



THE BLACK SASH

NATIONAL CONFERENCE 1991

PRESIDENTIAL ADDRESS

The theme for this our 1991 Black Sash National Conference is **RECONSTRUCTION**. We have chosen to focus on reconstruction because we believe that this country is entering a phase of reconstruction, and that there is a lot of work to be done. During the next three days of our conference we will be looking at the work of the Black Sash with a particular view to ensuring that we make a contribution to the positive reconstruction of South Africa. It has been pointed out to me that the term reconstruction could be misleading, because it could imply that we wish to reconstruct our country as in the past, which is the last thing that we as an organisation would want to do. What I believe the Black Sash would understand as reconstruction is the restructuring of our entire society from an undemocratic, unaccountable, unjust, authoritarian, patriarchal, fragmented and racially-obsessed country to a single nation, underpinned by legislation which guarantees civil rights and socio-economic justice, and built on principles of democracy, inclusiveness, accountability and openness.

The task of the reconstruction of this nation is an enormous and challenging one, and I believe that we are in a very important phase in our history. **WHAT** we do in this phase of transformation, and **THE PROCESS** by which it is achieved will set the pattern for the future. If we do not break away now from the negative patterns of the past, we will drag them into the future and find ourselves in a post-apartheid South Africa not much improved over the present.

In this address I will look at a few of the issues and tasks that lie ahead of us in the process of reconstruction, and some of the constraints and realities.

DISMANTLING APARTHEID

It is just 13 months since the Nationalist Party government in South Africa sent out clear signals to its citizens and the world that it intended to make a break with the apartheid past. By then the system of apartheid was in a state of collapse and under great pressure from both inside and outside of the country.

Most of the world has demanded that apartheid go because it is a deliberately planned, coldly evil system designed to secure the power and privilege of the few, mainly white, citizens at the expense of the subjugation and impoverishment of the majority of citizens who are black.

Much of the world thinks that apartheid is already dead because some civil and political rights have been restored and some discriminatory legislation has already been abolished. The process of dismantling apartheid has indeed begun and there is promise of some of the fundamental legislation being done away with this year, such as the Population Registration Act, Group Areas Act and the Land Acts.

However, the bulk of apartheid legislation remains in place, including the labyrinthine, racially-based system of "Own Affairs" government, and with it 13 separate legislative "parliaments", 15 departments of education, 18 separate health departments, 17 administrations dealing with pensions, as well as numerous "own affairs" administrations for cultural and religious affairs, community development and housing, rent control and squatter removal amongst others. The fragmentation and duplication inherent in this system of administration is inefficient, illogical, wasteful and confusing.

There seems to be no clarity on what the government intends to do about the "Own Affairs" system, although there is a commitment by President de Klerk to the "serious need for fundamental rationalisation" and the need for "interim arrangements" for problems arising from the fragmentation of administration. Finance Minister du Plessis recently said in parliament that the government needed to look at the duplication of structures in health, education and welfare. And yet, in Government briefing sessions both Minister of National Education Louis Pienaar and Minister of Education and Training, Stoffel van der Merwe gave the strongest indication that the education system could only be radically changed when a new constitution is drawn up.

We cannot wait for the conclusion of constitutional negotiations for this multiplicity of race-based administrations to be reorganised into single government departments. This task is urgent, and needs to become clear policy with legislation to back it up.

We do not underestimate the task of restructuring and rationalising a huge bureaucracy with a vested interest in retaining their jobs and the status quo. Last year 750 209 people were employed by the central government and the provincial administrations, while about a third of South Africa's economically active whites are in the public sector. The willingness, ability and desire of the existing civil service to adapt and cope with the fundamental changes required could be one of the real limits to reconstruction.

We all know that apartheid and its effects will be with us for many generations to come because it is a system that has been put into place over many decades and has penetrated the fabric of our lives and has penetrated our thinking. The task is not only to dismantle the legislation and the institutions that give them effect, but more importantly to fashion new attitudes especially in those who created and sustained our apartheid past so that we no longer see ourselves in separate little ethnic boxes, but rather as one united nation.

