



FW de Klerk

FOUNDATION

The Future of Multiculturalism in South Africa

Conference to Commemorate the
26th Anniversary
of FW de Klerk's Speech that
Initiated South Africa's Constitutional
Transformation Process

Presented by the
FW de Klerk Foundation
In conjunction with the
Konrad Adenauer Foundation



**Konrad
Adenauer
Stiftung**



The FW de Klerk Foundation

The FW de Klerk Foundation promotes and preserves FW de Klerk's presidential heritage by supporting the causes for which he worked during his presidency.

The Foundation:

- supports and promotes the Constitution, the Bill of Rights and the Rule of Law through the activities of the Centre for Constitutional Rights;
- promotes unity in diversity by working for cordial inter-community relations and national unity;
- supports charities that care for disabled and disadvantaged children;
- provides information on FW de Klerk's presidency and the factors that led to South Africa's transition to a non-racial constitutional democracy.

For more information, visit www.fwdeklerk.org



FW de Klerk
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Centre for Constitutional Rights (CFCR)

The Centre for Constitutional Rights (CFCR) operates as a unit of the FW de Klerk Foundation and reports to the Foundation's Board. The CFR's mission is to uphold and promote the Constitution.

The CFR's goals are:

- to promote the values, rights and principles in the Constitution;
- to monitor developments - including draft legislation - that might affect the Constitution or constitutional rights;
- to inform people and organisations of their constitutional rights; and
- to assist people and organisations to claim their rights.

For more information, visit www.cfcr.org.za



Centre for
CONSTITUTIONAL
RIGHTS

Konrad Adenauer Stiftung (KAS)

Freedom, justice and solidarity are the basic principles underlying the work of the Konrad Adenauer Stiftung (KAS). The KAS is a political foundation, closely associated with the Christian Democratic Union of Germany (CDU). In our European and international cooperation efforts we work for people to be able to live self-determined lives in freedom and dignity. We make a contribution underpinned by values to helping Germany meet its growing responsibilities throughout the world.

We encourage people to lend a hand in shaping the future along these lines. With more than 70 offices abroad and projects in over 120 countries, we make a unique contribution to the promotion of democracy, the Rule of Law and a social market economy.

We cooperate with governmental institutions, political parties, civil society organisations and handpicked elites, building strong partnerships along the way. In particular we seek to intensify political cooperation in the area of development cooperation at the national and international levels on the foundations of our objectives and values. Together with our partners we make a contribution to the creation of an international order that enables every country to develop in freedom and under its own responsibility.

For more information, visit www.kas.de or www.kas.org.za



“Freedom, justice and solidarity are the basic principles underlying the work of the Konrad Adenauer Stiftung (KAS).”

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Introduction and Welcome

Dave Steward,
Executive Director of the FW de Klerk Foundation

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

Good morning Ladies and Gentlemen. I would like to welcome you all this morning to our Annual Conference which we are holding once again in collaboration with the Konrad Adenauer Foundation. Alhoewel die onderwerp “Multikulturalisme” is, gaan die verrigtinge ongelukkig slegs in Engels wees omdat baie van ons gehoor nie tweetalig is nie, maar ons sal baie van die toesprake en inligting ook op ons webwerf publiseer en ook in Afrikaans waar nodig. Wanneer vrae gevra word, sal julle ook baie welkom wees om vrae in Afrikaans te stel.

We decided to dedicate this conference today to the future of multiculturalism. We did so because of the very strained and bitter communication that has taken place recently between our communities. We felt that the time had come for us to soberly examine our multicultural society: where it is going, how people feel about it. I think we should also bear in mind that, despite all of the heated remarks, according to the Institute of Race Relations, 79% of South Africans reported that they experience no racist incidents whatsoever. So we must remember that the great majority of South Africans want to make our multicultural society work.

Today we will be looking at multiculturalism from a number of different perspectives. Firstly we are deeply honoured to have with us this morning Dr Mathews Phosa, one of the stalwarts of the ANC, a poet in Afrikaans and a leader who has a very special interest in multiculturalism.

We also have this morning Rhoda Kadalie, who is a civic organisation leader, journalist, and commentator, who will be giving us her view on the perspective of Coloured South Africans on the evolution of multiculturalism.

We are also privileged to have here this morning Flip Buys, the Head of Solidarity. Solidarity is the largest Afrikaner organisation, probably in the world.

We'll have a panel discussion after that and then this afternoon we are going to be looking at multiculturalism

within the perspective of what the Constitution says. Again, we are deeply honoured to have with us for that address Justice Albie Sachs, founding member of our Constitutional Court, who in the course of his work on the Constitutional Court wrote a number of judgments relating to cultural and language rights.

We will also have all the way from Canada, from Monkton, New Brunswick, Dr Fernand de Varennes, who is perhaps one of the top experts in the world on the importance of language of tuition in multicultural societies, and the impact that the language of tuition can have particularly on minority languages, and then finally FW de Klerk. Former President De Klerk will give the Foundation's perspective on this important question, and after that we will have another panel discussion.

I would like to ask Dr Holger Dix of the Konrad Adenauer Foundation, our co-host, to say a few words also in welcome. I would also like to recognise the enormous contribution that the Konrad Adenauer Foundation is making to the promotion of debate in South Africa to supporting the democratic principles which lie at the heart of our Constitution. ●

*Transcribed from recording of speech.

“We decided to dedicate this conference today to the future of multiculturalism. We did so because of the very strained and bitter communication that has taken place recently between our communities.”





Introduction and Welcome

Dr Holger Dix,
Head of the Konrad Adenauer Foundation, South Africa

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

Dear Ladies and Gentlemen. Allow me to begin with expressing how much pleasure it gives us to work with the FW de Klerk Foundation as a partner.

In the past few years the partnership between the Konrad Adenauer Foundation and the FW de Klerk Foundation, as well as with its Centre for Constitutional Rights (CFCR), has been most productive and fruitful. We have jointly hosted many conferences, workshops and seminars on important constitutional topics that are pertinent for a sustainable democratic future of South Africa.

As a German political Foundation, Konrad-Adenauer-Stiftung aims to promote democracy, good governance and the Rule of Law. In order to achieve these objectives we need good partners, we highly value the expertise of local partners. That is why here in SA we implement most of our activities in cooperation with state institutions, civil society organisations, think tanks or universities. Without a doubt we consider ourselves lucky to have the FW de Klerk Foundation as a partner and source of expertise.

The theme of today's conference, which deals with the future of a multicultural society, is not only relevant for the South African context but also for the situation we are currently facing in my home country, Germany.

The influx of migrants has led to an intense debate on how to manage cultural, religious and ethnical diversity. People in Germany are anxious about what the future will look like. Politicians and society as a whole are confronted with some fundamental questions:

- How can we show solidarity and fulfill our humanitarian obligations without losing our cultural identity and overstressing our ability and willingness to help?
- How do we deal with the increase in extreme political positions that threaten our democratic values?
- How do we deal with people's fears, concerns and negative sentiments caused by the current refugee crisis?
- How can we promote the integration of foreigners and how do we safeguard our social cohesion in times of such crisis?

Michael Thielen, General Secretary of the Konrad Adenauer-Stiftung, has urged in a recent comment to discuss the current challenges more rationally and less emotionally and not to paint a picture of doom and gloom for the future of Germany.

The Foundation is convinced that it is important to have a solid understanding of the multiple challenges that Germany

is currently facing. These challenges must not lead to pessimism and passivity or resignation. Instead we must use them as political drivers to actively shape the future.

Reading these comments and sitting in Joburg reminded me of the situation in SA.

South Africa too seems to be under immense pressure these days. As a foreigner and guest of this country I do not feel authorised to comment on the political situation of this country, especially when there are so many experts and political actors in the room.

However, when visiting Exclusive Books, I notice book titles, such as "How long will South Africa survive?", "What if there were no Whites in South Africa?", "We started our descent" or "Dominance and Decline". These are certainly not uplifting titles. The reading of newspapers or tweets does not help to improve the mood either.

To make a long story short, I think Germany and South Africa have quite a few challenges and problems in common, such as:

- The increase of extremist political views and positions;
- A questioning of national identity and social cohesion;
- A departure from a rational and fact-based debate towards an emotionally loaded and heated debate;
- A new attraction of populist groups and parties that are not able or do not want to contribute to the solutions of the problems in any meaningful way.

I think what Germany shares with South Africa is the necessity to call upon political leaders, leaders from business, civil society and religious groups to abstain from emotionally loaded debates and practice a culture of informed and fact-based debate.

We need to call on them to address the concerns and fears of the people and not to ignore them.

We need to call on them to be part of the solution and tackle the current challenges constructively.

The Konrad Adenauer Foundation hopes that platforms such as this conference today will promote constructive dialogue and will help to develop a common vision for the future of South Africa. I am therefore very much looking forward to the upcoming presentations and discussions.

I thank you!



CHRISTINA TEICHMANN AND DR HOLGER DIX, BOTH OF KAS, CONVERSING WITH DELEGATES.



The Future of Multiculturalism
in South Africa:
**A Black
Perspective**

Dr Nakedi Mathews Phosa

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

Firstly, let me start by thanking former President De Klerk for the role he played in bringing about real change to our country. When all the noise has died down, future historians will judge positively the role you played in the liberations of all South Africans, black and white. Real leaders make difficult and selfless choices and become statesman, and you did just that. You and President Mandela crossed the dangerous Rubicon when you were called upon to do so.

The other day I read an article that was published in *The Star*, Tuesday 10 May 1994, and I quote:

“On the eve of changing the reins of power, South Africa’s outgoing and incoming presidents last night called for reconciliation and expressed confidence in the country’s future.

Outgoing president FW de Klerk told a civic banquet in Pretoria that he would play his part so that reconciliation became reality.

President Nelson Mandela said it was necessary to join hands to promote the spirit of reconciliation to build the country.”

Today, almost 22 years on from this event, we celebrate the freedom of all South Africans. Freedom for which we can all be thankful to not only Mandela and De Klerk, but to many ordinary South Africans that made the ultimate sacrifice for us to be free today. We honour their legacy and their commitment to celebrate a free South Africa.

On 2 February 1990, all South Africans collectively held their breath as they waited for the then President of South Africa, FW de Klerk to speak. What he said that day changed history and cemented his efforts to bring lasting peace to our country and in his efforts since then, to highlight the impact of racial oppression to the world.

However, many South Africans tell me today that irrespective of arguably the most balanced and liberal Constitution that any nation can hope for, they don’t feel free or safe in their homes, in the streets, on the busses and trains, schools, universities and at the tourist attractions in our beautiful country. We need to change this!

However, in any endeavour you have to understand the past to understand and shape the future, as nothing ever happens out of context.

During the Presidential Address to the ANC (Transvaal) Congress held on 21 September 1953, our revered former President Nelson R Mandela started off by saying:

“Since 1912 and year after year thereafter, in their homes and local areas, in provincial and national gatherings, on trains and buses, in the factories and on the farms, in cities, villages, shanty towns, schools and prisons, the African people have discussed the shameful misdeeds of those who rule the country. Year after year, they have raised their voices in condemnation of the grinding poverty of the people, the low wages, the acute shortage of land, the inhuman exploitation and the whole policy of white domination. But instead of more freedom, repression began to grow in volume and intensity and it seemed that all their sacrifices would end up

in smoke and dust.” It is from these circumstances that the celebrated *Freedom Charter* of 1955 and the Constitution of the Republic of South Africa of 1996 was born.

As a result of the direction that the De Klerk government took on 2 February 1990, all South Africans went to the polls on the 26th to the 28th of April 1994. This first fair and free election in which every South African participated in their own way, was born from the CODESA negotiations that resulted in an interim Constitution for the country. South Africans from all walks of life cast their ballots and elected their leaders, with hopes of economic prosperity and growth, education and empowerment through their own efforts and labour.

They also went with the hopes of laying the foundation of a united nation with many cultures and religions, where everybody will be free to choose, not only where they want to live – in the communities of their choice – but also free to receive quality education for their children and quality health care for the sick and the elderly.

They were also free to choose their language of tuition and practicing the culture of their ancestors.

We all held high hopes for the democracy that was born on the 27th April 1994. With white domination eventually crushed, the nation was jubilant and we all embarked on a journey where our freedoms and our rights were soon entrenched in the final Constitution of the Republic of South Africa. We are a diverse nation with diverse cultures and respect for each other – at least on paper.

It’s not easy to forget those triumphant early days of a free South Africa. We all thought everything was well in the rainbow nation. The world praised us for what was achieved and our economy grew at a pace hardly seen before, supported by uncontrolled international economic expansion and prudent fiscal and monetary management and discipline at the Reserve Bank and the Treasury.

A policy of prudence that was to stand us in good stead amongst our peers and developed nations in 2008 when the global economy rapidly contracted to produce the worst economic crisis the world has seen since the Great Depression of the 1930s.

The South African economy, in contrast to other countries, slowed, but never faltered. The institutional and political leadership of the time steered our country well through



“Black Economic Empowerment – the cry to economic empowerment of the masses – has failed.”

tough times to leave our economy fit and ready to grow again strongly in an era now redefined by the global economic events of the 2008 economic crisis. Times were tough but still good as foreign investment readily found its way to our shores and we could borrow freely internationally as a country.

We have had many success stories to celebrate and should rightly feel proud of our achievements as a nation. South Africa is seen to be a leader in its fiscal and financial management policies and legislation. Our monetary prudence saw our economy blossoming and our people moving swiftly towards a multicultural society in the early days of our democracy. Our leadership was principled and confidently represented our country and our continent on the world stages where we provided much needed guidance on complex issues.

Our economy was the envy of many of our peers, which led to unprecedented movement of people crossing our borders illegally to share in our growth. Our government set targets for meeting our local objectives as set out in the Bill of Rights, participated in international conferences and acted as a valuable contributor to the global debate on climate control and other pressing issues.

Our foreign affairs policy of non-alignment made us a strong ally and positioned South Africa as a trusted member of the regional and international communities.

And then everything started to change.

We have seen the once established and principled leadership eroded at national and provincial level.

Negative defining moments for South Africa were the shootings at Marikana, Nkandla, the case of Hasan Ahmad al Bashir, economic disruptive load shedding implemented by Eskom, the expansion of the executive to more than 70 members, the removal of former Finance Minister Nhlanhla Nene, all following in close succession.

The bloated presidential, ministerial and deputy ministerial executive structure is costing you and I, as taxpayers, hundreds of millions of Rands.

All of this at a time where the unemployment rate is more than thirty percent of potential economically active citizens of the country. What is often obscured in this statistic is the severe unemployment amongst the youth, even those with university degrees.

A fair question seems: Do we really get value for this amount of money spent?

Bloated structures like this do not happen without cause. We do not want uncritical citizens who see every criticism



as from the enemy or racists. By accommodating friends, acquaintances and other hangers-on to use the party as a ladder to positions and wealth, our beloved ANC has weakened itself, the Alliance, the economy and the country.

By acknowledging and accommodating individuals from other power groups, endowing them with a say in party policy matters we have created a climate of policy uncertainty at best and policy vacuums at its worst as individuals take their own positions on matters of national importance. External voices fuelled with hungry self-interest have seemingly found a welcome seat at the main table.

Black Economic Empowerment – the cry to economic empowerment of the masses – has failed. Whilst a few have been empowered, I do not only see endemic unemployment, but also rampant poverty and hopelessness wherever I visit.

There are those who are punting the development of “Black Industrialists” with billions of Rands set aside to implement such a skewed and misinformed policy that may have an impact on employment in the distant future. As much as entrepreneurs are not created at will by declaring them, handing out key infrastructure and other tenders to cronies and relatives won’t do it either.

Only the market and strong-willed and principled business leaders, supported by highly-skilled and educated specialists irrespective of colour or culture, can create entrepreneurs that can develop into industrialists. There are many successful black entrepreneurs that are also seasoned industrialists to be found on our continent and even in our country. They all did it by working hard and risking relationships and other assets to achieve success.

Many of us are spurred on by a belief that we can create something where the market has failed. This is an expensive misguided policy that is doomed for an expensive failure. It has no place in a mixed economy where capital intensive efficiencies are required to compete with other nations.

A broader based partnership between government and the private sector is essential to drive human and economic development. With government and the private sector working together as partners, we can move our resource-based economy to a globally focused, knowledge-based economy in the next decade.

We must realise that the world has changed and that global economic conditions will allocate industrial and other

economic activity to geographies where conditions are most suitable and labour most efficient.

Having said that, I read about some members of the youth eloquently quoting the writings of Karl Marx in attempting to detract from the fundamentals behind the poor economic growth in our country. I beg them to look around them and read articles and writings about the failings of socialism in countries like Poland, the former USSR, Cuba, Zimbabwe, Mozambique and other nations, where the rate of unemployment and poverty became equal to or far greater than in South Africa. The people will not eat slogans.

And let me add, THE ANC IS NOT A SOCIALIST ORGANISATION, NEVER HAS BEEN AND NEVER SHOULD BE. We have a socialist party, the SACP, don't attempt creating another one!

Good leaders read widely, debate openly with a view to learn while developing their opinions and honing their skills. Informed leaders never blindly follow any policy or person into the abyss.

There is a proverbial queue of State Owned Entities at the door of the National Treasury looking for bailout money. If it is not PetroSA with a multi-billion Rand hole to fill, it is SAA, which is fast approaching bankruptcy. Not to mention the SABC and Eskom. We must however thank Eskom, under the leadership of Brian Molefe, for having stopped the 'painful' load shedding.

The State Owned Entities are taxing the country with an estimated R50 billion short-term requirement, on top of crippling increases in tariffs and other service charges in attempting to get their finances onto an even keel. This is again proof of the disastrous policies and mismanagement of assets perpetrated on an on-going basis.

Sadly, we operate in silos. All the above and many more State Owned Enterprises (SOE's) operate and report to separate Ministers, overseen by a multitude of qualified and unqualified Board Members.

