



The FW de Klerk
Foundation

Consensus

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SGR-navorsing:

Stadige grondhervorming plaas druk op regering

Die FW de Klerk Stigting het pas 'n navorsingsdokument bekendgestel oor die vordering met grondhervorming in Suid-Afrika. Volgens mnr. Dave Steward, uitvoerende direkteur van die Stigting, sal grondhervorming in die afsienbare toekoms een van die neteligste vraagstukke in die nasionale debat wees. Dit is derhalwe van kernbelang dat die publiek oor hierdie vraagstuk ingelig moet word sodat alle belanghebbers op 'n verantwoordelike en konstruktiewe grondslag aan die debat kan deelneem.

Die dokument is saamgestel deur 'n navorser van die Stigting, me. Frouwien Bosman, en is 'n samevatting van die jongste gesaghebbende inligting oor die geskiedkundige behoefte aan grondhervorming, die grondwetlike implikasies van grondhervorming, vordering met grondhervormingsteikens, nuwe beleidstendense ten opsigte van grondhervorming, en kommentaar op voorgestelde beleidsveranderinge. Dit formuleer ook voorstelle vir 'n volhoubare benadering tot grondhervorming.

Volgens Bosman is die impak van informele en institusionele beperkings op swart

grondbesit steeds duidelik in die verdeling van grond tussen verskillende rasgroepe en plaas die slakkepas waarteen grondhervorming tans plaasvind die staat onder toenemende druk om meer ingrypende maatreëls te aanvaar om die doelwitte van sy hervormingsprogram te realiseer. Die studie van die FW de Klerk Stigting bespreek 'n aantal meganismes wat tans deur die Departemente van Landbou en Grondsake oorweeg word om die hervormingsproses te versnel, waaronder:

- * die heroorweging van die "gewillige koper, gewillige verkoper" benadering;
- * die benutting van die staat se grondwetlike reg tot die onteiening van grond indien dit in openbare belang is;

(Na bl.5)



'n Navorsingsdokument oor grondhervorming is onlangs deur die Sentrum vir Grondwetlike Regte van die FW de Klerk Stigting bekend gestel. Hier oorhandig me. Frouwien Bosman, navorser van die Stigting en skrywer van die dokument, die boekie aan mnr FW de Klerk, voorsitter van die Stigting.

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No changes to the provinces without provincial referendums

by

Dave Steward, Executive Director, FW de Klerk Foundation

The future of the provinces is one of the main issues that will be discussed at the ANC's forthcoming Policy Conference in June, and at its national conference in December. The ANC has published a policy document that is highly critical of the present provincial system. It points to the failure of some provinces to deliver key services; their failure to support dysfunctional municipalities and the expense and duplication that they entail. The discussion document poses three alternatives: that the present system be maintained; that provinces be abolished altogether; or that the number of provinces be reduced.

Provinces were included in the new constitutional system largely at the insistence of the non-ANC parties – particularly the NP, the DP and the IFP. The ANC had traditionally supported a unitary dispensation because it claimed that a developmental state would need a strong central government. The IFP, on the other hand, strongly favoured a federal system that would make adequate provision for regional differences, and in particular, the special role of the Zulu monarchy and the Zulu people in KwaZulu-Natal. The acceptance of provinces was one of the new Constitution's great compromises: on the one hand they were not as strong as the IFP, the NP and the DP wanted; on the other, they provided much greater devolution of power to the regions than the ANC originally advocated.

There were sound reasons for the decentralisation of power: it was in line with the constitutional principle of subsidiarity that holds that government should be devolved to the lowest effective level – thus ensuring that it remains close to the people and caters to special regional needs. For example, one of the new Constitution's objectives was the delivery of services in languages that would be understood by South Africa's eleven language groups. Accordingly, provincial boundaries broadly coincided with the core locations of our different language groups. In

addition, a degree of federalism counteracts the concentration of too much power in the hands of central governments. It also enables different regions to experiment with alternative policy approaches and to compete against one another for investment.

