

FW DE KLERK FOUNDATION
CONFERENCE ON

The **New** South Africa at 20:

The **Need** for Real
Transformation

31 JANUARY 2014

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Welcome

DAVE STEWARD

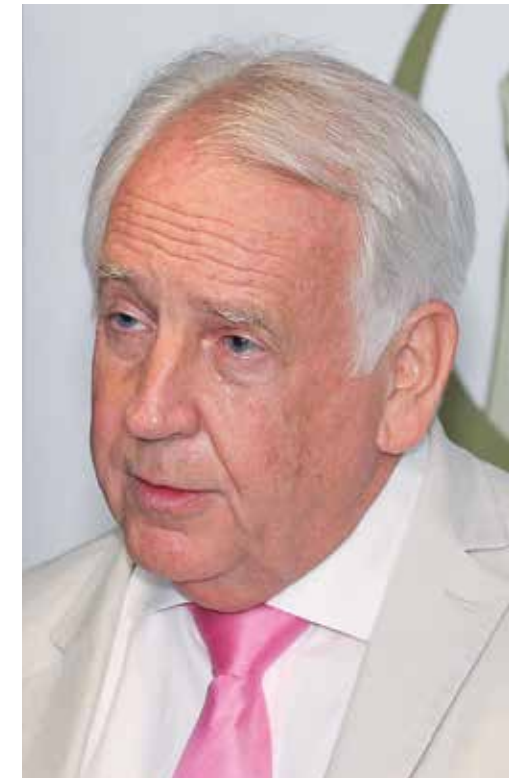
EXECUTIVE DIRECTOR, FW DE KLERK FOUNDATION

WE HAVE DECIDED TO DEDICATE OUR 2014 ANNUAL CONFERENCE TO THE THEME OF “THE NEW SOUTH AFRICA AT 20: THE NEED FOR REAL TRANSFORMATION”. WE HAVE CHOSEN THIS THEME BECAUSE WE WOULD LIKE TO ADOPT A POSITIVE APPROACH TO THE 20TH ANNIVERSARY OF THE NEW SOUTH AFRICA - RATHER THAN A CRITICAL REVIEW OF THE MANY PROBLEMS THAT CONFRONT US. SINCE TRANSFORMATION PLAYS SUCH AN IMPORTANT ROLE IN THE GOVERNMENT’S POLICIES - AND BECAUSE IT IS ALSO ESSENTIAL FOR THE FUTURE SUCCESS OF SOUTH AFRICA - WE THOUGHT THAT WE WOULD DEDICATE THE CONFERENCE TO A DISCUSSION ON “THE NEED FOR REAL TRANSFORMATION”.

In the process we would like to consider

- What the Constitution says about transformation. Although the Constitution does not include the word “transformation”, it clearly requires fundamental change to realise the values in section 1 and the rights in the Bill of Rights;
- The progress - or lack of progress - that we have made in the past 20 years in promoting the real transformation required by the Constitution;
- the need for real transformation in education;
- the need for real transformation in the labour market - with a view to reducing unemployment; and
- what we need to achieve the real transformation of the economy

We hope that the conference will stimulate debate on these topics and will persuade South Africans that transformation must be in keeping with all of the foundational values and that it must result in the practical and long-term advancement of human dignity, equality, the enjoyment of human rights and non-racialism. ■



Introduction

DR HOLGER DIX

RESIDENT REPRESENTATIVE, KONRAD ADENAUER FOUNDATION FOR SOUTH AFRICA

AS YOU KNOW, 2014 IS AN IMPORTANT YEAR FOR SOUTH AFRICANS, WHO ARE VOTING IN NATIONAL ELECTIONS FOR THE FIFTH TIME. AS THE REPRESENTATIVE OF A GERMAN POLITICAL FOUNDATION, THE KONRAD ADENAUER FOUNDATION SOUTH AFRICA, GERMANS AND ESPECIALLY JOURNALISTS ASK ME QUITE OFTEN ABOUT THE ACHIEVEMENTS OF SOUTH AFRICA IN THE LAST TWO DECADES, ABOUT THE WAY FORWARD AND ABOUT THE UPCOMING NATIONAL ELECTIONS. SOME JOURNALISTS EVEN ASK ME ABOUT POSSIBLE RESULTS OF THE ELECTIONS AND THE POTENTIAL IMPACT OF THESE RESULTS.

My answer to these questions about the election is very easy: Only dictatorships can accurately predict the outcome of elections before elections. South Africa is a proud democracy and I think we will have to wait for the results until after the elections.

The first question about the achievements of South Africa in the last 20 years is much more complicated to answer, but the advantage of my job is that in these cases I can support events - like this one today - which help bring people like you together and then just listen. I am pretty sure that after today I will be ready to respond to German journalists.

2014 is not only an important year for South Africa. It is also an important year for us in Europe and in my home country, Germany. In Europe, we will have elections too. The elections for the new European Parliament will take place in May and I think it is worth mentioning that these elections are getting more and more important for us Europeans, as the European Parliament of today is much

more powerful than it was in the beginning of the European integration process.

The year 2014 marks 100 years since the beginning of World War I, 75 years since the beginning of World War II and 25 years since the fall of the Berlin Wall. Former President De Klerk earlier referred to the fall of the Berlin Wall, which marked the collapse of the Soviet Union and Communism per se, as an important prerequisite for South Africa's democratic process. As in the case of South Africa post-1994, the initial euphoria about Germany's unification soon made place for, let us say, a reality check. German politicians and ordinary German citizens soon realised that the re-unification process was a much bigger task and would take much longer than we all originally anticipated. East and West Germans who were separated for so many years and lived under different political systems had to develop a common identity. That was not an easy process. In the beginning, some people in the former West and some people in the former East were asking themselves if they were not better

off before the Wall came down. We finally succeeded to build the United Germany and today an overwhelming majority of Germans are convinced that the Wall in the hearts and minds of the people has been removed too.

There are probably two things one could learn from the German experience. The first one is that to overcome an unjust undemocratic system takes time and a clear commitment. The second one, to sustain a democratic system, make it work and convince people that it is the best form of government above all others, is a constant challenge.

Let me therefore repeat what I said at last year's conference. Events like these are important instruments to nurture democracy and that is why I want to congratulate the FW de Klerk Foundation on this event, and that is why we, as the Konrad Adenauer Foundation, are supporting it. I wish you fruitful insights and a successful discussion. Thank you very much. ■

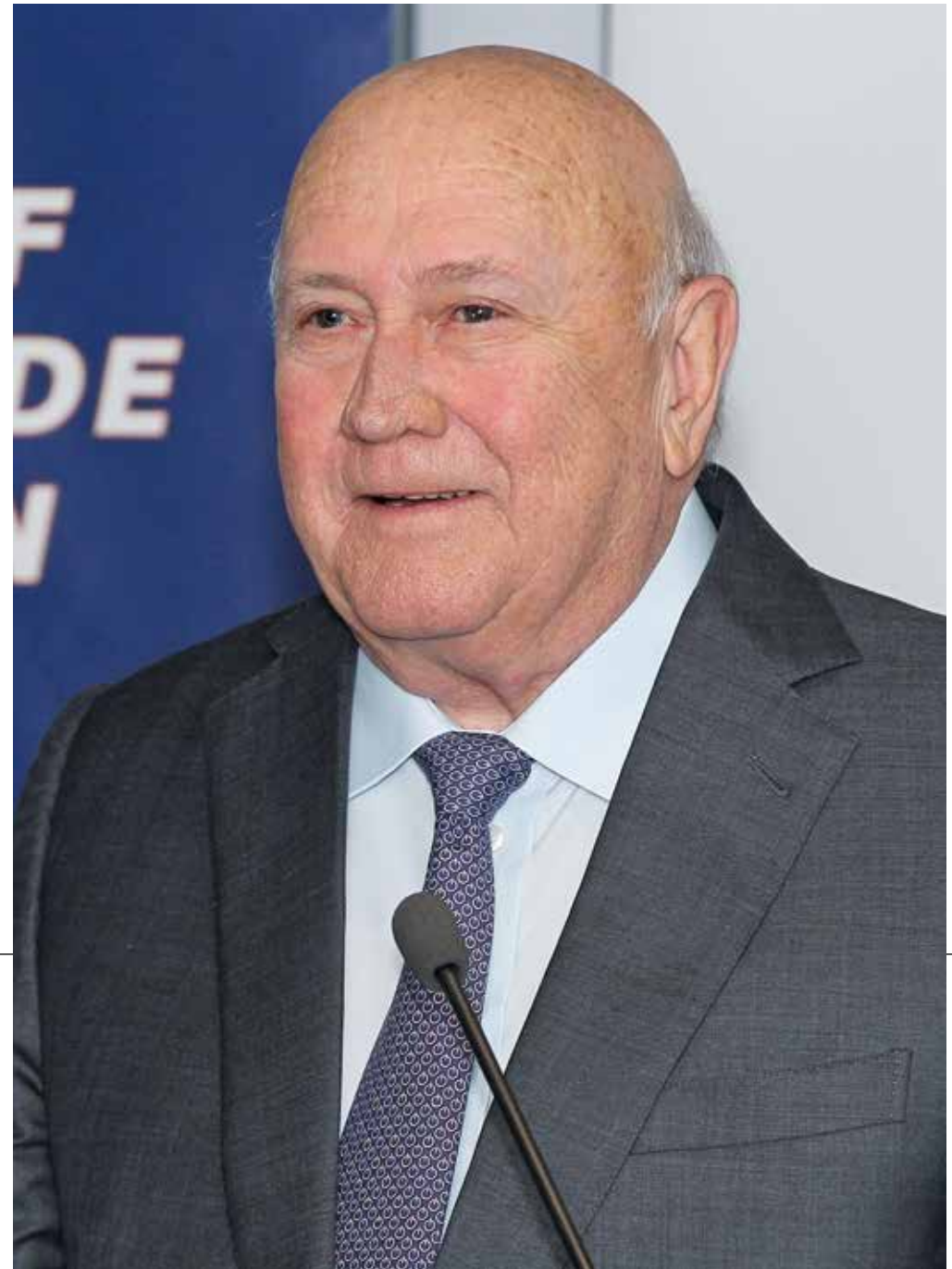


SPEECH BY FORMER PRESIDENT **FW DE KLERK**:
CHAIRMAN, FW DE KLERK FOUNDATION
TO THE FW DE KLERK FOUNDATION CONFERENCE ON
THE NEED FOR REAL TRANSFORMATION,
CAPE TOWN,
31 JANUARY 2014

The New South Africa at 20:

The Need for Real Transformation

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 multi-cultural 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.





I WOULD LIKE TO WELCOME ALL OF YOU TO THIS THE FIFTH ANNUAL CONFERENCE OF THE FW DE KLERK FOUNDATION. OUR CONFERENCE THIS YEAR TAKES PLACE A FEW DAYS BEFORE THE 24TH ANNIVERSARY OF THE COMMENCEMENT OF OUR TRANSFORMATION PROCESS ON 2 FEBRUARY 1990 AND IN THE 20TH ANNIVERSARY YEAR OF THE NEW SOCIETY THAT EMERGED FROM THAT PROCESS.

When we were considering an appropriate title for the conference we decided to focus on ‘the need for real transformation’. We chose this title for the following reasons:

- Firstly, because our new Constitution is a transformational document. It enjoins us to transform South Africa to ensure that everyone will be able to enjoy the rights that it guarantees in a society based on the values that it envisions.
- Secondly, because there are widely differing perceptions of what transformation means and widely differing views on the type of society in which it should culminate. These differing interpretations of transformation lie at the heart of our national debate and of growing divisions within our society; and
- Finally, because South Africa’s future success will depend on our ability to continue to transform key areas of our national performance

to ensure that all South Africans benefit from our new constitutional dispensation – and not just the present multiracial middle class and elite.

We agree with the National Development Plan’s identification of the main transformational challenges:

- firstly in providing decent education for all our people;
- secondly in reducing dramatically the present unsustainable levels of unemployment; and
- finally, the manner in which we can transform our economy to ensure rapid and sustained economic growth that will bring prosperity to all our people.

We shall be dealing with these questions in greater detail in the four modules of our conference later today.

We also invited a senior representative of the ANC to address us on the ANC’s vision of transformation – since we believe that it will be crucial to our discussion today. Unfortunately, he was not able to accept our invitation.