Is it not time for us to seriously look at consolidating all legislation relating to the management of all SOE's and placing it in a single ministerial portfolio?

If multinational companies can operate across many industries and markets, under a single Board of Directors and

a single CEO, why do we need a multitude of SOE's, each with its own Board, its own CEO, CFO and other duplicated positions?

I am sure we can come to an arrangement where deployment is replaced by professionalism in managing all state entities for the benefit of society. By taking this bold step, we will be releasing a multitude of skills and money back into the economy.

A strong governing party and governments operate from inner strength. Such inner strength will allow it to listen to the nation, admit its mistakes, and correct them. We, as the ANC govern, but we run a considerable risk if we forget that we govern on behalf of those who elected us through the ballot box.

Is nuclear power generation an affordable or desirable alternative for meeting our electricity generation needs when the world is overwhelmingly declaring it archaic and unaffordable, both from an economic and ecological perspective? Before we take a decision on this matter, one way or the other, we must ensure proper feasibility studies are done, environmental issues are clearly highlighted, internal skills in South Africa are developed and we need to agree whether or not it is affordable.

Whilst Eskom and the Municipalities succeeded in bringing electricity to almost every household since 1994, the on-going affordability of such electricity is rapidly putting it beyond the reach of many. It's no longer only the poor and the elderly that are suffering from this, but high energy prices and inadequate and irregular supply made South Africa an unfavourable investment destination. Should Metropolitan governments not play a bigger managerial role in energy management?

Certainly, the globally lauded successes of our dynamic renewable energy programme should be the vehicle that we expand and accelerate, rather than nuclear energy? We have created an unparalleled, smoothly managed, cost-effective programme of public and private sector holding hands. Why, if we have succeeded, do we want to walk away from a working, successful model?

Government is currently presiding over a struggling economy and some will argue, a fast approaching, failing State.

We were all astonished when former Minister of Finance,



“Good leaders read widely, debate openly with a view to learn while developing their opinions and honing their skills. Informed leaders never blindly follow any policy or person into the abyss.”

Nhlanhla Nene, was removed from his post in December last year. Our economy and our country's reputation have suffered incalculably.

Fearless questions need to be raised about our leadership when such actions lead to the global impoverishment of our political and economic currency.

We need the facts about these decisions and we need them soonest. Unsubstantiated political spin will not keep us from approaching the economic cliff. With the indeterminate impact of the drought and other global economic events, we need to be aware, prepared and ready for what may transpire.

We must be careful that we never argue with those who believe their own distortions.

The actions of our leadership on 9 December last year empowered investment fund managers to move South Africa off the list of desirable investment destinations. Capital flight as a result of a lack of investor confidence in our economic policies and questionable political stability has seen billions of Dollars leaving our markets in the past month. In addition, it was the stimulus to a substantial destruction of wealth. It is ludicrous to imply or state that the value of the Rand and the state of our economy is not determined by what a leader says or does. History is clear in its reaction to leader's utterances. Many a war was started and many a Dollar was lost on the back of what leaders said and how it was perceived. Look at the reaction of the markets if you doubt what I am saying. To change perceptions about our country and our economy, government must provide leadership to ensure private capital is made to feel welcome.

It is easy to treat history with a revisionist brush, ignoring the lessons imbedded in it. A former President recently wrote in an essay that history always finds a way, over time, to birth the truth.

Through this revisionist approach to history we don't allow ourselves to learn from its triumphs and failures. We expose ourselves to having to revisit past failures through our own failures. The only way to a balanced future is to correctly record our history, and then, to teach our children the honest truth about its glory and its failings. A revisionist approach to history never succeeds.



“The only way to a balanced future is to correctly record our history, and then, to teach our children the honest truth about its glory and its failings.”

Recent demonstrations are by far not over in the higher education sector that is in no shape to take fee write-downs and debt forgiveness. To ensure long-term education and skills delivery for economic growth these consistently underfunded institutions needs to be strengthened.

The calls for free services, be it university fees or electricity to name a few, will continue and reach a crescendo as government has made widely popular but economically unsustainable decisions in the past to please the masses.

Next time you hear that government has made a decision to fund something, remember government is 100% taxpayer-funded. Whatever we get that is labelled “free” is funded by the taxpayer. What right does anyone who pays no taxes have to demand that someone else should pay more?

Remember, I am one of the people who pays for all the “free” services that government gives you. I want to see value for money, economic growth, a bigger tax base, sustainability; nothing else.

As for the current *Higher Education Amendment Bill*: Taxpayers, alumni, lecturers, students and the ordinary South African, demand that our Tertiary Institutions are not treated and or reduced to glorified high schools.

Whilst the State has an obligation to subsidise tertiary education, it must refrain from the need to reduce University Councils to Parent-Teacher Associations. Even as our universities occupy eight places in the top ten in Africa – South Africa has 20 tertiary institutions ranking in the first 2 000 of the estimated 16 000 Universities worldwide – meddling in their affairs will certainly influence their international ranking. We hope our government will not be tempted to power grab as it will not only harm our Universities but our students will suffer too, as their ability to compete internationally will be diminished.

The much debated National Development Plan is not a plan for Government, but a plan for society, therefore for all of us, developed by all of us!

Now, my question to the leadership of our country is:

- Why don't we implement the NDP?
- Why do we pay lip-service to the plan?
- Why don't we make the NDP central to all our actions, activities and budgets?
- Why don't we evaluate the implementation of the NDP in the performance agreements of our Ministers and senior officials – and then, publish these agreements?

Decisive leadership – not populist, survivalist and corrupt –

must take all the required steps to make the NDP the only national strategy for development for South Africa.

Reaction to incidents of racism is not always fully understood. Criminalising racism will only fill our courtrooms and ultimately our correctional services' facilities. It will also lead to further racism and will entrench the differences in society even further. It takes nothing to join the crowd that supports racism and sexism – it takes everything to stand alone and work towards creating an understanding that will change people's minds and perceptions.

Our leadership must address racism through their actions. When a political leader starts supporting racism in commenting on social media we are in dangerous territory. Our leadership must lead in this matter. They must be strong in their condemnation but even stronger in their leadership that will create a balanced framework to address it.

For the record, I need to say that Khumalo does not represent me and the millions of black peace-loving South Africans, nor does Sparrow represent former President De Klerk and the millions of white peace-loving South Africans.

No living people, black or white, are responsible for what other black and white people did generations ago. It is true that your past does not determine who you are. However, your past prepares you for who you are to become.

We must accept responsibility for failing to provide leadership and implement programmes that actively promote multiculturalism in society, as called for in the Constitution. I have not seen programmes aimed at bringing the different South African cultures together to ensure understanding and nation-building. Just look at how divisively we celebrate our national days and you will understand what I am saying.

It's time that we realise that we are not black, white, yellow or brown: We are South Africans with diverse cultures. We have the same needs, desires and wishes for ourselves and our children. We are one nation.

Let us develop our sports men and woman, let's empower our teams to win, then support them with pride!

Whilst investor confidence can be severely scarred by removing an accomplished Finance Minister, the

“It's time that we realise that we are not black, white, yellow or brown: We are South Africans with diverse cultures. We have the same needs, desires and wishes for ourselves and our children. We are one nation.”



reappointment of another respected individual, without making other confidence-restoring changes, cannot, in the short or medium-term, restore our position in the international financial community overnight.

Money always flows to where gains can be made. It measures risk and determines a price that leaves room for a reward – profit. When the risks change and become unpalatable, money will leave, as is the unfortunate case in our economy now.

To bring investor confidence back, government will have to implement sound fiscal and monetary policies, develop or restore investor-friendly development policies and legislation and align education and skills development to what the investment world needs.

In this regard, I applaud the Governor and the policy committee of the South African Reserve Bank for taking a bold position on the repo rate. It has already had a short-term positive impact in the markets.

Yet, a lack of policy cohesion and political leadership will lead to investors looking to more favourable destinations for their projects and money. This in turn devalues our currency and our ability to borrow in the capital markets at reasonable cost.

Investor friendly policies must be aligned with the objectives of the NDP and other legislation; legislation preventing development must be reviewed and realigned for growth.

The leadership must not be scared and hesitant to engage other structures in society – labour, business, education – to inform policy reviews and legislative change that will address job creation, economic participation and poverty.

Lasting socio-economic change will remain a myth if a prudent transformation approach is not followed. We can only bring sound political transformation – I refer to professional political collaboration with society as the benefactor – and socio-economic development benefits to our country if we are clear about our objectives.

Our leaders must be clear about what we need to succeed as a nation. As citizens, we want:

- A sound education system that produces results in line with the needs of society and the economy;
- All South Africans to have the ability to participate equally in the economy without exclusion;
- All of the resources in our country to be aligned with growth, job creation, poverty reduction, food security and economic participation; and
- Multiculturalism to be celebrated as a strength – if not, society will spiral into distrust, dishonesty, entitlement, blatant pessimism and conflict.

Our leaders must remember that it is not government's role to create growth, it is the domain of the private sector. Government's role is to create the environment for the private sector to thrive and for them to create sustainable jobs in support of sustainable communities. It is a symbiosis that must be mutually beneficial for all economic participants to meet their objectives.

Business is ready to engage meaningfully with government to address job creation and growth. Government must clarify its policies and level the playing field. The current practice of continuously changing the rules of the game while it's being played is counterproductive. We want a clear game plan, firm policies and government's commitment to the plan then we can all play for the benefit of the Nation.

To move forward, we must train the next generation of skilled workers collectively, we must make it attractive for those South Africans that can help us develop skills and build the country that are being lost to emigration (those that are leaving are not only white or middle-class). The private sector must be supported and incentivised for creating further opportunities for learning and skills development other than through the use of expensive tertiary resources such as universities.

South Africa invested in all its people through taxpayer-funded education, skills development programmes and tertiary education programmes. To be successful beyond our borders, no South African with skills can be ignored. Everybody must have an equal chance to be appointed to a job. Historically job reservation was practiced with disastrous economic consequences. Why are we repeating the mistakes of the past? Can the outcomes not be seen?



During the Mandela days nation-building was ultimately strengthened through the work of the Truth and Reconciliation Commission – the TRC. The Arch spoke, he listened, he guided, we cringed and those that were wronged offered forgiveness to remorseful perpetrators. The lessons of the exercise have been documented and promptly banished to the bookshelves. It is time for us to reflect on the history and the actions that led to the TRC, the objectives of the TRC and the healing we found through the process. We owe a big debt to Archbishop Tutu and his team!

Whilst it was a difficult process, South Africa grew as a nation and we must all now work as one to build a future that is worthy of the sacrifices of the past. The youth must pause and understand where we all came from before they make uninformed utterances about our past and current leaders and their decisions.

It is time for South Africans to make this nation great again. It is time for us to hold hands in the street again as we did in the lead-up to the 1994 election. I remember those days of bridge-building, outreach and joint ownership of our future fondly.

The question now is, what do we do not to totally lose that momentum.

I call on Treasury to present a balanced budget that is a true reflection of the state of the economy of our country. Making empty promises now and reversing them in the Medium Term Budget Policy Statement after the Local Government elections will only speed up the classification of our sovereign bonds as junk by international rating agencies.

Be honest to the Nation, especially about the economy and the likelihood of hardship. Prepare the Nation to respond to the hardship by setting an example of discipline and frugality.

Attacks on former Presidents Nelson Mandela, Kgalema Motlanthe, Thabo Mbeki and FW de Klerk for opinions expressed in public are uncalled for. Rather than engaging them, utilising their experience and insights in thought-provoking debate, those with platforms engage in personal attacks without substance in order to appease their followers. What has happened to debate, discussion, opinion-forming and mutual respect? Let us agree to disagree without being disagreeable. I do not need to personalise or racialise debates if I disagree from you.

“Government's role is to create the environment for the private sector to thrive and for them to create sustainable jobs in support of sustainable communities.”



The short of this is that as a diverse nation we will always have diverse opinions – lets embrace them, debate them and build a new understanding regarding our own past and future without ignoring the lessons history can teach us.

In a multicultural society there will always be difference of opinion. That in itself is not destructive if our objective is to engage and to educate.

Attacking diversity will only enhance the current levels of division amongst people. The current climate of cultural and political intolerance between population groups and power groups will weaken our nation further, as is already visible in our poor performances on the sport fields, in the board rooms and in Parliament. We must treat our differences with dignity and allow debate. There is dignity in our differences.

The news is not about news anymore. It is about individuals destroying others and shoving a dictatorial agenda down the collective throats of decent South Africans.

We need the good news. We need to see and hear that we are a United Nation, where all actions and activities are aimed at making us a great nation, not only in Africa but also in the world. I want to again stand here telling you about the nation we started building in 1994 and in the decade thereafter. We don't deserve the divided nation we have become. We are so much better than that.

As for those advocating socialism and equalised poverty, we should be grateful for wealthy people – they maintain and create jobs when they spend their money and build their businesses. They care about growth and development. They take the risks to develop their businesses by investing in our economy, our people and our children through the taxes that they pay.

At present, the enemy of the poor and economic growth is not the rich, nor the international investors. It is our leadership, our government and our teachers that pitch up drunk at schools – if they even bother to come – and ultimately, all of us that are paralysed by indecision and career-driven correctness.

Ladies and Gentlemen, above all, I want a leadership with ethics and honour and a society where all cultures and languages are respected and every community has the freedom to practice their cultures without fear for retribution.

I say all of the above as a loyal member of the ANC but also as a person who believes that good men and women cannot be silent when the wrongs and wrongdoing reach such substance that it becomes criminal to be silent.

A famous Afrikaans poet and writer, NP van Wyk Louw, wrote beautifully on the topic of what he termed “*lojale verset*” (loyal resistance). I am putting my cards on the table today as I deeply believe that one of loyalty's most important elements is speaking the truth to power; whatever the personal or professional consequences. As leaders, our collective silence has simply become too costly.

I thank you. ●



Dr Nakedi Mathews Phosa

Dr Mathews Phosa, BProc LLB (UNIN), PhD (HON) in Law, (Boston University, USA), an attorney by profession, is a leading figure in South Africa's business and political world. Dr Phosa opened the first black law practice in Nelspruit in 1981 and worked as a partner until 1985 when he was forced into exile. While in exile, he underwent political and military training, after which he became the Regional Commander for *Umkhonto we Sizwe* (MK) the then military wing of the African National Congress (ANC) in Mozambique. He was one of four ANC members to be sent back to South Africa in 1990 to start the negotiation process with the former government where after he played a prominent role in the processes to establish a peaceful transition to a fully democratic South Africa. Dr Phosa was appointed as the first Premier of Mpumalanga Province in 1994 by the late President, Mr Nelson Mandela. Following the elections in 1999, he resigned his seat in Parliament in favour of focusing his attention for a career in business. Dr Phosa re-entered the political arena in 2007 when he was elected Treasurer-General of the ANC until December 2012. Dr Phosa is Chairperson of Special Olympics

South Africa and Innibos Arts Festival. Commercially, Dr Phosa sits on a number of listed company boards (Value Group, Waterberg Coal Company, Jubilee Platinum, Renaissance Capital and Bauba Resources), as well as a number of unlisted entities (Mathews Phosa & Associates, SMEC South Africa, Hans Merensky Holdings and Du Toit Smuts & Mathews Phosa Attorneys - to name a few). He also sits as a trustee to the Afrikaans Handels Instituut (AHI). Dr Phosa was awarded a Lifetime Achievement Award for his contribution to transformation and empowerment at the 12th Oliver Empowerment Awards ceremony on 26 April 2013. Dr Phosa attended the 25th anniversary celebrations of the signing of the Brazzaville Accord on Peace in Southern Africa in Brazzaville in February 2014 where he was awarded the Congolese Order of Merit. Dr Phosa attended the Congress of Vienna 2015 which saw a host of attendees from various countries around the world reflect on global diversity in October 2015. While in exile Dr Phosa taught Afrikaans at one of the schools in Mozambique. He has two anthologies in Afrikaans poetry to his name under the title “*Deur die oog van 'n naald*” - some of which have been prescribed in the school curriculum for our national matric syllabus. Dr Phosa launched an English anthology called “*Chants of Freedom*” on 2 June 2015.



The Future of Multiculturalism
in South Africa:
**A Coloured
Perspective**

Rhoda Kadalie

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

Can SA have a future without Coloured people?

So many academic papers and treatises have been written about Coloured identity that I am not going to revisit the usual arguments set forth when this topic is addressed. Not least because it was the label that determined my entire life under apartheid, but also because it still follows me wherever I go. 1994 did nothing to save me from this classification and today I feel quite ambivalent talking about Colouredness. Despite my misgivings, it is a notion that is central to a truly multicultural society. Scholarship on Coloured identity includes a broad range of perspectives, which I shall mention but not go into:

- Colouredness as a by-product of biological miscegenation and the shame that went with it;
- The effects of legalised racial classifications particularly on brown people versus other South Africans;
- The construction of identity by Coloured political actors themselves (Sean Jacobs);
- The construction of Coloured identity within the broader understanding of non-racialism;
- Colouredness as a manifestation of false consciousness amongst Coloureds (in the sense that they “are unable to see things, especially exploitation, oppression, and social relations, as they really are; the hypothesised inability of the human mind to develop a sophisticated awareness of how it is developed and shaped by circumstances.”)

The various analytical paradigms allude to the fluidity of the concept and the difficulties sociologists and anthropologists have in pinning down what many consider to be an “imagined community.” Regardless of the fluidity of the concept, let me try to give an account of what it means to “be Coloured” today? I shall use much of my own experience to weave a tapestry of the complexity of what it means to live in the interstices of race and ethnicity in the new SA.

