

Democracy Development Programme

Political Forum

**THE STATE OF DEMOCRACY – HAS THE BUBBLE BURST?**

Lead Speakers:

**Judith February, Political Information and Monitoring Service,  
IDASA**

**Bob Mattes, Democracy in Africa Research Unit, UCT.**

Moderator: **Judge Dennis Davis**

**Summary**

The panel of lead speakers introduced the topic of discussion for the evening – to assess the political crises currently facing South Africa, especially the threat to the Constitution, and to examine whether this posed a significant danger to the survival of democracy.

The discussion covered matters such as the failure of democracy to bring about wealth redistribution and adequate service delivery, the decline of the country's education system and the grave danger posed to democracy and economic stability by persistent inequality and poverty.

In particular, participants focused on the constitutional crisis and recent threats made against Constitutionalism and the Rule of Law.

There appeared to be some consensus that the legitimacy of the courts and the survival of the Rule of Law would continue to be in danger as long as there was a disjunction between the Constitution and the fulfilment of the promise of a better life for all South Africans.

Participants discussed how Civil Society needed to reassert its role in political life and how political participation had to extend beyond the confines of elections.

South Africans needed to relearn their natural talent for political engagement and conversation.

**Minutes:**

Dr Rama Naidu of the DDP welcomed everyone and said a few prefatory words about why the forum had been started.

He said that it was partly to create a public space for discussion and debate which would help deepen the understanding of the problems of South Africa's nascent democracy. That by creating this platform, people would begin to talk about issues which were highly relevant to the growth of democracy and that hopefully at some stage "words might be converted into action".

It was hoped to also take discussion about such matters beyond the confines of dinner conversations and into the public domain.

Programme Manager Ms Vanja Karth welcomed everyone and pointed out that the DDP had deliberately tried to limit the number of people taking part in the forum so as to ensure that there was a meaningful and inclusive engagement between participants.

She said that it was obvious that many South Africans were concerned about the state of democracy and it had to be asked whether this was merely part of the democratic process or rather whether South Africa was on the road to a Zimbabwe-type of political situation.

Judge Davis opened the discussion by saying that he welcomed this kind of debate and felt there was a real need for this type of engagement in the country at the present time.

He mentioned that he was astonished when two prominent political figures whom he had assumed to be passionate Thabo Mbeki supporters had recently remarked that the current government was incompetent and that perhaps even the former Bantu education might even have been preferable to the present educational system.

Judge Davis said that apart from being "extraordinary critiques" the comments were also indicative of the kind of interesting debates that should be taking place.

South Africans had shown in the past that they were adept at engaging with each other about political matters, he said.

Davis introduced the lead speakers – Bob Mattes of the Democracy in Africa Research Unit, UCT, and Judith February of the Political Information and Monitoring Service, IDASA.

Davis praised Mattes as one of the few people who gave the public hard and reliable data on democratic attitudes and practices.

Judith February, he said, was a prominent and authoritative analyst and commentator on political matters and matters of good governance and transparency and needed no introduction.

**Davis:**

If I may start with you then, Bob, do we have a crisis? Is this a serious moment at which this country could go in one of two directions? Continue a constitutional democracy or go down the tubes, as it were?

**Mattes:**

I don't think there is a crisis in the sense that non-democracy is a real alternative. I would use the phrase 'inflection point'. I see it as a kind of tension point at which the system could go in different directions. But I don't see that the end of democracy is the alternative.

We have one of the most minimalist democracies you could conceive of, to begin with. If you look just at the minimal prerequisites of democracy – elections – compared to countries which are at the opposite end of the spectrum such as Switzerland and the United States, who go to the polls several times a year to decide policy issues, South Africans go to the polls twice every six years.

Mayors and the presidents are indirectly elected at best and basically one is given a vote for a blank faceless party list. There is very little chance between elections for ordinary individuals to influence politics.

This is one of the most minimalist democracies I can imagine.

**Davis:**

You are talking about democracy in the formal sense....what about in the informal sense?

**Mattes:**

In the informal sense I think we are even worse off...

When we started a political barometer in the 1990s, we found that Nelson Mandela was trusted by about 42 percent of the people.

When we started to get data from other democratic countries, we found that South Africa consistently registers some of the lowest levels of non-electoral political participation.

Whereas in a country like Malawi, 65 percent of people can tell you off the top of their hat who their MP is, less than one percent of South Africans can even guess...

At the same time we have some of the highest levels of protest in the Afro-barometer and what this indicates is a very real sense that people who feel dissatisfied with the Government have no place to register their dissatisfaction and individuals to punish.

I come down very hard on the opposition parties...I think they are as much to blame as the ANC. Parties in power must govern and must try and get as much support as they can and that is the way it should be, but on the other hand opposition parties have to give dissatisfied voters real alternatives

**Davis:**

In relation to that point, it is sometimes argued that the ANC is a liberation movement and traditionally liberation movements capture the political terrain for x number of years...and that then at some point they implode... so why should we be surprised that there is this kind of one-party state?

**Mattes:**

In a very real sense, there are structural constraints on what opposition parties can and can't do...and many aspects of the system favour the governing party (what we call in American baseball, home team advantage), a whole range of things that favour the governing party, but despite that there are many things opposition parties can do.

What is most damaging to opposition parties is the fact that the vast majority of our respondents said that they didn't know anything about them.