Undoubtedly, several of our provincial governments have failed dismally to deliver effective services. Provinces might also involve additional expenses. However, the problem essentially is the lack of skills and experience – which would not disappear if provincial functions were transferred to equally inefficient national departments or municipalities. Also, federal systems need not cost more. The United States and Australia, both strong federations, spend respectively 30.5% and 32.7% of GDP on all levels of government, compared with 52.4% in France and 39.6% in New Zealand which have centralised systems.

The strongest arguments against dismantling the provinces are, however, political. Any move to change the *status quo* will inevitably be interpreted by minorities and non-ANC parties as a further step to erode the constitutional compromises on which the new South Africa is founded, and to concentrate total power in the hands of the ruling party. (According to the ANC policy document, KZN and the Western Cape “present special challenges for the ANC politically.”) We are currently witnessing the vehement rejection of the people of Khutsong to incorporation against their wishes into the North West Province. Any move to dilute the special status of KwaZulu-Natal, or to incorporate the Western Cape and the Northern Cape into their neighbours, would encounter even more vociferous opposition.

Accordingly, we need assurances that the Government will not change the current provincial system – or provincial borders – without first holding referendums in any of the provinces that would be affected.

FW de Klerk:

America acts as mayor, police chief

If the world has become a globalised village, there can be little doubt that, for the time being, the United States is its Mayor and its Chief of Police. America holds these positions because of its unchallenged military, economic and technological pre-eminence, Mr FW de Klerk said at the University of Nevada recently.

He spoke on bridging the gap between globalisation and isolation and the role of American leadership in a globalised world.

"America's role as *de facto* global leader bears with it heavy burdens and responsibilities such as the fact that the USA has to spend a disproportionate share of its national wealth on the upkeep of its global military capability, its pre-eminence makes it a target for disaffected groups all over the world and the likelihood of being criticised, whatever it does.

"Unfortunately, this is the price that must be paid for being the only remaining super-power. It is a price that was well understood by other pre-eminent powers, from the Romans two thousand years ago to the British during the nineteenth century," Mr de Klerk said.

He said that after the terrorist outrage of 11 September 2001 it was essential for the United States to use its big stick against international terrorism. It was right and proper to overthrow the Taliban regime which had provided the main operational base for the terrorist attacks against America and it was essential to put extreme pressure on any country providing a safe haven for Al Qaeda. It was equally important to launch a global campaign to track down terrorists wherever they might be hiding.

Mr De Klerk said playing the role of the global policeman brings with it many burdens and tribulations and little thanks. The imperial role also requires iron will and force, qualities that are often inconsistent with democratic values.

"The question is whether the United States can muster such will over an extended period to promote its global interests? There are clear limitations to the use of the 'big stick'. It is essential

to deal with clear and present threats – when it can be wielded swiftly, accurately and effectively, but it is problematical when it requires long, costly and unpopular operations on foreign soil. That is why the United States, in its global leadership role, should also consider the necessity of 'speaking softly' in the words of Teddy Roosevelt", Mr De Klerk said.

This meant a multilateral approach to international crises and to recognise that long term solutions can be achieved only by addressing the root causes of conflict - poverty, repression; ignorance and fanaticism.

According to De Klerk one of the central implications of globalisation is that none of us and particularly not the leading powers, can any longer ignore problems and grievances in distant countries. In a globalised world problems such as AIDS, economic crises and conflicts will sooner or later breach international borders. These problems can no longer be dealt with unilaterally by any single country. The international community should develop the policies, the resources and the will to tackle the root causes of global problems.

Another fundamental cause of conflict throughout the world lies in the inability of different ethnic and cultural groups to peacefully coexist, while a deep sense of cultural or ethnic alienation lies at the root of many of the wars throughout the world. Religious differences create volatile situations that can explode into violence and terrorism at almost any time.