I want to recount three anecdotes that demonstrate my point rather forcefully:

STORY 1

After the last national election, Pallo Jordan asked a prominent Coloured leader to convene a meeting of Coloured leaders to discuss why the ANC is unable to capture the Coloured vote. Many of us who went had all been involved in the anti-apartheid struggle in various ways and after 1994 followed different paths. Some got involved with the ANC very closely; others remained on the periphery; some dumped me for my critical voice; and some retained their friendship with me regardless of their loyalty to the party; some felt betrayed by the ruling party.

There was a great reluctance amongst us to initiate the conversation. So I foolishly entered where angels feared to tread. I tried to construct a narrative by stating upfront the following:

- That the ANC has always failed to capture the Coloured vote, except once in the WC, because it simply does not know how to connect with the Coloured people; it also simply refuses to get to know the Coloured people – as this meeting demonstrated so palpably;
- That their understanding of Coloured people is stereotypical and punitive based on their notion of the hierarchy of oppressions. Because the Coloured people enjoyed relative privilege under apartheid, they therefore deserved to be ignored and treated as “second class citizens” in the new SA;

- Coloured people have always been portrayed as co-optable through the CRC, the Tricameral Parliament, the Coloured labour preference policy, as though black Africans were never co-opted through the Bantustan policy and the traditional leaders of SA. Those Coloured institutions were and are always used to demonstrate how easily we allow ourselves to be lured into the white camp, whereas similar analogies are rarely articulated about black people, the homeland governments, and ways in which they were co-opted;

- That a profound misunderstanding of the Coloured people has to do with the dominant ANC leadership being imprisoned on Robben Island or living in Exile; the ANC leadership mingled more easily with whites in liberation movement than with Coloureds. (Madiba in Anthony Sampson); for ANC “whiteness” is easily understood as bipolar opposites, or rather, categorising all whites as oppressors makes life simple. But dealing with people whose origins are indigenous, first nation stuff, a direct threat to the hegemony of the majority (Thabo Mbeki would not participate in the human genome project);

- That the ANC negated the origins of the Coloured people, its role in various resistance movements, its leadership roles in various institutions, both conservative and left-wing; and the many different ways Coloureds have tried to construct their identity prior to and post-1994.

All hell broke loose, I had hardly completed my faltering attempt to start a conversation when Pallo Jordan interjected with annoyance, as only he can: “You Coloureds called Mandela a kaffir when he went to Mitchell’s Plain after he came from prison.” The outburst of the ANC’s leading intellectual portrayed a subliminal anger towards the Coloured people that was so deep that he was prepared to blame an entire group for the racist utterance of one.

As much as we got together as a fragmented group with variations of loyalty to the ruling party, Pallo’s outburst united us in ways we never thought possible. Ryland Fisher retaliated and said: “Did you come here to listen or are you here to impose your dominance as is typical of the ANC towards Coloured people?” Henry Jeffreys piled on, followed by Russell Botman, and others. I almost felt sorry for Pallo. There he confronted the full might of our subterranean anger, unleashed by an African nationalist who exemplified the contempt the ANC has shown Coloured people for decades.

Those of us who met with Pallo came from wide spectrum of institutions and activities, and the group included Muslim, Christian, urban, rural, and diverse professions, yet we felt

“I shall use much of my own experience to weave a tapestry of the complexity of what it means to live in the interstices of race and ethnicity in the new SA.”

“By labelling me he continued the negation of my place in the rainbow nation on behalf of his party.”

united in our retaliation against him. The question is - what was it that united us? Was it Ethnicity? Age? Cultural ties? Or common historical experiences? Perhaps it was not just one thing that united us, but a combination of all of those things.

I realised that Coloured people are as diverse as putting all of the following people of the same colour in the same room and asking them what unites them – J Gerwel, N Alexander, F Sonn, P De Lille, W James, Peter Marais, Allan Hendrickse, Allan Boesak, Tom Swarts, Alatheia Jansen, Cheryl Carolus, Trevor Manuel, Gerald Morkel and the swathe of Khoisan leaders vying for supremacy. It is not that easy, but you get my point.

STORY 2

In 2014, I submitted a Land Claim on behalf on my family. A requirement was to write a brief narrative on how the GAA affected us as a family. I wrote a story about forced removals and their effects on us as a family – both the maternal and paternal kin. When I sent it to my siblings, they asked me to submit it to the newspaper. The editor liked the story and asked for accompanying photos. It was published in the *Cape Times*. Responses from my white friends were astounding to say the least. Many thought they knew me well, but did not really. The honesty with which they cited their ignorance about my experiences moved me but it also pointed to one big flaw in our society – that “when one is considered equal with white people by virtue of one’s class position” one is considered to have no history; or that one has escaped the vagaries of political disruptions under apartheid, when in fact they profoundly shaped one. Exposing that part of my past in the newspaper suddenly made them view me differently. And I appreciated that.

STORY 3

After our second national elections, Ebrahim Rasool, MEC of Finance, labelled Coloured people who voted for DA, coconuts. Needless to say, my pen could not resist responding to this outwardly racist primordial public insult. Given Rasool’s position in the Call of Islam and as someone who promoted Ecumenism, I could not believe what I read. I wrote a column that went viral in which I stated that the only thing that vaguely resembled a coconut was the inside of Rasool’s skull. Subsequent to this outburst, I was asked to debate the issue on radio with Rasool – he chickened out and sent the honourable Yusuf Gabru to take me on. A friend, and fellow ANC member, I could hear that it was painful for him to take me on but he had national duty to defend his leader. The debate was nevertheless civil. Unable to argue with me, Rasool went on to say in the newspapers, “Rhoda is a bourgeois elitist, who, in any case, is no longer a member of the ANC.” By labelling me he continued the negation of my place in the rainbow nation on behalf of



his party. I promptly produced my membership card and revealed that I had renewed my membership but that the ANC member who collected my fees and those of others I had signed up, never issued receipts and disappeared. I also proudly declared that I was one of nine children, the daughter of a township pastor, who never earned more R3 000. That revelation shut him up once and for all. The ANC does not tolerate Coloureds who are uppity, who can debate, and who can assert their independence and rights to equality.

In that debate I felt it was important to assert the following – that:

- All my maternal and paternal kin were evicted from D6
- My family was evicted from Mowbray
- That I went to five different schools because of apartheid
- That I charred for a white woman for pocket money
- That white friends paid for my education
- That I refused to go to UCT because of their subliminal racist admission policy for physiotherapists
- That I went to UWC under protest
- That I had to leave the country to be married
- That my husband and I were hounded by the police because we dared to violate the *Mixed Marriages, Immorality Act* and the *Group Areas Act*.

This broad experience of discrimination and poverty put me squarely in the political arena with ANC blacks, who often claim that only their experience under apartheid was authentic.

As a Coloured leader of an African Nationalist party, Rasool was guilty of a number of things that recur prior to every election when the ANC rabidly campaigns along racial lines.

- Coloured people are viewed only as voting fodder – and the more unpredictable the Coloured vote the more frantic the ANC becomes – voted with NP, then with ANC, then DA. The ANC must realise that they make a mistake when they stereotype the Coloured vote; the idea of THE COLOURED VOTE is in need of serious deconstruction!
- They perpetuate the notion of hierarchy of oppressions – I was more oppressed than you therefore you deserve to be

excluded from the economic pie;

- In the greater scheme of things, Coloured people are viewed as good enough only for token appointments, never as equals;
- There is a tacit understanding that Coloureds must not even entertain the idea of being President; in other words Coloureds are peripheral to the ascendancy of leadership within the ANC; in fact when Minister Nene was appointed Minister of Finance, the media repeatedly claimed him as first black finance minister, in effect negating Manuel's ethnicity;
- Within the ANC, it is expected of Coloureds to know their place.

What all these anecdotes reveal is that "Colouredness" cannot be pigeonholed. People of mixed race, mixed origins, are difficult to define as a group, that is why the concept of Coloured is elusive and often defined in the negative – non-white. Not black. Not white. Almost a negation. The political football between two poles – black and white. And this is what Coloured people rebel against.

Hence the resurgence of indigenous people's movements with claims to land, origins, and recognition by the UN in terms of *Declaration on the Rights of Indigenous Peoples*; hence the demand for Coloured Economic Empowerment; hence the Constitutional Court case (Solidarity and Coloured correctional services officers) against the tyranny of majoritarianism posed by laws around AA and the supremacy of national versus regional demographics.

So what we should rather be concerned about is, what is the future of identity politics in South Africa? No one really knows what that future holds, but if we look at identity through the prism of Coloured, we get a sense of the frailty of racial identities in a country where freedom of association, as enshrined in the Bill of Rights, has become sacrosanct. People can now marry or live with whomever they choose, they can adopt across the colour line, they can choose to be who they want to be, paving the way for a thoroughly mixed society where race will eventually become redundant.

The ANC knows this and the more it fails to deliver, the more it will invoke race and mobilise around race and ethnicity to lay the blame for its failure elsewhere. The ignominious race debate and witch-hunts witnessed over the past weeks resurrect their heads prior to every election. And the media plays along instead of engaging in responsible journalism.

Apartheid might be dead BUT we are still trapped by racial hierarchies reinforced by new laws of racial preference – and the imperatives of racial redress through AA and BEE. That is why the case of the correctional services officers before the Constitutional Court is so important.

The real challenge is to live outside of a racial paradigm. The ruling party believes it needs to invoke race to improve society and provide opportunities for those excluded historically, yet reliance on racial categories is the very thing that has the power to destroy us. Racial ambiguity has always been a pesky problem for both the colonial and apartheid orders, and how best to deal with it for the ANC, is to reify and institutionalise it.

I am afraid, today Coloured people have embraced this identity with some pride, if anecdotal accounts are taken into consideration. Coloured people seem to view the idea of non-racialism as a threat to their identity. UDF – nonracialism (all oppressed identified as black against common enemy only to realise that once the enemy had been defeated, the majority denied them "blackness").

Coloured correctional services officers, POPCRU, my colleagues, family, Coloured members within the ANC members, DA members, faith-based groups, and so on. It amazes me and reveals that when society refuses to integrate and assimilate parts of society as equal, they will construct an identity they feel comfortable with.

In conclusion the question that remains is: is there a future for Coloured identity in SA? Of course there is. In fact the future is Coloured. A multi-racial and multi-cultural society like SA, can only thrive if we take our Constitution seriously. Not only does it guarantee equality on the basis of race, ethnicity, culture, gender, and other characteristics, but it is also a protection of the minority against the tyranny of the majority.

Wikipedia's definition gives this perspective: Unity in diversity is a concept of "unity without uniformity and diversity without fragmentation" that shifts focus from unity based on a mere tolerance of physical, cultural, linguistic, social, religious, political, ideological and/or psychological differences towards a more complex unity based on an understanding that difference enriches human interactions. ●



Rhoda Kadalie

Rhoda Kadalie is Executive Director of the Impumelelo Social Innovations Centre set up in 1999 to reward social innovations (including government and civil society initiatives) that improve the quality of life of the poor. Prior to that she was a Human Rights Commissioner for three years, appointed by President Mandela in 1995, responsible for the Western and Northern Cape. From 1976-1995 she was an academic, teaching social anthropology and women's studies, and founder of the Gender Equity Unit at UWC. Kadalie has travelled extensively internationally, presenting lectures and papers on human rights and gender politics in South Africa. In 1999 she was awarded an Honorary Doctorate in the Liberal Arts from the University of Uppsala, Sweden. In 2008, she received an Honorary Doctorate from her alma mater, the University of the Western Cape; and in 2010 the University of Stellenbosch bestowed a Doctor of Philosophy *Honoris Causa* on her. Kadalie has served on UCT's Council for about nine years and on University of Stellenbosch's Council for two years. She received a Human Rights Award in Toronto Canada on the 10th August 2003 in honour of SA National Women's Day. In

2010 she received the *Rapport/City Press* Prestige Award for column writing. Kadalie has been featured in numerous magazines, newspaper articles and many books and has written many articles and chapters in books about gender politics, liberalism, foreign policy, reproductive rights, and some biographical essays. Her book, *In Your Face: Passionate Conversations about People and Politics*, was published by Tafelberg in 2009. Kadalie has been a guest columnist for the *Business Day*, a national newspaper daily in South Africa, *Die Burger* and all its sister titles for many years. Currently she writes for *The Citizen* and *Politicsweb*.



The Future of Multiculturalism
in South Africa:

An Afrikaner Perspective

Flip Buys
Chairperson, Solidarity Movement

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

Mister De Klerk, Dr Eloff and other distinguished guests, US Nobel Prize economist Milton Friedman said a policy should not be measured by its intentions but by its outcomes. For this reason, this summit is very timely as it has become necessary to reflect on the multicultural outcomes of the constitutional dispensation to prevent us from ending up in an irreversible slide towards monoculturalism.

THE IMPORTANCE OF MULTICULTURALISM

Political thinker Andrew Heywood expressed the view of a growing number of political scientists that multiculturalism may become the ideology of the 21st century, the reason being that countries and communities are becoming increasingly multicultural as a result of migration and global mobility. Heywood thus argues that the main political issue present and future generations are facing is the quest to find ways in which people from different cultural and religious traditions can live together in peace.

This reality has forced a growing number of Western states, including almost all the member states of the European Union, to officially adopt multiculturalism and to incorporate it in public policy. The question is how the growing cultural diversity in most countries can be reconciled with national unity. The answer is to be found in "unity in diversity" as key theme of multiculturalism and the foundation of the South African Constitution.

Multiculturalism presupposes a positive acceptance of diversity based on the right to recognition of and respect for different cultural groups. The resulting policy is characterised by the formal recognition of the particular needs of specific groups and a desire to ensure equal opportunities for all. The aim is not to merely "tolerate" cultural communities but to actively promote their interests.

A simple majoritarian democracy is too simplistic to regulate the complexities of a multicultural society. In monocultural systems the individual rights and freedoms of majorities automatically prevail over the individual rights of minorities. In such systems, minorities will always have to fight for that which majorities accept as a given, for example to decide on the language policy of their nearest school. However, a monocultural system also easily leads to conflict because political competition degenerates into competition between communities on the grounds of identity, instead of being between individuals on the grounds of policy. According to US political scientist Timothy Sisk, the fact that minority communities enjoy voting rights but not sufficient voting power, causes them to experience democracy not as a freedom but as domination, given that minorities cannot easily safeguard their fundamental interests democratically against political majorities.

A multicultural system, in contrast, leads to minorities participating in the fundamental issues that affect them, ensuring that public policy reflects the interests of all people and groups and not only those of the dominant groups. In this way, multiculturalism can be regarded as a precondition for the equal enjoyment of the individual rights of citizens. Put differently, it ensures equal citizenship. As Judge Albie Sachs had put it:

Equality means equal concern and respect across difference.

It does not presuppose the elimination or suppression of difference. Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgment and acceptance of difference. At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best, it celebrates the vitality that difference brings to any society.

Multiculturalism brings political arrangements in line with multicultural realities; protects minorities from forced incorporation into the majority; prevents the alienation, isolation, lack of power and political impotence of cultural minorities; it guarantees their full participation in public life; and it ensures their loyalty to the country and the nation because their fundamental interests are being protected. In this way, unity and diversity are not opposite poles, as they are based on multiple identities that are equal. All are South African citizens with full individual rights, at the same time all are free to enjoy "cultural citizenship" of a particular cultural community.

Such "politics of recognition," as the Canadian philosopher Charles Taylor refers to it, prevent the democratic exclusion of cultural minorities simply by virtue of their numbers. Recognition of cultural communities safeguards individual rights; distributes decision-making power more evenly; and prevents its monopolisation in the hands of a ruling elite group originating from the majority, which only articulates and promotes the interests of the majority. Such recognition protects a group's way of life and limits the negative consequences of unequal political power. This ensures group access to government, deepens democracy and ensures democratic accountability and responsiveness.

CULTURAL LIBERTY AS MODEL FOR MULTICULTURALISM

The UN's influential Human Development Report 2004, titled "Cultural liberty in today's diverse world," expounds in detail a workable model for multicultural societies. The report describes cultural liberty as the freedom people have to choose their own identity and to pursue it without prejudice. Johannesburg political scientist, Professor Deon Geldenhuys, says that cultural rights, together with political, civil, economic and social rights, have globally become inextricably part of the family of human rights. The UN report also states that in the modern world of increasing democratisation and global networks, policies that inhibit cultural liberties have become less and less acceptable. The report strongly recommends cultural liberty in multicultural countries, setting it as a vital precondition for peaceful coexistence and national unity. It cautions against attempts to create, through nation-building, culturally homogeneous states with a single identity. The latter is regarded as a power political strategy that is irreconcilable with a democratic political culture. Instruments of power, such as the centralisation of political power, refusing minority groups to enjoy local autonomy, to pursue one official language and to follow an education system that gives precedence to the language, history and symbols of one group over that of other groups, are strongly denounced.

The report describes the violation of cultural liberty as an act that does not recognise or respect the values, institutions and way of life of a cultural group, criticising it as "cultural

exclusion". It distinguishes between two forms of cultural exclusion, namely exclusion based on way of life and exclusion of participation. Exclusion based on way of life takes place when a particular group's preferred way of life is not recognised with the insistence that all follow the same way of life. It could take the form of restrictions on a group wishing to practise its language, culture or religion, such as the prejudicing of a group's language by introducing another language as the only language in the civil service and education. The vandalising of a cultural group's statues is another good example.

The second type of prejudice pertains to participation exclusion in terms of which there is discrimination insofar as political, economic or social opportunities are concerned, for example exclusion when it comes to employment, business, education and politics. The report emphasises that ensuring cultural liberty and preventing cultural exclusion ask for more than the provision of civil and political freedom by means of the democratic system. What are called for are multicultural policies which have as point of departure that States should acknowledge cultural differences and needs in their constitutions, legislation, policies and institutions.

Without cultural liberty democracy will, in practice, degenerate into freedom only for the majority.