If you are a political party manager... your attitude should be 'hate the party or love it but just have an opinion on me and if you don't know anything about me, shame on me...'

The last thing I really worry about is... we had an approximately a 88 to 92 percent turn-out in the election in 1994 and in the last election it was 58 percent – that's a 30 percent drop.

There is a pattern, especially in Africa in post-liberation societies, where government support goes up, and we normally attribute that to clientelism and bandwagoning but in each of those situations – Zimbabwe, Namibia, Mozambique and South Africa, it was accompanied by a sharp drop in voter turn-out so it is not that voters are shifting their support but just that the governing party is winning a large portion of a smaller voter base.

Now the real danger of that is...in Zimbabwe ZANU-PF won 58 percent of a large turn-out election in 1979/1980. By 1994/1996 they won almost 80 percent of a 25 percent turn-out election... what that indicates is a political party that thinks of themselves as God ...and what they don't

concentrate on is that their base in society is getting smaller and smaller. And that is why Mugabe simply couldn't understand it when the MDC seemed to emerge from nowhere.

**Davis:**

If that is correct, then what we are seeing in this country is that the delusion of the ruling party...

And then, if that is correct...and you use the Zimbabwe analogy of no opposition, isn't that really disastrous for any culture of democracy in the country?

Where does that then take us?

**February:**

Reflecting on the topic of the debate - *Democracy, Has the Bubble Burst?* - what struck me is ....I think that in a country like South Africa, we seem to think of democracy as an event, so that we have an election such as that of 1994 and then we have democracy and it has to work for us... when in fact it is rather a process of democratisation, trying to build institutions and trying to legitimise them and that takes a long time...

As for the question of ANC support... what happened at Polokwane is interesting...a lot of people who were there were actually saying 'we don't want to be another Zimbabwe, we want change, we are tired of Mbeki...we are tired of not being listened to and of not having a voice...'

That to me is a hopeful sign because where the opposition has failed, what we have seen post-Polokwane is that there is some disillusionment at the way in which we might be squandering that gain.

What concerns me is that there were people who were saying 'we are tired of Mbeki and we don't necessarily want a Zuma but we do want a change....', but where are those voices now?

**Davis:**

Can I just come in there? The Sunday Times published a report this Sunday on research which showed that of course no one liked Mbeki...that didn't come as a surprise...but on the other hand no one seems to be moving towards Zuma...

Doesn't that place us in the incredibly dangerous position where there aren't any political homes for people to go to, so people will stop voting, the ANC will get larger numbers and Mr Zuma will think he is hugely popular? That seems to me to be far more dangerous than rather irresponsible statements by some people in the press...

**February:**

I wouldn't be as gloomy about it...there is a need for change and there are a lot of people in the ANC who are supportive of the party becoming more internally democratic, but the point is that if at some point we have a Zuma presidency, the question will then be – what was this fight about? Is it about personality or policy? I think it is more about personality. There are already people within COSATU who are saying 'if Zuma doesn't deliver what he says he will, there is going to be pay-back then.' And there were people at Polokwane who were saying that and they were saying to Zuma – 'Beware, because if you don't deliver, look at Mbeki...you will be next...'

I don't think we should be so quick to give up on the countervailing forces of power...

**Davis:**

But where are the countervailing forces of power?

**February:** Well the courts...

**Davis:**

But the courts are under very serious threat...

**February:**

I think that at this point we are at the crossroads and we are at the point where we need to decide what our values are and whether the Constitution will be the guiding document and that will depend on the kind of leadership ...

**Davis:**

How is it that we have come to a point where at least in the community which seems to be voluble, that the discourse of Langa and Moseneke – two of the most distinguished jurists we have ever had in this country – how is it that their discourse is now being shouted down by the Ngobenis, Ntsebezias and Hlophes of this world?

How have we come to such a position? I don't mean the personalities but rather the nature of the discourse

**February:**

I think that part of that has to do with the Mbeki years...with the environment that was created where certain people were in the inner circle and there were others who were outside of it....

I think that the impact of that is something we are seeing in all our institutions at the moment and I don't think we are able to measure that impact...the lack of agreement on what seems to be the constitutional arrangement...our social compact ... and I think that a lot of that has to do with those people who were outside that circle during those years... I think that the test will be whether there will be enough men and women in South Africa of character to stand up for what is right... for example in the context of the Hlophe matter...if indeed it comes to impeachment, whether there will be enough people in Parliament to stand up for the principle and be counted...

**Davis:**

When you say men and women, I mean men and women, which transcends race. I was looking at the Mbeki speech of 1996 – the 'I am an African' speech – an extraordinary speech which I commend to all of you to reread.

He talks about the fact that the Constitution seeks to have an Africanist which is beyond race, gender, colour and historical origin...and how is it that we have so failed...in that in a sense, if we look at the debate in relation to all of these matters, the Langa/Moseneke discourse (which I think fits in with that speech) has been drowned out by the far more vociferous and crude populist cries?

**February:**

The point is that constitutions, I think, are only as strong as the will of people to defend them...so it is important that people continue to, for example, assert their rights...

**Davis:**

But are they doing that?

**February:**

Well the point Bob made about how much we protest, was interesting... the point is whether it is protest for protest sake...

**Davis:**

But in relation to this whole judiciary matter, if you read all the debates that have been going on over the last few years...our legal community is divided along essentially race lines...white people seem to take one

position and black people another and there doesn't seem to be any overlapping consensus. Why?