OUR VIOLENT SOCIETY

The mood of euphoria following President de Klerk's February 2nd speech and the release of Nelson Mandela was soon tempered by harsh reality.

"The liberalisation of the political process upon which the government embarked in February was followed by an unprecedented upsurge in political violence in various parts of the country. By the end of June the death toll in political conflict since the beginning of the year had reached 1591, which was more than the figure of 1403 for the whole of 1989. The total number of

fatalities in political violence since its outbreak in September 1984...was in the region of 8000..by September 1990" (Race Relations Survey 1989/90).

We should not have been surprised or dismayed. The roots of the violence lie deep in our society with its long history of using violence and repression as a means of asserting authority and resolving conflict. We must understand the causes.

The government that gave birth to apartheid and the system of apartheid that we have lived under for the past 40 years has been a violent one. It violated people's basic rights to a share in the governance and resources of their land. It carried out acts of violence in the form of pass law arrests, forced removals and squatter demolitions. The State restricted, banned, detained, tortured, jailed and eliminated those who resisted its rule. It invented the notion of "the total onslaught" as an attempt to justify the acts of war and terror that were carried out (and are still being carried out) against its own citizens. It allowed its Civil Cooperation Bureau to act beyond the law, and has not sought to punish those who were part of the elimination of political rivals. In the process it violated both the victims and the perpetrators and warped some of the nation's minds.

The recent upsurge of political violence stems partly from conflict between political rivals fighting for power and control. It also stems from poor socio-economic conditions and the quest for access to scarce and precious resources by individuals and groups struggling to survive. Political intolerance and violence is NOT acceptable and MUST be condemned. Its roots must be understood and solutions found to the causes. We will be hearing reports on the violence and repression of 1990 from Sash monitors from around the country, and looking at ways in which we might address it.

MAKING A CONSTITUTION

South Africa has embarked on a political process of negotiating its way from the "old South Africa" to the "new South Africa". Signal in that process will be the negotiating and drawing up of a new constitution. On Saturday afternoon we will be examining constitution-making and a Bill of Rights and deciding what we feel is an appropriate mechanism for achieving them.

New constitutions offer us the opportunity to redefine what sort of nation we wish to be and the rules and structures by which we wish to be governed. New constitutions are mostly made when a country needs to make a clean break with the past, such as after a war or revolution. As the ruling Nationalist Party government has not been defeated in a war or revolution, we are in an interesting situation. The slate has not been wiped clean, the Nationalist Party government still holds power. We need to remember that all parties enter the process with a history - the whites with a history of domination, and the blacks with a history of subjugation. It is important that the history and realities of all parties be recognised and understood in order for the process of negotiation to move forward and for some settlement to be reached. This will call for a good deal of compromise from all.

There is broad agreement that the process of arriving at a new constitution is as important as the document itself, and that as

widely inclusive a process as possible is critical if the constitution is to enjoy legitimacy and long-term efficacy. So far the Government has engaged with the ANC and with other groups in behind-the-scene discussions, but little has filtered down to the grassroots. This is cause for great concern. We do not want to repeat the mistakes of the past - of little coteries of the elite making decisions for the rest without consulting them; of top-down rule, held in place by coercion or worse, force, because the decision-makers are out of touch with the realities on the ground. It is important for the whole population to make a constructive and supportive contribution to the constitution-making process.

Democratic consultation with the grass roots in the constitution-making process will be a time-consuming process. Herein lies a very real tension. While the system of apartheid is being destroyed, a vacuum is being created, which is causing great confusion, anxiety and uncertainty. There is a need to replace the old structures with new ones as quickly as possible. What happens, for instance in the interim to local governments, many of whom are in a state of total collapse? Just how will the different levels of government in this new South Africa be structured, and what will their powers be?