THE 1994 CONSTITUTIONAL SETTLEMENT

In a defining sense, the exchange of majority government for minority protection and human rights constituted the essence of the 1994 settlement. This was achieved by means of providing for the multicultural reality through the inclusion of comprehensive constitutional protection for language and cultural communities. One of the underlying assumptions was that language and cultural communities should have spaces where they could be a majority to prevent every aspect of their existence being dominated by demographic majorities. Thus political, cultural and even economic marginalisation could be prevented and all could have citizenship of equal value.

The Constitution provides for 11 official languages; mother-language instruction (including the provision for single-medium institutions and universities, for example); institutions for persons belonging to language, cultural and religious communities; the values of freedom, human dignity and equality enshrined in the Bill of Rights; a ban on unfair discrimination; the creation of a general council to protect the rights of persons belonging to language, cultural and religious groups; the establishment of councils for such



communities and special constitutional institutions, such as PanSALB, to watch over democracy (and multiculturalism). Section 235 of the Constitution even recognises the right to pursue various forms of self-determination.

The authors of the Constitution most likely heeded the warnings of statesmen such as Henry Kissinger and multicultural society experts such as Donald Horowitz about the challenges such countries pose for democracy.

Very significantly, Kissinger declared: "It is particularly important to understand the obstacles to democracy in a multi-ethnic and multi-religious society. In the West, democracy evolved in homogeneous societies. There was no institutional impediment to the minority's becoming a majority. Electoral defeat was considered a temporary setback that could be reversed [in the West]. But in societies with distinct ethnic or political divisions, minority status often means permanent discrimination and the constant risk of political extinction."

Donald Horowitz, author of the authoritative work, *Ethnic groups in Conflict*, offered the following advice: "For these societies, special sets of institutions seem to be required to insure that minorities who might be excluded by majoritarian systems be included in the decision-making process, and that inter-ethnic compromise and accommodation be fostered rather than impeded".

The alternative, Horowitz cautioned, was that white domination would simply be replaced by black domination.

CONSTITUTIONAL THEORY VERSUS POLITICAL PRACTICE

South Africa is a multicultural country, and to make it work, we obviously have to have a multicultural dispensation. The very theme of this conference hosted by the De Klerk Foundation, however, is an indication that there is serious concern about the future of multiculturalism. My interpretation is that there is a growing feeling that our increasingly monocultural state is aiming at shaping the multicultural reality of the country according to the government's monocultural ideology.

Probably, the reason for this is that our multicultural reality clashes with government's political ideology of a monocultural nation. Instead of working with realities and viewing culture communities as the constituent building blocks of the nation, the state is trying to transform the realities according to a political ideology. The strategy to achieve this is to attenuate nation-building and reconciliation to incorporation into the majority. This is pursued by trying to transform the country and all its institutions into demographic mirror images of the population composition by means of the state ideology of transformation. In this way, peculiarly enough, under the banner of promotion of diversity, the opposite, namely homogeneity, is enforced.

In this process, the ANC is achieving its aim of "African hegemony", linked to ANC control through their policy of cadre deployment. This is the essence of the decisions of the ANC's 1997 Mafikeng Conference where the policy of transformation was accepted, a term which does not even appear in the Constitution. Where transformation initially was embraced as a process to move away from apartheid, it gradually became clear that the ultimate aim is directed at replacing the then white domination by black African hegemony.

South Africa is now becoming a “transformation state instead of a constitutional state”, where the Constitution is interpreted within the framework of political transformation instead of the political policy of transformation being interpreted within the framework of the Constitution. While the wording of the Constitution has remained essentially the same in spite of several amendments, in practice, government is moving ever further away from many of the most important constitutional provisions. The most important examples of this are the constitutional provision for multilingualism which, in practice, has become English monolingualism; equality which has become representivity, property rights which are being diluted; the introduction of a welfare system under the banner of socio-economic rights; the co-opting or disempowerment of certain constitutional institutions by government; and institutions for language and culture groups such as PanSALB and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, where in practice nothing worth mentioning has happened.

In short, the ANC is using its overwhelming political power to undermine the multicultural reality of the country and the constitutional provision for this, with a monocultural political ideology. It is now nearing a point where the ANC's opposition to “Eurocentrism” has turned into the active promotion of Afrocentrism.

Among Afrikaners, a broad view is gaining ground that the ANC made concessions during the constitutional negotiations to acquire power, but now they are using this power to steamroller their original objectives. This is the reason for a growing disillusionment with the ultimate result of the political changes for which most Afrikaners voted enthusiastically in the early 90s. They thought it was essential for black people to get full rights, but now they are concerned that the “revolution” has been going beyond equal rights and that their own rights are now being prejudiced.

They wanted a fully-fledged democracy, but without their own democratic rights being dominated. They thought it only fair that black people should get full civil rights and equal opportunities, but they did not want to feel like second-class citizens themselves. They voted for the abolition of racial discrimination, but they did not expect to become the target of such discrimination themselves.

They thought it was only fair if the indigenous languages could achieve their full potential, but they thought it could be done without Afrikaans being marginalised. They agreed that black people should be empowered economically, but now they are worried that the enrichment of the elite under the banner of black empowerment is harming the country and could result in the disempowerment of many.

They wanted the ANC exiles to return from abroad, but they did not want circumstances to change to such an extent that their own loved ones would have to leave the country. They were of the opinion that Afrikaner control of state media could not be justified, but they did not want this to be replaced by ANC control.

They believed that black people should get their fair share of taxpayers' money without relinquishing their own fair share. They accepted that “black” history had to get its fair place under the sun, but they did not want to see Afrikaner history being criminalised. They understood the ANC's point of view that their place names and heritage should gain more



recognition, but they did not want to see their own historic names and heritage being marginalised without ado.

They appreciated the need for an improvement of black education, but now they feel that the ANC is taking control of and anglicising Afrikaans education and institutions.

Initially, Afrikaners supported affirmative action, but they reject it being abused to anglicise institutions and to bring them under ANC control through the ideology of representivity. Afrikaner voters exchanged minority control for a democratic constitutional state, but they are becoming most concerned that the country is beginning to change into a transformation state. In short, many Afrikaners feel that they voted for democracy but still ended up with a negotiated revolution.

There are no convincing signs that the ANC views the future as multicultural, but they are using political power to block constitutional spaces for multiculturalism and are forcing monoculturalism onto the country. I even want to go as far as to say that in the ANC's vision for the future there is no place for Afrikaners as a culture community. Rather, they are striving for a dispensation where Afrikaans individuals are incorporated into the majority by abandoning their insistence on their constitutional rights as a culture community.

The fact that there are still single-medium Afrikaans schools and that in some places space still remains for Afrikaans at university level is notwithstanding rather than owing to the ANC. Civil society has to defend its obvious constitutional rights and democratic space on a daily basis, and it is ironic that protecting these rights nowadays is sometimes viewed as “rightist”. The ANC's view of democracy apparently is that even if they only get 51% of the vote, they still have to have 100% of the power. They are clinging doggedly to obsolete notions such as “balance of power”, instead of granting everybody a place under a multicultural sun in a spirit of “balance of interests”. In this way, the gulf between constitutional and political spaces is becoming ever wider.

CONSEQUENCES OF THE SLIDE TOWARDS MONOCULTURALISM

The slide towards monoculturalism has already caused the Afrikaner's constitutional rights and fundamental interests drastic and irreparable damage.

I find it tragic that South Africa did not opt for a formal federal dispensation at the time of major transition. The two main advantages of federalism are that it entrenches multiculturalism more efficiently and that it limits the power of a centralist

party. As Lord Acton said: "Of all checks on democracy, federation has been the most effective and the most congenial ... The federal system limits and restrains the sovereign power by dividing it and by assigning to Government only certain defined rights. It is the only method of curbing not only the majority but the power of the whole people." It is actually the only real check and balance there is: power must be balanced by counter-power – not as is the case in the current system where power is balanced by own power.

A federal dispensation entrenches multiculturalism precisely because cultural communities are officially recognised and do not only have entrenched rights but also constitutionally entrenched original powers to exercise them. The Achilles heel of multiculturalism in South Africa is the fact that the majority may decide how minorities may exercise their rights. This leans towards a system where we not only have a lack of minority rights, but one that also entrenches majority rights in the name of democracy.

The starting point of a democratic multicultural strategy should therefore be the protection of its constitutional spaces and the expansion of its political spaces. Cultural freedom for cultural communities is not only a right but a prerequisite for survival and individual rights. A multicultural system gives cultural communities a say and the original decision-making powers regarding their fundamental interests, instead of having to place all of it in the middle of the political arena where the majority decides on it. This is not democracy but domination.

It would, however, not be fair to blame only the government for this. Karl Marx said that the ideas of the ruling class become the ruling ideas of society, and this corresponds with the ANC's pursuit of a "hegemony of ideas". To a large extent, the party has succeeded in having its political ideology of transformation accepted as the "ruling idea" of the state and of society. This resulted in a political ideology rather than the Constitution becoming the "national norm" of the country, and this is being pursued as the obvious benchmark for everything in the country by business people, university councils, the civil service, journalists, academics, and increasingly by the general public.

The elevation of the ruling party's policy to the country's ruling ideology has even persuaded the councils of almost all the historically Afrikaans universities to pursue it as par for the course. To a large extent a mainly depoliticised Afrikaans elite, in general, no longer has the intellectual tools and the political and cultural self-confidence to protect the constitutional spaces for multiculturalism. Thus the gap between constitutional theory and political practice widens.

The result is that political power eventually becomes stronger than constitutional authority, to the detriment of the fundamental interests of cultural communities as well as the institutional autonomy and academic freedom of these institutions. Perhaps the root cause of all this is the naïve assumption that constitutional provision makes political action unnecessary.

RECOMMENDATIONS FOR THE PROMOTION OF CONSTITUTIONAL MULTICULTURALISM

• Central role of civil society

It is clear that civil society will have to take responsibility for promoting constitutional multiculturalism as the

government's stance in this regard is not merely neutral; government is actively promoting monoculturalism.

The DA's growth strategy requires that the party should reposition itself as a party for the demographic majority in South Africa, and the party does not have the appetite to make multiculturalism a significant part of its political platform. This is unfortunate, since liberal parties, as parties standing for liberty and freedom, should provide space to accommodate the freedom of cultural communities as well.

Sociologist Lawrence Schlemmer emphasised the role of civil society by stating that "Minority groups in South Africa would therefore be well advised to develop strategies for political participation which do not assume electoral growth and leverage. Mobilisation for a more effective voice in civil society and in the lobbying process seems to be the obvious strategy to follow".

Philosopher Ernest Gellner considered a network of non-governmental organisations to be the best way to balance the power of a ruling powerful monopoly. Organised language and cultural communities promoting their rights and interests, form an integral part of the checks and balances needed to prevent a tyranny of the majority. Unfortunately, the political dynamics of the country make the forging of partnerships with other language and cultural communities really difficult, because there are not enough strong, organised cultural communities that have escaped the suction power of the central government's political co-optation.

Therefore, the strategy of the Solidarity Movement, the largest institution in the Afrikaans cultural community (350 000 families), is to provide essential services through a family of strong self-help community organisations; Solidarity's strategy also includes engagement with authorities; using and protecting our constitutional spaces and opportunities; and pursuing common interests with the majority.

• Representivity

In a multicultural country, few institutions will automatically reflect the composition of the population. The democratic alternative should be that all institutions together should reflect the demographics on account of the constitutional provision for freedom of association. Cultural communities, wishing to exercise their democratic right at, for instance, single-medium universities, should not merely be tolerated due to democracy; they should be actively supported due to multiculturalism.

Forced transformation of all institutions to reflect the population composition strengthens cultural dominance by the majority and entrenches monoculturalism even further. The compulsion to make all institutions representative of the total population is undemocratic and unconstitutional, and it will culminate in a monocultural system where every aspect of the lives of minorities will be controlled by the majority, as Mr De Klerk has repeatedly pointed out. However, as proclaimed in the UN's Human Development Report of 2004, "If the history of the 20th Century showed anything, it is that the attempt either to exterminate cultural groups or to wish them away, elicits a stubborn resilience".

• Unity in diversity

It is understandable that there might be concern that any

recognition of cultural diversity could hamper national unity. That is why unifying and common interests should also be emphasised, instead of artificially imposing common beliefs by means of clumsy nation-building strategies. These common interests that promote national unity are issues such as the necessity to have a functioning and successful country; peaceful coexistence and healthy race relations; a vibrant and growing economy that can solve the problem of poverty in the country; a healthy environment; unifying social values; upholding the Rule of Law; and a future in which everyone can live a free, secure and prosperous life.

• A political compromise

Canadian philosopher Charles Taylor said that intergroup trust in multi-ethnic societies cannot be taken for granted but should always be regarded as work in progress. There was a time when high levels of this essential trust did actually exist, and then it was collated and institutionalised in the Constitution. However, Taylor rightly points out that this cannot be a once-off process, and that this trust should be renewed on a regular basis. The concern is that in South Africa, trust has reached such a low point that we can call it a trust crisis. Therefore, the time has come to renew the intergroup trust with a national dialogue that could lead to what Prof Pierre du Toit called a “follow-up settlement”; this amounts to preventative maintenance of multiculturalism and the constitutional dispensation. However, the current political realities complicate the chances of reaching such an agreement, and in future it will become increasingly difficult to realise our constitutional language and cultural rights. It nonetheless remains essential to reduce the growing gap between the constitutional multicultural spaces and the shrinking political space to accommodate them.

THE FUTURE OF MULTICULTURALISM IN SOUTH AFRICA

Over the years, there were many discussions between the Afrikaner cultural community and the government regarding the relentless movement towards monoculturalism despite the lip-service paid to the multicultural spaces in the Constitution. Unfortunately, these discussions have not yet resulted in a fixed outcome despite all the burning issues pointed out.

Despite this, the Constitution and the United Nations’ Human Development Report provide promising starting points on which to build. There are at least three possibilities that can be discussed with the government, namely a cultural follow-

up settlement, a cultural contract between the government and minority groups, and a charter of cultural rights and freedoms that can be included in the Constitution as a supplement to the Human Rights Charter.

Of course, the ANC will not easily be persuaded to respect the existing constitutional spaces for multiculturalism and to implement the recommendations of the relevant UN report. However, history has shown time and time again that in our current day and age, no government can indefinitely ignore credible calls for (cultural) freedom. Lobbying among all communities in South Africa and abroad will be required in order to realise this dream.

The growing crisis in the country can force the ANC to face reality and to realise that they do not have the ability to overcome the country’s problems on their own. However, unless this happens, the chances of a comprehensive political realignment or a follow-up settlement is small, and other solutions for the current cul-de-sac in which the country finds itself will have to be sought.

In practice, numerous discussions and meaningful negotiations actually do take place at other levels, such as at local government level with municipalities about service delivery, where many local authorities have partnered with AfriForum to resolve local crises. This also applies to cases where the Solidarity trade union participates in discussions with the authorities on issues of common interest, such as crises in the economy.

Therefore, the Solidarity Movement will continue its strategy to declare its willingness to hold meaningful discussions with government; to create realities that must be recognised; and to promote the conditions for successful agreements, such as improving the balance of power, forging partnerships, and, through numerous discussions and negotiations, to actually negotiate a comprehensive series of “follow-up settlements” as one central agreement.

Although, due to circumstances a negotiating strategy for a follow-up settlement or settlements cannot be the main strategy for multiculturalism, it remains an important part of a future strategy to make Afrikaners permanently free, safe and prosperous. This is the condition in terms of which Afrikaners will be able to make a sustainable contribution to the wellbeing of the country and all its people. ●



Flip Buys

In 1988, Flip obtained a degree in Communication Studies at the University of Potchefstroom, with Political Science as another major. He also obtained an honours degree in Labour Relations at the RAU in 1992. He was a member of Puk’s student council, chairman of the chess club, deputy chairman of the mission service organisation, Hulpprojek, and editor of the opinion magazine, *Perspektief*. Later, he also completed courses in Political Economy at Wits and Project Management at the NWU. Flip is Chairperson of Solidarity which consists of a “family” of 18 organisations and represents more than 300 000 families. The goal of the Movement is to help create a future in which the Afrikaans community can continue to exist in Africa permanently, freely, safely and prosperously. Flip serves as board member of the University of the North West; as trustee of the Dagbreek Trust and the Trust vir Afrikaanse Onderwys; as director of the FAK and the *Rapport* Onderwysfonds, Helpende Hand and Pretoria FM; a member of the South African Academy for Science and Art; a member of FNB Commercial’s advisory board for Northern Gauteng; director of the Solidariteit Beleggingsmaatskappy;

director (alt) of the Rand Mutual Insurance Company and director (alt) of the Heritage Foundation. At school, Flip obtained provincial colours in chess. He loves reading and writing and to spend time with his family. He is 52 years old and married to Melanie. The couple has four children, of which one is currently studying at the University of the North West.



The Future of Multiculturalism
in South Africa:
**The Vision of The
Constitution**

Justice Albie Sachs

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

If we did a paternity or maternity test on the South African Constitution, whose DNA do you think would come up? It's no one in this room, although there are people here who made a major contribution. Nor is it Nelson Mandela. The answer is: Oliver Tambo.

I recall a moment in March 1988 when I was walking to the microphone in a room in Lusaka about a tenth of the size of this one. My topic was a Bill of Rights in a democratic South Africa. And my heart was going boom, boom, boom.

Oliver Tambo had set up the ANC Constitutional Committee which had organised a workshop to discuss a document we had prepared entitled Constitutional Guidelines. For years our legal skills had been used to denounce apartheid. A typical paper I had written had shown how every single article in the *Universal Declaration of Human Rights* was being violated in South Africa. (With one exception, I should add - try as I might, I couldn't show that apartheid denied rights to intellectual property!) Now we were moving our focus from what we wished to destroy, to what we were determined to build. It was thrilling to work as part of a team with the quiet, thoughtful, principled and open-minded Oliver Tambo at the helm. My function at the workshop was to explain what a Bill of Rights was and why we needed one in South Africa.