**Mattes:**

I think that the result of the Mbeki years and that minimalist democracy and a very strong centralising figure at the presidency... centre of the party...I think this desperation of the left has built up over the years...they have been unable to influence policy.

To me, if you were a Communist, the last person you would want to run the government is someone who owed most of the banks a lot of money...because if he started to change the system too radically as the Communists wanted him to, they might say 'what about all these overdrafts?'

**Participant:**

I was wondering about this question of why it is that more people don't speak out. Denis' question about the Moseneke/Langa discourse being shouted down.

Isn't it about a dissonance between the very high expectations of many people about change, materially but also emotionally, especially from black people, who, to put it very crudely, thought that they would be in charge and that hasn't happened so that there is a feeling of complete disappointment and disappointed people look for a scapegoat.

And in South Africa, where everything is about race, of course the scapegoat is about race too and although people like Moseneke and Langa are black, in the end they are seen as being part of the so-called white constitution and system.

The big question is how we are going to get beyond that racial narrative.

**Davis:**

Moseneke himself asked me a similar question recently. He said that the populists ask 'Who are these judges anyway? They are not elected and are just an elite'.

The counter-majoritarian argument, which is a more sophisticated word for populist argument, is that if you don't deliver to people and there is a huge sense of disappointment, they will start lashing out at the institutions and those who wish to exploit that grievance for their own ends are very successful.

**February:**

At Polokwane, some of the things people were saying was ‘Down with the educated ones’.

For example, on television yesterday the fact that we saw Vavi getting out of his Four by Four to face the Human Rights Commission...there’s just absolutely no question of us interrogating that... and then he goes on to talk about the workers’ struggle. And Jacob Zuma does exactly the same... he is seen consorting with the Sheiks... there is that contradictory narrative.

The question is...what is this about? Is this really about greater degrees of equality? About better socio-economic delivery and a better life or is it just about crude access to resources and putting other people in power? It is a mixture of both and Jacob Zuma will play that card because it suits him.

The other point about the Constitution is that it hasn’t been popularised in a sense. We have had an elite transition, we have had the framework and people like Mandela who have made us buy into that.... Fair enough there was consultation and public participation around the Constitution but after that it doesn’t resonate with people who are homeless....and so you have this document which is really aspirational and then you have people at the low end who are really desperate.

We haven’t popularised this idea of the Constitution as a framework and that it isn’t something that is going to deliver something overnight. And so if people, (because of their disappointment) think there is a fault and it is not working, they will say ‘let’s ditch it’ and if the leadership are opportunistic about that, I think it can be dangerous.

**Mattes:**

But I think that argument... I think it is just mistaken because South Africa had one of the most participatory transitions to democracy in the entire history of democracy.

When people talk about elite transitions...the person who coined that term – Terri Karl – came here and said that’s not what she meant by the term... she was speaking about a couple of guys who go to the Holiday Inn in Manhattan and negotiate the constitution of Venezuela – that’s an elite transition.

Compared to a mass revolution, sure, this was an elite transition, but compared to all the other transitions which took place since 1975 in democracy, this was one of the most mass-led transitions that a comparative political scientist can think of.

**Davis:**

Well then it becomes deeply disturbing to me, if I follow your analysis, because it means that people are really incredibly stupid.

If they can't work out for themselves that Vavi getting out of his big Four by Four is a problem, they will blame someone else because he is part of an elite, well then there's a problem...

**February:**

What I'm talking about is the discourse that's happening ...if you went and did a voxpop in Khayelitsha, people would say to you, as they did on television the other day ...'Government doesn't care for us... we're still here after 11 years and we don't have houses...'

The question is whether the discourse is portraying that and sometimes it becomes a self-fulfilling prophecy because you have the discourse which people don't question and it's a runaway train...and therefore you have people like Jacob Zuma who latch onto that. The point is how do we undermine that?

**Davis:**

How do we undermine that?

**February:**

Well, trying to be positive, we need to continue to use the media in the ways we do, civil society I think has a lot to answer for in the way we use the spaces available to us and ways in which we hold Government to account, the kind of discourse, whether we are reactive or proactive... I think we have a lot to answer for in that regard.

Are we pushing open doors? Are we using channels to protest...in this regard I think the TAC has done a good job...I think we need to be using those countervailing forces....

In Parliament as well, I think we have seen that there are spaces which are more available now. We talk about a weaker Parliament but what we do see in Parliament is that since Polokwane there has been a shift, and in some committees it's been good...in others it hasn't.

So how do we use the positive spaces to influence our democracy?

**Participant:**

Bob, in relation to service delivery protests, Jesse Duarte got up the other day and said that as far as the ANC was concerned there had only been 17 such protests in our history and it was not a problem.

And yet I have in the back of my mind the figure of 10 000 service delivery protests per annum. What's your research on that because there's a huge disparity between those two?

**Mattes:**

I think that comes from the Institute of Race Relations.

We have about 1 in 5 people taking part in protest action but that is far higher than say Botswana where the numbers are between 4 and 5 percent. It's the one place where South Africa leads the tables. So I think there has been a fairly large wave of protest...I think these protests happen especially in the context of people comparing themselves to those in other provinces.

**Participant:**

I want to pick up on something Denis said because it's very close to my heart. Mamphela Ramphele is completely correct about the state of the education system and I'd like to share some numbers with you because they are truly horrific.

