

# Editorial

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South Africa – like many other countries on the African continent – is grappling with the deepening of its hard-won democracy. At the same time many other African countries are also taking great strides in moving from authoritarianism towards democratic statehood.

But, as this edition of *Law, Democracy and Development* makes clear, democracy is a complex and contested concept and cannot merely be equated with the holding of regular elections. Many important and powerful actors (inside and outside a country) may influence the trajectory of that country's move towards democracy and towards the deepening of democracy in that state. While civil society groups, an independent and impartial judiciary and other independent bodies safeguarding democracy are essential for the establishment and blossoming of democracy in any given country, international institutions such as the UN-sponsored human rights treaty bodies can also play an important role in holding states accountable.

What is of critical importance is that newly emerging democratic states are not only supported but are also held accountable for their actions to ensure that they do not slide back into authoritarianism and that corruption and nepotism do not eat away at the fabric of society. Strong civil society participation and activism locally and internationally will often help in this regard.

It is against this background that the interesting mix of articles in this edition of *Law Democracy and Development* should be read. While the various authors deal with very different aspects of democracy, constitutionalism and the enforcement of social and economic rights, one can deduce that without eternal vigilance from all sectors of society, even states with a good democratic track record and strong constitutional institutions run the risk of backsliding into authoritarianism and disrespect for the basic rights of citizens.

**Patrick Bond** and **Jackie Dugard** consider South Africa's retail water policy and delivery system through the dual lens of the court case *Mazibuko & Others v City of Johannesburg & Others* (the Phiri water case, heard in the Johannesburg High Court from 3-5 December 2007) and a recent (2007) hydropolitical analysis by the country's leading water authority, Mike Muller. Together they raise crucial debates around the first democratic government's success in delivering water to people on low incomes. Several policy and practical issues deserve special scrutiny: the implications of pre-paid water meters and shallow sanitation for access and administrative justice, especially in cases of water emergency and chronic poverty; the origins and sufficiency of Free Basic Water (FBW) as well as the non-affordability of water beyond the current FBW allocation for poor households; and the politics of local and national state-society relations in a context of transnational corpo-

rations, multilateral financial institutions and market-oriented state policies. The authors' bias is towards unveiling power relations that maintain poor people in water poverty, notwithstanding 'developmental' rhetoric

**Lukas Muntingh** reveals that, South Africa ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1998 and that its Initial Report, which was due a year later, was submitted six years later, in 2005, and assessed by the UN Committee against Torture in November 2006. The Initial Report was incomplete, deviated from the guidelines and dealt superficially with obligations under CAT. In response to the Initial Report, six civil society organisations made written and oral submissions to the UN Committee against Torture during its 37<sup>th</sup> Session. This enabled the Committee to obtain a more informed view of steps taken, or not taken, by South Africa to give effect to its obligations under CAT. Many of the concerns raised by the civil society organisations found their way into the Committee's Concluding Remarks on the Initial Report. The overall impression remains that the South African government has to date not regarded its obligations under CAT as a priority.

**Melvin Mbao** and **G.G Komboni** critique the legal regime and institutional arrangements designed to promote good government and to combat corruption and maladministration in Botswana, a country widely acclaimed as Africa's success story. Using internationally accepted benchmarks on good governance and combating corruption, the article seeks to critically evaluate Botswana's record on these issues. It concludes that although Botswana has a relatively good record on good governance and in controlling the scourge of corruption, these achievements should not lull the country into a sense of complacency.

**Marius Smit** is concerned with bureaucracy and the role of school governing bodies. Following the first democratic election in 1994 and the establishment of a constitutional democracy South African society has been undergoing a fundamental transformation. In education, democratisation has been formalised with the redistribution and extension of power to local school governing bodies the removal of centralised control over certain aspects of educational decision-making. However, a number of bureaucratic actions and incorrect administrative decisions by education administrators have led to legal disputes that indicate a disregard for, or misunderstanding of the democratic values and principles that are necessary to promote effectiveness and efficiency in education. The article investigates manifestations of such controversial bureaucratic actions causing legal disputes, in the light of the democratic requirements for participatory school governance, with the purpose of establishing legal principles underpinning participatory democracy and efficient education, to which administrators should adhere.

**André Mbata Mabgu** and **Mpariseni Budeli** write on the trajectory of the Democratic Republic of the Congo (DRC) which – moving from a colonial to an independent to an oppressive state before finally emerging into democracy in 2006 – resembles that of many African states. Lessons from the DRC elections for democratic consolidation and state reconstruction may therefore be

considered illuminating, reflective of the post-colonial African experience with constitutionalism and democracy. The article concludes that, despite some shortcomings, the elections were particularly peaceful, thus disappointing many prophets of doom. After decades of authoritarianism and violent conflicts this is an achievement that should be celebrated across the continent and by those who assisted in the process, including the international community. The message from the DRC is also encouraging for the proponents of an African renaissance that cannot materialise without democracy, the rule of law and development.

**Andriette Hendrina Dekker** argues that the protection provided by social security is not only necessary to achieve social justice, it is also an indispensable tool in the fight against poverty. Formal, government regulated, social security in South Africa comprises both social insurance and social assistance. Due to the legacy of apartheid, this formal social security system is not comprehensive and excludes many of those who need it most – a factor that caused such people and communities to devise their own social security mechanisms. These alternatives can be termed informal social security which, although providing a certain degree of security, functions outside the protection and recognition of the formal system. The article offers suggestions for mechanisms to enhance cooperation between these two social security systems that can assist government in providing improved and more comprehensive social security.

**Nathiera Abdullah** assesses the possibility of introducing Shariah (i.e. Islamic Canon Law) compliant financing and banking products as possible vehicles of Islamic Economic Empowerment (IEE) for the purpose of promoting broad-based Black Economic Empowerment (BEE). Special attention is given to the contextual implementation of a three-tiered IEE paradigm or structure (*viz. zakah, sadaqah and infaq fi sabil Allah*) which could function as an innovative strategy, aimed at promoting the circulation of wealth and growth of potential income among a broader entrepreneurial constituency and the population at large. The immediate goals of IEE would be to assist in eradicating poverty, economic stagnation and unemployment, as well as to provide a specific model of socio-economic reconstruction and transformation. These goals can be achieved by calling upon all Muslims (and other interested parties) of means (i.e. financiers, bankers, investors, entrepreneurs, the employed) to embrace the Islamic *da'wah* mandate or vocation of being in solidarity with the rest of struggling humanity.