Because it is so central to the debate I would like to share with you our understanding of the ANC’s views of transformation. I wish to stress that this is not our own interpretation – but is based squarely on a fair analysis of the ANC’s *Strategy and Tactics* documents.

The ANC sees itself, not as an ordinary political party, but as a national liberation movement with an uncompleted revolutionary mandate. It sees “the continuing legacy of colonialism and white minority rule” as the “defining reality of our society”.

According to the ANC this legacy still impacts upon “the ways in which black people in general, and Africans in particular, are differently affected by everything, ranging from unemployment, to literacy, to life expectancy levels”. The ANC accordingly “focuses its energy upon mobilising around the aspirations and transformation objectives of this historically oppressed majority”.

Unlike its negotiating partners, the ANC did not view the constitutional negotiations as the means to achieving a final national constitutional accord. Instead it saw them as a means to achieving a beachhead of state power – which would then enable it to shift the balance of forces further to its own advantage. In the process it admits that it had to make constitutional compromises that it regarded as temporary expedients necessitated by the then prevailing balance of forces.

The ANC’s first priority after the 1994 transition

was to shift the balance of forces in its favour by seizing control of the levers of state power. Its targets, in its own words, were “the legislatures, the executives, the public service, the security forces, the judiciary, parastatals, the public broadcaster, and so on”. It gained control of these institutions by deploying ANC cadres to leading positions.

The central goal of the ANC’s National Democratic Revolution – even after 1994 – continued to be the elimination of apartheid social and economic relations. This would be achieved through the “de-racialisation of ownership and control of wealth, including land; and equity and affirmative action in the provision of skills and access to positions of management”.

The ANC’s transformation programme will culminate in the establishment of a “National Democratic Society” in which

- all the significant levers of state power will be controlled by “democratic forces”;
- “apartheid property relations” will have been eliminated; and in which
- there will be demographic representivity at all levels of ownership, management and employment in the public, private and non-governmental sectors.

At the same time, the ANC insists that it is committed to the letter and the spirit of the Constitution, including

- multi-party democracy,
- the separation of powers in a constitutional state,
- fundamental human rights to all citizens,
- respect for the rights of linguistic, religious and cultural communities, and
- social equity.

However, it says that these commitments must

be seen “within the context of correcting the historical injustices of apartheid” that is, within the framework of its goal of establishing a “national democratic society.”

It is against this background that the ANC’s debate in 2012 regarding the commencement of the second phase of the transition takes on special significance.

In his closing remarks to the 2012 Policy Conference President Zuma implied that the triple crisis of unemployment, inequality and poverty had been caused – not by ANC policies – but by white males and the continuing impact of “apartheid colonialism”. He warned that “unless we decisively deal with racialised and gendered inequality, poverty and unemployment, our collective democratic and constitutional achievements would be put at grave risk”.

The President also believed that the balance of forces had shifted sufficiently – in South Africa and internationally – for the ANC to abandon compromises it made during the political transition.

The reality is that the ANC’s approach to transformation now dominates many core aspects of government policy and of our national discourse. It lies at the heart of the debate over land reform; black economic empowerment; and affirmative action.

- Government is imposing mathematical demographic representivity throughout the public sector.
- Minister Rob Davies has made it clear that the Government wants to impose similar demographic representivity in the private sector as well.
- The new gender equality bill now before parliament would require a 50% female quota

throughout society, in government, in the private sector, on NGOs and even in political parties.

However, the ANC’s views on transformation are not all that bad, if compared with those of its alliance partners.

COSATU and the SACP see the ANC’s goal of the National Democratic Society only as a staging post on the line of march to the establishment of a full-blown communist state.

What then are the views of most of the non-ANC parties on transformation? What did they think they were signing on for when the 1996 constitution was accepted? Without wanting to pre-empt Francois Venter’s presentation I would like to share with you a few of my own interpretations of what the Constitution says about transformation.

Although the word “transformation” does not appear in the Constitution there can be no doubt that it is a transformational document. It is permeated with the requirement to move society from where it found itself in 1996 to the vision set out in its founding values.

These values include

- Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- Non-racialism and non-sexism;
- Supremacy of the Constitution and the rule of law; and
- Universal adult franchise, a national common voters roll, regular elections and multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Real transformation should be measured by our success in establishing a society built on these values. How are we doing?

We have made progress with the achievement of human dignity. However imperfect our society still is, all South Africans now enjoy much greater human dignity than they did in the past. This is because they are equal before the law; they enjoy the protection of a Bill of Rights; they have access to independent courts and can participate in a genuine democratic system.

At the same time, the human dignity of tens of millions of South Africans is seriously undermined by the failure of our society to assure many of the rights to which they are entitled.

For example, real transformation would require a professional and caring police service and justice system that would be able to effectively protect the lives, persons and property of all South Africans.

Despite some successes, we still have among the highest murder and rape rates in the world. We need a transformed police and justice system.

The ANC Government has achieved some important transformational successes since 1994.

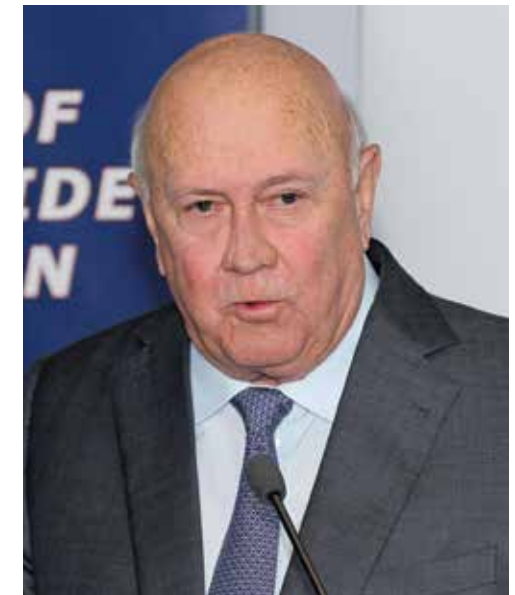
- It has built three and a half million new homes and has extended electricity, water and sanitation services to some 80% of the population.
- It has, on the whole, implemented appropriate macro-economic policies that have brought South Africa 20 years of modest economic growth – with the exception of 2009.
- It has extended social grants to more than 16 million South Africans. Although such grants may not be sustainable they have significantly reduced the percentage of South Africans who live in absolute poverty.
- It also presided over a very successful FIFA Soccer World Cup in 2010.

All these successes are examples of real transformation.

At the same time there have been significant failures. In particular, we have failed to provide all but a small percentage of our children with decent education. We have unsustainable unemployment that far exceeds the official figure of 24.7%. According to StatsSA only 14 million of the 34 million people between the ages of 16 and 65 are in formal or informal employment.

Our modules on education and unemployment will be dealing in greater detail with these transformation failures.

Perhaps our greatest transformation failure is that we are a more unequal society than we were in 1994. Our GINI coefficient of 0.7 makes us one of the most unequal societies in the world. Not only has inequality increased throughout society, it has also increased within each of our population groups.



Clearly, the government's policies to promote equality have failed. This is possibly because the main beneficiaries of affirmative action and black economic empowerment have been the emerging black middle class and elite – and not the vast majority of truly disadvantaged South Africans.

Real transformation would have required the implementation of remedial policies to empower the genuinely disadvantaged masses through the provision of decent education, jobs and effective social and municipal services.

Non-racialism is one of the principal values on which our new society has been built. We have made great steps in peacefully integrating our society and in changing the racial mindsets of South Africans – particularly among our youth. At the same time, the ideology of demographic representivity is once again creating a situation where South Africans are judged on the colour of their skin and not on the content of their character. South Africa is once again becoming one of the most racially prescriptive societies in the world.

Real transformation would require us to move steadily toward a society in which race is no longer an issue or a source of division.

Our Constitution proclaims the supremacy of the Constitution and the rule of law. Once again, we have made great progress in transforming our society from the situation before 1994 where Parliament was supreme. Today the

“Real transformation would require us to move steadily toward a society in which race is no longer an issue or a source of division.”

Constitution and the law are supreme. Our courts have been substantially transformed and have frequently shown courage and independence in striking down legislation and government action that is unconstitutional.

However, here also there are some alarm signals:

- The preponderance of politicians on the Judicial Service Commission and its increasing propensity to appoint judges on the basis of race – rather than in balance with the other criteria required by the Constitution – is threatening the professionalism and impartiality of the courts.

- The decision to disband the independent and highly effective Scorpions has opened the floodgates of corruption.

- Interference in the National Prosecuting Authority – including the irregular firing of National Director Vusi Pikoli; his attempted replacement by Menzi Simelane and the dropping of charges against General Richard Mdluli – are all serious causes for concern.

- It is equally unacceptable that transparently unfounded medical parole should be granted to friends of senior politicians.

Real transformation would require effective action to ensure that everyone – including the most senior politicians – is equally liable to be investigated, prosecuted and judged by truly professional and independent institutions.

Finally, we have undoubtedly made important progress in establishing a functioning multi-party democracy. We will soon be holding our

“The time has come for serious talks between Government and all those who are targeted by its version of transformation...”

fifth national elections. Nevertheless, there is a strong sense that Parliament is not playing the role envisaged for it in the Constitution. Oversight of the executive is ineffective because, in terms of our proportional system, MPs are accountable to their political bosses and not to the electorate.

Real transformation would require the implementation of the kind of reforms proposed by the late Frederik van Zyl Slabbert. He suggested a hybrid system, providing for geographic constituencies as well as a proportional list.

The Constitution also requires a government that is accountable, responsive and open. The recently adopted *Protection of State Information Act* is the antithesis of this requirement. Real transformation would require the inclusion of an effective public interest clause.

From all this the following points emerge:

- In many respects we have made significant progress in transforming our society.

- However, in other important areas, we have failed to achieve real transformation – particularly with the promotion of equality; the provision of decent education and other important services; our failure to create jobs for our people; and our failure to achieve levels of economic growth that are sufficient to meet the aspirations of all our people.

- It is also clear that the Government's transformation policies are not rooted primarily in the Constitution and its values, but in its own

dangerous ideology of the National Democratic Revolution. That is not what the non-ANC parties agreed to during our constitutional negotiations.

- We signed off on the values, rights and institutions that are articulated in the Constitution. We are more than willing to work for real transformation on that basis. We did not sign on for the National Democratic Revolution.

- We were never consulted about the ANC's approach to transformation and we do not accept it. These policies – in the ANC's so called second phase of transition – are overtly directed against South African citizens on the basis of their race. That is unconstitutional and the antithesis of the goal of national reconciliation.

The time has come for serious talks between Government and all those who are targeted by its version of transformation – including our minorities, our farmers, the media, civil society organizations; and small and large businesses. Collectively, we need to talk to Government

- about its misplaced struggle approach to transformation;

- about its divergence from the values in the Constitution;

- about the likely consequences for the economy, for inter-community relations and for the future of our national accord; and

- about the need for real transformation within the framework of the solemn pacts we made in 1993 and again in 1996. ■

SPEECH BY **PROF FRANCOIS VENTER:**
RESEARCH FELLOW AND FORMER DEAN OF THE FACULTY OF LAW,
NORTH-WEST UNIVERSITY
TO THE FW DE KLERK FOUNDATION CONFERENCE ON
THE NEED FOR REAL TRANSFORMATION,
CAPE TOWN,
31 JANUARY 2014

The Constitutional Transformation of South Africa

Prof Francois Venter is a Research Fellow and former Dean of the Faculty of Law at North-West University. He received a B Jur et Comm (1968), an LL B (1970) and an LL D (1978) from the Potchefstroom University for Christian Higher Education (PUCHE), and was admitted in 1972 at Grahamstown as an advocate of the Supreme Court of South Africa. He lectured in the Law Faculty of the University of Fort Hare from 1971 to 1973 and joined the Faculty of Law of PUCHE as a lecturer in 1974, and as a professor in 1980. He also served as Head of the Department of Public Law and Jurisprudence, and as deputy Dean of the Faculty of Law. Prof Venter was a Member of the Council of PUCHE from 2001 until 2003, and of the North-West University designated by Senate, from 2004 until 2009. He was seconded by PUCHE to the Constitutional Development Service as Chief Director: Planning from September 1990 to June 1993. He acted as advisor to the South African Government's delegation to CODESA from December 1991 to May 1992 and as Convenor of the Technical Committee on Constitutional Issues of the Multi-Party Negotiating Process at Kempton Park from May to December 1993. He was also a Member of a Technical Committee of the Constitutional Assembly of South Africa from 1995 to 1996.