About 40 people were looking expectantly at me. Some might have been there directly from the underground at home, but most were comrades living in exile, a couple from the MK military camps, others from various political structures. I had three arguments, and my heart was racing. How would these comrades at the heart of the struggle, many risking their lives on a daily basis, take my reasoning?

The first argument, the diplomatic one, was easy. To be seen to support a Bill of Rights would put the ANC in a positive light. It would tell people, ourselves, the world, that we were not power-hungry terrorists waiting to seize power, to get revenge. On the contrary, it supported the idea that we were aiming to achieve a free, democratic and law-governed South Africa. The delegates nodded their agreement, no problem.

The second, the strategic argument, was a little more complicated. An entrenched Bill of Rights was our answer (note that I'm using the word "our"- I was a member of the ANC until the 1994 elections, when I decided to be a

candidate for the Judiciary, and stepped away from political activity) - it was, I repeat, our answer, developed primarily by Oliver Tambo, to group rights. This was a time when protection of group rights was being strongly promoted as the key to a constitutional settlement in South Africa. In non-technical terms, group rights were being hailed as the foundation for creating a system of power-sharing between the white minority and the black majority. In more technical language, the principles of consociational democracy as advanced by Arend Lijphart were being invoked in favour of adopting group rights rather than majoritarian democracy. Lijphart's central idea was that in deeply divided and segmented societies it was both principled and practical to grant as much autonomy as possible to the different community groupings. Each would then have a large measure of governmental control over its own special affairs, and all would accept governing by consensus at the national level. Even our closest friends internationally, from East, West, North and South, were urging us to "get real" and adopt some form of power-sharing along these lines.

It is a nice term, power sharing - but power sharing between whom? Between racial groups? The problem wasn't only that the Constitution would in effect be entrenching a grossly inequitable status quo, in which the 13% white minority happened by law to own 87% of the land and 95% of productive capacity. It would also be placing racial identity right at the heart of all the structures of government. Thus, Parliament and the Presidency would be shared between persons selected as leaders of the different racial and linguistic groups. As we saw it, this would mean that a form of apartheid would be moved from the sphere of separate development and Bantustans right into the institutions of the central state itself. At the same time, race discrimination would continue to be shielded in the private sphere by the mechanism of constitutionally guaranteed property rights and freedom of association.

Oliver Tambo was the great proponent inside the ANC of a completely different vision. He took constitutionalism and constitution-making very seriously. His point of departure, however, was not that black and white groups should live side by side in separate communities protected by power-sharing arrangements. Rather, it was to secure the fundamental rights of all, black and white, in a united, non-racial South Africa. He had no problem in principle about accepting group rights for workers, or women, or children, or members of language groups and faith communities. But he refused to "get real" and introduce constitutionalised



“This was a time when protection of group rights was being strongly promoted as the key to a constitutional settlement in South Africa.”

markers of identity, culture and historical provenance, into the formal structures of government itself. Instead, people would have their fundamental rights secured not because they belonged to a majority or a minority but because they were human beings. Thus, the instrument to protect people from future abuse, humiliation and dispossession would not be power-sharing between ethnic groupings but an entrenched Bill of Rights guaranteeing the dignity, equality and freedom of all. The delegates cottoned on quickly. Once more I noticed nods of agreement. No need for my heart to go boom, boom, boom.

What was the third reason for having a Bill of Rights? It was advancing this, perhaps the most profound and deeply principled reason of all, that was causing my heart to race. We needed a Bill of Rights, I said, against ourselves.

What would the delegates think? It was easy for me, a lawyer who had grown up with the privileges that went with a white skin, to come up with these ideas... I looked into the eyes of the audience. To my joy, instead of hostility or repudiation, I saw looks of delight. It was as though they all felt a sense of reassurance that the Constitutional Committee, fulfilling the mandate given to it by Oliver Tambo, was urging the creation of institutional mechanisms against any abuses of power from any quarter whatsoever in our new democracy. This was not for us a matter of pure political or legal philosophy. We were living in societies where many people who had fought very bravely for their freedom had gone on to become authoritarian Heads of State themselves. Jomo Kenyatta was held up as a prime example; jailed by the British for years, he had gone on to use his status as President of Kenya to seize land and amass a fortune for his family. Indeed, we had seen how inside our own organisation Oliver Tambo, with the support of people like Chris Hani and Joe Slovo, had from time to time been obliged to take firm and principled initiatives against unacceptable forms of conduct and abuses of power.

I sometimes get praise for being the person who introduced the Bill of Rights into the ANC. It was completely the other way around. I was, if anything, a rights sceptic. Strongly influenced by critical legal studies ideas, I inclined to the view that that it was wrong for essentially political issues to



be decided by the courts. It was the ANC, Oliver Tambo, who persuaded me that in South African conditions, a Bill of Rights could enunciate the quintessence of all we had been struggling for, convert the Freedom Charter into an operational document, and become the cornerstone of our country's new constitutional order. The Judiciary would then become a crucial instrument for ensuring that core elements of political morality would be maintained in the new society. They could also see to it that the rights of workers, women, children, the disabled and the poor were respected.

A month after urging acceptance of a Bill of Rights, I was blown up. I can't help thinking that the real target was Mathews Phosa who spoke here a little while ago, and who was then deep in the underground in Maputo. But they couldn't get him and I was a sitting duck, so they blew me up instead. I'm not blaming you, Mathews, indeed the operative who planned the operation has stated on film that my name was on the list of "those deemed important enough to be eliminated". Anyhow, as soon as I'm out of hospital some months later, the Constitutional Committee of the ANC flies to London. And, fantastic though the intervention of surgeons and physiotherapists and occupational therapists had been, the best, best, best medicine I received was of a different order: I was asked to work with Professor Kader Asmal on drafting the first text of the ANC's Bill of Rights for a Democratic South Africa.

The Bill of Rights for us, then, is not just another legal document. It is life and death, it is who we are, it is the foundation of our transformation in South Africa. It certainly acknowledges and embraces multiculturalism, the theme of this conference. But it does so without allowing group rights to become the foundation of the governing structures of our new constitutional order. That was foundational, and, Rhoda, I'm not going to let you get away with dismissing non-racialism just like that. From a political point of view, our institutions simply had to be non-racial.

Once the principle of non-racial democracy was accepted, then the issue of multicultural diversity could be handled within that framework. It took six years to get our Constitution - and it wasn't easy - it wasn't FW de Klerk and Nelson Mandela getting into a room, doing a little deal, you give me this, I give you that. I'm sure former President De Klerk, next to me on the platform as I speak, can testify that the process was robust, filled with conflict and setbacks. It took us six years, we had breakdowns. Chris Hani was assassinated, we had rolling mass action, we had massacres. It was extremely tense but we never let go of the ideal, and we got it. We as South Africans got this amazing Constitution! And 20 years afterwards we can have the open, free debate that we're having in this City Hall Chamber.

The democracy we take for granted emerged in a situation where nobody in the world felt South Africa stood a chance. A racial bloodbath was seen as the inevitable outcome. It's not only that we avoided catastrophe, we established a strongly implanted Constitution with institutions, mechanisms, principles and values that enable us today to deal openly and robustly with the many, many things that concern us and worry us and ravage us. We do so with the knowledge that we've got the vote, we've got free speech, we've got an independent Judiciary, we have strong political parties, open contestation. We take the openness of our society for granted. It's great we take it for granted and it's sad we take it for granted. Great because it's normal, that's the country



we're living in; and a little bit sad because we don't give ourselves credit for our enduring achievements. We beat ourselves up too easily, I believe, too quickly, because many things are happening that many of us are very, very distressed about. But that should be a reason for using the democratic rights we have won to bring about the changes we desire, rather than to descend into despair and, at times, self-flagellation.

Once the issue of directly constitutionalising group rights in our institutions had been taken off the agenda, then issues of how to respect and balance out different community, traditional and cultural interests could come to the fore. This they could now do in their own right, and not as proxies for political and economic power. Problems of race, gender, disability, sexual orientation and so on, are ubiquitous and are dealt with by the equality provisions of the Bill of Rights. Similarly, unfair discrimination on the basis of language, culture and religion is prohibited. But something more is required to permit the active expression of these rights.

I accordingly turn to discussing how multiculturalism, the acknowledgment of diversity and pluralism, plays itself out affirmatively in the Constitution. I deal first with the manner in which the Constitution indirectly but significantly responds to the reality of the diverse way in which our country has been peopled. After that I discuss the manner in which multiculturalism is expressly supported.

INDIRECT CONSTITUTIONAL ACKNOWLEDGMENT THAT WE ARE A CULTURALLY DIVERSE SOCIETY

Once the non-racial character of our state institutions was established, the greatest contestation at the negotiations was over the question of devolution, that is, of how power should be allocated between central, regional and local authorities. And this is where the diverse manner in which South Africa had been peopled kicked in. In those days we didn't speak about the elephant in the room. Some of you might remember the battles we had in the early 90s over the f-word, "federation". In the end our Constitution uses neither the words unitary nor federal to describe the state. Instead the Preamble declares that "South Africa belongs to all who live in it united in our diversity", and later speaks of the need to "build a united and democratic South Africa". Section 1 states that "South Africa is one, sovereign democratic state" founded on certain specified values. The structures of government then go on to embody a considerable degree of devolution of power to the nine Provinces. And the historical patterns of settlement and cultural make-up undoubtedly influenced the demarcation of Provinces. One result is that the Western Cape now

has a political leadership demographically, politically and even culturally very different from that in other provinces. Similarly, the Inkatha Freedom Party wouldn't have come into the final constitutional arrangements and agree to take part in the elections of 27 April 1994, if there hadn't been a guaranteed measure of self-government for KwaZulu-Natal together with recognition of the Zulu monarchy.

My own personal view is that there is another area where multiculturalism was indirectly rather than directly accommodated by the Constitution, and that is in relation to the electoral system we opted for. I haven't seen this referred to in the literature on our Constitution, but I believe that the choice in general of Proportional Representation (PR) did a lot to promote multi-cultural rather than purely ethnically-based parties in our country.

If we had gone for constituency representation based on first-past-the-post such as the white Parliament had had, the outcome would have been demographic representation in Parliament corresponding precisely to the demographic breakdown of 80-9-9-2 lamented by a number of speakers today. The spatial divisions in our country resulting from the imposition of the *Group Areas Act* and other racist statutes would have produced constituencies numerically dominated by members of a single racial group. Inevitably we would have had blacks voting for blacks in black areas, whites for whites, Coloured people for Coloured people, and Indians for Indians. I'm not against having a degree of direct representation in Parliament mixed in with PR, such as we have in local government. Even better, I believe, we could have large constituencies with multiple members as proposed by the Slabbert Commission, with PR lists to ensure that ultimately representation in Parliament reflects the share of the vote that each party received nationally.

But I don't think a mixed system of constituencies and PR should be based on small single-member constituencies. Not only would there be inordinate fighting over the delimitation of boundaries, constituencies would unavoidably reflect the racial and ethnic spatial divisions forcibly created by apartheid. Large constituencies coupled with PR in fact encourage the parties to seek support through creating lists that transcend cultural divisions. It limits the impact of local demagoguery and ethnic populism that small constituencies would promote. And it also facilitates the bringing into Parliament of the expertise of thoughtful people in different communities who might not be great at the hustings but outstanding in Parliament. So I don't think our Parliament today is 80-9-9-2 and happily not so, because there is a diversity of skills and life experience and ability that needs to be represented there that might not correspond exactly to demographic quotas. Similarly, equitable gender representation is more easily achieved with lists.

DIRECT CONSTITUTIONAL ACKNOWLEDGMENT OF MULTICULTURALISM

The Constitution places much emphasis on the three "Ds" - Dignity, Diversity and Difference. I have already cited the ringing phrase "South Africa belongs to all who live in it, united in our diversity." That is the motto for our country. The qualities of being united and diverse are not seen as antagonistic, as mutually incompatible. On the contrary they are regarded as producing a potentially productive tension. As I look at it, we are united in our right to be the same, to have the same fundamental rights, yet we are diverse with

regard to our right to be different, in terms of how we express ourselves and exercise our rights. Thus the right to be the same and the right to be different are not contradictory. In our constitutional dispensation they presuppose and support each other.

A similar note is struck with regard to *language rights*. I still remember when the negotiators met on language rights in a room at Kempton Park. It was just the two of us, Baleka Mbete and myself, sitting on the one side, and a huge team of professors and even Neil Barnard, the top security official, on the other. Clearly this was going to be extremely important for the National Party. They would be fearful that the Afrikaans language would be submerged under majority rule as it had been after the South African War when the British had imposed a policy of Anglicisation on the defeated Boers. Indeed, it was clear that the whole negotiation process would be jeopardised if an appropriate place for the Afrikaans language could not be found.

But the approach that Baleka and I had been mandated to adopt had not been governed only by a need to find accommodation with 'the other side.' Our mandate came from a conference which the ANC had organised in Lusaka on the question of language rights in a democratic South Africa, where Baleka and I had been amongst the principal speakers.

My views on language rights had been strongly shaped by my experience in Mozambique. It had been wonderful to be in the newly independent country in 1976. It was the time of the Revolution, full of *joie de vivre* and transformatory energy. We sang songs of freedom. Everything seemed possible. Samora Machel came out with a vivid phrase, "For the nation to live, the tribe must die". It was very powerful. But it was wrong. For sure, tribalism as an ideology of separation, of ethnic exclusion, had to die. But many of the customs, cultural formations and languages associated with the tribes had not only to survive but to flourish. At the time, however, the prevailing idea was that Portuguese should serve as the language of national unity, and that its extended use would unite all Mozambicans. It didn't, and the policy of making Portuguese the supreme language and treating other national languages as subaltern, didn't work. Thus, President Samora would deliberately send a person who had grown up speaking Ronga, to be Governor in Cabo Delgado where the mother tongue was Makonde. The object was to discourage regionalism and promote the idea of the nation. The Governor would address the people in Portuguese, the language of struggle, the language of national unity. It didn't work. We could see the results in practice and came to the conclusion that promoting multilingualism rather than the predominance of one language as the official language, was the way to go. So for me the idea of equal respect, now in our Constitution it is called "the equal esteem", of all languages, was born in Mozambique.

Baleka came to a similar conclusion after seeing how the relationship between English and Kiswahili was evolving in Tanzania. Baleka spent a number of years connected to the University of Dar Es Salaam. Living in an independent African country she learnt that language couldn't be looked at simply in purely instrumental or quantitative terms. Language was intensely meaningful to people, to their sense of self. Kiswahili had been developed over centuries as a language of common usage in large portions of the East Coast of Africa, freely spoken by everybody in the region. English

had come later as the language of colonial domination and even later been appropriated by a section of the people in their struggle for independence. Yet exclusive use of English for all official business in independent Tanzania would disempower the great majority of people. Conversely, extensive use of Kiswahili would literally give voice to everyone and make everyone feel part of the national polity. Now the idea of equal esteem for all languages - how do you achieve that? If you make English the dominant language and you subordinate Kiswahili, there is no equal esteem. National unity is not furthered.

In a sense, in all former parts of the British Empire, language rights are rights against English. English doesn't need rights and protection. It's powerful, it's overwhelming, it's the air you breathe. But it needn't suffocate other languages. It is convenient as an international means of communication; it is the mother tongue of millions in South Africa, and the second or third language of millions more. Indeed, this Conference is being conducted in English, though I doubt if more than a quarter of those present have English as their mother tongue. But it should not be like the eucalyptus tree that sucks up all the water for metres around, preventing any other growth within its radius.

So, based on what we had learnt in Mozambique and Tanzania, Baleka and I both made strong interventions at a Conference on Language Rights in Lusaka before we returned home from exile: make English an official language in a future democratic South Africa, not the official language. The ANC in fact officially adopted a policy aimed at achieving equal respect for all the languages deeply implanted in our country. This did not require reducing the status of Afrikaans and English. Rather it called for upgrading the African languages that had been marginalised first by the British and then under apartheid. Rather than undermining English and Afrikaans, it necessitated freeing the marginalised languages of their subaltern status and facilitating their emergence as flourishing means of expression and communication enjoying equal recognition in the new society. In other words, the idea was to achieve equality of the vineyard by upgrading the suppressed languages rather than equality of the graveyard by downgrading the dominant ones.

So we came up with the concept at the constitutional negotiations of coupling upgrading of marginalised languages with non-diminution of existing language rights. Not everybody could understand the term 'non-diminution.' I still remember Arthur Chaskalson, who headed the technical drafting committee, asking me, "What do you

“English doesn't need rights and protection. It's powerful, it's overwhelming, it's the air you breathe. But it needn't suffocate other languages.”

mean by this term 'non-diminution'?" He pointed out that it had never been used in any other constitutional document. But I couldn't find a better word, and if I recall correctly, it was used in the Interim Constitution, though not in the final one.

Looking at the text of the language provisions in the final text, one in fact notices something textually quite odd: though all the 11 official languages are declared to enjoy parity of esteem, they are not listed as one would expect in simple alphabetical order. So, instead of starting alphabetically with Afrikaans followed by English and ending with isiZulu, the list begins with Sepedi followed by Sesotho. To have begun with Afrikaans and English would indeed have looked as though these two languages still enjoyed precedence. So, wisely I believe, the drafters broke alphabetical ranks and tucked these two languages in about two-thirds of the way through, with isiZulu still coming in proudly at the end. Oddity has its place in constitutional texts.

The language clauses are comprehensive and sophisticated. They deliberately leave open quite a few issues for future balancing and interpretation. There is not one single official language requirement that runs through every aspect of public life. Thus language policies at a national level, in the Province and at the local government level can be different; and language in education is treated with specific care in the Bill of Rights. You disaggregate the issues and they become less contentious.

