

**Address by Dr Mamphela Ramphele at the launch of the Open  
Society Monitoring Index**

**12 August 2010**

On a Highveld day 55 winters ago, determined optimists gathered to declare their vision for a new society, a free and open society. What the Congress of the People set down in the Freedom Charter, adopted in Kliptown on the 25th and 26th of June 1955, reverberates down the decades, from the mid-twentieth century to this succeeding millennium.

The first article of faith in the Charter is “The People Shall Govern”, a sentiment and injunction stated very clearly also in our Constitution. Every citizen of South Africa – indeed, every person who lives in this land, regardless of ethnicity or nationality – has a role to play in nurturing and protecting that principle. And we must do more: we must proclaim it throughout this beloved continent because, after the soccer World Cup, more than ever it falls to South Africa to lead the way in Africa.

Undeniably, we are the engine that powers Africa’s economy. That is an achievement, a rigorous test commendably passed. But there is a more profound challenge, a fundamental examination of our humanness, nationhood and ability to inspire. Can we become also the spirit that powers democracy on our continent?

The Sterkfontein caves in Gauteng have the remains of some of humankind’s earliest forebears, showing that long have we been integral to the development of our species. Now we must extend that legacy of our ancestors. We must ensure that South African society is one in which all doors are open to all – South African and non-South African alike - and where human rights and equal rights are a staple of the everyday and not mere words on the pages of the Constitution.

In such a society – an ideal towards which we strive, for it is not yet a reality – there is no room for xenophobia, a compliant judiciary, ailing Chapter 9 institutions, or censorship and State oppression under the guise of protecting information. In short, the State and the People must be able to trust each other. Society must by definition be open, transparent and accountable. That entails the rule of law, government accountability and government responsiveness.

None of this is new. The creation of exactly such an “open society” is a principal aim and founding tenet of the Constitution. But how does one

measure how freely information flows or the level of the State's adherence to and application of the rule of law? Is it possible to quantify and grade the accountability and responsiveness of government? In sum, is it possible to say how far South Africa has walked down the long road to an open society?

These questions are significant because those who drew up the South African Constitution knew full well that its success in practice would lie in creating an open society and keeping it in rude health.

Still, you might ask why this emphasis on open society. After all, the Constitution hardly uses the term "open society", or its partial synonym, "openness", beyond the Preamble and Founding Provisions. Yet they are there, ever present in the pillars of the house of freedom, where they are clad as access to information, freedom of expression, accountability and the rule of law.

We are here this evening to celebrate a barometer of how open our society is. The Open Society Monitoring Index assesses the degree of "openness" in South Africa. Whether you love or hate acronyms, here is another – OSMI. Remember it, because it attempts to do something valuable: assessing South Africa's progress in creating an open society.

Let us pause and step firmly into the prevailing political circumstances. At first blush, the Protection of Information Bill has a comforting ring to it. But the Bill, if enacted, could very well be used to make our society less open, less accountable. Citizens could be deprived of information and, ultimately, freedom of expression would be inhibited if not choked altogether for fear of the punitive measures the Bill contains.

Would we, the people – in whom I include the citizenry and other residents of South Africa – choose not to know of government tender irregularities, of unauthorised expenditure of taxpayers' money, of profligate behaviour that suggest disregard for accountability and the rule of law? I think not, I hope not, I believe not.

The behaviour of public officials counts a great deal, and not only in the general compact with the public, the citizens of a nation. You might recall that the father of the ideal of the open society, the philosopher Karl Popper, pointed out that although individual freedom is the critical element in an open society, the State is mandated to prevent human suffering.

Ask yourself, then, about the efficacy of future public policies if they were to be based on flawed information, designed in secrecy and promulgated without the benefit of prior and robust public debate.

Ask yourself, too, how the rash of irregular and unethical behaviour by senior government figures would be contained without the sorts of public callings to account that the media has made in this, and other years.

