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-----A ray of hope

SUBMISSION: Joint Constitutional Review Committee

Sekwele Centre for Social Reflection is a Civil Society Organisation providing space for communities and their leaders to reflect on critical social issues that relates to the well being and progress of South Africa and all its citizens – black and white, rich and poor. The SA Constitution in the Preamble states:

*"Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
Improve the quality of life of all citizens and free the potential of each person; and
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Section 25 Property

Sekwele hosted workshops: "SA Constitution 1996" (7-9 August 09), "Tenure Systems" (18-20 June 09) and "The Gap between the Rich and the Poor in S. A." (May 2000). Concerns were raised in these workshops that the Constitution is protecting the rights of the rich and the powerful and neglects the rights of the poor and those marginalized by the macro-economic policies such as GEAR and BEE.

During the workshop on Tenure participants called for scrapping s 25 in total as it serving the interest of the rich at the expense of the poor. Section 25 is one of the most contentious clauses in the SA Constitution. During the CODESA negotiations in 1993 the ANC delegation walked out, as they believed that the inclusion this clause will not assist in "healing the divisions of the past". After 15 years the gap between the rich and poor has grown and the poverty levels of the poorest are worsened. Many see the direct and indirect link between the property clause and the growing gap.

The property clause is used (abused) by the old and new elite to protect their interest as property owners but also to exploit workers and farm dwellers. "We are turned into criminals when we protest about our rights against insecure tenure, with little protection from the state". "The property clause must be scrapped from the SA Constitution" remarks made by participants during Sekwele workshops which they believe are shared with many other community members. Sekwele remains committed to the building of united and democratic South Africa that belongs to all who live in it.

Mokesh Morar
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16 August 2009



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Wednesday 19 August 2009

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As a method of achieving its mission and vision, after the advertisement calling for public submissions on the South African Constitution, Sekwele invited members of the public and other Civil Society Organisations to reflect on the impact of our Constitution.

Below is a compilation of, among others, which the participants felt the need to be redressed.

S28 Children's Rights

S28 (2), clearly states that the child's best interests are of paramount importance in every matter concerning the child. These include right to a family and parental care, basic health services, and others. It is clear that, while our Constitution embodies a value system in which the legal position of our children is very important, - at the same time, contradicts this provision.

Participants felt that the protection afforded children (interests) sometimes outweighs the reason why parents withhold such rights. Issues of teenage pregnancy, unbecoming behavior at school, and abortion are difficult to reconcile with this provision. To elaborate further, some legislation passed, for example, Choice of Termination of Pregnancy Act 92 of 1996.

In South Africa, any woman of any age can get an abortion by simply requesting with no reasons given if she is less than 12 weeks pregnant. A girl under the age of 18 will be advised to consult her parents, but she can decide not to inform or consult them if she so chooses. Participants felt that the constitution should restrict the conditions in which termination of pregnancy should be performed. They recommended situation like when continuous pregnancy poses a health risk to the baby, the mother, and also if rape was as a result of rape.



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Constitution and Education

S29 (1) (a)

Participants in this workshop felt that this section inadequately addresses the issue of education. The word 'basic education' does not sufficiently provide for an answer the question of reduction of poverty in South Africa. Participants felt that if by basic education, the Constitution meant to be 'able to read and write' then, the extent to which the Government commits itself to educate citizens is not justifiable in a democratic society based on equality and freedom.

Furthermore, some participants felt that 'healing the divisions of the past' also meant that those who were disadvantaged may also now have consideration. The elite will be able to educate their children, whilst those who are poor wont be able to get an education which is more or
"Give a black child decent education resources and bring the culture of discipline back into our schools and then watch the results. You will see good and competent black professionals coming out naturally..." remarked one of the participants. The gist of this argument is that the Constitution should spell it explicitly that basic education 'to at least up to and including Matric level"



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S29 (1) (b)

While the Government has done a lot to educate its citizens, on one hand, for example, by providing loans NFSAS, it has on the other hand insufficiently address the impact of financial burden to school leavers after graduating.

Participants felt that school leavers are unjustifiably over burdened by paying back the loan, while at the same time trying to find footing in the corporate world. Unemployment is rife in South Africa. If for instance one is temporarily employed, one starts paying, but in the event that such a person loses work, the loan is continuously deducted from the student, failure to pay that results in the student's name being listed in the credit bureau.

S29 (3)

The establishment of private schools is a thorn in a flesh for poor communities. Some participants felt that social status is a point departure in the selection criteria used by these schools to enroll pupils. Does, for instance, those who live in the informal settlements, fail to send their kids to these schools even though they can afford the fees? In Bethlehem, participants felt that it is difficult to send their kids to these schools for many questions would be asked like, how much they earn, where they live, are they from a single headed family and so forth. Private schools should be open for every one who wants to access them, despite social status.