"I don't believe it is a hopeless situation. We also, between 1984 and 1987, were confronted by our own version of the *intefada*; we also resorted to draconian security measures to restore order; we also experienced growing international isolation and condemnation. We emerged with a new constitution which guarantees the individual and collective rights of all our people and which is enabling us to live together with one another in peace and co-operation. If we could do it, the Israelis and the Palestinians should also be able to do it," he said

Skree die regsberoep: "wolf-wolf"?

deur Dave Steward

Heelwat bespiegelings oor die onafhanklikheid van die Suid-Afrikaanse regbank doen die laaste tyd die rondte, hoofsaaklik vanweë die twyfelagtige optrede van verskeie senior regslui.

Daar word gesê die regsberoep skree "wolf-wolf!" oor bedreigings vir die onafhanklikheid van die regbank. In die oorspronklike fabel skree 'n enkele veewagtertjie "wolf-wolf!" as 'n onverantwoordelike poets. In dié geval egter is dit regslui, van 'n gewese hoofregter en regters, tot kommentators vanoor die volle politieke spektrum, wat diep bekommerd is dat die regering se grondwetlike amendamente van 2005 die onafhanklikheid van die regbank ernstig sal knou. Juis hieroor het pres. Thabo Mbeki wyslik die departement van justisie opdrag gegee om die voorstelle te onttrek en te heroorweeg.

Wat presies word bedoel as gesê word die onafhanklikheid van die regbank is nie absoluut nie? Hoeveel regeringsinmenging moet in die aktiwiteite van die howe geduld word? Dit lyk asof sulke besluite moet berus by "die demokraties verkose parlement, die wetgewende gesag". Deur dit te doen word die parlement bo die howe geplaas, soos in die vorige bedeling. Die skeidslyne tussen die wetgewende en uitvoerende gesag is dikwels vaag, maar dit is noodsaaklik vir die behoud van fundamentele regte dat die howe ondubbelsinnig onafhanklik bly.

Daar is ook gevra of dit werklik die onafhanklikheid van die regbank sal beïnvloed as regters nie meer verantwoordelik is vir die aanstelling van ondersteuningspersoneel en ander aspekte van hofadministrasie nie. Voormalige regter Jan Steyn glo dit sal. Verlede jaar het hy gevra hoekom die bepaling dat die gesag oor die 'administrasie van die howe' by die uitvoerende gesag (die minister) moet lê. Hy wou weet of die minister dan kon voorskryf watter regter oor watter sake moet beslis? Hy wou ook weet watter ander administratiewe gesag die minister nodig het as staatsdepartemente reeds opdrag gekry het om die doeltreffende funksionering van die howe te verseker?"

Die regsgemeenskap is bekommerd dat die

minister van justisie volle verantwoordelikheid van hofadministrasie mag oorneem asook oor voorgestelde amendamente. Dié amendamente sal die Grondwetlike Hof die "hoogste hof" vir alle wetsvraagstukke maak, die howe verhinder om wette te maak wat na hul mening ongrondwetlik mag wees en die magte om regters aan te stel in die hande plaas van die uitvoerende gesag.

Daar is ook gevra hoekom regter Hlophe steeds 'n regter is? Hy is net soos enige ander beskuldigde geregtig op die gepaste proses om die voordeel van sy veronderstelde onskuld te geniet. Klage teen hom dien steeds voor die Regterlikedienskommissie (RDK). Enige poging om die dissiplinering van regters in die hande van die minister van justisie of die parlement te plaas, sal fataal vir die onafhanklikheid van die regbank wees.

Daar is wolwe wat in die grondwetlike onderwêreld skuil. Die 1997 ANC-dokument oor strategie en taktiek sê: "onder die strategiese take van die Nasionale Demokratiese Revolusie is die versterking van die houvas van die demokratiese beweging oor staatsmag en om die staatsmasjienerie te omskep om die belang van sosiale hervorming te dien". Op 8 Januarie 2005 het die ANC se NUK verwys na "die belangrike uitdaging om die nasionale gesamentlike geestlike ingesteldheid van die regbank te transformeer om dit in lyn te bring met die visie en aspirasies van die miljoene wat in die stryd betrokke was om ons land van wit minderheidsoorheersing te bevry." Dit het ook verklaar dat daar baie mense "binne ons regbank is wat hulle nie as deel van die massas beskou nie, nie aan hulle verantwoordbaar is nie en nie deur hul drome, hoop en waardesisteme geïnspireer word nie". Die grondwet bepaal egter "Die howe is onafhanklik en slegs onderdanig aan die grondwet en die wet, wat hulle onpartydig en sonder vrees, bevoorregting en vooroordeel moet toepas."