During the period of writing this paper, my question about local government was answered. In Steven Friedman's column in the Weekly Mail of 15 -21 February, we are told that the government plans to pass a law that would allow racial local authorities to be dissolved and replaced by negotiated new local governments. It is a form of "local option" with a difference, in that it is seen as an interim measure until a uniform non-racial system is negotiated nationally. The Government is keen to see cities negotiate these arrangements - it has offered to fund them if they do. It would appear that the plan has not been negotiated with the resistance movements, or anyone else. I must add my loud support to Steven Friedmans comments:

"However keen the Government may be to concede local power, it has gone about introducing change in the same way it used to do when it wanted to hang onto power.

It has decided how change should happen and, in time-honoured fashion, has drafted a law setting out how the voteless can exercise power. The Government did have another option: it could have invited resistance movements to negotiate the details of interim local government arrangements and then enforced the agreement.....

There is little chance that resistance movements will try to make arrangements stick unless they have taken responsibility for them - and they wont do that unless they have negotiated them."

The pattern that is developing is cause for alarm. The apparent lack of consultation with interest groups, and the lack of clear communication with the public via the media does not bode well for the future. Add to this the fact that amongst the majority of the people of South Africa there naturally exists a deep-seated degree of uncertainty and mistrust about the good faith of the Government. This is very disappointing given the model of consultation that took place around the amended Labour Relations Act. The government would appear to be playing the same old high-handed, authoritarian game. Is that really what we want to take into the future with us?

I believe that if a multi-party conference is to take place, one of the main issues to be discussed is to reach agreement on PROCESS: HOW are arrangements for interim administration and government arrived at which have the support of the public ?

In this climate of top-down, government by decree, it is very difficult to feel that as a citizen you have a role to play in determining the political future of the country, especially when you are not represented in that government. However, I do believe that

one of the important changes that needs to take place in peoples' minds is their attitude toward government. Under a new constitution, which will hopefully have full and broad support, government must be seen as answerable to all of the people. This can only be ensured by a vigorous and engaged electorate which demands that government be democratic, open and accountable. For so long most South Africans have been passive to the violations of democratic practices at all levels of government. We have accepted authoritarianism as Government's right. Our passivity has granted it that right.

MAKING A BILL OF RIGHTS

Within this process of constitution-making an important element is the defining of a Bill of Rights. Because South Africans have never been protected by a Bill of Rights, many do not know what it means to have a constitutionally entrenched Bill of Rights, that establishes the idea of people having rights and of people being equal. It seems clear that the new South Africa will require a justiciable Bill of Rights (i.e. it is enforceable through the courts) along the lines of the UN Declaration of Human rights.

The rights that are to be included in a Bill of Rights for South Africa is currently a matter for vigorous debate. The debate lies around whether the Bill of Rights is seen as an instrument to protect existing rights (including the right to private property and "group" rights), rather than to promote significant social change. Some would see a Bill of Rights "as a major instrument to ensure a rapid, orderly and irreversible elimination of the great inequalities and injustices left behind by apartheid", and would thus see that a Bill of Rights should be centred around affirmative action. There is a suspicion by the mass of people that the objective of the current call for a Bill of Rights by those in power is primarily *"to protect the existing and unjustly acquired rights of the racist minority rather than to advance the legitimate claims of the oppressed majority."* (Albie Sachs)

At our 1990 National Conference we agreed that: "The Black Sash remains committed to the development of a human rights culture in South Africa, recognising that civil and political, socio-economic and developmental and environmental rights are inextricably linked. It was agreed that this commitment would form the broad framework within which all Black Sash work would be undertaken."

