuse, deprivation and domination) to review and comment on draft legislation so as to ensure legality and constitutionality.

In conclusion, unless we as lawyers play the role expected of us, the African continent has little prospect of succeeding to realise the dream of the African 'Renaissance.'