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## South Africa's Progress to Democracy: 8 Years On

Speech by F W de Klerk to Living Newspaper

Eight years have elapsed since the birth of the New South Africa. The question that I would like to address tonight is: How is our new democracy faring eight years after our first fully democratic elections?

Democracy literally means rule by the people. This proposition simply, logically and necessarily requires:

- regular, free and fair elections to establish what the will of the people is;
- a governmental system that enables the people to participate freely at all levels of the processes by which they are governed;
- the protection of the basic rights and freedoms of the people, including their right to participate in the democratic process and to oppose the government.

These elements are all defined by our Constitution which was adopted in its present form in 1996. How has South Africa fared in these three areas since 1994?

During the past eight years we have held two free and fair national elections and municipal elections. We have an Independent Electoral Commission which is functioning independently and effectively. We have also seen the smooth and peaceful transition from our first president to our second president after the retirement of President Mandela.

So I think that we can report that we comply fully with this aspect of democracy.

The second question is whether our governmental system successfully enables people to participate freely at all levels of the processes by which they are governed. Here, I think that we have some problems.

Our multiparty democracy is not really working very well. This is not due to the Constitution itself, but rather to the voting patterns of our electorate. Most South Africans are still voting along ethnic lines and have yet to make the leap to non-racial value driven politics. The result is a dominant governing party without any credible electoral challenge. Voters who vote for opposition parties feel increasingly disempowered and alienated.

Parliament is not nearly the dynamic forum that it should be. Democracy, however, is not confined to the national Parliament. Rule by the people means that the people should have the right and the ability to participate at every level in the processes by which they are governed. At the most basic – and perhaps the most important - level democracy depends on the ability of people to take decisions that most immediately affect their lives and the

lives of their families. People are not free if they cannot decide where they wish to live; where they wish to work; where and how they wish to educate their children; where and how they wish to worship; what language they wish to speak; to what organisations they wish to belong; or what views they chose to hold. It is precisely because apartheid denied these basic freedoms that it was so unacceptable and had to be dismantled.

These freedoms must, of course, be enjoyed within a reasonable framework that ensures that the manner in which we exercise them does not prejudice the equal rights and freedoms of others. In particular, they can never be an excuse to discriminate against others.

Freedom and democracy also presuppose the reasonable autonomy of the organisations composing civil society to which people belong: the clubs of which they are members; the companies for which they work; the religious institutions where they worship, the schools and universities where they educate their children. If the state unreasonably interferes with the right of any of these associations and institutions to conduct their lawful business as they see fit, it is an abrogation of their freedom; it is an interference in their democratic right to manage their private affairs.

The same is true of the communities and cities within which people live and work. The duly elected governments of such communities, cities and governments should ideally enjoy the greatest possible autonomy to manage their affairs as they and their constituents see fit.

The question is to what degree we in South Africa – and particularly those of us who belong to minorities – enjoy this full spectrum of genuine democratic rights? To what extent are we protected from what James Madison – one of the founding fathers of the American democracy – called the tyranny of the majority?

Here, I think some warning lights are flashing. There is a tendency of political centralisation that is incompatible with true democracy and with the basic freedoms enshrined in our Constitution.

In the name of transformation, the state is increasingly intervening in areas of civil society – in schools, universities, businesses, sports – where it does not belong.

Individuals, organisations and companies are disturbingly hesitant to claim their rights or to question these trends because of their fear of being ‘politically incorrect’ or of alienating an increasingly powerful government.

Here, I want to place one matter above any doubt: I fully support the necessity for transformation, backed by balanced affirmative action. Change must come in all spheres of life. We simply cannot proceed as in the past. The tradition of historic advantage for white South Africans in particular must be replaced by a dispensation of equal opportunities for all. All forms of racial discrimination must be eradicated, root and branch. Access to quality education for everyone is essential. Welfare creation, coupled with more equal distribution, is an extremely important priority.

However, a better balance must be found between the need for transformation on the one hand and the rights and autonomy of people and of civil society on the other.

This brings me to the Charter of Fundamental Rights. How are we doing eight years after 1994? Here, also, I believe that there are some warning signals. I would then like to focus on a few problem areas:

### **Freedom of Association**

This right is clearly recognized in the Constitution provided that it is not linked to discrimination. At the moment, it is experiencing enormous pressure. In the drive for transformation, the principle of proportionality comes strongly to the fore. This goes hand in hand with the vague – and sometimes outspoken – threats that those who do not act to the government's satisfaction will be forced to do so by legislation.

