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## **Hydropolitics and the Evolution of Democracy in South Africa: An Afro-Optimistic View<sup>i</sup>**

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When South Africa became a democracy in 1994, it was against a backdrop of protracted political violence juxtaposed against a complex set of negotiations. This cocktail of violence and peace was as potent as it was intoxicating, but the CODESA jamboree generated enough goodwill and institutionalised robust processes for legal transformation, that the heady transition to democracy took place in relative peace. It was an achievement to be proud of and, indeed, a cause for celebration that our new democracy was born relatively healthy. I am, therefore, happy to call myself an Afro-Optimist, because we collectively got so much right when in essence so much could have actually gone wrong.

Yet, what never reached front page news was one of the hidden underlying factors that so many years of Apartheid had generated – the plumbing of political power – or

stated differently, the mal-distribution of access to that most basic of all resources, water.

This issue is manifesting today between Israel and the occupied Palestine territories.

South Africa is a relatively water scarce state, with one of the lowest conversions of rainfall to runoff in the world. While we receive about the same average annual rainfall as Canada does, we have exceptionally high evaporative losses as our dry and thirsty climate drinks the water that it has just given after a storm. Most of South Africa loses more water to the dry atmosphere than actually falls as precipitation. In essence this is the meaning of being arid – more water is lost to evaporation than falls as precipitation.

Understanding this basic hydrological reality allows us to analyse the real significance of water as a foundation of human civilizations. In water scarce states like South Africa, particularly during times of non-democracy, there is a tendency towards resource capture, in which the powerful political elite mobilizes and gains control over scarce natural resources like water. The South African economy under Apartheid was built on resource capture as powerful political alliances were formed to trade the privileges arising from access to water – wealth, human health and financial security - for votes and taxes to keep an illegitimate regime afloat. This has given rise to what is known as the pipelines of power thesis, where water pipelines became physical links that spanned the spatial and temporal water divide, providing assurance of supply to a select few in exchange for political power and control over the disenfranchised majority. The Orange-Fish-Sundays transfer scheme, the Thukela-Vaal transfer scheme, and the Lesotho Highlands Water Scheme are but a few examples of this historic phenomenon.

It therefore comes as no great surprise that the South African Constitution has, at its very heart, notions of equity. Within this bundle of issues, loosely called 'equity', lie cross-cutting notions of historic redress and sustainable development, all within the context of the rule of law. It is a fine document that every South African should be deeply proud of, because it sets out the rules by which our new democracy will be governed: a democracy in which we all are equal in the eyes of the law, providing a future in which fairness will be the order of the day.

It could have all been so different though. It could have been a violent bloodbath in which an illegitimate regime was toppled by sheer physical force. However, in an act unprecedented in human history, an illegitimate regime voluntarily negotiated itself out of existence. This it did with dignity, integrity and pride, and in so doing, laid a normative foundation upon which we can collectively build a secure future in which every South African citizen can find their rightful place under the African sun.

The Preamble of the Constitution recognizes the injustices of the past and sets forth to heal those divisions. Significantly, one of the first major pieces of legal reform was the National Water Act, which was promulgated as Act 36 of 1998 (only two years after the Constitution was adopted), after a mammoth debate within the water sector, and within society at large. The National Water Act repealed no less than 109 separate pieces of Apartheid legislation relating to water, and sets out the new legal framework in which water will be used as a vehicle for intensifying democracy and social justice within the framework of sustainable development. The preamble reflects the Constitution by making it very clear that the core issue of the Act is historic redress and redistribution in order to achieve a just and stable future.

The National Water Act is a revolutionary document in many respects and is highly respected in the global water sector. Major elements of this Act are:

- Water rights previously associated with land rights have been repealed.
- The only water protected by legal right is that water needed for basic human consumption, where no other water is available (called the Basic Human Needs Reserve); and the water needed to sustain ecosystem integrity (called the Environmental Reserve).
- Water allocated to neighbouring states in terms of international agreements is given a high level of protection.
- Water will be managed at the lowest practical level in society, in keeping with the internationally accepted principle of subsidiarity.
- While the letter of the Act is about redistribution and historic redress, the spirit of the Act is encapsulated in the five eloquent words, “some, for all, forever, together”.