Die prys van vryheid is ewige waaksaamheid – en dit is die taak van die media en sosiale gemeenskap om alarm te maak wanneer kern-elemente van vryheid bedreig word.

Grondhervorming vorder stadig

(Van bl 1)

- * pro-aktiewe staatsdeelname aan die eiendomsmerk;
- * verdere grondbelasting op landbougrond;
- * beperkings op buitelandse grondbesit; en
- * 'n "reg van eerste weiering" vir die staat in alle landbougrond-transaksies

Die sentrale vraag wat in die studie geformuleer word, is of hierdie nuwe benadering tot grondhervorming in pas is met die sosio-ekonomiese realiteit in Suid-Afrika en of dit huidige uitdagings in die hervormingsproses doeltreffend aanspreek.

Daar word onder andere verwys na die kapasiteit en gepastheid van die landbousektor om as primêre katalisator vir sosio-ekonomiese ontwikkeling te dien en verdere bydraes tot die staatskas te maak gegewe die sektor se kwynende bydrae tot die Bruto Binnelandse Produk en die hoë risiko's en lae vlakke van winsgewendheid in landboubesighede, die onvanpastheid van 'n hervormingsprogram wat op landelike grondhervorming fokus terwyl die Suid-Afrikaanse bevolking toenemend verstedelik, die gevare verbonde aan die uitbreiding van die mandaat van die Department van Grondsake voordat voldoende kapasiteit binne die departement geskep is, die twyfelagtige rasionaal agter 'n grondhervormingsbeleid wat van die "gewillige koper, gewillige verkoper" beginsel afwyk, die ongeldigheid van aansprake dat grondpryse deur grondeienaars gemanipuleer word om hervorming te kniehalter, die fokus op die realisering van nasionale doelwitte ten opsigte van die oordrag van grond na swart Suid-Afrikaners sonder voldoende inagneming van plaaslike uitdagings, en die staat se versuim om die impak van grondhervorming op kommersiële landbouproduksie en voedselsekureiteit te oorweeg.

Volgens Steward is dit teleurstellend dat die rol wat die mark en die privaatsektor in grondhervorming speel voortdurend onderskat word.

"Die FW de Klerk Stigting beywer hom daarvoor dat bestaande boere en landbou-organisasies as geloofwaardige vennote in die hervormingsproses erken word en dat hul voorstelle vir samewerking in

goedertrou deur die betrokke staatsdepartemente aanvaar word."

"In die studie word daar ook gepleit om groter duidelikheid rondom die wyse waarop "billike en regverdige" vergoeding in gevalle van onteiening bepaal sal word en oor die manier waarop die staat sy reg tot eerste weiering sal administreer.

"Sal die staat, byvoorbeeld, die beste aanbod in die mark ewenaar of sal vergoeding op 'n ander wyse bepaal word?" het hy gesê.

Steward het gesê die Stigting glo dat grondhervorming bestuur moet word op 'n wyse wat gelykheid aanmoedig, in ooreenstemming met die beginsels wat in die grondwet vervat is, maar dat dit regverdig moet wees teenoor alle betrokkenes en die volgehoue effektiewe benutting van skaars landbougrond moet verseker.



SAPS agrees to language demands

THE FW de Klerk Foundation, through its Centre for Constitutional Rights (CFCR) has taken action against the South African Police Service (SAPS) in the Western Cape on its unconstitutional and illegal exclusive use of English as its only official language for internal communication.

The action was the result of a complaint by SAPS members stationed in the Boland about orders issued by the SAPS command in the Western Cape instructing them that only English should be used as the language for all internal communication. According to the Constitution two official languages of the relevant area should be used. It is also in contradiction of the national standing orders of the SAPS and contrary to the Police Act.