TRANSFORMATION ENTAILS RADICAL CHANGE, I.E. A CHANGE AT THE ROOTS AND FROM ONE CONDITION OR FORM TO ANOTHER. THE WORD IS WONDERFULLY FLEXIBLE – A FAVOURITE IN THE VOCABULARY OF POLICY MAKERS AND PROPAGANDISTS. IN POLITICS AND LAW TRANSFORMATION IS A PECULIARLY SOUTH AFRICAN CONCEPT. THE MOST PROMINENT USE OF THE TERM IS PATENTLY POLITICAL. SECONDLY SOME PROMINENT AND RESPECTED SOUTH AFRICAN LEGAL ACADEMICS HAVE IN RECENT YEARS PHILOSOPHISED AND THEORISED EXTENSIVELY ABOUT THE MEANING AND PLACE OF TRANSFORMATION IN OUR CONSTITUTIONAL ORDER. MUCH OF THIS WORK HAS BEEN PUBLISHED IN IMPRESSIVE, MOSTLY LIBERAL, ACADEMIC LITERATURE, IN A FEW INSTANCES ALSO UNDER THE FEATHER OF PROMINENT JUDGES. WHAT IS REMARKABLE OF BOTH THE POLITICAL AND THE ACADEMIC VARIATIONS, IS THAT THEIR EXPONENTS ARE UNABLE TO RELY ON ANY REFERENCE IN THE CONSTITUTION TO THE WORD “TRANSFORMATION” OR TO OTHER CONCEPTS THAT ARE CLOSELY ASSOCIATED WITH IT, SUCH AS “AFFIRMATIVE ACTION” OR “BLACK ECONOMIC EMPOWERMENT.” TRANSFORMATION DEPENDS ON INTERPRETATION.

There is however another meaning that should be attributed to transformation based on the ideal to establish a South African constitutional state as it is envisioned in the texts of the 1993 and 1996 Constitutions. Probably due mostly to ideological pressures, this more accurate and promising meaning of transformation seems to be losing traction. I understand my task

this morning to be to draw your attention to the merits of what I shall call transformation to constitutionalism.

CONSTITUTIONALISM

Constitutionalism is a concept used widely,

essentially to indicate a desired state of affairs prevailing in a democratic state. The concept is also inferred in the notion of the “constitutional state.”

The first constitutionally regulated major transformative step to South African constitutionalism occurred on 27 April 1994 when the 1993 Constitution came into operation. In the first paragraph of the preamble a sincere desire to achieve constitutionalism was expressed, namely the “need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms.”

Constitutionalism gives expression to a complex of structural, substantive and doctrinal elements that are desirable in a state. I have collated these elements from the international literature on the subject. This is represented in the graphic on the screen, to which I will refer briefly later on.

To fully grasp the meaning of the profound constitutional transformation that this country underwent 20 years ago, we need to compare the changed condition to the previous one. This was done with much hyperbole by Justice (later Chief Justice) Mahomed in 1995 in the seminal death sentence decision of the Constitutional Court. This dictum justifies extensive (though abbreviated) quotation here.

He said:

All Constitutions seek to articulate, with differing degrees of intensity and detail, the shared aspirations of a nation; the values which bind its people, and which discipline

its government and its national institutions; the basic premises upon which judicial, legislative and executive power is to be wielded; the constitutional limits and the conditions upon which that power is to be exercised; the national ethos which defines and regulates that exercise; and the moral and ethical direction which that nation has identified for its future... The South African Constitution... retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos, expressly articulated in the Constitution... The preamble, section 8 and the postamble seek to articulate an ethos which... unmistakably recognizes the clear justification for the reversal of the accumulated legacy of such discrimination... What the Constitution expressly aspires to do is to provide a transition from these grossly unacceptable features of the past to a conspicuously contrasting “future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex”.

If one filters out the emotional language, the substance of this early judicial vocalisation of the impact of the introduction of constitutionalism on law and society was that the intended radical change was primarily in the nature of constitutionalism. One, but by far not the only, feature of this transformation is identified as being the reversal of the legacy of discrimination. It is this “reversal” that makes the transition to constitutionalism peculiarly South African, the selective over-emphasis of which characterizes the political and some academic and judicial versions of transformation.

TRANSFORMATION TO CONSTITUTIONALISM

To measure the degree of success of our constitutional transformation from sub-constitutional, racially defined parliamentary sovereignty to modern constitutionalism, one should imagine an ideally transformed South Africa as was hoped for by rational people when the constitutions of 1993 and 1996 were written. These ideals were most compactly expressed in the 34 Constitutional Principles that were negotiated in the 1993 MPNP that bound the Constitutional Assembly in its work on the 1996 Constitution. These Principles were understood to be a record of agreements based on the assumption that all sides will honour them as a “solemn pact”. Let us consider, with reference to the elements of constitutionalism, some of the Constitutional Principles that held out the expectations of constitutionalism. You may find it informative, as we do so, to weigh the degree of success that we have achieved over the past two decades towards the establishment of a stable constitutional state with reference to the graphic, beginning with the left column.

Principle IV required the Constitution to be the supreme law of the land, binding on all organs of state at all levels of government.

Principle VII stated that the “judiciary shall be appropriately qualified, independent and impartial...”

Principle XXX demanded the establishment of “an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner...”

Principle XXXI stated that “[e]very member of the security forces (police, military and intelligence) . . . shall be required to perform their functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.”

Principle XXIX: “The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.”

Principle IX: “Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.”

Principle III: “The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.”

Section 35(1) of the 1993 Constitution required courts to interpret the fundamental rights chapter in a manner promoting “the values which underlie an open and democratic society based on freedom and equality.” Perhaps the most significant enhancement to the new constitutional order that was brought about by the 1996 Constitution, was the elevation of freedom and equality to the level of foundational constitutional values. Interestingly, however, what was superimposed, was human dignity as the overarching constitutional value underpinning the interpretation of the Constitution and the Bill of Rights and serving as a guide to the lawful limitation of fundamental rights.

When the Constitutional Court confirmed at the end of 1996, in accordance with the requirements of the 1993 Constitution, that the new Constitution conformed to the requirements of the 34 Principles, South Africa had formally completed the first stage of transformation that was initiated by State President De Klerk in Parliament on 2 February 1990. This was the transformation of a state in danger of collapse under world-wide economic and political pressure, to aspirational constitutionalism embodied in a globally admired Constitution.

The introduction of constitutionalism entailed the establishment of a vast range of institutions that either did not exist before 27 April 1994, or that underwent a substantial metamorphosis. Among the new ones were the Electoral Commission, the Constitutional Court, the Financial and Fiscal Commission, the Human Rights Commission and seven (out of nine) new provinces.

Some of the previously known institutions that emerged in a new guise included the President and Cabinet, Parliament, the SAPS and SANDF, local governments, the public service and the Auditor-General. These institutions underwent varying degrees of structural change, although elements of the pre-constitutional models of each are still clearly recognizable.

Although there are those that consider the judiciary to be a weak component of the state, incapable of ensuring obedience to its judgments, there can be little doubt that the work of especially of the first highly talented bench of our Constitutional Court, has been the most effective agent of transformation in the direction of constitutionalism. The introduction of constitutional supremacy over all law created the scope for the Constitutional Court to take the lead in thoroughly transforming the South African legal system as a whole. It goes without

saying that much of the judgments of the Court are open to criticism and in some instances even severe criticism, but that is par for the course for any independent modern court that has to deal with political issues in its interpretation and application of a supreme constitution.

CONSTITUTIONAL PROVISION FOR SOCIAL RENEWAL

While the transformation to constitutionalism was, and continues to be the primary goal of our Constitution, it would be unrealistically one-sided not to acknowledge the negotiated consensus that an urgent socio-economic need existed to confront the inequalities brought about by our history of cultural and racial alienation over centuries. In 1994 the newly consolidated citizenry of South Africa accepted a common responsibility to put an end to the institutionalization of inequality and of working



towards the achievement of equality. This intention was recorded in various provisions of both Constitutions. Unbiased consideration of these provisions is required for a proper understanding of this aspect of transformation.

In addition to the already mentioned desire for equality expressed in the preamble to the 1993 Constitution, section 8 prohibited discrimination comprehensively, but subsection (3) added the qualification that the prohibition would not preclude measures designed to advance the previously disadvantaged, and also prepared the ground for land restitution.

Section 212(2) required the new rationalised and restructured public service to be non-partisan, career-orientated, to function according to fair and equitable principles, to promote an efficient public administration broadly representative of the South African community and to serve all members of the public in an unbiased and impartial manner.

Sub-sections (3) and (4) required employment in the public service to be accessible to all South African citizens who comply with the normal statutory requirements, and that the qualifications, level of training, merit, efficiency and suitability of the persons concerned were to be taken into account.

All these substantive provisions of the 1993 Constitution pointed primarily to the establishment of a constitutional state in which reasonable provision is made for balanced steps to prevent the continuation of unconscionable inequities.

The famous “postamble” was however cast in more dramatic language, often quoted to justify more drastic steps towards restitutionary action. Significantly however, the heading

was “National Unity and Reconciliation” and the wording was primarily conciliatory, with assurances that there was no intention of dividing South Africans into acquiring victors and sacrificing losers.

The tone of the preamble to the current Constitution similarly reflects the negotiated understanding of reconciliation by recognizing the injustices of our past, expressing the belief that “South Africa belongs to all who live in it, united in our diversity”, identifying the adoption of the Constitution as a means to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.” The intention of founding a “democratic and open society,” and to “improve the quality of life of all citizens and free the potential of each person” is also expressed.

None of these sentiments hints at a justification of indefinite and exclusive privileging of any section of the population. Nor do the founding constitutional values of human dignity, the achievement of equality, the advancement of human rights and freedoms and non-racialism that were entrenched in section 1 in 1996.

When it comes to the equality and property clauses of the Bill of Rights, the apologists for affirmative action and black economic empowerment usually choose to skip over the core provisions to emphasize the qualifications on the core. Thus section 9(1) emphatically states that “[e]veryone is equal before the law and has the right to equal protection and benefit of the law.” This is followed in sub-section (2) allowing “legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination” to “promote the achievement of equality.”

Similarly the core protection of property is to be found in the very explicit section 25(1) which provides that “[n]o one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.” This is then followed by the expropriation clauses (2) and (3) and the land reform clauses (4) - (9). An objective reading and just application of these provisions should not raise concern for any owner of property, since arbitrary deprivation and inequitable expropriation are explicitly prohibited by the Constitution.

The essential point I wish to make here, is the following: the kind of social transformation actually foreseen in the Constitution depends in fact on full transformation to constitutionalism. This is so because only in a balanced constitutional state, society will be capable of sustainably realizing the material and moral support required for the promotion of the achievement of equality. Transformation in the form of creating a culture of consumption of the available economic fruits while it lasts, is obviously not sustainable.

The nuanced qualification of the core constitutional provisions concerning equality, property, land ownership and appointment policy distinguishes our aspirational constitutional state from others. This is most readily demonstrated with reference to different affirmative action approaches: in the United States discrimination in favour of disadvantaged persons is in principle not given preference before other equality demands; in Europe the “equal opportunities” model applies mostly, which requires that all competitors should be placed in an equal starting position; the South African substantive equality model considers measures that counter the continuation of discrimination against previously disadvantaged

persons, not to be discriminatory. This however does not amount to a constitutional blank cheque for e.g. reverse discrimination or for racially calculated appointment quotas. The fragile and contestable nature of the arguments for the non-discriminatory nature of affirmative action was recently demonstrated in the conflicting judgments of the Labour Court, the Labour Appeal Court and the Supreme Court of Appeal in the case of Ms Barnard against the SAPS. After all, section 195(1)(i) of the Constitution provides no more than that, (and I quote) “public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.”

GENETIC DEFECTS OF OUR CONSTITUTION

In our Constitution there are certain unfortunate weaknesses that allow for political abuse. Thus e.g. in the restructuring of the institutions that existed in South Africa before, e.g. the military, the police, the public service and local government, fundamental changes occurred in the form of large-scale purges of personnel in accordance with the ANC’s policy of cadre deployment. That this has been the major cause of the collapse of infrastructure and service delivery has been acknowledged openly by the ANC, without however indicating an intention to change their deployment policy - other than urging the decision-makers to intensify their efforts to ensure that control over all levers of power, including the judiciary, are secured.