This is a complicated piece of legislation because, in effect, it seeks to undo the plumbing of our society and redistribute the flow of water in a more equitable and sustainable way. In essence, three highly complex sets of processes are called for in the National Water Act, each of which are major challenges in their own right and, when combined, become a truly daunting task:

- Catchment Management Agencies (CMA) are to become the new institutional expression for the management of water in keeping with the principles of subsidiarity. To this end 19 water management areas have been demarcated and, over time, each of these is to be managed by a still-to-be formed CMA. This process is being piloted in the Incomati Water Management Area at present.
- Water allocation is to be achieved through a complex array of new mechanisms and instruments. A delicate balancing act is to be performed that will keep the process of redress and redistribution firmly on track, while not undermining investor confidence or social stability.
- The classification of every river in the entire country in a complex set of technical and social interactions that will eventually result in a high level of consensus on the specific river reaches that need to be protected, versus the rest that can be allocated to development. This process is being called the National Water Resource Classification System (NWRCS) and is about to be launched.

The most public of these three issues at present is the second, which has been given the unfortunate name of Water Allocation Reform, resulting in the acronym WAR. The so-called WAR program is actually the launch of the first water allocation program, as no formal process of water allocation existed before the National Water Act was promulgated. The landowners of the country, who have every reason to be interested in the process, seem not to have woken up to this process yet. Given that water gives value to land, the very fact that water rights previously linked to land rights have been expressly done away with makes the WAR program indirectly about land reform as well. The chosen name and acronym of the WAR program is, for this reason, unfortunate and, in my view, merely sends out an incorrect message because land reform is such a deeply sensitive issue. Had it been called the Water Allocation

Program it would have been given the acronym WAP, which is suitably ambiguous and will not unduly ruffle the feathers of sensitive constituencies.

In future, water allocation is likely to be made so as to balance out strategic needs at a national level. Those needs derive from a basket of issues, including demands from the previously disenfranchised electorate to make a real difference in their daily lives. The current flutter of political unrest engulfing South Africa at the time of writing, supported by the recent announcement by Minister Ronnie Kasrils's office that the National Intelligence Agency (NIA) is evaluating these events, serves to illustrate just how sensitive the issue is. Recently, a newspaper was served with a censorship order. The signs are subtle, but there – they all remind us of the delicacy of our new democracy and the fragility with which it is being held together by the current political leadership of the country. If the Government moves too slowly, then they face a grass-roots backlash. If they move too fast, they could run the risk of undermining investor confidence and closing the door to much-needed foreign direct investment.

We live in truly interesting times from a hydro-political sense. The international isolation caused by Apartheid past drove the government of the time to think of issues like national self-sufficiency, specifically in food, but also in terms of strategic industries like those associated with the energy and steel sector. That formed an unholy alliance, in which farmers were encouraged to produce all of our food and industry was given a cosy position where their pollution was seen as a necessary externality that was justified by the need for national survival. That mindset drove us the very brink of water scarcity as the thirsty agricultural sector consumed our water as if there was no tomorrow and the so-called strategic industry polluted the little we had left with apparent impunity.

Those days are gone forever. Freed from the limitations of our self-imposed isolation, South Africa can now trade in food, and can move to a posture of food security rather than national self-sufficiency, thereby freeing up large volumes of water. This means that with judicious management of that scarce resource, South Africa is no longer faced with water scarcity constraints to future economic growth potential. By re-allocating water from processes that are known to be inefficient at the level of the production unit (known as intra-sectoral allocation), or by allocating water away from agriculture to industry where better economic efficiencies occur - supported by the

possibility of recycling effluent streams and thereby making the slice of the pie even larger (known as inter-sectoral allocation) - South Africa has options previously unknown. In short, this is good news, making the water allocation program a strategic issue with significant future ramifications.