During negotiations we had had strong debates about what sort of body or bodies should be responsible for developing languages, and, in particular, for promoting the upgrading of languages that, if I can put it this way, had been made to languish. I had argued strongly against a body that would be composed of representatives of each official language community fighting in its corner for advancing its particular tongue. The argument turned out to be successful. So the Pan South African Language Board is provided for with a view to promoting the development of all official languages, as well as languages facing extinction, as well as sign language. Since I had spoken so strongly in favour of a body that would have a Pan South African vision people joked at the time that it should be called the PSLB (PSAlbie) for short.

I was pleased to see that the Board must in addition promote respect for many languages spoken by different communities that have made their home here. These are listed alphabetically: German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu and Urdu. In passing, I remember with some amusement discussions we had with representatives of France about whether French should be included. In saying *non, merci* I got the impression that they were rather disdainful of the idea that their powerful language needed protection in a faraway Constitution. Finally, the Board must promote Arabic, Hebrew, Sanskrit and other languages used for religion.

For a variety of reasons, people have commented that the Board hasn't had the impact that maybe some of us hoped it would have in achieving the above. It has certainly been under-resourced for the multiple and complex tasks it has to deal with. I suspect, however, that the main problem has been that the issues have been too hot, too intense, too political, touching on too many deep sensibilities, for it ever to achieve very much.



In terms of legal developments, it is the Bill of Rights itself that has probably had more direct impact on public life. The Bill of Rights gives considerable attention to religious, cultural and language rights. It does so without involving group rights as constituent elements of constitutional structures. Rather, it protects the rights of individuals, on their own or in community with others, to express themselves in terms of language, culture and religion.

Thus freedom of *religion*, belief and opinion goes beyond simply protecting belief, conscience, the right to worship, and so on. The Constitution acknowledges a degree of legal pluralism by permitting legislation to recognise marriages concluded under any tradition or system of religious, personal or family law. The one proviso is that the legislation must be consistent with the Constitution. This area is very sensitive. To this day there has been no consensus reached in the Muslim community as to whether Islamic family law presided over by Muslim clerics should be officially recognised as part of the state judicial system.

In the meanwhile, the courts have moved cautiously in the area of recognising Muslim marriages as part of the state system of law. On the one hand, there are a number of decisions which uphold the status and dignity of Muslim marriages for the purposes of entitlement to receive state benefits. Similarly, in keeping with the spirit and letter of the Bill of Rights, the courts have provided legal support for vulnerable parties in Muslim marriages. But the courts have refrained from engaging with questions concerning the way Muslim marriages are entered into or ended. Similarly, they have not pronounced on the legal status of polygamous Muslim marriages as such. Parliament and the courts have, however, dealt with African customary law marriages that might or might not be polygamous.

Before dealing with the status of African customary marriages, however, I will refer to two provisions in the Bill of Rights that expressly relate to language and cultural rights. One expressly states that everyone has the right to use the language and to participate in the cultural life of their choice. There is an important proviso: this cannot be done in a manner that conflicts with the Bill of Rights. So a cultural practice that, say, permitted child marriages or the imposition of cruel punishments, or violated equality between men and women, would not be protected by this provision. I suspect that the women's movement was particularly influential in ensuring that cultural practices that were harmful to women (and to children) would not be immunised against remedial measures. At the same time, the express recognition of language and cultural rights represented a strong constitutional statement in favour of diversity and pluralism.

The second provision states that persons belonging to cultural, religious or language communities may not be denied the right to enjoy these rights and to set up appropriate organisations to enable them to do so. It is to be noted that the right is not expressed affirmatively, but through a double negative: you cannot be denied the right to combine with others in pursuing your cultural, religious and language rights. This formulation corresponds to what had been hotly contested provisions in international human rights instruments. At the drafting conferences representatives of governments in many countries had been resistant to what they had seen as threats to national unity emanating from recognising rights of minorities. Thus the governments of a number of Latin American countries expressed concern that any acceptance of minority rights would encourage separatism of indigenous communities from national life.

Whatever the provenance of the text of these two provisions, they undoubtedly offer a significant degree of support for pluralism and diversity in our society, while at the same time falling far short of expressly affirming minority rights. There has undoubtedly been some evolution of international thinking in recent decades in favour of greater recognition of pluralism and rights of cultural minorities. Yet by and large the emphasis has been on securing rights for marginalised minority groups that find themselves faced with the bitter choice of either being assimilated into the majority culture or else remaining under-resourced and disregarded, if not subject to overt discrimination and exclusion. The thrust



has definitely not been to use the concept of minority rights to provide a shield for privileged groups against equitable social transformation.

I recall how puzzled I had been when in exile in London to learn that the Minority Rights Group was supporting our struggle in South Africa, not for minority rights but for majority rule. It took me a little while to work out that in our country the fact was that the majority were the minority, and the minority the majority! It was our paradox then, and, I'm sorry to say, is still largely our paradox today. In terms of access to land, facilities, education, health, the minority are the majority and the majority are the minority. We are still battling to find ways of unwinding the patterns of inequality that bedevil every aspect of our public life and impose great unfairness in the private sphere. This unwinding is not assisted by allowing notions of multiculturalism to be used to defend privilege and exclusion.

One of the most commented on features of the Constitution is the express recognition it gives to customary law as an original source of law. This is contained in the shortest chapter in the Constitution, which is headed Traditional Leaders. Here once again a limited form of legal pluralism is permitted. The institution, status and role of traditional leadership, according to customary law, are recognised subject to the Constitution. A traditional authority that observes a system of customary law, may function according to legislation and customs as amended over time. And the courts must apply customary law when applicable, subject to the Constitution, including the Bill of Rights, and any legislation specifically dealing with customary law. Finally, provision is made for legislation which would permit traditional leaders to have a role at the local level, as well as to set up a national council of traditional leaders and provincial houses of traditional leaders.

Thus, traditional leadership is recognised, but not as a source of political power competing with democratic power, but rather as a significant institution in the cultural life, if you like, the spiritual life, of considerable sections of the nation. At the same time, customary law now takes its place as an original, indigenous source of law on a par with the common law, that is, with Roman Dutch law and those aspects of the English common law that were received with colonisation into South African law. But as with the common law, customary law is subject to the Constitution and legislation. Furthermore, when developing the common law or customary law, the courts must promote the spirit, purport and objects of the Bill of Rights. Thus customary law is not seen as an autonomous system to be applied by autonomous courts, according to what we lawyers call 'choice of law principles', to communities subject to it. It is instead regarded as part and parcel of the national legal system, operating within the matrix of legislation and being infused with constitutional values. At the same time, themes consonant with customary law have been influential in the interpretation of the Constitution, as will be seen below.

Amongst the many notable features of our Constitution is the establishment of a number of bodies with special responsibilities for supporting constitutional democracy. Popularly referred to as Chapter 9 institutions, some, like the Public Protector, the Electoral Commission and the Auditor-General, are very well known. Others, like the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, are much less so.

“I think that the only statement in our post-democracy jurisprudence explaining the importance of Afrikaans in our country, was written by me.”

Sadly for the CRL Commission, it would seem that the weightier the title and the more widely stated the objectives, the more slender the resources and the less the public profile.

The priority objects of the CRL Commission are firstly to promote respect for the rights of cultural, religious and language communities; secondly to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association. It may recommend the establishment of a council for any community or communities. Its membership must be broadly representative of the main cultural, religious and language communities, and, interestingly, broadly reflect the gender composition of South Africa. I say interestingly, because the constitution-makers were clearly aware of the manner in which many people use cultural identification as a means of perpetuating patriarchal domination.

The voice of the CRL Commission has been directly heard at this conference, so I will say nothing more about its impact on national life, save to mention that as with the Language Board, the issues it has to deal with tend to be too politically loaded for it to have great impact. I do get the impression, however, that at the internal level interesting and valuable interactions take place.

CASES ON MULTICULTURALISM IN THE CONSTITUTIONAL COURT

How did the fact that South Africa is a multicultural society play itself out in the Constitutional Court? We judges don't look for cases in order to make points about how the Constitution should be interpreted and applied. I remember once being full of expectation about a case dealing with the way that intellectual property rights of giant Pharmas were being asserted to prevent South Africa from importing generic anti-retrovirals at a tenth of the price. But the Pharmas capitulated in the High Court, so we never pronounced. We could only resolve particular disputes as they reached us. I will mention six cases involving disputes centred around multiculturalism that did in fact reach us.

A challenge to the constitutionality of the *Gauteng School Education Bill* was heard fairly early on in my 15 years on the Court. I might mention that, contrary to expectations, the Provinces have passed very few laws of their own, their main function being to manage the delivery on the ground of nationally-determined laws and policies. In any event, this was a law adopted by the Gauteng Legislature which included a provision to the effect no child should be denied access to a public school, a state school, on grounds of language. The background was the refusal of the formerly whites-only Afrikaans-medium schools to admit black kids

who could understand English but not Afrikaans. The schools insisted that black children who spoke Afrikaans were now most welcome, and that the children who were being turned away were not being excluded because of their race but because the school was an Afrikaans-medium one. The provision was challenged by some Afrikaans-medium state schools, as well as by an NGO that promoted the Afrikaans language. The gist of their argument was that to protect the future of the Afrikaans language it was necessary to have Afrikaans-medium schools.

I found it to be a poignant case. I could feel the anguish of counsel arguing for what amounted to a form of group rights in a constitutional context heavily weighted towards individual rights and non-discrimination. I recalled the days of my anguish as an advocate arguing in a court where many of the basic assumptions were totally against the philosophical framework within which my mind functioned. And I recalled the intense anxiety I would have that my inadequate contentions would be disastrous for the client or cause I was representing.

Ismail Mahomed wrote a judgment very, very quickly and the text of the Constitution made it very clear: you could have single-medium schools in the private sphere, but there was nothing to justify an exclusively single-medium school in the public sphere.

That has been changed; the final Constitution allows a measure of flexibility in this respect. I strongly supported Justice Mahomed's reasoning, but felt something had to be added to it. The application to the Court was a cry from the heart. People were fearful that the Afrikaans language would be suppressed after the victory of democracy as it had been under Lord Milner after the victory of the British against the Boers. I think that the only statement in our post-democracy jurisprudence explaining the importance of Afrikaans in our country, was written by me. And it was easy for me to do so. Uys Krige, Gregoire Boonzaier, I grew up with them. They were boere with a sense of humour, vitality and energy. My dad was the General Secretary of the Garment Workers' Union - Anna Scheepers, Johanna and Hester Cornelius; they all seemed six feet tall, full of brightness and energy and fun. The kind of English disdain for Afrikaners that was so strong in my school, I didn't have that. One had to acknowledge that Afrikaans - and it is in the judgment - is one of the treasures of South Africa. The literature, the culture, the very name Afrikaans - African - it was born here in the Cape. It had input from slaves and Khoi people, as well as the Dutch language. As part of the context for interpreting the multicultural thrust of the Constitution we had to acknowledge the impact of Milner and the forced imposition of English on people with a view to destroying their sense of independence, their pride, their sense of community - that's part of our history, part of why we had a Constitution.

But at the same time we also had to acknowledge that there were black kids living in the suburbs of Johannesburg who didn't have a school they could go to. The nearest school - their mother might be a domestic worker - would be an Afrikaans-medium school. We had to balance out these different aspects, develop an appropriately balanced constitutional vision derived from the text of the Constitution itself. And I cannot help thinking that the very points our Court was dealing with already in 1996, are the issues playing themselves out in Stellenbosch, in the universities, elsewhere, today. It is not a question of the one principle

trumping the other, but of reconciling the principles as fairly and harmoniously as possible. It is respecting, acknowledging, accommodating, listening to the Other, and seeking joint solutions that accord with the letter and spirit of the Constitution. Human dignity, equality and freedom must always be the touchstones.

The second case concerned *Christian Education Schools*. American educationalists had come to South Africa because they couldn't beat the boys at school anymore in America (my American friends tell me that in their country it is the boys who beat the teachers!) To their credit, in apartheid South Africa they would beat black bums as well as white bums. But under the new Constitution, the use of corporal punishment in schools was forbidden. The CESA heads were extremely distressed. Their *raison d'être* was being challenged. They rushed straight to our Court. We said no, they have to go first to the High Court. My preliminary view at that stage was that their chances of succeeding there were not strong. I hadn't thought deeply on the issue yet, nor had I heard argument. Asking for the right to use the cane as a fundamental right when Parliament had legislated against it seemed to be asking for a lot. Yet the more I went into it, the more difficult it became. The fundamental right claimed was not to beat children, but to follow one's beliefs. These were questions of conscience. The community had been set up for that very purpose. They understood it as a Divine injunction: spare the rod and spoil the child. It meant everything to them.

I might personally find their beliefs to be bizarre. But that was not the test. I was asked to write the lead judgment for the Court, and actually found it to be very difficult. In legal terms we held that although the new law did not expressly target the CESA schools in any way, the inevitable impact of the law would be to restrict their freedom to exercise their religion as they saw fit. But we held unanimously that the limitation was justifiable in an open and democratic society. The rights of children had to be protected. There was too much violence in our society generally. And the Christian Education families could continue (within the limits of what the common law allowed, I stressed) with their chastisement of the boys at home, but not in the public area of the school. The rights of the child, the right to be free from physical

violence in public and private, had to be given appropriate recognition. The issue of what the common law permits in the light of our Bill of Rights is now being raised before the Courts and I will not comment on it.

In the *Rastafari* case, brought by a candidate attorney, our Court split. I think it was by five-four, with two colleagues on leave. I was part of the minority. I wrote about the Rastafari in Cape Town being a Diaspora of a Diaspora. They were modelled on a Jamaican community that that modelled itself on an imagined Ethiopian figure. It was their conscience, their belief system. They wanted to smoke marijuana, as part of their culture, their religious world view. In my opinion, even if the use of dagga was not decriminalised generally, there could have been a controlled supply of dagga to Rasta priests for use on sacramental occasions, just as communion wine had been permitted in Catholic Churches during Prohibition in the USA. It would have given them some degree of dignity and recognition while the wider debate about the use of dagga continued. But the majority said no. They accepted that although Rastas were not being singled out for harsh treatment, the impact of the anti-drug laws severely affected their exercise of religion. But the limitation was justified because it was an integral part of drug control generally. The issue of decriminalisation was one for Parliament, not the courts.

The *Shilubana* case raised the issue of whether a woman could be chosen as a traditional leader. The Hosi of the Baloyi community was not well. He and the Royal family decided that his successor should be Ms Shilubana, then a Member of Parliament. This decision was endorsed at a public meeting of the community. But shortly before his death the incumbent said, no, no, it's got to be my son. The Government appointed Ms Shilubana, and the son went to court. The High Court ruled in his favour, saying you can't be appointed a traditional leader; you are born a traditional leader. The matter went to the Supreme Court of Appeal. They said the same thing. It came to us and we say no, customary law had to be looked at as a living body of law, not an ossified set of rules. Ms Shilubana was not being foisted on the Baloyi community in the name of gender justice. Rather, she was being called to occupy her post by the overwhelming majority of the community. It was gender injustice that had kept her out of that position in apartheid times. Now the community wished to correct that injustice and restore her to the position she should have occupied decades before. This is what the community wanted, and so Ms Shilubana now is the Hosi of that community.

The theme of customary law being living customary law that incorporates and embraces the Constitution, and the values of the Constitution, is now firmly established as part and parcel of our constitutional jurisprudence. My personal view is that this will strengthen rather than weaken customary law, ensuring it both vitality and widespread legitimacy.

I should add two more cases in this section. In *Bhe* the Court struck down primogeniture as an element of customary law, namely the principle found in many feudal societies throughout the world that the eldest male relative of a deceased person succeeds to title and estate. My colleague Sandile Ngcobo felt that the answer was to make the eldest descendant, whether female or male, the heir. The majority, however, decided that the issues were so multiple and complex that Parliament should decide through properly canvassed legislation. Finally, in *Richtersveld* the Court



“Equality didn’t mean treating everybody the same. It meant treating everybody with equal respect and concern.”

accepted that under customary law indigenous communities did indeed have aboriginal rights in relation to the land in which their goats eked out survival. This meant that their expulsion from the land to make way for lucrative diamond mining should be classified as a deprivation of property rights, entitling them to appropriate compensation.

I turn now to the beautiful judgment written by my colleague, Chief Justice Pius Langa, in the case of *Sunali Pillay*, who insisted on wearing a jewel in her nose at Durban Girls High School, in spite of a school rule against the wearing of any jewellery. He said this case was about a tiny object, a nose stud, with big implications. She was a Tamil of Hindu persuasion, and contended that wearing the nose stud was part of her culture and religion. They threatened to expel her, the matter went to the Equality Court, which sided with the School and then to the High Court, which ruled in her favour. Finally, it reached the Constitutional Court where we too ruled in her favour. We held that wearing the nose stud was part of her culture and her religion, the two being intertwined.

Equality didn’t mean treating everybody the same. It meant treating everybody with equal respect and concern. It involved reasonable accommodation. If at all reasonably possible, you didn’t push people into a position where they had to choose between being faithful to their beliefs, on the one hand, and being obedient to the law, on the other. The authorities should walk the extra mile to find a reasonable way of accommodating the beliefs. What the School should have done was to explain to the other girls why, if they wanted to wear Britney Spears jewellery they could be prevented from doing so while at the same time Sunali should be allowed to wear her nose stud. Accommodating Sunali’s beliefs would show respect for cultural diversity in our country. Part of the

School’s educational mandate was precisely to encourage the learners to understand and imbibe the values of the Constitution. It is a judgment written not as a grammatical treatise on words in the Constitution, but with a sense of our history, of our diversity, of the importance of respecting the cultures of others. Indeed, respecting means more than just tolerating diversity; it involves welcoming the idea that people can be who they are in a country, our country South Africa, that has been peopled in such a diverse way.