Regarding the “political” branches, there is one disturbing constant that has survived, and continues to undermine our transformation

to constitutionalism. South Africa inherited the British colonial governmental structure of the British Crown being represented by the Governor-General as head of state, with a Prime Minister in the image of Westminster being head of government. When, under the direction of Mr PW Botha this model was revised in terms of the *RSA Constitution Act, 110 of 1983*, the functions of the symbolic head of state were merged with those of the Prime Minister, thus creating a state presidency at the pinnacle of both the executive and legislative branches. The State President's position of power was unassailable, except from within, i.e. through internal party political processes. When the 1996 Constitution was written, this arrangement was re-established after the relatively brief existence of the Government of National Unity provided for in 1993. Today the President is both head of state and head of the National Executive. As head of government he not only appoints the Deputy President and the Cabinet ministers, but may dismiss any of them at any time. The President as head of the Executive also appoints the Commander of the Defence Force, the National Commissioner of Police and the heads of the intelligence services. This places the leader of the political party that obtains the majority vote in a general election in an immensely powerful position, causing every member of the Executive to be completely dependent for his or her political, executive, administrative and legislative

activities on the goodwill and approval of the President. The President's displeasure can be fatal to key political and professional careers and aspirations.

In this respect South Africa failed to undergo transformation to constitutionalism on a significant point: appropriate division of authority among various persons and institutions. Seen from the perspective of constitutionalism, this is the weakest element in our Constitution.

Here we encounter another shortcoming in our constitutional transformation. Modern democracy depends on political parties to provide representative channels for the expression of different variations of political opinion in society. In our case it is required that those who wish to participate in an election must register a political party. Thus the ANC, among a range of others, is duly registered for election purposes as a political party. However, the ANC essentially does not understand itself to be a political party, and it says so explicitly in its *Strategy and Tactics* documents.

This means that the ANC does not see itself as a participant in the democratic process of determining who should govern the country, but its political conduct is to be determined by the thoroughly Marxist notion of the National Democratic Revolution, the main content of

which, and I quote from an ANC document of 2009, remains the liberation of Africans in particular and Blacks in general from political and socio-economic bondage.

Despite these brave words, after 20 years in government the ANC has been unable to transform in any significant way the most debilitating aspect of our society, rampant poverty especially among black people, except the elite. In fact, the gap between rich and poor, the so-called GINI coefficient, has increased since 1994.

Transformation in the constitutionalist sense of the word does not seem to be on the agenda of the ANC any more. It employs the notion of "transformation" differently and is using the instruments of the power of the state without any scruples to implement a form of transformation not founded on constitutionalism, but on political expediency. The ANC's core transformation policy is intended to benefit only "Africans in particular and blacks in general". It would appear that the ANC understands the frequent constitutional reference to the benefits of equality and democracy for all South Africans to apply only to black South Africans. Can South Africans born after our constitutional transformation be expected to accept such an attitude to conform to the demands of constitutionalism?

THE NEED TO REFORM TRANSFORMATION

These and various other disturbing indications that the process of establishing constitutionalism is in remission, are well known. This raises the question whether the constitutionalist ideals of 1993 and 1996 can realistically be resurrected? The answer obviously depends on future social and political developments. A return to the establishment of constitutionalism requires the majority in Parliament to produce leaders willing and capable of guiding the country back on a course towards the achievement of constitutionalism provided for in the Constitution.

It is furthermore necessary that the assumption of the correctness of the degraded political meaning to which transformation has been reduced must be removed from our journalistic, academic, judicial and political discourse. The temptation of "political correctness" is destructive of constitutionalism. In order to bring us back on the road towards a real South African constitutional state, South Africans need to focus on impartially nurturing the ethics of the foundational constitutional values of this Republic, namely human dignity, equality and freedom. ■

PANELISTS from left to right:

- Adv Johan Kruger (Chair), Director, Centre for Constitutional Rights (CFCR)
- Prof Francois Venter, Research Fellow and former Dean of the Faculty of Law, North-West University (NWU)
- Adv Paul Hoffman, Director, Institute for Accountability
- Sheila Camerer, Former Deputy Minister of Justice
- Rhoda Kadalie, Executive Director, Impumelelo Social Innovations Centre





SPEECH BY **DR THEUNS ELOFF**:
VICE-CHANCELLOR, NORTH-WEST UNIVERSITY
TO THE FW DE KLERK FOUNDATION CONFERENCE ON
THE NEED FOR REAL TRANSFORMATION,
CAPE TOWN,
31 JANUARY 2014

The Need for Transformation in Education

*Transcribed from recording of speech.

Dr Theuns Eloff was born in 1955 in Potchefstroom and obtained bachelor degrees in law (1974) and theology (1980, *cum laude*) at the Potchefstroom University for Christian Higher Education (PU for CHE). During his two years of compulsory national service, he completed his Masters degree in Theology (*cum laude*). While he was a minister of religion of a congregation at the University of Pretoria for a period of six years, he completed his Doctorate in Theology. In the wake of difficulties resulting from his inclusion in the delegation, which, in July 1987, met with representatives of the ANC in Dakar, he decided to leave the ministry in 1989 and join the Consultative Business Movement (CBM), where he was appointed as Executive Director in 1990. He helped plan and facilitate the National Peace Convention, which led to the signing of the National Peace Accord in September 1991. He headed the Process and Secretarial Services in CODESA and headed the Administration of the Multi-Party Negotiating Process after CODESA. He received a number of awards in recognition of his role in the negotiation process including the World Economic Forum's honour as one of "100 Global Leaders for Tomorrow" (1996). In January 2002, he became Vice-Chancellor of his Alma Mater. He established a new management philosophy and played a leading role in the merger of the Potchefstroom University with the University of North West. In May 2004 he was appointed as the first Vice-Chancellor of the new North-West University (NWU). Under his leadership, the NWU has accomplished one of the most successful, stable mergers in South Africa's higher education sector and is on its way to establish itself among the top six universities in South Africa. In 2005 Dr Eloff was elected as vice-chairperson of Higher Education South Africa (HESA) and in 2007 as chairperson for a term of two years. He was also elected as vice-chairperson of the Association of Commonwealth Universities (ACU) for the period 2007 to 2009. He was elected as Chairperson for the period 2009 to 2011. In addition, he was elected president of the national Afrikaanse Handelsinstituut for 2011 and 2012. Dr Eloff is a director of Astral Foods and the FW de Klerk Foundation. In 2008, he received an Honorary Doctorate in Law from the London South Bank University.





A FEW WORDS ABOUT TRANSFORMATION. MUCH HAS BEEN SAID ALREADY, BUT IT IS UNFORTUNATELY NOT JUST A SEMANTIC ISSUE IN SOUTH AFRICA. IT'S INTRINSICALLY WOUND UP WITH OUR PAST AND THEREFORE WITH RACE.

One of the points I want to make is that the narrowed meaning of transformation as equity, as affirmative action, has not served us well. In certain cases it was the easy way out, just to appoint more black faces to any organisation and you're transformed. But unfortunately the media feeds that too, because when we read transformation in the media, it is almost always about equity. Thus, the Springbok team is not transformed enough, Bafana-Bafana is not transformed enough, etcetera etcetera.

Without going into all the philosophical detail, transformation - when you look at it from a global point of view - can only be continuous change for improvement. That is it. I often think, what is an American University faced with when it is faced with transformation, and it is about continuous improvement. It is

not always easy because as humans we are resistant to change. After 20 years, we should not only ask what could have been, but how to do it better. That is the essence of what I want to talk about transformation.

Yesterday Wendy Luhabe gave me the idea of the pipeline, and you will see that the pipeline - the education pipeline - is a golden thread throughout my presentation. If we can get the pipeline right, then all the other troubles will evaporate over time, but because the pipeline is not right, we have trouble.

I am going to deal with three aspects of education: basic education, post-school non-university education; and university education.

Good things about basic education: 20% of

state funding goes to education, broadly 61.1% of the GNP. Good statistics. Unfortunately 78% of that goes to salaries, only 5% to capital and 17% to operational expenses. Not good. Broad access to basic education exists. Almost 99% of children go to school. Not many drop out at primary school levels, a fact not well known. Very few drop out before Grade 7. Approximately 75% of Grade 1's were also in pre-primary, that is another fact that surprised me. More than 86% of learners remain in school up to Grade 9. But generally quality education does not happen in the basic school system. The pre-FET, that is before Grade 10, does not prepare learners for Grades 10 to 11 and here the drop-out rate is very high.

There is also high teacher absenteeism: 40 days per year or almost one and a half days a week. Subject knowledge of most teachers is alarmingly low, SADTU has a stranglehold on education and proper government management and discipline are lacking in most schools. That is a general statement.

There is a reality of two school systems. Nix Paul of this part of the world estimated that 75% of our schools are probably dysfunctional and only about 25% are functional. That is more than the old Model C schools, so it is something to be thankful for. Accountability levels in those schools, poor governance and management, lack of a learning culture or disciplinary good order, poor or no learner/teacher support material, high teacher absenteeism, slow pace and dealing with the curriculum homework and assessment, high levels of reputational drop-outs and the poor teaching leads to the majority

of students failing the standard test and, by the way, can I add - some of the teachers fail the same test.

And on the other hand you have got the functional schools. So what do we do?

My suggestion is that we should realise as a country, not just as a department, that the problem is not in quantitative issues such as money, but in qualitative issues, such as how money is spent. Subject matter knowledge, classroom practices, attitude of teachers, parent involvement and very importantly, leadership and management.

The Minister of Basic Education is often criticised for what has happened, but she has very little control in our system over what happens in schools. Someone asked me, if you could give her advice, what would you say? And I said, I would ask two things: I would ask the President to appoint good Premiers, to appoint good MEC's of Education, because without them she is dead politically. Secondly, I will ask the President to ask the ANC to break the stranglehold of SADTU on basic education in schools. So, spare a little sympathy for Angie.

Secondly, we should realise that if 75% of the schools are dysfunctional, trying to tackle them all at once will result in failure. It is not a good business organisational principle to take a big thing - a big elephant - and try to eat all at once. And therefore my suggestion is, and this is for discussion, focus on 5% of all the schools in any district per year and then move on. India has, with great success,

“After 20 years, we should not only ask what could have been, but how to do it better.”

“Therefore on basic education, improving the quality of teaching and learning management is crucial.”

spent resources - inordinate resources - for the last 20 years on 5% of the population every year. Now in India a while ago, 5% of the population was 50 million. Same population as South Africa. So they pour resources into a region this year, almost no extra resources for the others and then next year they move on. They had their failures, but mostly they had successes. If we do not focus, you cannot reform 24 000 schools at once. Unfortunately I think, that is what SADTU does. SADTU does not want anyone to be lifted out. We must all be poor and all be equal.

Leave well-functioning schools alone. Do not overcrowd them with learners from dysfunctional schools. Parents want to vote with their feet, so they want to take their children out of the dysfunctional schools and put them into functional schools and so the functional schools are overcrowded and therefore you make the functional schools dysfunctional.

Focus on what? There may be others, but I believe there are four important stumbling blocks to good basic education. Firstly, subject matter knowledge, classroom practices. I must stand ashamed as a VC and others, who train teachers. We apparently do something wrong as a group because we are told teachers do not understand their subjects anymore and therefore universities must play some role there.

Secondly, leadership, governance and management of schools. In our education sector, I am called the ‘managerialist’ in

somewhat derogatory terms, but I believe that if management leadership and management are not the most important thing in any organisation, then it is close to the first stumbling block. And here it is the role of parents, and even learners themselves, to take responsibility. There are many anecdotes of schools where learners were challenged to take responsibility and the results were fantastic.

Third one. Bureaucracy of districts and provincial departments. I spoke about that. The problem is we have an attitude in government today: when things go wrong, make rules, and it is crippling our system.

Fourthly, the role of SADTU. There are some members in SADTU who are realising that things are going wrong, but I am afraid the majority, the leadership positions, are still putting members’ salaries, members’ benefits above the learners’ interests.

Therefore on basic education, improving the quality of teaching and learning management is crucial. The outcome of a transformed basic education system should be learners who are either able to enter the economy or study further, creating the pipeline: the pipeline to universities, the pipeline to FET colleges, the pipeline to the labour market.

I think it is worth considering the model that the Centre for Development and Enterprise, Ann Bernstein’s group, has put on the table - about the possibility of contract schools. Private

schools, run privately, for the public benefit. It has been done in Brazil, in poor communities very effectively. I think it should be considered as part of the solution in South Africa.