Twelve and a half years ago, 1.2 million black six-year olds entered our education system. Of those, 278 000 passed Matric at the end of last year – but when those 278 000 were tested for their functional literacy, only 42 000 of them were found to be functionally literate.

So all but 42 000 of black children are falling through the cracks in the system.

And they are a revolution waiting to happen. Not a black-white revolution but a have-have not revolution.

These people need to be accommodated in some way because if we don't do something about them, they will do something about us.

**Participant:**

There's a saying that you don't need democrats to have a democracy...the other thing is that if anything, I think South Africa has in a sense been handed a poisoned chalice...there's this talk of a liberation movement and talk of a wonderful messianic struggle, but what if we realise that the ANC are just grubby politicians in the same way as anywhere else?

It's only here that we think of our politicians as being nice people...everywhere else we hate them and assume the worst of them. And that is why we have a healthy skepticism...

**Davis:**

It is not so much about grubby politicians but isn't it about the fact that we are only 14 years into this process. And that there's an anxiety at the moment that that constitutional ...that accountable practice is so fragile.

Can I just put something to both of you? There's this thing...that in a way we naively believe – and maybe this is the fault of having an extraordinary leader like Mandela during the transition - that in some way some politicians will lead us into the promised land in a Moses-like

fashion whereas that is actually impossible and in a sense we have got to where we are now because of this naïve view that politicians rather than institutions will...

**February:**

And we have mythologised the struggle and had people like Mandela and expected people to follow in his shoes and even with Mbeki, it was clear that he was not going to be able to do that. The question is...I agree that there shouldn't be so much emphasis placed on individuals but I do think that leadership is important...whether individuals to lead institutions are strong enough, are committed enough, and also whether those institutions are strong enough to withstand the kind of political pressures, particularly where you have dominant parties like in South Africa.

And so we are going through a kind of second transition, where we are negotiating these boundaries...and that is going to require...soft issues like values...questions of social cohesion...I don't think we've addressed those issues adequately...

It's not as if in 1994 a line was drawn and you have no more violence and no more corruption and that we shut the door on all of that ... you can't do that...

**Mattes:**

I think rather than a cult of personality...it's about a more romantic vision of power...there are good guys and bad guys and once we get the bad guys out of the way we will have good guys and you can give them as much power as possible...

And I would fault the people who framed the constitution...for the lack of effective separation of powers...the lack of institutional bounds  
The constitution was designed to enable a good government to rule as effectively as possible...it wasn't designed to restrain a bad government....

**Davis:**

Well can I just ask you – what would you have done? What would you have put in?

Well I would look at the electoral system combined with the power relations between the president and the Legislature.

The other thing is that there has been an enormous abrogation of responsibility from this guy named Mbeki...he used to be president...I mean 600 people were killed, 40 000 moved out of their houses...we expected a national address that night and there was nothing...

There is just an enormous hole in the centre where there ought to be a leader...saying something about xenophobia, saying something about Jacob Zuma and about Malema...but there's nothing...

**Mattes:**

But at least there should be an institution at the centre to fight back on its own, but for some reason that's not happening...

**Participant:**

It all seems to come down to this question of leadership. Judith said that a constitution is only as strong as the people who defend it and who are they?

If we do not as a nation have people who can help us to believe that the constitution is the thing...what I think we have at the moment is that we are allowing a situation to develop where it is all about the party and at the moment the leadership we get assumes that the State exists to serve the party...and Rasool demonstrates that... Rasool is being fired for purely party political reasons ...it has nothing to do with governance or what's best for this province in the remaining nine months...it's just about getting him out of the way so that they can consolidate a political victory here ... and I just wonder...what can we do...we won't have another Mandela...to build up a quality of leadership where the leadership leads from outside the party and helps us believe that that constitution...as Bob says, we have told ourselves all along that we have the best constitution in the world...

I mean we have these things...these forums and discussions but they seem to be heard only by the people outside of Government. We're all having a conversation but the ruling party is not listening...they're not part of it.

**Davis:**

That a terribly important point...one of the things I said to Brendon and I smiled - was that while I was doing Future Imperfect in the early 90s, I could always get the ANC to come but never the National Party and after 94 it was the other way around.

Government don't want to be accountable... how do we move to a culture...

**February:**

It's something I have been thinking about and I suppose particularly doing the kind of work we do at IDASA... it does seem that as a second transition, there are different kinds of spaces opening up. The Kader

Asmal initiative around defending the Constitution...we supported...the question is how do we get ourselves to a position where we are talking to each other and getting people to realise that an infringement of the Constitution at the level of...the Hlophe matter... is going to affect their ability to get an ID book, their right to housing and how do you make that link?

I'm not sure that I have the answer to that, to be honest...save to say that people need to not give up, to not be intimidated to take their cases to court...to protest, and not to take their cases to the media...as an example the Sunday Times not being intimidated by the Mantashe action and printing what it likes...it is about getting people like the poor and the marginalised in society to take ownership of that...

**Davis:**

But how do we do that?

**February:**

Well I'm not sure that I have any of the answers to that...

**Davis:**

What interested me was that during the UDF time...in the 80s, there was a time when people from all sides of the fence could get together and agree that there were some core things, values worth defending or promoting and we don't get that sense any more...

**Mattes:**

Your question reminds me of a story...in 1956 or 1957 when Khrushchev made his famous Stalin-bashing speech to the Soviet Communist Party and he was listing crime after crime after crime...and somebody from the back of the hall leapt up and said 'Where were you Mr Khrushchev when all this happened?'