I end with a reference to an aspect of traditional values and ways of doing things that moves from customary law to our legal system as a whole. I refer to the principle of Ubuntu - I am a person because you are a person, I cannot separate my humanity from an acknowledgment of your humanity. Ubuntu requires separate and extensive treatment, and I merely touch on it here. It first surfaced in our Court’s judgments in the case of *Makwanyane*, where six judges referred to it as an important value when we unanimously struck down capital punishment as being unconstitutional. Later in defamation cases, starting with *Dikoko*, the Court came down with increasing support for resorting to Ubuntu-based remedies aimed at restorative justice, rather than continuing with punitive money awards. Finally, I mention the *Port Elizabeth Municipality* case, which turned on the justice and equity of ordering eviction of homeless black people who had put up their shelters on unoccupied white-owned land adjacent to an upmarket, overwhelmingly white suburb. In deciding what was just and equitable, writing for the Court, I stated that our Bill of Rights was nothing if it was not our Ubuntu writ large. Accordingly, in interpreting the Constitution and the relevant statute we had to acknowledge that the fact that millions of our people were living in grossly unacceptable conditions was not only an assault on their dignity but an affront to the dignity of all of us.

Ubuntu, then, is not a principle reserved for customary law but a philosophy coming from African society that should humanise the whole of our law. And if ever there was someone who embodied the spirit of Ubuntu in everything he did, even in the midst of one of the most strenuous and prolonged struggles for freedom in our era, it was Oliver Tambo. The story never ends, but the telling of it does, where it began. ●



Justice Albie Sachs

On turning six, during World War II, Albie Sachs received a card from his father expressing the wish that he would grow up to be a soldier in the fight for liberation. His career in human rights activism started at the age of 17, when as a second year law student at the University of Cape Town, he took part in the Defiance of Unjust Laws Campaign. Three years later he attended the Congress of the People at Kliptown where the Freedom Charter was adopted. He started practice as an advocate at the Cape Bar aged 21. The bulk of his work involved defending people charged under racist statutes and repressive security laws. Many faced the death sentence. He himself was raided by the security police, subjected to banning orders restricting his movement and eventually placed in solitary confinement without trial for two prolonged spells of detention. In 1966 he went into exile. After spending 11 years studying and teaching law in England he worked for a further 11 years in Mozambique as law professor and legal researcher. In 1988 he was blown up by a bomb placed in his car in Maputo by South African security agents, losing an arm and the sight of an eye. During the 1980s working closely with

Oliver Tambo, leader of the ANC in exile, he helped draft the organisation’s Code of Conduct, as well as its statutes. After recovering from the bomb he devoted himself full-time to preparations for a new democratic Constitution for South Africa. In 1990 he returned home and as a member of the Constitutional Committee and the National Executive of the ANC took an active part in the negotiations which led to South Africa becoming a constitutional democracy. After the first democratic election in 1994 he was appointed by President Nelson Mandela to serve on the newly established Constitutional Court. In addition to his work on the Court, he has travelled to many countries sharing South African experience in healing divided societies. He has also been engaged in the sphere of art and architecture, and played an active role in the development of the Constitutional Court building and its art collection on the site of the Old Fort Prison in Johannesburg.



The Future of Multiculturalism
in South Africa:

The Impact of the Language of Education at Schools and Universities

Dr Fernand de Varennes

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

"[W]e are extremely proud that the new Constitution asserts equality among South Africa's languages, and that, for the first time, the languages particularly of the Khoi, Nama and San communities will receive the attention they deserve, after years of being trampled upon in the most humiliating and degrading manner..."

FORMER SA PRESIDENT NELSON MANDELA

The issue of the language of education at schools and universities is obviously a very timely and topical one given the increasing shift towards the use of English not only as the main medium of education, but even the exclusive official language used in instruction and administration in an increasing number of South African schools and universities. Former SA President Nelson Mandela's pride at the equality he foresaw for South Africa's languages in the new Constitution seems... well quite frankly, lost from sight somehow in recent years. There is no equality if education is only in the medium of one official language. There is no equality if one official language is privileged, and all others are cast aside.

Using the same official language for all is not equality when it is clearly not the language of everything but not of everyone. I was asked to speak to use on the impact of the language of education at schools and universities: I will of course do that, but from a rather legal point of view, particularly from the viewpoint of the prohibition of discrimination and the right of education in international human rights, as well as the practices and policies in many parts of the world, and what it means as to the impact language has on education.

Quality education means education that reflects the language(s) of the local community, within a globalised world. A globalised world does not mean we should all speak exclusively the same international language. The future is multilingual.

I will do this in four parts: first by looking at the impact of the language used as medium of instruction in general pedagogical terms, in terms of learning and school attendance. Secondly, I will consider the specific issue of



illiteracy around the world, and particularly in Africa where there is a language disconnect in the language used for education and the actual language of the population of a country. Thirdly, I will address the common misconception that using only one language in education is less expensive and therefore the only possible approach for countries such as South Africa. And fourthly I will point out that in relation to minority languages, using the mother-tongue of students is quite often the best way to ensure they will be able to effectively learn other languages. Finally, bringing all this together, I will illustrate why there is worldwide a quite common practice of using more than one language for education and how this can be connected to the right to equality without discrimination.

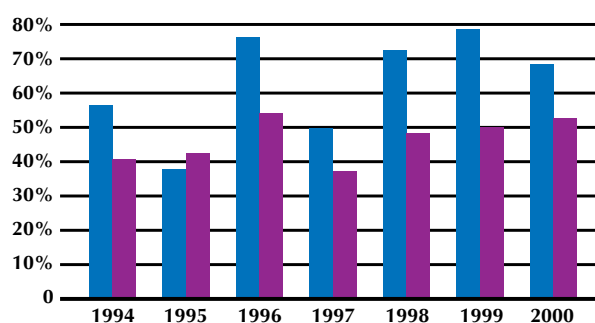
So first, it is widely confirmed in pedagogical terms that education in the mother-tongue of children leads to encouragement, strength and enthusiasm, and I would add greater success.

The scientific basis for this is measurable and observable in all parts of the world. Let me illustrate this with one indicator which on the negative side shows how the mismatch of language in education leads to poor educational results. According to the World Bank the largest single predictor of exclusion from education is when instruction is not in the language of children. 50% of the world's out of school children live in communities where the language of the schooling is rarely, if ever, used at home. This underscores the biggest challenge to achieving Education for All (EFA): a legacy of non-productive practices that lead to low levels of learning and high levels of dropout and repetition. (World Bank, 2000.)

The World Bank in this report considered the results of studies around the world. There is quite a fairly wide agreement that not teaching in the language of children is a "non-productive practice" because it tends to be accompanied by high dropout rates, repetition and poor learning because children may not be perfectly fluent in the language used by their teachers.

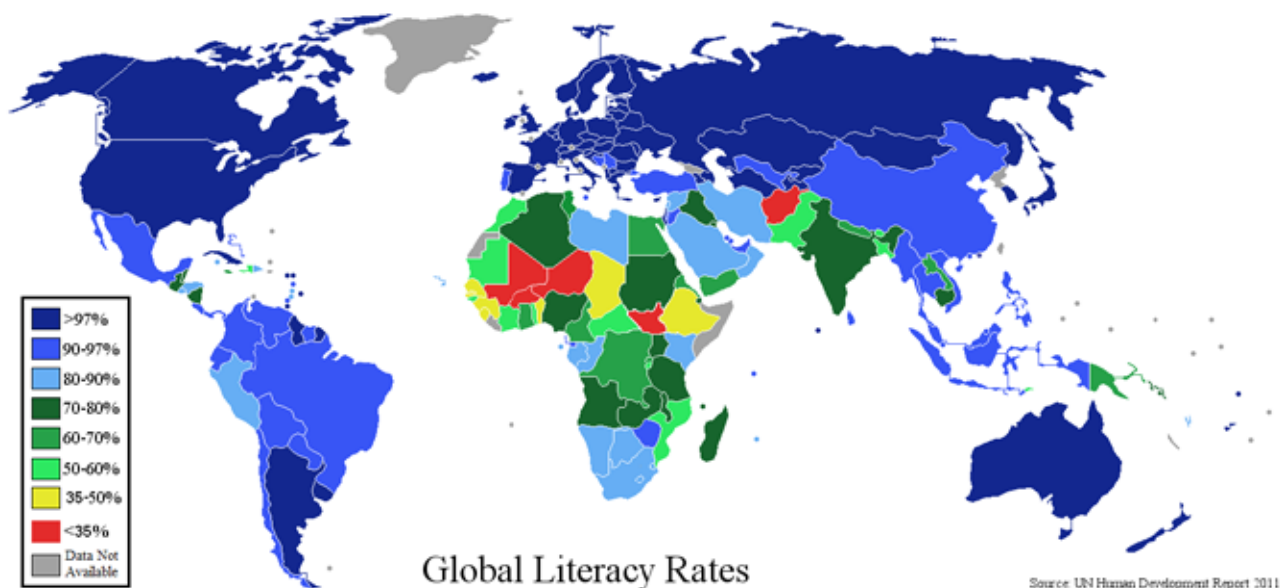
Numerous studies show that children learn best when they are taught in their own language – as you have shown here graphically in research in Mali where the blue line shows 32% higher pass rates for children taught in their own language (blue line) compared to those taught in official and international language (French) only in what is that purple.

End-of-primary Examination Pass Rates, 1994-2000



Secondly, and closely connected here, is the "official language disconnect" in education when there is a mismatch between the language used in education and the language of students has consequences in terms of illiteracy rates.

The world's lowest literacy rates occur where the medium of instruction is not the languages of the country's population.



That is what you see here: countries with the lowest literacy rates are those with the highest levels of linguistic disconnect, other than Afghanistan which is the exception due to ongoing warfare for decades and the absence of a national public education system in many parts of the country.

Correlation between world's lowest literacy rates and disconnect between language of instruction and language of the population - The Language Disconnect			
Lowest Youth Literacy Rates (15-24)(a)	Population in relation to official language of instruction (b), (c), (d)	Language(s) of instruction in public schools	Poorest Countries (GDP 2014)
Niger (26.56%)	<ul style="list-style-type: none"> About 13%, fluent 0.1% native speakers 	French (except for "experimental" or "pilot" schools with mother tongue for first 3 years)	Malawi
Guinea (45.24%)	<ul style="list-style-type: none"> Between 24%, fluent 0.1% native speakers 	French (except for "experimental" or "pilot" schools with mother tongue for first 3 years)	Burundi
Burkina Faso (45.43%)	<ul style="list-style-type: none"> About 22%, fluent 1.3% native speakers 	French (except for "experimental" or "pilot" schools with mother tongue for first 3 years)	Central African Republic
Ivory Coast (50.23%)	<ul style="list-style-type: none"> About 34%, fluent 0.2% native speakers 	French (except for "experimental" or "pilot" schools with mother tongue for first 3 years)	Niger
Benin (52.55%)	<ul style="list-style-type: none"> About 35%, fluent 0.3% native speakers 	French (except for "experimental" or "pilot" schools with mother tongue for first 3 years)	Liberia
Liberia (54.47%)	<ul style="list-style-type: none"> About 50%, fluent 2.5% native speakers 	English (except for "experimental" or "pilot" schools with mother tongue for first 3 years)	Madagascar

(a) 2015 Estimate, Unesco Institute for Statistics

(b) Estimation des francophones dans le monde en 2015, Observatoire démographique et statistique de l'espace francophonie.

(c) Geographical distribution of French speakers, http://en.wikipedia.org/wiki/Geographical_distribution_of_French_speakers

(d) Liberia - L'aménagement linguistique dans le monde, www.axl.cefan.ulaval.ca/afrique/liberia.htm

The countries with the highest illiteracy rates are those with the highest proportion of disconnect between the language of education and the languages of the population in a country – and those are unfortunately as you can see here all in Africa.

What appears most important and what involves a clear and direct correlation is a significant disconnect between the languages of the population of a country and the language of instruction: this is it seems to be the most important factors towards the perfect storm for illiteracy.

That's what the countries of Niger, Guinea, Burkina Faso, Ivory Coast and Sierra Leone share – and which directly and clearly contributes most to extremely low literacy rates when combined with poverty.

Poverty is still widespread in many parts of the world, but what makes these five countries stand out so much is that the majority of children are not taught in their own languages. And that is extremely rare in the world. In most countries, a majority of children are taught in their own language.

Most children in Mongolia are taught in their own language, in this case Mongolian. The vast majority of children in Canada are taught in their own languages – French and English which are official and to a lesser degree a few indigenous languages. In Switzerland, the vast majority of children are taught in their own languages which are the four official languages of the country: German, French, Italian and Romansh.

In Sri Lanka, most students are taught either in Sinhalese, Tamil or English, which are the three main languages, etc. etc. That is what you find in almost all countries of the world, except... in Africa. It is precisely these African countries which have, directly and proportionally, the highest illiteracy rates in the world because they privilege languages such as French and English which are not well understood by a majority of the population as you can see here – and therefore among the world's worst dropout rates, poor academic results, and illiteracy.

Thirdly, the use of minority languages as medium of instruction in public education, whether it is mother-tongue, bilingual or multilingual, is financially more efficient and cost-effective.

Official language-only educational programmes can “cost about 8% less per year than mother-tongue schooling, but the total cost of educating a student through the six-year primary cycle is about 27% more, largely because of the difference in repetition and dropout rates.” (World Bank (2005), *In Their Own Language: Education for All*. World Bank.)

It is less expensive, or we should really say more cost-effective - if you teach in the languages of the population and also teach them the national language – where practicable and reasonable – than only teaching them in one official or international language. This is because a government will be “wasting” its money, its financial resources if it teaches in a language with high drop-out rates, with students leaving school because of language problems after only three or four years education. They are a loss, because most of them are not literate and have very low levels of education.

There is often the assumption that using only one language in education, or particularly an international language such



as French and English even if these are not the languages of a very large segment of the population, will be less expensive than education in a number of languages that is shared by a large proportion of the population in a country. You may already have books printed in one official language and readily available in many subjects, the teachers are already trained, etc. There are no need for expensive translation or teacher training in other languages or to develop new material in the minority language.

But what does a government get for its investment when it uses a language in education which is not shared by most of its population. Studies in many different countries in Africa, Asia and the Americas show that your drop out rates are much higher if you only teach in the official language to linguistic minorities who are not fluent in this language. They also show that the results of these students are lower than if they were taught in their own language – so you are getting again a bit less for your money because the students are less well educated.

And most of these studies additionally agree that many students will repeat a grade more often because of the language barriers – that's also a waste of my money trying to achieve good education.

On the other hand, when more than one language is used you achieve a dropout rate which is much lower and students stay in school longer, repeat less often, and get better results.

As is in fact the practice is most parts of the world, and it is a better, more cost-efficient use of the money of the state in public education.

Fourthly, and what may again surprise many is the conclusion from a wide variety of sources, including in World Bank research, that the best education for learning other languages, is instruction in one's own language.

Very positive results have been seen for example in Thailand, in the south where the Malay language has been used tentatively in some pilot projects as language of instruction in a few schools, with well very interesting and dramatic effects: After three years, primary grade 1 (age six to seven) children (of the Malay-speaking Minority in the south) in the programme scored an average of 40% better in an assessment of their reading, mathematics, social studies, and Thai language skills than children in the Thai-only control schools (Walter 2011). In fact, boys in the pilot programme were 123% more likely to pass the reading evaluation than boys in the control schools, and pilot program girls were 155% more likely to pass the mathematics exam (ibid.). These dramatic results bolster the argument that education based in the learners' first language contributes to, rather than detracts from, mastery of the both national language and subject content. (Kosonen, Kimmo & Person, Kirk R. (2013) *Languages, Identities and Education in Thailand*. In Peter Sercombe and Ruanni Tupas (Eds.) *Language, Identities*

Other studies by UNESCO and others agree that the best education for learning school subjects and other languages, is instruction in one’s own language while being taught well the official or national language.

To summarise, children taught in their own language learn the official or majority language better for the following reasons:

- first, because when taught in their own language there is generally a better level of understanding and communication between teacher/pupils
- students not only obtain better results, the drop-out rates diminish significantly
- by staying in school longer, students overall acquire more literacy abilities, both in their own language and in the official language with more time in school

There is also a legal, human rights dimension here. In relation to language in education, it could constitute either a denial of the right to education, or of a difference of treatment through a language preference in education which does not respect the right to equality without discrimination.

This is because in the contexts of Niger and Sierra Leone, and other countries is unreasonable and unjustified – even if the preferences are linked to a country’s only official language.

The possible legal argument in international law is that not offering education in the mother-tongue where it is practicable could be considered to be unreasonable and unjustified, and therefore discriminatory, if a significant number of students are disadvantaged by the choice of a language of instruction. This is especially the case where you have large numbers of students who are affected detrimentally, such as where there is a very high language disconnect in education in countries mentioned earlier since this leads to extremely high illiteracy rates and poor academic results.

You can see with this table that at various times, United Nations human rights committees have clearly linked the language of education as involving international human rights standards.

The UN Human Rights Committee has even recognised on



a couple of occasions that public universities should use languages other than a state’s official language as medium of instruction where you have large populations who would benefit from access to tertiary education in their own language.

This by the way is actually rather common around the world: in many countries with more than one language, it is not uncommon to have public universities which teach completely in one or other official language. In Canada, the university where I work only uses French as the medium of instruction. French, as you may know, is one of two national official languages in Canada, spoken by about 23% of the country’s population.

In Sri Lanka, which has in practical terms three languages used by the national government in education, Sinhalese, Tamil and English, public universities use these three languages as medium of instruction.

In Hong Kong you have one university that teaches mainly in Chinese, others use mostly English, and all universities using at least to some degree three languages of education: Cantonese, Mandarin, and English.