What about outside the school sector, the post-school sector outside universities? The new *White Paper* published last year identifies three sectors. The old FET Colleges - Further Education and Training Colleges - will henceforth be called Technical and Vocational Educational Training Colleges (TVET’s). Fifty of them. Quite a number of smaller, also private TVETs. Community Colleges will be a new addition absorbing the Public Adult Learning Centres and what Mr De Klerk said this morning about training is very important here. This whole sector is more about training than about typical higher education. And then there are also are plans to revive Nursing and Agricultural and even Teacher Colleges.

The *White Paper* mentions the following challenges and these challenges are the same as higher education and most of them also for basic education: improving access and throughput rates, management capacity, governance, support services, accommodation funding, developing management information systems - very important at this level - partnerships with employers to place graduates for practical work. We do not get it right. Responsiveness of the Colleges to the labour market, and creating a mix of programs and qualifications needs to be addressed.

Now what is interesting, is that in this *White Paper* (and if you have not read it, it is not a bad thing, at least read the executive summary), I do not know whether it is intentional or by accident - sometimes I think the National Democratic Revolution happens by accident and not by intention - but transformation in its

narrowest sense is almost never mentioned in the whole document.

It is a move to capacity, to efficiency, to effectiveness. Now if that is the line, I have got hope. If that is the line of the policy makers, to move away from the symbolic things and go to the real stuff, we have got some hope, so read the 2013 *White Paper*, I think it is not a bad document.

Access is an issue for the post-school sector, presently about 650 000. About 200 000 are in the private sector. We want 2.5 million by 2030. That is a big task. Success is an issue. Capacity. Government wants to build 12 more campuses by 2015, huge money necessary for that. Quality placement of students, accommodation funding, government and management.



Lastly, universities. The *Educational White Paper of 1997* mentioned a number of principles of transformation, all of which I think we can agree on and that are still relevant. But these in discussion around universities have been narrowed to an equity index recently which is totally trivial and not a priority. If we look at these principals of transformation, then I say if we have focussed on these, then we would have had a better sector.

Let me also say that the university sector in general is better off than the schooling sector and the college sector. I would say that we have 15 relatively good universities but the gap between the good universities and the not so good universities is widening - but more than 50% of the universities are functioning and only 25% of the schools. I think that gives you an idea of where we are.

There is a real need for transformation and the National Development Plan sets specific targets for the higher education sector. Listen to a few of these. They want us to increase university science and maths entrance to 450,000 by 2030. We only had 264 now and you will see how difficult it becomes.

Graduation rates (graduation rate is the percentage of students completing their studies every year, so it is a factor of throughput rate and efficiency) 25%: currently 17% only. Participation rates (percentage of young people between 18 and 25 in post-school education): currently 15%. They want us to double that.

“There is a real need for transformation and the National Development Plan sets specific targets for the higher education sector.”

PhDs as a high knowledge output. The US produces 200 PhDs per million per year. Our target is a 100, but we are only at the moment at 28 per million. Presently 1500 per annum, target for 2030: 5000 per annum.

Now given the pipeline of basic education, I think Paul Colditz can relay more on this. Just one subject, maths. If we want to produce PhDs, you need students, first years, with maths. Now in 2012, - we don't have the detailed figures of 2013 yet - of the over 700 000, almost 800 0000 matrics who wrote, 122 000 wrote maths. 42 000 of those, only a third, passed with between 50% and 69%. Now I passed accounting in my first year with 50%, and I can tell you, I was dangerous. Only 11000 passed with 77% or more, so out of 700 000 matrics, 11 000 can study at university and become perhaps PhDs. That gives an idea of the problem with the pipeline.

What are the challenges at university? Same thing as in schools and colleges: governance and management leadership. Some universities are still under administration, others are struggling financially. A high skills shortage in the economy is clear in our education. When we recruit, we do not keep good people. We compete with the public and the private sector.

Funding is an issue. I am in trouble with the Minister, I said this morning on radio that one factor that causes the students to riot, is irresponsible statements by the Minister about

“What are the challenges at university? Same thing as in schools and colleges: governance and management leadership.”

free higher education. We have to talk to him about that.

Access, interestingly enough for universities, is almost adequate. Almost 85% of students in higher education are now black, generically black, 68% African.

So, in a sense we have almost solved even the demographic access issue. But success is wilfully inadequate, especially with regard to black Africans and Coloureds. Indians and whites, great big drop when it comes to the success rate, the drop-out rates, the throughput rate is very low. 20% to 30% of first years drop out after June of every year or do not come back in their second year. The throughput rates are very low.

Research is not adequate at all universities, both in terms of articles and PhDs, although it is improving. I believe just as free higher education is a red herring, internationally our rankings are also a red herring. Every year, once or twice, the media writes about it: only one university in the top 200 and why is it so bad? The rankings are highly suspect because they focus - about for 70% - only on research. Nobel Prize winners, it is not applicable to us I believe. Yes, there are some of the universities that are in the top 700, six or seven, but 15 of our universities of our 25 universities are probably in the top 10% in the world. That is much better than America where they have 5 000 universities and only about a 100 of them are in the top 500. Therefore let those

universities who can compete internationally, let them do it. But let the others concentrate on what we could do and should do for the country.

I am not going to go through this, but to give you an idea of how should we measure transformation you would have seen that I have taken transformation back to what I would call the core business of universities because that is what we want to do in basic education, that is what we want to do in the colleges. Therefore teaching/learning is core business, research and commercialisation is core business and implementation of the expertise is core business.

Now it is very difficult in South Africa, there is no system of comparing universities. You can compare on research, you can compare on throughput rate, but very few systems exist to compare universities. I have come across something from the Centre for Higher Education and Training, Nico Cloete's outfit here in the Western Cape. They brought out the following - they have three categories: Academic Staff Input, that would be two main factors, the PhD levels and Masters levels of Academic Staff at universities, as well as Teacher/ Lecturer/ Student ratios. Secondly, undergraduate to Masters output would be pass rate, success rate, graduation rate etcetera, etcetera. And high level knowledge output would be articles published, masters research, masters and PhDs. This is how they rate the higher education sector. So you can see three clusters, the blue

“I believe that the ultimate test of a university’s undergraduate teaching is the time in which a graduate finds a job and after 10 years, his or her socio-economic level.”

cluster has an average of 3.6 out of 4 in the first category, 3.5 and 3.2. You see the eight universities there: UCT, Rhodes, US, North West, Pretoria, KZN, Wits and UWC. Then the second cluster has 2.33 and 1.7 reflectively and the fourth cluster has 1.6, 2.1 and 1.5. You can see obviously that the universities of technology are lagging behind, especially in research but also in staff input, so PhDs are fairly rare at the universities of technology and they have got to do something.

Now I would say, what is transformation? Transformation is that we have in 10 years time no green sector. This wheel must only consist of red and blue. To move the whole sector to do all that they can in terms of staff qualifications, proper ratios between staff and students, good teaching, undergraduate teaching, outputs and good research outputs. This is available obviously.

What should we focus on? Same point. Focus

on the bottom of the 25 universities without neglecting funding for the others. We need better functioning universities, systems, processes, policies, management, governance and leadership. We need universities that produce better quality graduates and research that is more relevant for the solution of the problems of the region, the country, the continent and the world. Very importantly, universities that produce graduates who can be employed, employable, and who can contribute to the solution of local, national and international challenges.

I believe that the ultimate test of a university’s undergraduate teaching is the time in which a graduate finds a job and after 10 years, his or her socio-economic level. But we do not have those criteria, we do not have the systems to do that. In the UK they have got the Higher Education Funding Council. They make it compulsory for employers to give feedback about graduates on an ongoing basis.

The old HSRC in the old days did that. It is not done anymore, so it is very difficult for universities to determine where we are. I think unless we do that, in the sense the success rate of universities are as meaningless as the pass rate of matrics. It does not give you the big picture. It does not tell you where people passed. It says, 83%, 85% passed, but many of them passed with 30% or 35% or 40%. So we need a different way of looking at this. Finally, the equity index and demographic representativity is not in my mind a priority at all, because if the pipeline is opened up and it runs well, demographics will correct itself.

What are the common factors in education for transformation? First one: leadership, governance and management. Absolutely. Not only of schools, of colleges, of universities, but also of the departments. Efficiency and effectiveness must improve. Success rates and quality must improve; we are not even close to our own targets. Responsiveness to the market must improve. Funding: government has limited resources. I do not think we can afford free higher education in this country. Yes, I think NSFAS should get more money, but I think it is undesirable and impractical to propagate for free higher education.

Focus on the 5% to 10% of the bottom per year, leave the top 40% alone. So, improve the

flow of the pipeline. My sense is that in education up to now we have done mostly the things that are easy to do. The narrow meaning of transformation, the symbolic things, like changing a street name, not providing a toilet - now it is time for the hard things, real transformation. ■

PANELISTS from left to right:

- Dave Steward (Chair), Executive Director, FW de Klerk Foundation
- Dr Theuns Eloff, Vice Chancellor, North-West University (NWU)
- Mike Wilter, Former Head of the Western Cape Education Ministry
- Dr Paul Colditz, CEO, Federation of Governing Bodies of South African Schools (FEDSAS)





SPEECH BY **HERMAN MASHABA**:
CHAIRMAN, FREE MARKET FOUNDATION AND CHAIRMAN,
LEPHATSI INVESTMENTS
TO THE FW DE KLERK FOUNDATION CONFERENCE ON
THE NEED FOR REAL TRANSFORMATION,
CAPE TOWN,
31 JANUARY 2014

The Need for Transformation in the Labour Market

*Transcribed from recording of speech.

Born in 1959, Herman Mashaba's academic dream was shattered in 1980 in his second year of a B. Admin. at the University of the North, when the University was shut down due to political unrest. When the University was reopened after two months, he decided not to go back. There were strong promises to send him out of the country for military training. In late 1980, Herman found himself a clerical job with Spar Pretoria, where he worked for seven months. He then worked 23 months for Motani Industries, which became his longest and last salaried job. During his spell at Motani, he managed to buy a car, and two months later he resigned and started his business career. Herman sold different products on a commission basis from the boot of his car for close to two years. Products in his portfolio ranged from: insurance, fire detection systems, linen, crockery and dinner services. His break came late 1983 when he was exposed to and sold hair products on a commission basis for one of the companies in Johannesburg. It took him 19 months to make up his mind to start his own hair-care manufacturing business. In February 1985 the first bottle of *Black Like Me* products hit the South African market. Herman started the business with three other partners and his wife, with a R30 000 loan, in a 200m² SBDC unit in Ga-Rankuwa, in the then homeland of Bophuthatswana. He now runs his own investment company, Lephatsi Investments (Pty) Ltd with investments in various sectors of the South African economy: real estate financial services, insurance brokerage, bullet-proof materials, security, fuel distribution, global cleaning services, facilities management and merchandising. Herman has recently launched his autobiography, *Black Like You*, which is already attracting a lot of media and public interest. Since mid-2011 Herman has served as the Chairman of the Free Market Foundation. On 12 March 2013, Herman was awarded an Honorary Doctorate in Business Administration by Central University of Technology, Free State.





FOR SOME OF US - AND I LIVED HALF OF MY LIFE UNDER A REPRESSIVE SYSTEM - 1994 JUST ARRIVED AND WE WERE EXTREMELY EXCITED WITH THE PROSPECTS. LOOKING BACK DOWN THE LINE NOW, 20 YEARS INTO OUR DEMOCRACY, NEW CHALLENGES ARE FACING US AGAIN. THE UNFORTUNATE PART IS THAT SOUTH AFRICANS ARE NOT ENGAGING. I HAVE TAKEN A PERSONAL RESPONSIBILITY FOR LETTING THINGS GET TO WHERE THEY ARE TODAY, BECAUSE WE TEND TO TAKE THINGS FOR GRANTED: WE ARE IN A NEW SOUTH AFRICA, WE WERE UNDER THE LEADERSHIP OF MR MANDELA AND THOUGHT THINGS WOULD JUST RUN SMOOTHLY. IF WE ARE NOT CAREFUL, IT MIGHT JUST BE TOO LATE.

Initiatives like these are more than important for our country to engage, and we need to engage robustly and as adults that are committed South Africans. We must not be deceived by some people thinking that they are more committed than some of us. All of us - we are involved, we are engaged because we are committed, we are patriots, we love this country, we love the world, we love people of the world. And no one can obviously claim to be more committed than I am.