And Khrushchev said 'Would the comrade who said that please stand up...' There was silence and no one stood up. And Khrushchev said 'That's where I was...'

Kader Asmal reminds me a bit of this. He was a Cabinet member - in 2002 I think it was during the Parliamentary press week- and a member of the press asked each Cabinet member 'Does HIV lead to Aids?' And he and many others were saying they wouldn't be forced into answering that question.

**February:**

In the ANC when you talk to people about the situation ...it's so fluid... I mean in Parliament for example, some people say 'we are really worried about what is happening in our party'.

And you want to say 'Well are you doing something about that? Are you speaking in Caucus?'

And there seems to be – particularly among the older members – a sense of resignation and that worries and concerns me...

**Participant:**

I think it was Joel Netshitenze who once said 'Be afraid of Jacob Zuma because he will shut down the media more tightly than anything that's happened so far'.

**Davis:**

The conventional wisdom that Zuma can't play the kind of ideological hegemon in the way that Mbeki did...for all sorts of reasons and that therefore we have a better chance of it not being shut down than under Mbeki...that seems to be contradictory...

**Participant:**

I haven't ever believed that...I think we face exactly that risk because what this transition is is about loot, about money...it's about access to wealth rather than influence and he is going to be surrounded by people who, with respect, are a lot cleverer than he is and who will take that space and make sure that..

**Participant:**

Just to put what Paul was saying about this abysmal rate of performance into context...I work with teachers. Over the last ten years, I think it is, we have more people coming into the education system in South Africa at a higher growth rate than ever happened in any country in history and that puts some pressure on any system.

But my fear is – yes it is about those who are failing and are lost, but even about those kids who have passed.

Is it surprising that we have high voter apathy when they are really not trained in schools to be critical thinkers yet and to grapple with ethics and morals and values...all those things that make a democracy?

**Davis:**

But they weren't trained in the 1970s and 80s under apartheid...

**Participant:**

Of course not, but then I would question whether everyone who was protesting was doing so because they were sure about how a democracy works.

But they were not trained to know what to do with this freedom...

**Davis:**

My impression as a teacher at the University of Cape Town is that I have students who are less critical than I have ever had and this transcends race and gender.

**Participant:**

Well I find from teaching at UCT and Stellenbosch and UWC that the working class students are far more critical than middle class students...

**Participant:**

My concern is more about those who will never get to university...not that a good education trains you to be a critical thinker ... but those are the ones who are going to turn out to vote...

I think that the school curriculum is wonderful in what it says about creating democratic, responsible, critical-thinking students, but what happens in the classroom is another story.

**Davis:**

Could I ask you then, because you are closer to this than I am, why do you think this is so?

**Participant:**

Part of our work is to get teachers to understand what apartheid did to them as individuals and how this influences how they teach... and I think not enough work has been done with teachers on a very personal level and to get them to try and engage with their role in this transition and to understand how their role has changed from upholding the status quo under apartheid to promoting this culture of human rights and the Constitution we now have.

The courts and the Church and Business had a role in the TRC process but education was just left out of the picture and specifically teachers.

**Participant:**

I want to latch onto something Judith has been saying. The way I look at it is that there are contending discourses.

The question for me is why we haven't seen the discourse of constitutionalism becoming hegemonic.

I think that at least for the first decade after 1994 there was a feeling that our constitution was becoming entrenched and a high level of buy-in but for the last two years or so we have seen a regression from that or a diminution of that.

The question for me is why would that have happened and I think that the reason is partly that, as we have seen for the last few years, Thabo Mbeki had no qualms about undermining essential institutions of our democracy. The other thing for me is that if you just look at the dominant discourses in our society, not enough has been done to bring home the importance of constitutionalism.

We have had other discourses such as the discourse of materialism for example, which has been circulating very successfully but we haven't maintained a discourse around things like constitutionalism or reconciliation and racism...

Wherever you moved about in private spaces you heard a lot about this (racist) discourse but it wasn't being taken up publicly.

The latter is probably one area where Mbeki probably did better...

The other Mbeki legacy for me is about the exclusion of certain voices, which I think was originally a sort of ideological exclusion because of the narrow specific economic policy which he had to follow, so he excluded certain COSATU and SACP types. But now it has moved way beyond ideology to a peer fight about being excluded and wanting in...

I had an interesting conversation with Nzimande at the Stellenbosch ANC conference and it was clear to me that already at that point, he had moved beyond the ideological differences between him and Thabo Mbeki but was rather saying that he was being excluded and couldn't get his voice in.

The point about our failure to popularise our constitution... we excluded about 50 percent of our population.

And what they are seeing is a failure of the State and a serious failure in service delivery, so for them an official document sitting somewhere which speaks about a social contract doesn't mean anything.

Because for them, they are not seeing any of the socio-economic rights written into our Constitution. If they become sufficiently mobilised and organised to take it up like in the Phiri water case recently, where they had to fight for four or five years just for something as basic as the right of access to water...

And that for me speaks to the failure of elites in our country...we did have an elite transition... there were points when ...from the ANC point of view, at a conference at the end of 1991, where their supporters were trying to get the leaders back on track...and that led to the withdrawal of the ANC from CODESA.