Even in the United Kingdom, English is not the exclusive language of education. In Wales, there are a large number of schools that teach completely in the Welsh language, even

Table 1: Recognition of right to education in one’s own language in public educational system, UN Committees, 1988-2014

Committee	Right to education in mother tongue	Right of education and culture	Discrimination in education	Bilingual or multilingual education	Right of an indigenous or minority group
HRC	8		3	1	6
CRC	23			35	5
CERD	9		8	4	
CESCR	19	19	4	5	5

HRC = Human Rights Committee; CRC = Committee on the Rights of the Child; CERD = Committee on the Elimination of Racial Discrimination; CESCR: Committee on Economic, Social and Cultural Rights

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though everyone is also taught English. All universities in Wales provide at least some teaching in part through Welsh.

And finally, you can see how in Switzerland, public universities either use one or more of that countries as medium of instruction, so that in total there are four languages used for tertiary education – not teaching a language as a language or course, but four languages used as language of instruction at the tertiary level.

Language used by Swiss public universities:

- University of Basel (Basel), German-speaking
- University of Bern (Bern), German-speaking
- University of Fribourg (Fribourg), French- and German-speaking
- University of Geneva (Geneva), French-speaking
- University of Neuchâtel (Neuchâtel), French-speaking
- University of Lausanne (Lausanne), French-speaking
- University of Lucerne (Lucerne), German/English-speaking
- University of Lugano (Lugano), Italian/English-speaking
- University of St. Gallen (HSG) (St. Gallen), German/English-speaking
- University of Zurich (Zürich), German/English-speaking
- Swiss Federal Institute of Technology Lausanne (EPFL) (Lausanne), French/English-speaking
- Swiss Federal Institute of Technology Zurich (ETH) (Zurich), German/English-speaking

Even the International Court of Justice has commented indirectly on the desirability of using the languages of a country's populations in education – and why using more than one language is not immediately problematic as such.

I will finish with this quote from more than a thousand years ago, in the 9th century, from King Alfred the Great, often described as the first English king. He lived at a time when education was almost exclusively in what was then in Europe the only international language – Latin – the language in which almost all books and scientific research were produced.

“Therefore it seems better to me, if it seems likewise to you, that we turn some books which are most needful for all persons into the tongue which we can all understand; and that you act (...) to the end that all the youth now in England of free men who have the wealth to be able to apply themselves to it, be set to learning so long as they are no use for anything else, until the time when they can read English writing well: let those afterwards be instructed further in the Latin language.” (*Alfred the Great, First King of the Anglo-Saxons, 846-899*)



What he is saying here is that the use of only the international language in education actually disadvantaged and excluded his people, the Anglo-Saxons, because of the language disconnect. Only an elite was fluent in Latin, so therefore education did not really reach his people as much as it should, according to him.

It is in a way ironic that more than a thousand years later, what he saw as the negative aspects of only using an international language for the purposes of education is still in place in a number of countries – with unfortunate effects.

The difference today of course, just as former President Mandela and former President De Klerk have recognised and reminded us, is that the Constitution of South Africa asserts equality among South Africa's languages, international human rights acknowledges the connection and significance of language in education, and we know scientifically that it is better for literacy and pedagogically and even in terms of cost-efficiency not to limit education to one dominant language.

We could not, should not go back to a past where there is no place in education for all the beautiful languages of South Africa. ●



Dr Fernand de Varennes

Dr Fernand de Varennes is Dean of the Faculty of Law at the Université de Moncton in Canada and Extraordinary Professor at the Centre for Human Rights at the University of Pretoria in South Africa. Dr De Varennes is one of the world's leading legal experts on language rights and the rights of minorities, and has written some 200 publications which have appeared in 30 languages. He has made presentations to a number of United Nations committees in Geneva and the European Parliament in Brussels, worked with the OSCE High Commissioner on National Minorities, as well as prepared reports on matters such as the linguistic and human rights of indigenous peoples and minorities, the prevention of ethnic conflicts, and the rights of migrants. A former Director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict in Perth, Australia and the founder of the Asia-Pacific Journal on Human Rights and the Law, he is a Research Associate at the International Observatory on Language Rights at the Université de Moncton in Canada and has been a visiting professor at the University of Hong Kong. In recognition of his contributions in the fields of human and minority rights, he

was awarded the 2004 Linguapax Award Spain, was nominated in 2004 for the Gwangju Prize for Human Rights in South Korea, and held the Tip O'Neill Peace Fellowship at INCORE (Initiative on Conflict Resolution and Ethnicity) in Northern Ireland.



The Future of Multiculturalism in South Africa

Former President FW de Klerk

TO THE FW DE KLERK FOUNDATION
ANNUAL CONFERENCE

The Cape Town Civic Centre, 2 February 2016

The FW de Klerk Foundation decided to dedicate its annual conference this year to the consideration of the future of multiculturalism in South Africa.

We did so because of the strains that have been developing in relations between our communities and because of the central importance of reaching agreement on how communities in our complex multicultural society should relate to one another in the future. These are questions that will play a key role in determining the long-term success of our society and the security and happiness of all our peoples.

This is also a challenge that increasingly confronts countries throughout the world. The main threat to peace during the 21st century no longer comes from the possibility of conflict between countries but rather from the inability of states to manage relationships between ethnic, cultural and religious communities within their own borders.

The age of the single culture, single language state is over. Two-thirds of the world's 200 countries have minorities comprising more than 10% of their populations. Cultural and ethnic minorities now comprise more than one billion people throughout the world - one in seven of the human population.

Our own country, South Africa, is one of the most culturally and ethnically diverse societies in the world.

Like so many other African countries, South Africa was a creation of European imperialists. At the beginning of the last century the British drew arbitrary lines on the map of Southern Africa which created South Africa as we know it today. In so doing they incorporated within the same state a wide array of different peoples with different cultures, values and levels of development.

In 1910 when the Union of South Africa was established, the British gave white South Africans a monopoly of political power. During the subsequent decades whites used their monopoly of power to promote and protect their own interests. Their relationship with the other peoples of South Africa was characterised at best by condescending paternalism - and at worst by naked exploitation and dispossession.

26 years ago today I initiated the process that would end the white monopoly of power and that would open the way to our present non-racial constitutional democracy.



During the constitutional negotiations the participating parties gave extensive attention to the manner in which the rights of all our communities would be protected and how they would work together in a new spirit of unity in diversity. Our new Constitution recognised our 11 official languages and proclaimed that they should enjoy parity of esteem.

- It required us to strive for unity within our diversity.
- It prohibited discrimination, *inter alia*, on the basis of race, language and culture.
- It enjoined the state to take special action to develop our indigenous languages.
- It stated that government at national and provincial levels must use at least two official languages.

The Constitution importantly recognised the right to receive education in the language of one's choice in public educational institutions, where such education is reasonably practicable and provided that it does not lead to discrimination.

It also created space for language, cultural and religious diversity.

- Everyone would have the right to use the language and participate in the cultural life of their choice.
- People belonging to cultural, religious and ethnic communities would be able to enjoy their culture, practise their religion and use their language.
- They would be able to form cultural, religious and linguistic associations and other organs of civil society.

Our new Constitution was in line with international thinking on multiculturalism at the time.

A United Nations Development Programme report, published in 2004, pointed to what it called the newly emerging 'identity politics'.

"In vastly different contexts and in different ways - from indigenous people in Latin America to religious minorities in South Asia to ethnic minorities in the Balkans and Africa to immigrants in Western Europe - people are mobilising anew around old grievances along ethnic, religious, racial and cultural lines, demanding that their identities be acknowledged, appreciated and accommodated by wider society."

The Report affirmed that cultural liberty was a vital part of human development. If handled well, it could lead to greater cultural diversity and enrich people's lives. However, if it was mismanaged it could "quickly become one of the

“Our new Constitution recognised our 11 official languages and proclaimed that they should enjoy parity of esteem.”

greatest sources of instability within states and between them." The answer was to "respect diversity and build unity through common bonds of humanity".

The UNDP Report recommended that states should promote cultural liberty as a human right and as an important aspect of human development. Neither did the UNDP believe that cultural rights could be secured "simply by guaranteeing individuals' civil and political rights".

On the contrary, the promotion of cultural rights required explicit state action: "...states need to recognise cultural differences in their constitutions, their laws and their institutions. They also need to formulate policies to ensure that the interests of particular groups - whether minorities or historically marginalised majorities - are not ignored or overridden by the majority or by dominant groups."

It is only within such a framework of tolerant multiculturalism that all of us who live in multicultural societies can achieve our full potential as human beings in the many different areas in which we operate.

For example, I am an individual. I belong to the De Klerk family. I belong to the Reformed Church. I am a member of a number of private organisations - including a number of golf clubs. I am an Afrikaner. I derive my language, my history, and my traditions and much of my identity from all these associations. I am also very proud to be an active citizen of the new vibrant and multicultural South Africa. Like my ancestors since 1688, I am an African - and I like to think that I am a citizen of the world.

None of these relationships are mutually exclusive. People can be all these things at the same time. Their reasonable rights in all these spheres need to be protected. Neither should they suffer discrimination because of any of these affiliations.

I believe that we South Africans are all richer because of the cultural diversity that we enjoy. I am confident that we can show that diversity does not need to be a source of tension and conflict - but can help to enrich our lives by providing



“I am confident that we can show that diversity does not need to be a source of tension and conflict - but can help to enrich our lives...”

differing perspectives of the world in which we live.

Unfortunately, virtually every one of the provisions relating to cultural and language rights that we negotiated into the 1996 Constitution has been ignored or diluted:

- English is increasingly the single *de facto* official language.
- The supposed official status of the remaining 10 languages is increasingly an illusion.
- Little or nothing has been done to develop our indigenous languages.
- Afrikaans, as a university language, is under enormous pressure - and there are increasing pressures on especially single-medium Afrikaans schools.

Perhaps the most ominous threat to diversity comes from increasing demands that minorities should conform to the goal of pervasive and all-embracing demographic representivity. The idea is that in a perfectly non-racial society all institutions in the public, private and non-governmental sectors should reflect the ethnic composition of society at all levels - down to the first decimal place.

In a multi-community society like South Africa demographic representivity would mean that minorities would be subject to the control of the majority in every area of their lives: in their jobs, in their schools, in their universities, in their charitable institutions and in their sports. It would be the antithesis of multiculturalism. It would constitute African hegemony - and negate the idea that all South Africans are equal, regardless of the community to which they belong.

Our communities also continue to be deeply divided by our very different perceptions and experiences of the past.

During the negotiations we reached agreement on the need for reconciliation and for actions to promote national unity. We accepted that our approach to the past should be based on:

- a need for understanding - but not for vengeance;
- a need for reparation - but not for retaliation; and
- a need for Ubuntu - but not for victimisation.

We also agreed to establish a Truth and Reconciliation Commission to examine our deeply divided past and to promote reconciliation and national unity.

In the course of the TRC's proceedings, I made a full and sincere apology for apartheid. I apologised in my capacity as Leader of the National Party to the millions of South Africans

- who had suffered the wrenching disruption of forced removals in respect of their homes, businesses and land;
- who over the years, had suffered the shame of being arrested for pass law offences;
- who over the decades - and indeed centuries - had suffered

the indignities of humiliation of racial discrimination;

- who for a long time were prevented from exercising their full democratic rights in the land of their birth;
- who were unable to achieve their full potential because of job reservation; and
- who in any way suffered as a result of discriminatory legislation and policies.

I said that this renewed apology was “offered in a spirit of true repentance in full knowledge of the tremendous harm that apartheid has done to millions of South Africans.”

Nothing has changed since I made that apology. I stand by it. I believe that all white South Africans should continuously try to understand, acknowledge and process the pain and humiliation that apartheid caused black, Coloured and Indian South Africans. We need to be involved in addressing it.

At the same time, black South Africans must show much greater sensitivity for the enormous complexity of our history. They should not judge previous generations by the moral standards of today - either Paul Kruger or King Shaka. History is not a simple cowboy story about bad guys vs good guys.

The main motivation of my people throughout our history was simply our desire to establish and maintain our own right to national self-determination.

Our critics must also understand that even more important than apologies is the determination to put right what has been wrong. It was *inter alia* for this reason that my colleagues and I took the decisions and actions that were necessary to get rid of apartheid forever. We also agreed that our new Constitution should make provision for restitution, for a balanced system of land reform and for measures to promote equality that would not result in unfair discrimination against anyone.

Despite the considerable risks involved we gave up our virtual monopoly of power and of our historic quest to rule ourselves. Instead, we put our faith in the non-racial Constitution that we negotiated with all our fellow South Africans. In March 1992 almost 70% of white South Africans supported the course that we had adopted.

Now, 22 years after the founding of our new society we continue to be more deeply divided by our past than ever.

Many white South Africans live contentedly in their own first world bubbles oblivious of the plight of less advantaged communities. This manifests itself too often in what blacks perceive as an unconscious racial superiority - and

“Now, 22 years after the founding of our new society we continue to be more deeply divided by our past than ever.”



sometimes in crass, racist and hurtful remarks and attitudes.

On the other hand, the attitude of many blacks towards white South Africans is becoming harsher and more uncompromising. Many feel that little has changed since 1994. Many believe that whites “stole” all the land that they now possess and that their relative prosperity is based not on hard work and enterprise, but on the historic exploitation of black South Africans.

Whites are increasingly blamed for the problems of inequality, unemployment and poverty that continue to afflict many South Africans. The Government openly attacks their history and their heroes - such as Jan van Riebeeck and Paul Kruger - who, ironically, led one of the greatest anti-Imperialist struggles in African history.

South Africans are once again perceiving people from other communities

- in terms of negative racial stereotypes and not as individual human beings;
- in terms of past animosities rather than in terms of the need for present and future cooperation to achieve national goals.

More seriously, prominent political parties are competing against one another in their attempts to mobilise their constituencies on the basis of hostile racial agendas.

We simply cannot afford this kind of racial polarisation. We must remember the UNDP’s warning that if relationships between communities in multicultural states are mismanaged they can “quickly become one of the greatest sources of instability within states and between them.”

We need to return to the spirit of reconciliation, compromise and goodwill that characterised the first years of the New South Africa. We need to hear Nelson Mandela’s call for reconciliation and nation building again.

We need to rediscover the vision of multiculturalism in the Constitution - in which:

- all our indigenous languages will be fully developed and enjoy real official status;
- all our languages will be treated equitably and with parity of esteem;
- the human dignity and moral equality of all our peoples will be respected - regardless of their race or language;
- all people will be treated on the basis of non-racialism and non-sexism;
- no one will be subjected to unfair discrimination on the basis of their race, gender or language;
- everyone will enjoy the right to education in the official language or languages of their choice in public educational institutions; and in which
- everyone will have the right to use the language and practise the culture of their choice.

Leaders of goodwill from all our communities must now urgently come together to call for calm:

- They should unambiguously condemn racism from whatever quarter it might come;
- They should call to account those who seek to incite violence - whoever they are;
- They should encourage South Africans to abandon negative stereotypes of people from other communities;
- They should urge all South Africans to treat one another with respect, courtesy and toleration;
- They should promote open dialogue between our communities to gain understanding of the sources of their anger; their fears and their sense of hurt;
- They should learn more about one another's cultures, languages and histories; and
- They should encourage us all to unite around the values in the Constitution and to work for a society in which those values will be translated into reality.

We must all understand that all of us are mutually dependent: none of us will prosper and feel secure if all of us do not prosper and enjoy security. We really do have a symbiotic relationship and cannot survive without one another. As Pik Botha used to say, it makes no difference whether a zebra is shot in a black stripe or a white stripe: the whole animal dies.

Because of the importance of healthy multiculturalism to the future of South Africa, the FW de Klerk Foundation has decided to establish a Centre for Unity in Diversity that will operate alongside the Centre for Constitutional Rights, which we established in 2006.

The new Centre will uphold the Constitution's vision of unity in diversity; the language and cultural rights that it ensures; and everyone's right to equality - regardless of their



race, gender or language.

- It will monitor any developments that might harm national unity; and that might constitute unfair racial, gender or language discrimination.
- It will actively participate in the national debate on issues related to the rights of South Africa's language, ethnic, cultural and religious communities; and
- It will - where possible - assist people to claim their language, cultural, religious and gender rights.
- It will support and promote nation building and social cohesion.

Like the Centre for Constitutional Rights, the new Centre will be assisted and guided by a Panel of Experts. We hope that the new Centre will be up and running within the next six months.

In conclusion I call on all fair-minded and moderate South Africans:

- Let us say no to all forms of hate speech and destructive dialogue.
- Let us distance ourselves from all extremists.
- Let us take hands and build bridges towards a healthy multicultural nation.
- Let us build a successful, peaceful and prosperous South Africa.
- Let us revive the spirit and intent of 1994.
- Let us work together to make the vision in our Constitution of human dignity, the achievement of equality and the advancement of human rights and freedoms a tangible reality for all South Africans. ●



FW de Klerk

During his presidency from September 1989 until May 1994, FW de Klerk dismantled apartheid and initiated and presided over the inclusive negotiations that led to the adoption of South Africa's first fully democratic Constitution in December 1993. Also in 1993, he was awarded the Nobel Peace Prize, together with Nelson Mandela. After the election on 27 April 1994, Mr De Klerk served as one of South Africa's two Executive Deputy Presidents until 1996, when his party withdrew from the Government of National Unity. He retired from active politics in September 1997. In 1999 he published his autobiography, *The Last Trek - A New Beginning* and established the FW de Klerk Foundation. The Foundation upholds the Constitution through the work of its Centre for Constitutional Rights and works for positive relations in multicultural societies. Mr De Klerk is also the Chairman of the Global Leadership Foundation, established in 2004, whose panel of former presidents, prime ministers and statesmen provides discreet advice to heads of government on issues that concern them.



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Support the FW de Klerk Foundation and its Centre for Constitutional Rights

The Foundation is a non-profit organisation with a small operating budget. If you are interested in making a contribution, there are several ways to donate. All donations are tax-deductible and received in terms of Section 18A of the *Income Tax Act No 58 of 1962*.

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