Let me just give you the background as to why, as the chairman of the Free Market Foundation,

I managed to convince my colleagues on the Board that we have to start doing things and do them in an active manner. I have called this my defining moment because this particular incident - without any doubt - is the one that made me say two years ago, "Herman you are an adult, you are a South African, you have got to stand up." Every day when I am at home, every night I have dinner with my kids and they ask me difficult questions. And two years ago this was a defining moment, where I made a commitment: that I am never going to say to my kids, like my parents did, that I saw what was happening and I did nothing. So my kids and

my family know this very well, that I am really committed to this process. And I really hope that the balance of my life will be committed to ensuring that some of the ideals that I would like to see of what the new South Africa or the future South Africa could be like.

I would just like to give you a sense of how this march actually changed my perspective and my view, and how it compelled me to become an active citizen of this country. I am sure all of us South Africans are aware - I think roughly two years ago - that Mr Julius Malema (at that time the ANC Youth League leader) organised a march. Ten thousand to 15 000 desperate people followed him from Johannesburg - where he handed the memorandum to the Chamber of Mines - down to Sandton where he handed the memorandum to the JSE and off to Pretoria, where he handed the final memorandum to government, which was received by the Minister of Public Works. Afterwards Mr Malema was running late to go to Mauritius for a lavish wedding and was whisked away by the blue lights. What is interesting about what I am sharing is the whole debate around this march for economic freedom and, what is actually quite disappointing for me in particular, was the government's response to this. If you look at the Minister of Public Works when he received this, he agreed fully with this economic march. I am talking about these terrible issues that we have, of unemployment, poverty and inequality. I was born and brought up knowing and understanding that economic freedom for me is not really about someone taking from someone and giving it to me.

So I think Mr Malema and the march - and obviously supported by the government - I think their belief and views for this country to seek economic growth and economic emancipation of our people is for government to take away from those who have and give it to those who are poor. I realised this is a very dangerous programme or initiative that we are embarking upon as a country. But at the same time I cannot really blame Mr Malema for what he was doing. I think we live in a democratic country. We have listened to comments about our Constitution earlier on, that we live in a constitutional country. So if you advocate your principles and your values that is fine, as long as you do not infringe on other people's rights.

But then the challenge for us privileged South Africans: why are we quiet? Because how did Mr Malema attract such big numbers of people? It is because that is the only thing that they have heard. For some of us who do not really agree with these economic policies, we have been totally quiet for the last 20 years. And I decided, "You know what, I have got to stand and start articulating a totally different view because for me economic freedom is the ability to be able to wake up every morning to go and work for my family without interference by government or the person next door." That is my interpretation of economic freedom. And it is the kind of life and country that I want to live in.

That is when I took a decision and ended up taking over the Chairmanship of the Free Market Foundation. And the reason I went

“So if you advocate your principles and your values that is fine, as long as you do not infringe on other people's rights.”

“I do not really believe that there is any South African who can argue with the fact that our rule of law is under attack. And we have got to do something.”

to the Free Market Foundation at the time - I have been a small financial supporter of the organisation for many years. So when I approached the Foundation - they keep on giving me information on a weekly basis, great information to really educate us as South Africans to take responsibility for our lives - so when I approached Leon I said, “Leon why are we not sending this message? You are talking to the converted, why are you not talking to these people in Alexandra? These people in Soweto are unemployed, those 10 000 to 15 000 people that Mr Malema attracted. Because if you do not talk to them the only thing that they know is this socialist programme that they are being taught.”

Unfortunately for me, when I discovered that I needed to participate and do something I thought at the time I would increase my financial support to the organisation, only to realise that they needed much more than the financial contribution. They also needed my personal contribution. And because I had already taken a decision to be an active member of society I ended up taking over the Chairmanship of this beautiful organisation for my sins.

For the past 18 months or so I have been the Chairman of the Free Market Foundation. For those of you who do not know what the organisation is all about, it is an organisation founded in 1975 to promote and foster an open society. The issues we are talking about contained in our Constitution, the rule of law.

Every day, every night, every hour and minute of my life I look at our interference with the rule of law in this country, and I get really very nervous. Because if you want to destroy a country, interfere with the rule of law. And I do not really believe that there is any South African who can argue with the fact that our rule of law is under attack. And we have got to do something. I think an organisation like the Free Market Foundation is there to promote and foster and defend the rule of law.

The other thing that we want is personal liberty. I do not like to live in a society where government tells me when I must go to the toilet and when I must drink water and when I must go and work for my family. I think that responsibility - as far as I am concerned - is human nature and I do not need the next person to go and tell me that I need to work for my children. So for me to have kids and be able to eat I do not believe I need a government or the man next door to tell me that I need to do this. I think personal liberties are very important, which is very unfortunate in our country today. Sometimes I have a sense that government feels that we are not good enough to be able to do anything for ourselves, that we need government to drive everything for us. This is really something I have a very serious problem with as a South African.

Economic and press freedom: we know what is happening today with legislation in Parliament to restrict press freedom in this country. And

without a free society we are going to have major challenges.

I urge all of us as South Africans - to begin with, the fortunate and particularly the privileged - let us start the process now in ensuring that we protect all these institutions we have. We should counter the steadily increasing intervention in the economy by the government. That is really in a nutshell what the Free Market Foundation stands for.

Let me just give you the latest employment data in our country; it is one of my biggest fears and something that gives me sleepless nights - that we sit with almost 7.5 to eight million unemployed South Africans. We hear statistics telling us about roughly 25% and so forth, but we are actually sitting with 36% to 37% of our people unemployed. You come across people at the age of 35 to 40, and they have already given up looking for work. Do we then count these people as employed? I think it is a very dangerous situation in our country.

What is creating this is this uncompetitive labour market which is draconian. Some of the colleagues in the labour organisations, every time I engage with them in public debates - because I really feel some aspects of our labour legislation are draconian - they do not like me to say this, but that is my view. I really believe some aspects of our labour legislation are draconian because we talk about minimum wage and so forth. What is the minimum wage to the 7.5 to 8 million South Africans today? It is naught, if you know how to write naught. Zero. So we talk about all these beautiful things, about minimum wage. We talk about decent jobs while turning our people into scavengers.

Every time I leave my house on a Friday there men and women at the gate scraping in our

dustbins. On our freeway they are pulling these trolleys making R60 to R70 a day. They get up at three o’ clock, four o’ clock in the morning. Are those the decent jobs that we are talking about? And at the same time, what are we doing to the integrity and the spirits of these people? Because as you can see them scavenging, you can see them hiding themselves. They get very angry at us. When they get an opportunity to hit at us from a crime point of view they do not feel anything because we never felt anything for them - because we think it is not our problem. But one thing I can assure you, it is our problem. Unfortunately this is affecting small firms because it makes our small firms very uncompetitive. Obviously we have this major issue with the bargaining councils, a matter which I will deal with at a later stage.

Ten thousand people queue for 30 training posts. The eThekweni municipality advertised for 30 posts to train people in the Fire



Department. Not even employment, only for people to be trained. Ten thousand people showed up. This is the reality of our situation. And we still talk about minimum wage, we still talk about decent jobs. Something that I tried to get our government and our political leadership - and parliament in particular - to understand is that people do not go into business in South Africa or anywhere in the world because they want to employ people. Employment of people happens as a result of businesspeople wanting to make money.

If we do not understand these common, simple trends, as government you will forever be looking for decent jobs and expecting people to earn millions of Rands a day. The simple fact is that people do not employ others because they have got good hearts. I always like to use the example of the Archbishop Tutu - no one in the world can question his integrity. He is one of the finest human beings to ever come out of this world. So, if employment had to happen because people are good, my feeling is that Desmond Tutu would be the biggest employer in the world, not just in South Africa. So people do not employ because they have good hearts. They employ because of their need to employ people. And in terms of payment, employers can only pay what they can afford, not what the government or someone else prescribes to them. You can only pay what you can afford. So if you want your people and your community to earn more money, then create full employment so that employers can fight for that scarce commodity. But when you have a situation like this, that is when it will encourage this kind of exploitation to continue.

“Let us take this matter a step further. We have a Constitution that needs to be protected.”

We took a decision as the Free Market Foundation. I was really fortunate that as soon as I took over the Chairmanship I managed to convince my colleagues on the Board to take action. We have been an advocacy group since 1975. I managed to convince my colleagues and said, “Let us take this matter a step further. We have a Constitution that needs to be protected. Let us look at some aspects of this draconian labour legislation that we can take to the Constitutional Court and involve the service of some of the best legal brains in this country to give us a sense of what the weaknesses in our systems are, what these draconian unconstitutional aspects are.”

And they discovered these bargaining councils. How do these bargaining councils work? We have big companies and big trade units that get together on a regular basis to agree on the conditions of employment and conditions of employment in their particular sector. Which is great. It is encouraged in a free society. You can agree on paying people whatever you want to pay them; you are happy to have your people work two days a week. That is your democratic right.

What we have got a problem with is that these bargaining council agreements - once signed - give the Minister of Labour no option other than to extend these agreements to non-parties, people who never participated in these negotiations. Most of the time what happens? It is the people who are affected, small businesses where I come from, where I started my business back in 1984/1985. You can imagine I started in a place smaller than this, 200m² with my

“We obviously need transformation. The challenge is how do we run this transformation without affecting the future of this country?”

wife and two partners. Imagine if there was a legislative framework in 1985 that I must pay the same salary as Unilever, or Procter & Gamble - like it is happening today. I would not have started my business. Sometimes I feel sad to say to our people and my family and everyone around that I am lucky that I was not born in the new South Africa because I would not have had an opportunity to start a business.

I have witnessed in the last 20 years how small black businesses in the townships and our communities have been wiped out and to a large extent by this draconian labour legislation. Because today in our country if you do not have a sophisticated legal team to look after your human resource issues, you have got major problems. When you are taken to the CCMA, who are the commissioners in the CCMA today, a big percentage of them? I do not have to tell you, you know them. So basically, you as an employer, once someone takes you to the CCMA you have got to then prove your innocence. If a small businessman with no capacity - unlike the big firms that have got some of the best legal people in their HR department to look after them - but for small businesses, they unfortunately do not have any of those opportunities. The most unfortunate part about this is that we have the government enforcing this collusion of big business and big trade unions. So that is for us where the problem is - that you have small businesses being taken out of business and at the same time you have unemployed South Africans where obviously the big trade unions

will negotiate the best terms and deals for their members.

What about the 7.5 to 8 million unemployed South Africans? No one negotiates for them. What we are saying is we feel that these employers and workers colluding to limit competition has to stop. We do not believe it is constitutional and we would like the Constitutional Court to make the determination. The people who are mostly affected are women, Africans, young people and, today it extends to white small businesses. The other day I had an interview that is hopefully in today's *Mail & Guardian*, regarding the threats to white small businesses in this country that are not given an opportunity to start because they are now affected by this draconian labour legislation.

At the same time black economic empowerment is another challenge to them. Imagine there is the 24-year old white guy who wants to start a business in this country. Before you start you have to look for a black partner. Already you know when you start, there are major, major challenges in your life. So what I am saying is, I think for us as a country Black Economic Empowerment is important too. We obviously need transformation. The challenge is how do we run this transformation without affecting the future of this country? Because the way we are running things right now we can only pay the big price as a country.

The challenge for us is section 32 of the *Labour Relations Act*, which forces the Minister to

“... we encourage all South Africans to begin the process of taking an active part in the future of this country.”

extend this agreement to non-parties. And for us as a Free Market Foundation our request is really so small. In the Act it says “the minister must”, so in our application to court we say “the minister may”. We just want the legislation changed; we are asking our parliamentarians to change this from “must” to “may”. The reason we are asking to change this to ‘may’, is because we want the Minister to really look at the implications to the broader society before imposing these agreements on non-parties. Right now the Minister is only concerned about the few employed union members and the big companies. She has no option to look at. So what we are asking is let us change this “must” to “may”, so that the minister can apply her mind.

I cannot wait for the day when I have to face the Minister of Labour in an open court of law, where she has to defend the fact that she does not want to be given the powers as a Minister of Labour in this country; to be given the choice to make up her mind and decide appropriately. Unfortunately for us, at the same time we are not giving up and we are not going anywhere.