But after that when they went into the multi-party negotiations, my sense was that things became opaque and the pace was too fast...people couldn't keep up, even leaders within the party couldn't keep up with the pace of negotiations and certain compromises were made, particularly around economic policy.

That's where I think we have failed as the chattering classes...we have not been upset about the increasing level of inequality in our country and now the likes of Zuma are using that to get into the pound seats. That's why I am skeptical about the idea of elite transitions...because it's not actually about ideology now...it's about positions.

Our failure as the chattering classes and the media is not to have complained hard enough and to have pushed for alternatives to economic policy or some suggestions as to how to address this chasm of inequality. In our society we even go so far as to victimise poor people and we say to them – you are unemployed because you are unskilled, so we are saying to them 'it is your fault that you are unemployed' instead of blaming the system that created this inequality...

**Davis:**

But isn't there a point about how we are so happy in, as you call them, the chattering classes, by the GEAR ...and the financial planning of Manuel and the neo-liberal agenda which we have enthusiastically embraced, that at the end of the day we are surprised and say 'Gosh!' when we see all these unemployed people on our doorstep.

**February:**

Yes, the point is that the middle classes benefited from the Mbeki years....and the question is what were the faults in holding Government to account then and how do we not repeat them...

**Davis:**

But I can't help thinking that the contradiction in your argument is that the ones who are really angry now are not the working class but those of the elite who say they didn't benefit to the same extent from the neo-liberal economic policies of Mbeki.

They seem to be saying that 'if you had included us, we would have been really happy and you wouldn't have been in trouble at Polokwane....'

**February:**

Some of this, a lot of it...you want to say that Mbeki created Zuma and created the environment that we are in at the moment.

And Christi....your point around tampering with institutions... it was more subtle in the Mbeki years...there wasn't a Hlophe issue and the

Malema discourse, but there was a lot of it happening and the arms deal – the fault line – there was a lot of that going on...so in a sense this environment has been created.

This question around the culture of materialism... firstly around the values of the constitution, I think you are right... the kind of education we had in the Mbeki years was a very technical one. I remember being in a meeting with Geraldine Fraser-Moloketi – the queen of technocracy and she was saying that all you had to do was to print a booklet and tell people about their rights...and corruption ...the idea that if you circulate 14 000 booklets and tell people about their rights...that kind of technical approach to the Constitution and you want to say ...'well actually the booklet is not going to do it...'

And then I'm thinking about the point about Mbeki and black economic empowerment and the contradiction of some of that....yes Mbeki talks and tells us that we are still two economies and two countries and there must be this inclusion and it must be done economically and then BEE distorts it and then our race debates become as opaque and unclear as they are now. And you want to say, well firstly, did he not see it coming?

**Davis:**

I take the point about elites but my question is – is this then about a squabble between an elite that was included and one that was excluded?

**Mattes:**

I'm not sure what the evidence is of long-term sustained mass dissatisfaction of the poor...some research shows that the poor are among the most stable ANC voters. All the research shows that since 2006 we have seen a sustained period of rising expectations in South Africa, even among the poorest of the poor.

I don't think it is any accident that all this has been occurring during a period of major economic decline.

The xenophobic violence ...is not an accident...research shows that only after long periods of economic optimism are dashed, that the inverted J-curve goes down and that political violence occurs, in emerging societies. We forget how recently Thabo Mbeki was a popular leader and the ANC was extremely secure...

**Davis:**

Well then can I just ask you, if that is so that he was much more popular in 2006 and now, in 2008, we are in a much more parlous economic climate, what implications does that have for his successor?

He will be inheriting a far more difficult economic climate than we have now and we can't even expect the growth rates we have at the moment...

**Mattes:**

I don't necessarily buy into the argument that the economic policies pursued by Mbeki and Manuel were the root of the problem...because I ask... as opposed to what?

I think the problem was about completely shutting off of any debate about that and simply saying – this will be the policy.

Where would the money have come from? ...with the kind of economic conditions internationally as well, double digit inflation...all that was arrested by the ANC by very conservative responsible management...

So Manuel can say that it is only because of such policies that we have some money we can invest now... without that we would maybe have had triple-digit inflation now...

**Participant:**

I think we also need to be very critical of ourselves and of the media and civil society, because we almost consciously excluded some of the discourses...just about nobody saw Zuma coming...we were there at the **NGC** in 2005 and those concerns were there and Blade Nzimande said 'we have killed the fear' and there was a genuine fear(really inaudible, not sure NGC is correct david) inside the party and there were genuine concerns that socio-economic issues had not been covered all that well by the media.

And also not consistently enough looking at how BEE had was creating a culture of party patronage...

I think that we as civil society really need to be critical about how we steered some of the discourses...

**Participant:**

Talking about civil society, in recent marches by COSATU about high prices in Durban, we went there to see whether we could also join the march with our DDP banner as a member of civil society. Because we felt than on the one hand we were saying that we were voiceless but when people took to the streets like this, we would stay behind our walls but also say bad things about them, such as that they were disrupting traffic. When the social movement complain about the lack of housing and say they are not able to engage with Government and municipalities about this, we sit back and do nothing about this. Why are we not marching with them?

Why do we assume that this is their problem and not ours?

This is about basic rights enshrined in the Constitution but somehow we have given up and abrogated our responsibility as if it is not our problem and we think that somehow it will stay on the outside.

Civil society has a serious issue here...we have forgotten about the struggle days and taking to the streets...