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S151 Local Government

S 151 (2) The executive and legislative authority of a municipality is vested in its municipal Council.

S 151 (3) A municipality has the right to govern, on its initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the legislation.

Participants felt that, while these sections sound splendid, there seems to be contradictory provisions. This is so in the sense that while local municipalities have authority; they may not legislate in conflict with the provincial and national legislation. It therefore defeats the purpose of creating three (3) spheres of the Government which are independent.

Participants looked at this against the background of social unrest in many local municipalities throughout the country. Most of the protests were against service delivery. A closer analysis of this situation will reveal that some of the complaints have nothing to do with the municipalities.

Participants felt that if the object of local government is to encourage the involvement of communities and community organisations in the matter of local governance, then more opportunities for participation should be enhanced by placing more power and resources at a



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closer and more easily influenced level of government. The point of departure then is that the constitution should enhance more autonomy to the local government.

The benefit of involvement of people is that people are more likely to be committed to the project, programme, or policy if they are involved in its planning and preparation. This is because they identify with it and even see it as 'their' plan.

THE SOUTH AFRICAN CONSTITUTIONAL REVIEW

FOCUS GROUP DISCUSSION

SEKWELE CENTRE FOR SOCIAL REFLECTION

BETHLEHEM

16 July 2009

Facilitator: 'Mapule Maema

Co-facilitator: Ntaoleng Mokoena

Staff participant: Esther Nzimande

FGD Participants: Authur Zwane

Anna Mabizela

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CONSTITUTIONAL REVIEW

1. Introduction

The following are findings from a Focus Group Discussion made up of six participants in response to an advertisement placed in the Mail & Guardian of the 17th to the 23rd July 2009, inviting members of the public to make written submissions to the Constitutional Review Committee on specific sections of the Constitution that they feel should be reviewed. The report is a direct verbatim of their feelings about the South African Constitution.

2. Methodology

Focus Group Discussion method was used as a method of eliciting in-depth discussion from the group. Focus Group Discussions are guided discussions involving select group members, in a systematic way, to provide information on a particular topic. The reason for choosing a Focus Group Discussion was because the discussion prompts thoughts and debate among group members, which a researcher might miss on a one on one interview basis and questionnaires (MeTA Communication Tool) FGDs can also yield rich, in-depth qualitative information through exploring knowledge, beliefs, concerns and attitudes; encourage participants to generate and explore their own questions; analyse the experiences in their own words and terms (MeTA Communication Tool).

2.1 Selection of Participants

The Focus Group Discussion was made up of six participants. Four participants selected were from a group that participated in a Crime Workshop organised by Sekwele Centre for Social Reflection in Bethlehem on the 17th-19th July 2009 and two were support staff. These participants were chosen because of their immense contribution at the Crime Workshop. On the 17th of July Sekwele Centre for Social Reflection organised a workshop to raise awareness on Crime in Bethlehem. What came out of the workshop was a cry by the participants that the South African Constitution had loopholes; that it favoured the black elite and the rich over the poor. After seeing the advertisement, Sekwele thought it was a god opportunity to link the discussions that came out of the Crime Workshop with the Constitution review.

2.2 Research Design

Group and Topic Lead Ins were utilized to find out the level of understanding of what a Constitution is? What it entails? Topic Lead-Ins are exercises that generate interest in the topic; activate participants' prior knowledge of the subject, help the facilitator and participants to identify individual learning needs and goals, encourage sharing of information and resources and reveal resistance to discussion or learning (Reproline Tools for Trainers). Group lead-Ins are particularly useful for introducing the topic, discovering what is already known and activating that prior knowledge. Some of the activities that were used were the "Word Tree", whereby a list of words is generated to the topic (Reproline Tools for Trainers). The "word tree" was made out of cards from different colours in order to make it more interesting and fresh. Energiser games, such as, the "Ball of yarn" was used to get responses on one the questions put down on the flip chart for discussion.

3. Detailed Findings from Discussion

3.1 What is a Constitution?

The participants had a clear understanding of *what a Constitution is*. Their understanding of what is a Constitution? was as follows:

- Rules and Regulations governing a country
- A foundation that communities have to abide by

3.1.1 What does a Constitution entail?

- Guidelines
- Provides us with information as to who is responsible (powers)
- Rules as to how to live our lives
- Policies
- Laws

- Rights
- Limits
- Legislature

3.1.2 Who Implements a Constitution?

- Those who are in power
- Politicians
- Cabinet
- Parliament
- Government
- Other political parties
- Traditional Leaders
- International Laws, for example, human rights and freedom of association
- Constitutional Review Committee
- Legal Office

3.1.3 Who Influences Policy Making Decisions?

- Communities
- Civil Society; NGOs, Trade Unions
- Business People

3.1.4 Has it ever been reviewed? Yes, yearly. However, the participants argued that people do not know about this kind of information.