We lodged our court papers on 5 March 2013. We lodged our papers in the Gauteng North High Court. It was the Minister of Labour, the Minister of Justice and all the bargaining councils. A few weeks later the Minister of Labour and 27 bargaining councils filed notices of opposition to our case. Interestingly some of the union members started threatening bloodshed and a bloodbath in the country, in the streets. And in my interviews in the media I was quite shocked that people in government - instead of respecting the rule of law - can talk about a bloodbath. Civil society organisations and simple South Africans like us who feel aggrieved and are appealing to the courts - government tells us that there is going to be a bloodbath. They must have received some advice to stop making such statements. But the problem for us is to get the cooperation - the sooner that this matter can go to court the better. We have seen delay after delay, total disregard for the rule of law.

We have in fact agreed to even give them an extension until 30 September. We said if you

have not submitted your papers before 30 September we are not giving any further extensions. Interestingly, on 31 July, COSATU - who we believe had no right whatsoever to be part of this - also applied to intervene. And after consultation and discussion with our legal team, we decided not to delay the case. We allowed them to come in, but we gave them 30 September as the deadline. The 30th September 2013 came. Not a single party lodged papers. Very unfortunate in a country like ours where we are sitting with high unemployment, with just over 1% growth, 16 million people on social grants and a tax base of roughly six million South Africans who are the only taxpayers.

Civil society organisations like us, we see a challenge, and we are asking our Parliament and our government to debate these issues. They totally ignored us. So up to now we are waiting. On 4 October NUMSA also applied to intervene, which we rejected. It was my first job at work on 13 January this year, signing court papers refusing them to also be party to this. And on 7 October we applied to court for the date to be set for the hearing. We are still waiting. I am actually having discussions with my legal team on Monday afternoon to understand where the case is. You can imagine I am frustrated. Fortunately I am not going away. I am not going anywhere.

We will do everything possible to ensure that we are given a hearing because that is what we expect the courts to be there for. We urge all South Africans to assist, not in this particular case, but in other areas. I am sure we are not the only organisation that feels that the rule of law in our country is under threat. So whatever initiatives we heard about this afternoon, about education, about other initiatives, we encourage all South Africans to begin the process of taking an active part in the future of this country. Let us not leave it to someone else. Because we went to bed in 1994. Mr Mandela is no more. We are in a totally new environment. If we are not careful it might be too late.

Fortunately I believe very strongly that as South Africans we have got that resilience. The people in our communities are already standing up. So I think it is important for privileged South Africans, in particular, to believe in the process of real engagement without being threatened by insults and so forth. Because over the last 20 years, particularly the last 15 years, a lot of privileged South Africans are scared to get involved because of concern over the insults. I think for the future of your children and the future of their children rather take the insults now, but make sure that the future of this country is protected. Thank you very much. ■

PANELISTS from left to right:

- Adv Johan Kruger (Chair), Director, Centre for Constitutional Rights (CFCR)
- Herman Mashaba, Chairman, Free Market Foundation and Chairman, Lephatsi Investments
- Gretchen Humphries, Deputy General Secretary, Federation of Unions of South Africa (FEDUSA)
- Michael Bagraim, Labour law specialist





SPEECH BY **COLIN COLEMAN:**

PARTNER, MANAGING DIRECTOR, AND HEAD INVESTMENT BANKING DIVISION, SUB SAHARAN AFRICA, GOLDMAN SACHS
TO THE FW DE KLERK FOUNDATION CONFERENCE ON
THE NEED FOR REAL TRANSFORMATION,
CAPE TOWN,
31 JANUARY 2014

Where are We on the Road to **Economic Transformation?**

Colin is head of the South African office of Goldman Sachs, a role he has held since joining Goldman Sachs in 2000. In 2008, he was named head of the Investment Banking Division for Sub-Saharan Africa. Colin is a member of the Growth Markets Operating Committee. He was named Managing Director in 2002 and partner in 2010. In the early 1980s, Colin was involved in South Africa's change process and later in its constitutional transition. From 1989 until South Africa's first democratic elections in 1994, he was an Executive Director for the Consultative Business Movement. Colin served in working groups of the multi-party talks, facilitated the International Mediation Forum and helped to negotiate the agreement to facilitate all parties' participation in South Africa's 1994 elections. In 1994, Colin became a senior consultant for public affairs at Standard Bank Investment Corporation (SBIC), where he was an advisor to the SBIC chairman. He was subsequently appointed Director of Public Finance for SBIC's Standard Corporate and Merchant Bank. In 1997, Colin relocated to London, where he became a Vice President of Energy, Power and Oil for J.P. Morgan's Investment Banking Advisory Department. In 1996, Colin was nominated as one of the World Economic Forum's Global Leaders for Tomorrow. He was also a recipient of Harvard Business School's "Business Statesman Award" in 1994 and was named one of Euromoney's World Top Ten "Financing leaders for the 21st Century". Colin earned a BA in Architecture from the University of Witwatersrand in 1988.





WHERE ARE WE ON THE ROAD TO TRANSFORMATION, THE VIEW FROM ABROAD ON SA'S ECONOMY AND WHAT SA'S BUSINESS LEADERS BELIEVE WILL BE A WINNING AGENDA TO UNLOCK GROWTH, EQUITY AND JOBS IN SOUTH AFRICA.

Ladies and gentleman, thank you for giving me this opportunity to speak with you today.

As we approach South Africa's fifth democratic elections, as a nation we are all taking stock of what we have achieved – and what we need to do next. The world too has turned its gaze towards South Africa and asked the question: "What are we doing to advance President Nelson Mandela's legacy?"

The volatility of the Rand over the last few days and weeks has just given added impetus to these questions.

In an Oped for *Business Day*, 5 November 2013, titled "Take pride in what we have achieved - and raise the bar", I argued... "when the US Federal Reserve tapers its bond purchase programme, developed markets' yields will

rise and growth markets are likely to sell off. The anticipated tapering of quantitative easing means the time of easy money is over. SA must act fast to raise its game."

As events in Davos concluded last week with the nasty shock of the capitulation and sell off of growth market currencies, particularly the Argentina Peso, and to a lesser extent Turkish Lira and the South African Rand, WEF delegates went home conscious of the arrival of a new phase of a re-pricing of growth market assets.

SO, WHERE ARE WE ON THE ROAD TO ECONOMIC TRANSFORMATION?

To recap, the Goldman Sachs Report "Two Decades of Freedom - a 20 Year Review of SA" identified key structural advances in our

economy since April 1994:

- GDP almost tripled from \$136bn to \$400bn;
- Inflation fell from a 1980-1994 average of 14% to an average of 6% from 1994-2012;
- Gross Gold and FX Reserves rose from \$3bn to a prudent \$50bn today;
- Tax receipts of R114bn from 1.7m people rose to R814bn from 13.7m people;
- In the last decade a dramatic rise in the middle class with 4.5m consumers graduating upwards from the lower (1-4) Living Standards Measure (LSM) and in total 10m consumers added to the middle – higher LSMs (5-10); and
- Social grant beneficiaries rose from 2.4m to 16.1m people today.

The Report also highlights significant challenges including:

- Unemployment remains stagnant at 25% from the 23% inherited in 1994, concentrated amongst the youth;
- The majority of Africans remain in lower income categories whilst vast majority of white people remain in middle to upper class categories;
- The current account deficit of now 6.8% is one of the highest amongst global peers, placing SA in the exposed company of other twin deficit countries;
- The contribution of mining and manufacturing to GDP has fallen to 23% from 38% in 1986;
- Household debt to disposable income soared from 57% in 1994 to 76% now;
- Real wage inflation across the economy of 3% per annum was recorded over the two decades of democracy, whilst in the mining sector wage inflation in the decade 2001 -2011 was 11% per annum just as PGM productivity declined 4% per annum over the period; and
- The public sector, despite increasing to two million employees, and significantly increased spending has seen its contribution to GDP fall from 19% in 1994 to 15% today.

THE VIEW OF SOUTH AFRICA FROM ABROAD

Seen from abroad many investors are positively surprised when reminded by the report of the progress recorded in the fiscal and monetary environment, the associated rise in the size, sophistication and depth of the economy and SA's capital markets, and the significant gains made both in the cash and non cash (free services) transfers for the poor and the rapid rise of the middle class. They are also encouraged by the adoption by the South African Government of the National Development Plan (NDP), and by the overall respect for the rule of law and the Constitution. And, the promise of a fast growing neighbourhood of Sub Saharan Africa is certainly catching attention.

Yet many are equally concerned by the current twin deficit, the persistent labour strife exemplified by the platinum sector strike, a low growth environment with rising inflationary pressures, social service delivery protests, the inefficiencies and corruption in the public administration and instances of anti-competitive behaviour in the private sector. Many also suspect that the Government either lacks the political will to implement the NDP, or more likely lacks the skills and institutional capacity to execute on it. Some now even question South Africa's position as the best platform for investing in the African growth story.

SO, HOW DO THE OFFSHORE EQUITY INVESTORS CURRENTLY SEE SA?

- Growth / momentum institutional investors are currently the least persuaded by the South African story. This reflects both concerns at the weak and weakening Rand on the one hand, and on the other, the weak overall economic

growth performance projected into a lacklustre corporate earnings outlook. This is not unique to South Africa. A similar slowdown in other growth markets such as Turkey is forecast as their Central Banks start to increase interest rates. Ultimately this is likely to result in an economic slowdown.

- Cash flow oriented / Value investors continue to approach their South African investments with a deep fundamental approach and constructive outlook. Their concern over the macro conditions in the political economy has resulted in their applying a higher discount to their SA investment thesis and ultimately looking for cheaper valuations to increase investments. Liquid, well managed companies with well understood equity stories are at the top of the add-on list.

- Amongst certain mining investors, and many specialist Mining funds, South African Mining has become almost “untouchable” as a result of the persistent labour strife. Some deep value investors do however make the point that at some stage, should the labour issues be resolved, the Platinum Group Metals (PGM) sector may once again become an appealing investment sector.

- Lastly, hedge funds in particular continue to believe that the SA banks are broadly exposed to the unsecured lender credit pressures and that these pressures will contaminate their loan growth and Non-Performing Loan ratios and in turn their earnings and return outlook.

AND WHAT ABOUT THE RAND? HOW DO THE OFFSHORE INSTITUTIONS SEE OUR CURRENCY?

- Last year a lot of the outflow that pushed the Rand weaker was a combination of speculative interest in the context of a tapering environment, a reduction of overweight offshore bond

positions, as well as active “overlay hedging” from real money investors that were long South African equities and bonds.

- 2014 has so far been somewhat different: portfolio flows in both bonds and equities have been very disappointing. Since the start of the year there have only been four days of positive inflow into the bond market, totalling R1.5 billion (vs bonds outflows of almost R7 billion). The equity market is slightly better, but has still seen net outflow of around R1 billion for the year to date and only six positive days of inflow. Compare this with the anecdotal reports of corporate interest in the market which have been universally one way (buying USD) since the beginning of the year. In other words, what we are experiencing is the impact of a 6.8% current account deficit in the absence of portfolio inflows.

- Clearly the sentiment with respect to the US Dollar in an environment of tapering, expectations regarding the potential near term performance of growth markets generally, and more specifically concerns over the perpetual labour issues in SA, particularly in the mining sector, are all combining to produce a fragile sentiment with respect to emerging market assets generally and for South Africa. This means that the opportunistic inflows that we would have expected to come in and support the currency in the past, are simply not materialising.

Ultimately the “shorts” seems to be continuing to focus on those countries which maintain significant current account deficits and that were overly reliant on portfolio inflows as the primary source of their financing. The “early adopters” of a more hawkish monetary policy stance (Brazil, India, Indonesia) have seen their currencies stabilise in the last six weeks, whereas those viewed as continuing with real rates that are too low to attract or even keep hold of capital continue to weaken. Turkey and

South Africa’s interest rate actions this week places the spotlight further on the unfolding re-pricing of growth market assets and their relative attractiveness.

Unlike other key emerging markets (EM) the SARB established an Inflation Targeting (IT) framework in 2000. The framework has been effective in managing inflation (and deflationary) pressure, anchor inflation expectations and supporting growth in the past 14 years. We expect the SARB to continue to maintain its measured approach to any future rate action and focus on the inflation and growth outlook consistently within its IT framework.

SO WHAT OVERALL IS THE SCORECARD FROM ABROAD?