According to Adv Paul Hoffman, Director of the CFRC, the Centre had obtained legal opinion on the matter and the advice was that these instructions were not only unconstitutional and illegal, but also against the standing orders of the SAPS.

Our argument is that the policy of the provincial police structure who in certain instances, make the use of English compulsory, was in contradiction with the national language policy of the police services. According to the law the provincial police must adhere to orders issued by the national command. The decision to use English exclusively is not only in direct disregard of these instructions, but also against the Constitution," Adv Hoffman said.

In an endeavour to resolve the issue the Foundation initiated lengthy consultation with relevant role-players. These included Mr FW de Klerk, chairman of the FW de Klerk Foundation, Mr Dave Steward, Executive Director of the FW De Klerk Foundation and Advocate Paul Hoffman, Director of the CFRC, Western Cape Premier Ebrahim Rasool, the province's Police Commissioner Mzwandile Petros, Mr Leonard Ramatlakane, MEC for Community Safety in the Western Cape and Dr Lionel Louw, Chief of Staff in the Premier's office.

The parties agreed on the importance of recognising the multicultural nature of South Africa and the Western Cape as a Home For All.

They emphasized the importance of ensuring that all policies should comply with the constitution and the ideal of unity in diversity.

They also agreed that the SAPS in the Western Cape should not be obstructed in its mission to combat crime and that there are some operational circumstances in which English must be used.

Premier Rasool and Mr De Klerk noted that members of the public have always been entitled to service from the SAPS in the language of their choice. Most of the offending instructions and orders (which were not issued by the Commissioner of the SAPS in the Western Cape) were repealed and those that remained were interim instructions which would be replaced in the near future by a comprehensive nationwide Language Policy. As a result of these discussions, the FW de Klerk Foundation's CFRC agreed not to proceed with legal action.

Mr De Klerk thanked Premier Rasool and the SAPS in the Western Cape for their constructive approach and for their support for constitutional values and multiculturalism.

Advocate Hoffman said the SAPS had enough time to explain its viewpoint that all SAPS members in the Western Cape must use English exclusively as communications language.

"We brought this to the attention of the SAPS in September last year but despite numerous attempts from our side to discuss the problem with senior members of SAPS, as well as officials of the provincial government. We also brought it to the attention of the national Minister of Police, Mr Charles Nqakula, the national SAPS Commissioner, Jackie Selebi and the Afrikaanse Taalraad. We had no reaction, until a meeting with Commissioner Petros was convened," Hoffman said.

"In a province where two thirds of the population is Afrikaans speaking, this is unacceptable and unconstitutional," Hoffman said.

Frank discussions at Intundla meeting

Mutual agreement between people about their pasts, particularly about divided pasts, is a prerequisite to reconciliation.

The TRC, which aimed to achieve reconciliation, arguably failed to do so as a result of its composition, which reflected only one view of our past.

In trying to further true transformation, the Foundation hosted a two day seminar at the beginning of March, to engage people with divergent views in a discussion on how best to deal with the divided past so as to work towards a common future.

The participants included Mr FW de Klerk and Mr Dave Steward from the Foundation, Adv Nikki de Havilland from the Foundation's Centre for Constitutional Rights, Mr Moletsi Mbeki, a private business entrepreneur, former Head of Communication for Cosatu and media consultant to the ANC, Dr Fazel Randera, former Inspector-General of Intelligence and TRC Commissioner, Mr Jaco Theunissen, acting Chairperson of the SRC, Pretoria University, Mr Dirk Herman of Solidarity, Ms Raenette Taljaard of the Helen Suzman Foundation, Mr Johann Roussouw of the

FAK and Prof Francois Venter, Professor of Constitutional Law and former advisor at Codesa. Differing interpretations of history were identified during the frank discussions. Some of these included the contention that liberation movements were solely responsible for liberating South Africa, the contributions that all communities had made to the development of South Africa before 1994, the notion that all whites were axiomatically "advantaged" and that they are "colonialists of a special kind", therefore not true Africans, and the need to accommodate all of South Africa's communities in an overarching national identity.