"The great majority of South Africans have in reality never enjoyed either first, second or third generation rights. Their franchise rights have been restricted or non-existent, so the achievement of first generation rights is fundamental to the establishment of democracy and the overcoming of national oppression. But for the vote to have meaning, for the rule of law to have content, the vote must be the instrument of second and third generation rights." (Albie Sachs)

BELIEF IN THE LAW AND IN THE JUDICIAL PROCESS

Another major task which we face is the restoration of the belief in the law and in the judicial process. The judicial process is seen as, and is, a white one: the parliament that has made the laws has largely been white, all magistrates (144) and judges in South Africa (excluding the homelands) who preside in the courts that interpret and pass judgement on the transgressors of these laws are white, about 88% of the prosecutors and 95% of the legal professionals working for the department of Justice are white. (1989/90 Race Relations Survey)

Imposed onto this judicial system and other law enforcement systems such as the police and the administrative courts (i.e. pass courts) has been the duty of enforcing apartheid and security legislation and the emergency regulations. These laws have systematically punished people who opposed the state, and have violated basic human rights. Public law in South Africa has been tainted by apartheid.

Small wonder that the courts and the law are not trusted and that whole system has been seen as brutal, repressive and corrupt; as a punisher and not as a protector of the people and as a tool of the ruling party.

What can be done to restore belief in the law and justice ?

Firstly, all laws that are made must be just and must be made by a democratically elected government. Laws (such as the Security Legislation) that are violations of basic human rights and must go.

Secondly, the law must become sensitive to the fact that we live in Africa and that the majority of our population is African, with its own customs, language and culture. The functioning of the courts and the composition of the courts needs to be South Africanised. It is important that we strive toward a judiciary and legal system that reflects both the race and gender composition of the country.

Thirdly the law must be made accessible to all. We welcome the setting up of small claims courts, and the setting up of a public defender system for people who cannot afford lawyers' fees in criminal cases. A very exciting development, and one in which the Sash is involved is the growth of a para-legal movement. Our Advice Offices are now actively involved in the training of para-legals who offer to communities their first access to the law.

Forthly, the police and all allied law enforcement forces must be retrained to be the impartial, fair protectors of the people that they should ideally be.

RE-ORDERING PRIORITIES

We drag into the future an appalling legacy of the securing of privilege for the few who were white by the denying of the material and political rights of the majority of citizens who were black. Dealing in our advice offices and in the field with the poor and dispossessed, we in the Black Sash have come to understand that political power without access to resources and economic power has little meaning. That removing race from the

statute books, giving every person the vote, and then relying on market forces to provide, can only go so far in redressing the maldistribution of resources that gives South Africa the dubious distinction of being high on list of the world's inequality league.

I would hope that we are all acutely aware that this country needs to rapidly deploy resources to meet not only the basic needs of the majority of its citizens, but also to redress some of the enormous imbalances which exist between the various race groups.

While redistribution does have to take place, we have to realise that our economic resources are not unlimited. South Africa is only a semi-developed country. To illustrate, our GNP per capita is US\$2290, while that of the United States is US\$20 000 and that of Australia is US\$12 340. We also have to contend with an economy that is growing slowly and a population that is growing rapidly. This places an even greater strain on our resources, particularly our public resources. By our own doing we have limited the development of our own human resources. We now need urgently to invest in the development of those human resources.

Of particular concern is the state of education which has been in a deep crisis for some years. The implications for South Africa's economic development of a grossly underskilled and unemployable workforce are profound. The implications for the school-leaving youth (50% of SA's population are under 18) are worse. It is thought that to bring parity to spending on education will take 50% of the national budget. Clearly impossible given the other contending national needs. Some private funds are being made available, such as from the Independent Development Trust. A fundamental rethink on education is required, with the critical involvement of all concerned parties in the redefining and implementation of solutions.

Little has changed since February 2nd, 1980 for those who sit in our Advice Office queues. In fact life has become worse and the queues lengthen, as the recession bites deeper, and the impoverished and unemployed come to seek help in obtaining every last cent owing to them.