Let us not forget that it is the people who shall govern. And the people can govern only if they have access to information, if they are free to express their opinions, and if they are free from all fear that the government will victimise or criminalise them should they disagree with it. The people need to be confident that the government can and will be held accountable, and that the rule of law cuts both ways, and is not perverted to punish only those who disagree with the ruling party of the day.

It would be well to remember here that in his foundation text, *The open society and its enemies*, Popper demonstrates that achieving substantive goals such as removing inequalities or entirely transforming society depends in the first place on an open society being in existence.

**What, then, is this open society and how can we best help to bring it about and maintain it?**

Open society embraces the other, the stranger, the foreigner. Open society is not xenophobic. New blood, fresh ideas, and other ways of seeing the world, thinking about the world and living in the world are the oxygen of open society.

Open society stops to savour the new scent, to taste the different. Open society struggles when it does not have the information it needs to understand the world. Open society suffers when government is not inclusive, accountable and responsive. Open society is grievously injured when the rule of law is impeded or, worse, effectively suspended.

Forging and maintaining open society in South Africa is vital because it is the clearest way to distance ourselves from the past and to remain steadfastly on the path where our larger social aims may be achieved. But the way forward is not easy. The situation calls to mind a celebrated line of poetry: “The woods are dark and deep, and we have miles to go and promises to keep before we sleep.”

The current political environment is unpromising, if not downright forbidding. We are faced with that oddest of democratic scenarios: continuing hegemony by one party. Gratitude for liberation should not mean unending gratitude to the leading movement in that process. Here, of course, the imperishable figure of Nelson Mandela inserts and asserts itself. But respect for and devotion to that saintly figure does not require as its corollary unthinking and uncritical support for the dominant liberation movement with which he is associated. It is very human to be caught in the seductive embrace of one's liberators, but it is irresponsible and shirking one's civic duty to continue to entrust the future of one's society solely to a party or parties associated with the liberation struggle.

But who liberated South Africa? Liberals enjoy thinking that it was they, rather than the liberation movements. Those very liberation movements claim the honour. But of whom were – are – they composed? Ordinary people, who fought apartheid every day first by surviving, then by resisting, and finally by rebelling. It is the so-called ordinary citizens of this land who freed it. They – we – do not owe the ruling party thanks for our freedom; rather, it is the party that should be grateful to the people of South Africa.

I cannot ascribe to viewing history solely through the prisms of red-letter dates and important characters – the ranks of those the media love to call the great and the good. That approach to the stories of humankind visits upon ordinary people what the great social historian EP Thompson dubbed, unforgettably, “the enormous condescension of posterity”.

Both Thompson and his intellectual heir, Eric Hobsbawm, strove to correct that skewed perspective. Hobsbawm named a collection of his essays *Uncommon People*, noting that it “is almost entirely about the sort of people whose names are usually unknown to anyone except their family and neighbours ... but collectively ... such men and women are major historical actors. What they do and think, makes a difference. It can and has changed culture and the shape of history”.

What complicates the situation here is that South Africa's authoritarian political, economic and social history defines power as dominance, and little about the practice of power after 1994 has challenged that archaic and crude approach. That opposition politics are often portrayed as disloyal to the foundations of our democracy, and thus lacking legitimacy, exacerbates the problem.

It is something of an irony that our Constitution, in electing proportional representation as a means to promote plurality of opinion and choice, at the very same time weakens the voice of voters. Proportional representation empowers political parties and disempowers those who voted for them because those citizens are deprived of the sort of direct representation offered by constituency mechanisms. Instead, parties determine members of parliament and the citizens of the country are left under-represented. I have had regretful cause to say this before: ‘Our electoral and parliamentary systems unintentionally promote “group morality” by giving too much power to political parties, with a resultant weakening of incentives for ethical choices.’