The good

Quality of institutions - the trust and confidence from offshore investors, particularly in the South African Reserve Bank (SARB) and the Ministry of Finance, is probably greater than for any other emerging market. This makes investors more tolerant of volatility and short term negatives. Investors derive comfort from the transparency and integrity of policy makers, as well as their openness and accessibility.

The not so good

Skills shortages - this appears to be one of the most consistent issues preventing greater levels of Foreign Direct Investment (FDI). A lot of FDI that does come in, does not do so with a view to using SA as an export base. Unit labour costs are perceived to be too high compared to productivity. Put simply – SA could only afford higher wage growth in line with productivity improvements. We have lost competitiveness not only because the rand was too strong, but because there was insufficient skilled

labour. The link between productivity growth, improving education levels and better relations between labour and management is clear.

The could do better

Foreign investors want to see a labour legislation framework that gives workers and unions better representation, but at the same time prevents unions from crippling businesses or even industries. The fact that the same, extremely damaging, stand-offs between the unions and the employers continues every year shows that this is an area that still requires attention and new policy initiatives. The government’s own efforts to directly intervene in order to mediate are very welcome, but sadly cannot on their own address the fundamental structural fault lines in the labour law architecture.

The can’t do much about

Current macroeconomic mix: high and growing twin deficits, high inflation and dependency on



portfolio inflows. These are partly the result of external drivers and partly the result of past policies. But either way, there is little that policy makers are perceived to be able to do to alleviate the issues in the short term.

Domestic macro mix: The sustainability of a ~7% current account deficit and a ~5% fiscal deficit with unemployment at ~25% and growth at ~2% is questioned. While at the same time inflation is at risk of piercing the upper end of the targeting band in a global environment of rapidly declining portfolio flows into emerging markets. Policy makers at both Treasury and the Reserve Bank are therefore limited in the responses that they can adopt to turn the tide in the short term.

A WINNING TEN-POINT AGENDA: VIEWS FROM DOMESTIC BUSINESS LEADERS

To recap, our “Two Decades of Freedom” report pointed to the following key issues for SA to address:

Driving economic growth through:

- Revitalising the mining and manufacturing sectors, and driving new frontiers for growth;
- Building economic linkages with Africa, and creating visible economic wins from BRICS;
- Driving investor confidence and targeting \$5-10bn in FDI per annum;
- Driving innovation via increased spend on R&D and investing in expanding technology;
- A common effort to protect the rate & cost of capital and SA’s credit rating; and
- Defending the rise of the African Middle Class

Labour Pact for:

- Sustainable growth and Employment; and
- Balancing wage inflation with productivity growth.

Public sector:

- Creating fiscal space by optimising state assets, particularly focused on SOEs;
- Productivity: “bang for buck” especially in the areas of health and education outputs;
- Exercising good management practices and professionalizing the public administration to meet its performance requirements;
- Education fit for employment;
- Special focus on unemployed/ unemployable youth; and
- Leadership driving a culture of accountability and teamwork.

In anticipation of the President’s State of the Nation speech on the 13th of February, closely followed by the Finance Minister’s Budget Speech, I asked 15 CEO’s from JSE top 40 companies what initiatives they would like to see launched in 2014. In particular what do they believe would unlock earnings growth, investment and jobs in their businesses and in turn lift the performance of SA Inc. as a whole. In aggregate our discussion with the CEOs produced a ten-point agenda for unlocking earnings growth, job creation and capital investment.

1. A complete overhaul of SA’s labour relations architecture:

Universally, the view amongst these business leaders is the current system, built on the Western European model, is “just not working for South Africa” and is proving destructive to job creation and productivity. The dysfunctional conflicts within the union movement aside, the effect of the current labour relations system is higher real wages for fewer workers, lower productivity and job losses for more and lower exports. Overall this is an unsustainable recipe for the country.

A less restrictive, more responsive labour

system with a partnership approach between business, government and labour designed to avoid strikes, drive job creation, attract investment and skill both the workforce and the feedstock for the workforce is needed. Business can support and help resource training, artisanship and apprenticeships to develop skills for work, and work closely with schools and FET colleges. When strikes do occur they should require secret strike ballots and be a last, not a first, resort.

Wage inflation should increasingly be tied to productivity gains and incentives aligned. A conversation between unions and managers on sharing both the costs of production and the profits should be encouraged so that all the stakeholders drive shared interests to grow their companies. Some believe that this requires a New Labour Commission, while others believe we cannot afford the time and need an immediate action orientated initiative to implement the required changes.

2. Lifting the administrative burdens on business:

“Bureaucratic Overload!” is the battle-cry. Business feels stifled by the degree of regulation and the exhaustive procedures of the regulatory authorities. Amongst an already stretched agenda the transformed public administration has to review, and business has to comply with, onerous license regimes, empowerment requirements, complex planning consents, customs clearing procedures and immigration procedures for hiring skilled expats. And amongst those procedures lurks the shadowy threat of the long arm of corruption. The simplification of these procedures and the “professionalization” of the public administration would lower the costs and increase the speed of doing business in South Africa.

One example is to “make it easy” for expats to move into South Africa or other African countries to perform work. “If we run South Africa like we are hosting the World Cup every day, not just for a fortnight once every 100 years, it would make us a winning nation”.

3. A flexible and responsive Trade Policy:

an example is the clothing industry in which one company said would create around 10,000 new jobs if the Government scrapped the import duties on the textile industry which it could do at the stroke of a pen. The current duties protect fewer people’s jobs, all of whom in this case, the company would guarantee a job in the new local clothing manufacturing facility. This company could also create jobs in this sector in the form of small business facilitation. This is but one example where a more partnership approach between government and business can unlock jobs and growth through a dynamic trade policy.

4. Free movement of capital:

the continued existence of the architecture of exchange controls continues to restrict the movement of capital for businesses, and adds uncertainty for companies in competing globally for assets including with the use of their shares as acquisition currency. The funding of offshore and onshore balance sheets remains regulated and complex, and adds risk to the overall management of the firms. Whilst liberalisation has occurred, the complete removal of the exchange controls architecture would be perceived as a progressive step in supporting corporate South Africa’s global competitiveness. Some believe such a move would also be supportive for the currency.

5. Administrative excellence:

whilst the broad public policy approach and regime of the current administration is perceived

positively the quality of implementation is perceived to have deteriorated. The deployment of capable administrators into the public service to provide the best of breed leadership and “best people for the right seats” in SOEs and Ministries / departments of state is seen as a top priority for the 5th State administration.

6. Prosecuting corrupt officials:

ensure prosecution with full enforcement of sentences for corrupt government officials. The introduction of a State Tender Board is seen as a positive in this regard. Strict compliance with the adopted anti-corruption measures is required.

7. Regional integration:

Improving African regional trade and market viability, including improving cross-border logistics and substantially reduced waiting time at border posts. If South Africa is to take advantage of its position as a “gateway to Africa” we must work hard to open the doors for business on the continent and simplify if not in some cases eradicate the visa, permitting, logistical bottle necks and other impediments to doing business. Improving regional infrastructure such as power, road and rail will go a long way to unlocking inter regional trade.

8. Unlocking cheap, clean energy in Africa:

Africa has been fortunate to discover significant

oil and gas reserves and is blessed with some of the best hydroelectric resources in the world. The South African government should work with business to explore and unlock alternative energy options and enablers, including:

- Accessing viable gas resources in the region (including, exploring for and exploiting shale gas);
- Considering Liquid Natural Gas (LNG) imports; and
- Collaborating on gas-to-power plants.

The above should aim to bring down the cost of power for inter-alia the mining and manufacturing sectors in South Africa. Significant private capital and job creation awaits.

9. Advancing the provision of infrastructure:

the long-term stability, availability and affordability of power and other infrastructure e.g. water and transport is essential to inter-alia the mining industry. Eskom needs special focus and also linked to exploring alternative regional sources of energy. Given the liability profiles of pension funds and long term savings vehicles in SA, there is a natural and significant appetite for infrastructure assets. SA has over R4.5 trillion assets under management in pension funds and others forms of long-term savings in SA. Government and the savings industry need to accelerate work in developing the right framework and risk sharing to tap into

more of these savings to fund the infrastructure necessary to drive growth and job creation. The SOEs policy, governance and management and the role of the shareholder as owner needs to be clarified. Efficiency, reliability and productivity, and pricing impacts should be foremost in the minds of the SOEs.

10. Certainty of operating environment:

“No moving the goal posts”. Whether the financial, health or mining industry the cry is the same: set the rules and don’t change them. Whether it is the rules governing affordability of household insurance policies, mining licenses and the broader regulatory regime covering strategic minerals, the role of the private sector hospitals, medical aids and so on relative to the NHI - the private sector needs certainty for long term investments and job creation. Large scale investment decisions and associated jobs in the hundreds of thousands depend on it.

CONCLUSION

South Africa, as it approaches the 5th democratic elections in its 20th year of democracy, appears to be at a crossroads. The world has become tougher for all growth markets. We need to raise our game. We need to get the basics right. Much has been achieved but to overcome structural inequality, unemployment and low

growth SA needs to get to work. This is the job of all South Africans. It is the job of business to invest, to train, to hire and to drive earnings. It is the job of the unions to organise, to unlock productivity, to widen access to the work force and to add to the sustainability of industry. It is the job of the Government to create policy and deploy the best people to a professional and efficient administration. It should also cut the cost of doing business, open doors for trade and investment, pull down barriers to growth, spend tax payers’ money effectively, to get “bang for the buck”, protect the poor and the vulnerable and work with its social partners to take extraordinary measures to get all South Africans in to work.

It is all our “jobs” to work together to build a prosperous South Africa. The “Two Decades of Freedom” report suggest that in the next 20 years South Africa should aim to raise its GDP annual growth rate (from the past 20 years’ average of 3.3%) to 5% thereby growing the size of the economy to \$1trn by around 2030. Such growth, if attained, would cut both the unemployment rate and Debt / GDP % in half, and see GDP per capita double.

This vision is within our grasp. Team South Africa: it’s all to play for!

PANELISTS from left to right:

- Dave Steward (Chair), Executive Director, FW de Klerk Foundation
- Colin Coleman, Managing Director, Goldman Sachs International, South Africa
- Gerhard Papenfus, CEO, National Employers’ Association of South Africa (NEASA)
- Moletsí Mbeki, Deputy Chairman of the South African Institute of International Affairs (SAIIA)
- Dr Frans Cronje, CEO designate, South African Institute of Race Relations (SAIRR)



Dr Holger Dix, Resident Representative of the Konrad Adenauer Foundation for South Africa, and former President FW de Klerk.



ON FRIDAY, 31 JANUARY 2014, THE FW DE KLERK FOUNDATION HOSTED ITS ANNUAL CONFERENCE IN CONJUNCTION WITH THE KONRAD ADENAUER FOUNDATION. THIS YEAR'S THEME WAS "SOUTH AFRICA AT 20: THE NEED FOR REAL TRANSFORMATION". THE CONFERENCE WAS HELD IN CAPE TOWN AND WELL-ATTENDED BY MEMBERS OF THE PUBLIC AND A LARGE PRESS CONTINGENT.

This publication is a compendium of speeches presented on the day (certain speeches were transcribed from recordings). Each speech was followed by a insightful panel discussion, and panelists included: Prof Francois Venter (Research Fellow and former Dean of the Faculty of Law, North-West University), Adv Johan Kruger (Director of the Centre for Constitutional Rights), Adv Paul Hoffman (Director of the Institute for Accountability), Sheila Camerer (Former Deputy Minister of Justice), Rhoda Kadalie (Executive Director, Impumelelo Social Innovations Centre), Dr

Theuns Eloff (Vice-Chancellor of North-West University), Mike Wilter (Former Head of the Western Cape Education Ministry), Dr Paul Colditz (CEO, FEDSAS), Herman Mashaba Chairman (Free Market Foundation and Chairman, Lephatsi Investments), Gretchen Humphries (Deputy General Secretary, FEDUSA), Colin Coleman, (Managing Director, Goldman Sachs International, South Africa), Gerhard Papenfus (CEO, NEASA), Moletsisi Mbeki (Deputy Chairman of the SAIIA), Michael Bagraim (Labour law specialist), Dr Frans Cronje (CEO designate of the SAIRR). ■

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

CENTRE FOR CONSTITUTIONAL RIGHTS (CFCR)

The CFR is a unit of the FW de Klerk Foundation.

The CFR's goals are:

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

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

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 organizations 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



FW de Klerk
FOUNDATION



Centre for
CONSTITUTIONAL
RIGHTS





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