We make the right noises afterwards and statements about xenophobia, but when they are marching in the streets, we are not there.

Imagine this country mobilising in unison against high prices, but we are not there.

What has happened is that that space has been claimed by the trade unions and by political parties.

**Davis:**

Well for a very long time it was the TAC that claimed that space and I suppose it is not entirely coincidental that they did more than anyone else about the victims of xenophobia...

**Participant:**

My own feeling about the current threat to the Constitutional Court and the Hlophe matter is that it is one of the gravest threats South Africa has ever faced. Am I over-reacting?

**Participant:**

No.

**Davis:**

I would like to know if there is anybody who would say 'yes'!

**Participant:**

The whole thing about the Constitution and the rights discourse not having been internalised, I'm not sure that is entirely correct, because whether you are John Hlophe or a TAC person or a student, anybody, everybody talks about their rights...they just don't want to talk about the same rights...

But the rights discourse is everywhere...it is infesting our society...the problem is to be able to get to a place where you and I realise that our rights are co-dependent.

There is a rights culture but it has to be realised that it includes obligations too.

**Davis:**

Sorry to interrupt you, I remember when in the apartheid day I used to address white audiences, they used to say ‘So you want on man one vote...*once*?’.

And in a sense there is a difference between wanting rights as a central component of the legal system and then wanting those rights *once*, so as to change.....

**Participant:**

The second point is that one of the problems since 1994 has been the demobilisation of civil society, because the ANC and Nelson Mandela were seen as being the Messiah....

The only way to get out of that will be through single-issue campaigns. The TAC campaign, the Joe Slovo people, whom John Hlophe threw out of their houses...it will be people who focus on an individual issue and at some point those groups will be strong enough and will come together in some form of alliance to fight for their rights...

**Davis:**

That is how the UDF actually came about...it was about local issues and they then united to form the UDF. You have a whole lot of single interest groups and they then all join together. How else do you get a broad movement?

**February:**

Pierre is talking about a catalyst. For me the question is: how do we defend the Constitution? For me it’s also about the framework we have agreed on and the importance of the court.

**Davis:**

Because counter-hegemonic projects don’t just emerge. When I was young, you could read *Das Kapital* and the *Grundrisse* and you could get a pretty good idea of what a counter-hegemonic project is, but it’s a little more difficult today.

**Participant:**

When Christi was talking I was reminded of the pre-Polokwane scriblings of Mark Gevisser in *The Dream Deferred*, and those of you who want to remind themselves, go to XLI of the introduction...

Where the Mbeki inner circle – and I assume it’s Joel Netshitenze - and those like him in the presidency - who says that the things keeping him awake at night were that Jacob Zuma would undermine the rule of law, throw the Constitution into the dustbin and unstitch the economy that Mbeki and Manuel had so carefully stitched into the global economy.

And that is really the difficulty we are facing at the moment...that this broad church that's called the ANC accommodates people as disparate as Professor Kader Asmal, who's on exactly the same page as me, when it comes to defending the Constitution and Julius Malema, who only opens his mouth to change feet.

This is because the national democratic revolution is closer to the front of the stove with the new leadership than it ever was with the outgoing leadership.

And while ANC politicians of all hues tend to pay lip service to the values and precepts of the Constitution, those who are driving the national democratic revolution – and remember it was one of the Polokwane resolutions that the party leadership must be re-educated about the national democratic revolution – and that is why we are hearing these funny things from Vavi and Gwede Mantashe about the counter-revolution... and of course my friend Malema as well.

They are bringing what they learnt in their post-Polokwane classroom out into the glare of the public.

For as long as this elision between being faithful to the national democratic revolution and simultaneously saying 'I respect and protect and promote the rights guaranteed in the Constitution and'... we are all having the wool pulled over our eyes...

If the next election is run on the basis that people are given a clear choice between proceeding with the national democratic revolution or sticking to the national accord that was negotiated with great difficulty and at great expense and loss of life back in the 1990s, at least we will have a real issue.

**Davis:**

I'm not sure that what people here are saying is that the national democratic revolution is what people have as their agenda...

**Participant:**

If you look at threats to the Constitution, for me, one of the biggest threats is to get back to the middle classes and the responsibilities of the middle classes. People understand the fact that they have rights but there is a high level of intolerance towards difference.

Just because they are different to you doesn't mean you have the right to kill them...that's a serious problem in our country...we seem to think we can kill people because they are different to us.

If you look at the discourses that enable those kinds of actions, at the same time you have the problem of white privilege which is not being addressed ...I am not seeing a media which is holding up a mirror and saying 'What are we doing about this chasm, about this inequality?'

What are we doing about the fact that white people, generally have benefited disproportionately from the economic growth of the past years?’

Yes, a small group of black people benefited too, but they are a very small group in comparison to the entire population.

If you look at Zimbabwe you had a small group of white farmers who were sitting with all the arable land and when ZANU-PF came to power, they could use that as a political tool to mobilise people.

So even if one doesn’t have a moral problem with white privilege, one still has a problem in that one is setting oneself up and giving ammunition to the Malemas of this world...

And we haven’t even spoken about some of the things some parliamentarians have been saying recently in Parliament. One was talking about the help that NGOs were giving to refugees after the xenophobic attacks, saying that these were imperialistic whites who were trying to undermine the Government.

These are racist statements being made about whites but because we haven’t really grappled with the problem of white privilege in this country, it becomes very difficult to take these people on.