The road to impunity is littered with the good intentions of group morality. Where that group consists of the ruling party, the public good is invariably undercut. The constitutional rights of citizens play second fiddle in that much-played ditty, “The morality of the Party and its survival”. As a welcome aside, one should record that certain key figures in the African National Congress have been unequivocal of late in calling for an end to this sort of rationalising of the indefensible.

It is necessary to speak of a group malaise in the body politic, for it is not only in the ANC that morality and survival bump up against each other. Opposition parties often are their own worst enemies – and those of the citizens and voters of this country who desire a meaningful broadening in the number of voices in the public sphere.

One million voted for the Congress of the People in the last election but internecine power struggles within the party have left it unable to cope with its ambition and promises. Factionalism within the Inkatha Freedom Party does little to advance the cause of democracy in the nation as a whole, or in the IFP’s power base in KwaZulu-Natal.

The Democratic Alliance holds power in the city and province we are in tonight, but can the DA genuinely transform and become more than the party of choice for those who have “semigrated” to the Western Cape from other parts of the country?

Of late, there are signs that the DA and the Independent Democrats are edging ever closer to a marriage either of convenience, necessity, or true love. Such a marriage if based on the desire to establish an alternative political culture that can promote serious opposition politics could become a founding stone of politics beyond colour coding.

We should note that group morality is not only a political plague. It infects and infests the private sector too. For every one-party state there are countless monopoly capitalists with their anti-competitive practices that exploit poor people. For each instance in politics of cronyism, corruption and nepotism there are dozens of business deals lubricated by the same means.

Let us turn to the culture of impunity, sadly almost a defining feature of post-colonial African governance. It has its roots, understandably, in the colonial aftermath. Amid the euphoria of the post-colony, the hated overlords and ladies overthrown, it was natural that adulation and reverence were showered on the leaders of the liberation struggle. Soon, leader, party, government and state became compressed into an unchallengeable monolith.

To the leader were accorded the rights and dues of a sovereign; to the party, omnipotence; to the people, the duty of unswerving loyalty. Down this road lay diminished government accountability and eroded sovereignty of the nation state. Today, such so-called state capture typifies many African countries, where the boundary between the party and government and state is indistinguishable. From this conflation of power grows the culture of impunity.

In effect, this is a creeping coup d'état often achieved with the approval or unwitting complicity of the people. This situation need not come to pass in South Africa. The people were active agents in their destiny and will be so again because supplicant citizens cannot build an open society. And, in the truly open society, the people are the ultimate guarantors of freedom.

That does not deny the challenges of maintaining openness and liberation. To a significant degree, the populace continues to invest its emotional, social, economic and political future in the hands that drew it out of slavery. But those hands have changed. No longer inured to hard work, they indulge instead in the profitable practice of reaching into deep pockets made accessible by the post-liberation empowerment landscape. Put plainly, this is appropriation of state resources for party political reasons.

Again, the cat's paw of state capture is a busy agent here, securing material benefits for a small, affluent elite and undermining the fundamental and innately high-minded intentions of black economic

empowerment. As it stands today, BEE is an acronym for black elite enrichment.

There are no limits to the garish displays of conspicuous consumption, opulent lifestyles and extravagant spending that draw on the public purse. Such flaunting of power is not just vulgar; it is an affront to the spirit of the struggle and to the millions of poor people, still poor now, who fought for freedom – and in whose name the struggle was waged. The legitimate aspirations and fond hopes of poor people are seen by the powerful and those in power merely as obstacles to further self-aggrandisement and the accumulation of absolute power.

All the while, the people grow poorer and more disaffected. The gap between rich and poor becomes a yawning chasm, inexcusably overtaking even the scandalously huge Gini coefficient of our developing-world partners and competitors such as China and Brazil. Does South Africa really wish to top a league table that measures the disparity and grotesque inequalities between poor and rich in developing nations? I think not, I hope not, I believe not.

Yet it is down this very road that we seem to be headed. Lying in wait are potholes and ruts filled with the good intentions of a new nation and a post-colonial order of compassion, and with the high and genuine ideals behind black economic empowerment.