If this approach is taken to its extreme consequences, it would make a mockery of freedom of association and the autonomy of voluntary and non-governmental organizations.

### **Language and Education**

The right that section 19(2) of the Constitution offers with regard to education in the language of choice, is being pushed further and further into the background. In the same manner, not enough is being done to give full recognition to Section 6 of the Constitution with regard to our 11 official national languages.

With regard to both education and language in general there is clear tendency to make English the de facto dominant language.

### **Affirmative Action and Discrimination**

Section 9(2) of the Constitution which allows the State to implement affirmative action “in favour of people who have been disadvantaged by unfair discrimination”, must be implemented in conjunction with Section 9, which clearly prohibits discrimination on any grounds.

Affirmative action, which means in essence, discrimination in favour of certain classes or groups of people, can and must accordingly be subjected to certain tests.

Unfortunately this balance between non-discrimination and affirmative action is not given sufficient attention in practice. In fact, the dominant impression among many people is that the prohibition against discrimination is frequently violated in the name of affirmative action; that the concept of the disadvantaged is wrongly being attached only to race and colour; and that South Africa is running a serious risk of once again becoming a country in which discrimination on the grounds of colour will once again become the norm.

One could also identify other matters about which there is reason for concern. Fears regarding property rights, aroused by recent developments in Zimbabwe and proposed plans affecting mineral rights, come to mind. It is, however, not my objective to draw up an indictment or a list of grievances.

Fact is that these examples show that there is reason for concern. Although our Constitution contain provisions which offer security with regard to these and other matters, warning lights are flashing with regard to important aspects of the Charter of Fundamental Rights, the functioning of Parliament and the centralisation of power in the

hands of a dominant party that faces no credible electoral challenge. This situation, in turn, is creating an unfortunate breeding ground for the dilution and undermining of the Constitution and the Charter. A disturbing picture is beginning to emerge:

- a governing party that can, to a large extent, make or break as it pleases;
- a private sector that is frightened of confronting the government; and
- individuals, institutions and organizations which fail to claim their constitutional rights, either out of fear or because they feel that it is better to stay in the good books of the authorities.

It is not my objective to launch a political attack on the ANC tonight. In general, the ANC has shown itself to be dedicated to the constitution and I am not questioning its bona fides in this regard.

What is, indeed, happening is that the ruling party, in its zeal and sometimes in its over-zealousness to achieve certain goals, does things or lets things slip through, which do in fact jeopardize important provisions of the Constitution. The question is, how should we responding to the flashing warning lights regarding the constitution?

As I suggested in the first F W de Klerk Memorial Lecture in Potchefstroom last week, I believe that the following steps would help to address this problem:

- We need to establish an independent institution within the State that would scrutinise all new legislation during the drafting stage and important government decisions to ensure that they comply with the Constitution.
- Hard-pressed opposition parties should be helped to appoint advisers who would be able to assist them with constitutional matters.
- We need to establish an independent watchdog non-governmental organisation to monitor the constitutionality of government legislation and action; provide constitutional advice to the public; and where necessary, to take cases to the constitutional court.

My Foundation, the F W de Klerk Foundation, is actively working on initiatives to promote these objectives.

Eight years after 27 April 1994, our democracy continues to make promising progress:

- we have one of the most liberal constitutions in the world;
- we have held two free and fair elections – and have watched the voluntary retirement of our first president; and
- all our major parties remain committed to democracy.

The plant has taken root – but it is still fragile and still needs constant care and nurturing. The price of freedom remains eternal vigilance – and constant commitment.

The future of our democracy will depend on us – the citizens of South Africa.

- We must make use of the political freedom that is guaranteed by our new constitution. If we are unhappy about aspects of the new South Africa, we should exercise our freedom of speech and say so;

- we should use our political rights by actively supporting the political parties of our choice;
- we should vigorously participate in the activities of civil society and promote the autonomy of the organisations that make up civil society;
- we should claim the rights that the Constitution guarantees; and
- we should do everything we can to defend, promote and popularise the Constitution – because it is the foundation of our democracy and of the new South Africa.