**Participant:**

Are we not forgetting as a country that yes, the Constitution defines rights and we are prepared to fight for those rights, but these rights imply obligations and responsibilities too?

**Davis:**

Let me ask this. Apart from all the other gloomy predictions, it strikes me that a number of people would say that the issue of globalisation is almost the steel girder against attacks like this. In other words, whatever happens in this country, if you are part of the global world in some way, there are constraints imposed on you, but if you want to get out of it like Mugabe, well then that’s disastrous.

But if you, like Zuma, want to play within the global game, then there are serious constraints as a nation state, and that we shouldn’t be getting so hysterical but should be looking more broadly than our usual narrow perspective.

**Mattes:**

What worries me is all the shutting down of democratic spaces...it’s all the other stuff, the shutting down of the media and of civil society...and incursions on the right to freedom of speech...that’s what worries me.

**February:**

Yes my concerns are similar to yours Bob but also... Christi raises a not insignificant point about inequality... the way in which people access rights ...we have always said that this level of inequality is unsustainable...coupled with HIV/AIDS... it is not going to make progress.

Those levels of inequality and that we bank on the fact that people are going to be complacent... and will continue looking to the ANC to solve things and that there will not be an uprising or just a complete withdrawal from political life. That bothers me a great deal and I think it calls for a new form of activism.

**Davis:**

All right, let me thank both of you and everyone else...if I can just make two or three final remarks...

The first is about globalisation. I really do think that we look at things too narrowly...I *do* think that globalisation is a terribly important question. I am more than pleased that we are getting a discourse in the global world beyond mere neo-liberalism. That issues of trade and health and welfare and a whole range of socio-economic issues and that the neo-liberal consensus has imploded.

It would be completely silly to not realise that nation states don't work in a vacuum any longer and I do find it significant that Jacob Zuma rushes off to Britain and to America to reassure global capitalists that he is not going to unstitch the economy...

Now if you decide you want to stop the world and get off like Robert Mugabe, that will have very serious consequences but I am not persuaded at all that that is what South Africa wants.

If you really want to know my view, I think that Business is very happy that Zuma is coming in...they seem to think that he is going to balance the balls rather more successfully than Did Mbeki.

And one of the balls we are talking about is precisely the one you are talking about...the ball of economic growth, if I can put it that way.

And that Zuma will be able to articulate to the black masses that he feels their pain rather more than Mbeki does.

**Participant:**

All that, after he goes to jail...

**Davis:**

I don't want to get into those issues...

My second point is the one you have already made...which is very correct... that I don't know how you can have a rights-based democracy which articulates socio-economic good when the Geni co-efficient is as

high as ours is and when the vast majority of people say ‘Well this constitution is in the breach...not in compliance’

And I do think that white people have been very mean-spirited... I continually think that to a large degree...and it’s not only whites...the bourgeoisie have said after 1994 ‘Oh well, we’ve got this apartheid off our backs and it’s business as usual... and we can all be happy...

My own position publicly is to defend the Constitution ...that’s what I am enjoined to do... but I am extraordinarily scared about the future of Constitutionalism in a society where to a large degree economic policies are going in a different direction...

I was the first judge, together with my colleague Comrie, to deal with socio-economic rights...in the Grootboom case...that was in 2000.

And I remember thinking to myself when I walked into that court on a very rainy winter’s day and seeing all of these people from that area had come with their children and they were coughing and spluttering and they were sick...and outside it was raining... and I thought to myself ‘Am I having a nightmare? Why are these people asking *me* for shelter? Is the Minister of Housing Piet Koornhof? Am I having a nightmare that I am a judge in the apartheid era?’

Why would people in a democratic society come and ask me for shelter when they voted for a government that was supposed to have given these things to them?’

What I am really trying to say is that you cannot have a vibrant constitution when in fact people think that, to a large degree, it is not fulfilling any needs.

And odd as it seems, when the courts are called upon to hold the Government accountable, what the discourse seems to indicate is that somehow the Constitution is failing, even though oddly enough the judges are the last line of defence.

There has to be a congruence between what the Government is doing and what the Constitution says for the courts to have some legitimacy.

So what comes up for me is precisely your point about the dissonance between the promise and reality.

And what also comes up for me tonight is something that you said Bob, which is something I haven’t thought about as much as I probably should have – which is the failure of institutional mechanisms like constitutional enterprise. So that you get this terrifying notion that actually there are no other mechanisms other than a vote every five years and as people get more disillusioned with that, a smaller percentage of people vote.

And we get into this horrible cycle of a lack of accountability.

I do think we need to think about how we draw in civil society. Every one is telling me we have to defend the Constitution but after four hours of

conversation I am still wondering - how on earth are we going to do that? Because I do think it is under a serious threat and we have to act quickly.

Two final points in conclusion...thank you very much for having us here...we have these conversations and they do enrich democracy and we should have more of them and I think it is important that we actually debate as a nation and that more people should come and talk about these things...

What people said last night (at a meeting) was that it is not just a Prague Spring...it can be more. What I do know is that over the next nine months to a year, before the unstitching occurs, there is going to be space... and if we don't use that space, it will have been our fault.

Finally, Judge Davis remarked how, as a passionate bibliophile, he was so excited to discover the Book Lounge – a highly appropriate venue for this evening's forum.

Ms Karth then thanked everyone for coming and closed the meeting.