Institutions tasked with oversight are increasingly subject to political appointments. The independence of judiciary is potential cause for grave concern. So too is the state of Chapter 9 institutions such as the Public Protector and the Human Rights Commission. And, most pressingly perhaps, loom the perils of the Protection of Information Bill.

For the media, the early post-apartheid years were among the best of times. But the times are changing, and are now among the worst. In the immediate afterglow of 1994 and the subsequent adoption of the Constitution, freedom of speech and opinion, and freedom of expression were more than protected: they were guaranteed. The iron-fisted censorship regime applied by the one-party apartheid state fell away.

Come 2008, those good times were under threat. The first try at passing the Protection of Information Bill was deflected by vigorous criticism from civil society, the media and from within certain quarters of Parliament itself.

Come 2010, and the Bill is reintroduced in a form that many regard as more severe and more insidious. As I have argued in public forums, and in my book *Laying Ghosts to Rest: Dilemmas of the Transformation in South Africa*, many of our leaders cast themselves in the very mould of the colonial masters they have replaced. Their revolutionary fire and love of freedom from oppression all too often has morphed into a passion for emulating oppressors and their methods. Lenin was of the belief that for Communism to work, a better human being would need to be invented. Sadly, perhaps it is also true that for liberation and transformation to succeed, a better kind of post-colonial leader will have to be created. We need to heed Paulo Freire's caution in *Pedagogy of the Oppressed*, that the oppressed can readily turn into oppressors unless a new leadership ethic is adopted.

In late July, hearings were staged before an ad hoc parliamentary committee on the Protection of Information Bill. At first glance, the intentions of the Bill appear well motivated. Attempting to create a suitable democratic framework to manage sensitive information is laudable. But, as with so many well-intentioned ideas – BEE springs first to mind – those intentions are imperilled by the creeping provisions in the Bill that might well halt the dissemination of information by the media, or by elected officials upholding democracy who blow the whistle on inefficiency and corruption by government officials.

On Wednesday 6 August, *Sunday Times* journalist Mzilikazi wa Afrika was arrested at the newspaper's offices by eight members of the Hawks. The police did not have an arrest warrant, but took Wa Afrika away on charges of fraud and defeating the ends of justice. The newspaper and its lawyers were not informed at first of where Wa Afrika was being held.

This dramatic incident calls to mind the apartheid regime's contempt for habeas corpus and its use of detention without trial. The Hawks seem to have behaved as if the Protection of Information Bill had been enacted. None of this augurs well for an open society.

Closer analysis of the Bill reveals it to be dangerously, perhaps deliberately, vague in key areas. Take the excessively broad definition of "national interest", which allows almost every level of government to classify information.

Directly and ominously, the Bill provides for the classification of state-held commercial information such as tender proceedings and the workings of state-owned enterprises. These clauses would seem to



provide a cloak for corrupt practices that would obscure visibility by the public. Those proposing the Bill deny that it will be so used. Those opposing it say that its definitions are amorphous by design, because a possible intent is to misuse and abuse certain of the Bill's provisions.

Had the Bill been enacted before publication of *Laying Ghosts to Rest*, I might not have been able to cite the disgraceful case of Tender Park in Polokwane. There, state tenders were abused by those connected to the Limpopo Provincial government in order to build huge mansions with money intended for RDP houses. That the perpetrators of this vile deed chose to name their self-empowering vehicle Tender Park illuminates the grotesque nature of such acts by people loyal to the ruling party who enrich themselves at the expense of poor people.

Very effectively, the Protection of Information Bill's draconian fines and prison sentences would bring guardianship of democracy to a stop. Why? Astonishingly, the Bill makes no provision for disclosure of state information in the public interest.

Consider by way of highly visible practical examples what this means. Recent reports of lavish spending at taxpayers' expense by government ministers and bureaucrats could well not see the light of day. Is it in the public's interest to know how much ministers and other public officials spend on luxury accommodation and entertaining themselves at tax payers expense?