State pensions are sometimes key to the survival of families. For many households in the rural areas, state pensions are the only source of income. During 1980 our Advice Offices organised a campaign around the improvement in the delivery of state pensions. They met with some success, and in the process of collecting and analysing the data, realised that it was important for us to start channelling our energies into looking ahead and making a contribution toward a future welfare policy. We will be examining this issue on Saturday morning, and will continue to gather and analyse information so that we can identify areas of most need, to be fed in where most appropriate.

ACCESS TO LAND

"Within living memory approximately three and a half million South Africans were removed from where they were living to another place in the pursuit of apartheid ideology.

For more than thirty years the Black Sash has worked against, and written extensively on, the removals programme of the South African government and has joined with the churches and human rights organisations in opposition to the Group Areas Act, the

Land Acts and the systematic dispossession of black South Africans. (Sheena Duncan, 1980 Narrative Report of the Advice Office Trust)

The Land Acts of 1913 and 1936 and the Group Areas Act are due to be abolished in 1991 (which makes it quite extraordinary that 43 Group Areas were declared after President de Klerk announced the intention of scrapping the Group Areas Act in April). The Land Acts have created a situation in our country where Africans (who constitute 75% of the population) may own land only in the bantustans and whites (who constitute 13% of the population) may own land in the remaining 87% of South Africa.

Whites, coloureds and indians own property by means of title deeds. In most instances black property rights are not reflected in legal documents or title deeds. This does not mean that blacks have no property rights, it means that the State has prohibited them from having such documents. Even in the Homelands recognised rights to land are not registered on title deeds. The land is held in trust by the State on their behalf. One in every five South Africans is homeless and has no rights whether of lease or ownership to occupy land anywhere at all.

Doing away with this legislation entails more than the mere repeal of discriminatory legislation. It implies far reaching changes in our systems of land tenure and the control of land usage.

The formulation of a coherent land policy is critical. This policy would have to be seen in the larger urban and rural development framework and would have to recognise these (amongst others) contending claims on land:

- those who hold title to land
- those who are settled on land and don't hold legal title to it
- those who are landless and homeless and are seeking land to settle on, whether urban or rural
- those who are seeking restitution of the land from which they were forcibly removed.

"It is a matter of urgency that the process of developing a new legal framework be opened up to those with a direct interest and that the state draw on the expertise and knowledge of practitioners who have worked in the minefield area of black land rights for years. This is necessary to minimise the potential damage to existing rights and settlements of people should the Acts simply be repealed in a vacuum." (Aninka Claassens)

It is also a matter of urgency that while the process of formulating land policy is underway, the State take no action to erode the supply of land that would satisfy the various claimants.

Here I am thinking in particular of State and para-statal land in the cities that could house the urban homeless, and the State land in the rural areas, particularly those from which communities were forcibly removed.

Land is a finite resource - we cannot manufacture any more of it. Land houses and feeds the population, provides us with water resources, contains our mineral wealth, and is something to which people are deeply attached because it gives them a sense of belonging, a sense of place.

RECONSTRUCTION

During the course of our conference we will focus on issues that we believe important for the Black Sash to put its energies and resources into. In some of our smaller regions the membership is fully engaged on the ground and in keeping the Advice Office and service side of our work functioning. In the larger regions our membership will be able to undertake the advocacy and lobbying for those principles we wish to take into a future South Africa. We have a precious resource in the Black Sash: women who care about justice for all, and want to do something to attain this dream.

I would like to conclude where I began: The task of reconstructing South Africa into a single nation, underpinned by legislation that guarantees civil rights and socio-economic justice, and built on principles of democracy inclusiveness, accountability and openness is an enormous, challenging and exciting one. None of these ideals have yet been attained, and these notions must be promoted. We must work alongside all South Africans in putting in place the building blocks that will form the united, just proud, peaceful nation that we can and will become. There is an enormous amount of work to do and there is no time to waste. We must succeed.

Jenny de Tolly,
Cape Town.
28 February, 1991.