3.1.5 Why should it be reviewed?

The participants argued that there is a need to review the Constitution so that the voices of the people can be heard, so that we can be treated equally and fairly, in order to redress it favouring the people in higher places. They further argued that everyone can be involved in decision making process, to address the complaints of the people, to change it so that it becomes simpler. There is a need for it to be specific.

4. SECTIONS IN THE CONSTITUTION THAT NEED TO BE REVIEWED

The point of departure from the above discussion is a presentation of the chapter that the participants chose. The participants decided to review Chapter II of the Constitution that provides for the "Bill of Rights." The Bill of Rights provides for rights such as, Education, Life, Privacy, and access to information, Housing, Children. The discussion was a link between social problems facing South Africa and the limitation of the Constitution.

4.1 Equality (Section 9):

- The participants felt that there is a high level of inequality in the workplace, especially the Parliament.
- Unequal treatment of women
- Access to resources is unequal between men and women. "This is a man's world."
- Equality has not been met
- No clear indication between South African citizens and Foreigners
- Gender Inequality in families
- Language inequalities, for example, Xhosa and Sotho is favoured more over other languages, such as Venda; National Anthem.
- White people have easier access to services and resources (affordability)
- Unequal access to information, for example, internet access, newspapers, television.

4.2 Life (Section 11)

- Everyone has a right to life

- Question of people killing others. What right does a mother have in killing an unborn baby?
- Issues around persons accidentally or intentionally killing someone

4.3 Privacy (Section 4)

- What does the Constitution say about: a) the media infringing on the rights of the people?
b) Violation of the rights of the people by the police
c) Violation of Privacy of HIV patients by nurses and hospital administration.
d) People violating one another's privacy, for example, checking your spouse's cell phone without his permission.

4.4 Environment (Section 24)

- Hazardous actions, for example, mines, pollution from factories, poor regulation of imported goods (such as, food that contain Asphame, do people know about the danger of this ingredient?)

4.5 Access to information

- Limitation on guarantee of protection to people if someone violates ones privacy if someone uses my information without my permission
- Information is easily accessible to those who can afford it.
- Ignorance of the public, for example, reading of notices and newspapers. Counter argument is that the government officials put up advertisements on notice boards a week before closing date.
- Corruption of government officials.
- Sensitivity of information is not covered in the Constitution.

4.6 Housing (Section 26)

- Poor regulation of provision of housing in Bethlehem
- Evictions on farms and informal settlements is rising

4.7 Children (Section 28)

- Children have too many rights
- Children need to be empowered about their rights
- Parents should be held accountable for their children
- What does the Constitution say about how should society deal with irresponsible children.

5. RECOMMENDATIONS AND SUGGESTIONS BY PARTICIPANTS

- The Constitution should be more specific, so that everyone can understand it.
- The Constitution should be made simpler, so that even a lay person can understand it.
- Sections of the Chapter II should be reviewed thoroughly.
- Section 28 on Children should include the roles of parents and encourage the aspect of culture in a child's upbringing.
- Section 9(5) should be reviewed. The usage of the word "unfair" does not make sense. Discrimination is discrimination, it can never be fair.
- The Constitution should indicate that the people and the media should not infringe on people's privacy.
- It should emphasise the accountability of government officials and companies.
- Effective rights should be implemented, for example, education.
- The section on Housing should be reviewed with the facts and realities given by the communities not only the Ministers.
- The Constitution should be locally brewed and not Roman.
- Rephrase the wording "Everyone has the right to." Yes everyone is entitled to rights, but this does not necessarily mean they will access those rights.
- Change or amend Chapter 4: Procedure of elections. Make it Representative Democracy, like in America.

6. Conclusion

The above report was based on a Focus Group Discussion that was held by Sekwele Centre for Social Reflection in Bethlehem; so as to provide space for the community to engage with the Constitution. The aim was to also see whether people do read the Constitution and whether they are aware of what it entails, what their rights are? The response was good. The above narrative is direct verbatim of the discussion. Sections of which the participants thought should be reviewed have been mentioned and we hope that their submissions will be valued.

Reference

Reproline: www.reproline.jhu.edu

7. APPENDIX

QUESTION GUIDE

- 1) Have you ever read the Constitution?
- 2) Did you understand it?
- 3) How would you link the South African Constitution to other legislations?
- 4) Do you think there is a need for the South African Constitution to be reviewed and amended?
- 5) Give reasons to the answers given to the above question.

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