One has to ask why our political leaders persist in their hesitancy in demonstrating their political will to foster accountability and transparency in politics and governance. Perhaps it is because to be answerable to and open with the people is to come too close to the ideal that the people shall govern.

It would appear that the South Africa favoured by sponsors of the Bill is one with restricted public access to information, limited government provision of information and strictures placed on independent news media. All these restrictions are to be done to protect "the national interest". Who is the nation whose interests are referred to here? Citizens would be very worried to home those who should be accountable to them deciding on the parameters of such accountability.

Only the most phlegmatic of temperaments would be unconcerned when faced with these prospects. Furthermore, those institutions tasked with oversight are increasingly subject to political appointments. We the

people need to strengthen and guard those statutory bodies that monitor accountability. As citizens we must demand that Chapter 9 institutions act vigorously and with integrity to hold public officials and leaders accountable.

Oversight of another type occurs in the judiciary, the independence of which is arguably under threat. A significant number of appointments in all branches of the judiciary have drawn censure for their seemingly political motivations. New names even on the Constitutional Court, the ultimate gatekeeper of citizens' rights, have drawn reasoned criticism.

And what is to be made of the reluctance of government departments to comply with court judgments that affirm government's obligations to realise the socio-economic rights of citizens?

None of that augurs well for the open society that lies, tantalisingly, within our grasp. Let me recap. Open society is blinded when it does not have the information it needs to understand the world. Open society suffocates when government is not inclusive, accountable and responsive. Open society is voiceless when the rule of law is impeded or, worse, effectively suspended.

Comes the moment, comes the means. We need to know how open our society is so that we may guard against that closing of the mind and inward turning of the gaze that leads to tyranny, xenophobia and disempowerment. We need to know how open our society is so that we have a yardstick against which to measure South Africa's progress in creating an open society. The Open Society Monitoring Index assesses the degree of "openness" in South Africa by measuring the free flow of information, accountable and responsible government, and the rule of law.

The barometer measures public access to information, government provision of information and free and independent news media. On accountable and responsible government, it looks at free and fair elections; the degree of public participation in legislative processes and the accessibility of those procedures; and the executive's accountability to Parliament. Concerning the rule of law, it examines independence of the judiciary and elite law-enforcement agencies, and the conduct of mass law-enforcement departments.

Results from Round 1 show South Africa faring neither particularly well nor particularly badly in these spheres. In general, respondents felt the

design of formal institutions and legal mechanisms encouraged openness, suggesting that the basis for open society is present and solid.

But the scores also reveal that the main threats to openness relate to citizens' engagement with rules and institutions, and government's commitment to preserving their integrity and functioning.

Overall, the results indicate that our democracy can be deemed "healthy" or "above average" when judged by procedural definitions of democracy such as elections. When focus falls on the rule of law, executive accountability, and public access to information, however, the openness of society is far more ambiguous.

Wide as it is deep, the Index opens a window into the society that we are, and draws the outlines of the society that we can become. In that, it performs a national service. An open and healthy democracy needs robust dialogue and debate between an effective state and an alert and active citizenry. It needs give and take between the people and the political class.

Citizens must commit anew to engaging with one another to find ways of reshaping the social, economic and political spheres so that openness becomes a staple of our lives. Politicians must bind themselves to transparent, accountable and responsible government.

The quality of a genuine democracy can be measured by how open it is to a multiplicity of voices. An open society - and with it the freedom that so many fought for so long to win - can be sustained if the people are prepared to defend, protect and promote it. The quality of our democracy and its openness depends on the level of engagement by citizens. It is a sacred duty of all citizens to guard this democracy. The democracy of South Africa belongs neither to government nor to any political party or political class. Freedom, democracy and open society in the making are the people's to have and to hold.

"The People Shall Govern"

I think so, I hope so, I believe so.

Dr. Mamphela Ramphele  
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