The Department of Water Affairs and Forestry (DWAFF) is actually doing an excellent job in managing this balancing act. While it is true that some industrialists are becoming increasingly annoyed that their water licences have not been approved yet, meaning that their business operations are technically outside of the law, it is also true that DWAFF has been engaging some of the best and brightest minds in the country, because they do not want to get it wrong. Their task has been to develop the Water Allocation Program, which they have done. The only mistake that they have made, in my view, is to incorrectly name it Water Allocation Reform (WAR), but that is not a serious issue and can easily be overcome by merely renaming the process.

There are two distinct sets of risk arising from this whole process.

The first risk is that of political backlash from frustrated grass-roots supporters of the ruling African National Congress (ANC). In this regard, there is growing tension from a number of areas. The Black Economic Empowerment (BEE) processes in the country have been hijacked by select elite, who have become super-rich in a relatively short space of time, leaving the large previously disadvantaged community in the dust of their spectacular success. Running parallel to this has been the relatively slow process of land reform. Punctuating both of these issues has been the low capacity to create new jobs in the now democratised economy. This is a potent cocktail that government will have to take heed of, and confront, in the near future.

The second risk is that of the loss of investor confidence as perceptions grow that DWAFF is slow to roll out licensing processes. It is known, for example, that certain industrialists are adopting a wait and see approach before they make major cash injections into the South African economy. One such case involves a multi-national corporation that wants to invest 3 Billion Rand, but is at loggerheads with DWAFF on licensing issues and, as such, has placed this investment on hold. This translates into many jobs and, coming in the wake of the recent Barclays Bank buy-in, would open the floodgates to future foreign direct investment. It is also known that certain banks

are taking a precautionary approach when being asked to fund agricultural expansion until such time as greater certainty exists around the whole Water Allocation Reform process. The recent injunction against mining houses regarding their responsibility towards the sustainable management of what is known as Acid Mine Drainage (AMD) and related mine-rewatering issues, is yet another example. At the heart of this case, now within the legal process, is the responsibility of companies to repair the environmental damage caused by their operations, even after the mine has closed down. This has far-reaching strategic implications, not only for the mining houses, but also for business in general, and for the South African economy as a viable investment destination in future.

In conclusion, it can be said that water resource management, as a vehicle for redistribution, the deepening of democracy and the movement towards a sustainable future in which every South African can reach reasonable levels of personal aspiration, will be a complex journey indeed. Yet, in the spirit that underscored CODESA and the relatively peaceful transition to democracy in South Africa, I feel deeply optimistic about the future. I remain proudly Afro-Optimistic. Despite the daunting nature of the task at hand, South Africans from a variety of technical backgrounds are all joining forces in a bid to make it happen. The National Water Act is not just about managing water. At its very core is the redistribution of privilege in a society deeply scarred by a history of resource capture and mal-distribution in favour of a select few. It is about providing a stable platform on which the future economic growth and prosperity of our nation will come to depend. It is about restoring human dignity in areas where there has never been dignity. In short, it is about the new hydraulic mission of a fledgling democracy that is learning how to fly to reach the heady heights that it is capable of realistically.

The strategic landscape has been changed in an irrevocable way, yet the revolution that drove this change has been so silent. Every single user of water as a strategic input to their production process, or every company that generates an effluent stream that is being discharged to river systems, is today faced with a *fait accompli*. The regulatory architecture has changed in a fundamental way. Winning companies will realize this and rapidly start to develop coping strategies to ensure their future prosperity under the changed management regime. Losing companies will simply fail

to recognize the significance of these events and slowly start to recede into the background as their competitive advantage is eroded from under them.

Hydro-politics is thus intimately interwoven with the evolution of democracy in South Africa.

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<sup>i</sup> *The views expressed in this paper are those of the author and do not necessarily reflect the views of the Centre for International Political Studies (CIPS)*



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