The group discussed the degree to which these differing perceptions of the past were an obstacle to all South Africans. It was agreed that a multi-hosted conference should be held with a clearly defined topic that was both forward looking and which simultaneously addressed our past. The Foundation is in the process of initiating such a conference, the proposed title of which will be *"Constraints holding South Africa back from taking full advantage of globalization."*

Letter:

Zim lawyer assaulted

To those who care about human rights, the rule of law and human decency, I was one of the lawyers assaulted by Mugabe's thugs in Harare because we sought to present to the minister of justice and commissioner of police a petition by Zimbabwe lawyers protesting the unlawful arrest and detention of two of our colleagues, and the defiance by the police of court orders requiring their release and declaring their arrest and detention unlawful. We assembled outside our high court, but before we could exercise our constitutional right, we were ordered by a senior police officer to disperse. As we were trooping away some of the police thugs in plain clothes said we were moving too slowly and in the wrong direction, while we were in actual fact going to our offices. They then set upon us with rubber truncheons and baton sticks. I tried to assist a female lawyer, but for my chivalry, I was singled out and hit on the head, back, and arms by a female who seemed to relish assaulting an unarmed defenceless lawyer. Some of legal colleagues were hit in varying degrees. The president of the Law Society of Zimbabwe, Mrs Beatrice Mtetwa, was also assaulted severely.

None of us were charged with any offence and all we wanted was to assert the rule of law and persuade the Mugabe regime to respect laws and the rights of citizens. For our efforts we were violated and humiliated. But we cannot give up on our country. We cannot yield to a despot or succumb to this lawlessness. While we do not plan to be martyrs, we will stand for what is right. For all its brutality, the government of Mugabe and its instruments of oppression have lost the battle of ideas and values. They rely on brute force to assert themselves. In the long term this is not sustainable, as history amply demonstrates. Some of you may ask: how can we help? Well I have no great ideas in this regard. The least you can do is pray for the people of this land and for good to triumph over evil. You may also document these atrocities so that those responsible may know that they will one day be required to account for their misdeeds. You may assure us you care about our battles. I suspect that I might get into trouble for this email, but others have made greater sacrifices than this.



Centre positioned as leading constitutional roleplayer



THE Centre for Constitutional Rights (CFCR) of the FW de Klerk Foundation has made significant progress since its launch almost eight months ago and is positioning itself as a major role-player in the constitutional arena in South Africa.

At the first Board meeting of the Foundation this year, held in Cape Town earlier this month, Mr Dave Steward, Executive Director of the Foundation, gave an overview of the activities of the CFR.

"One of the key aspects we are focussing on is the independence of the judiciary. We have interacted with various NGO's regarding this matter, with key role-players in the legal community and are actively participating in the ongoing debate.

"We had strong reaction from the legal community and the media, where a variety of articles were published and it culminated in President Thabo Mbeki withdrawing the constitutional amendment," Steward told the Board.

"One of the other highlights thus far was the intervention we had with the Western Cape South African Police Service (SAPS) regarding the use of Afrikaans at their stations. We obtained two legal opinions from associates in the legal community and made representations to the Western Cape Language Conference. Mr De Klerk and members of the CFR met with Premier Ebrahim Rasool and SAPS Provincial Commissioner Mzwandile Petros regarding the matter.

"After these consultations, the offending regulations were withdrawn by SAPS pending the announcement of a new national language policy," Steward said.

Referring to the hotly debated issue of affirmative action, Steward said that the CFR has engaged with government at a high level, with trade unions and with a number of affected individuals to promote the concept of balanced affirmative action. Media articles and engagement in the debate on affirmative action

was also continued, with exposure for the cause as far as publication of an article by adv Nikki de Havilland, the Deputy Director of the Centre in the SA Times, a London based publication with more than 100 000 readers.

The CFR has also briefed Senior Counsel on the constitutionality of present implementation practices.

Regarding the present crime situation in the country the Centre drafted articles for general distribution to the press while it is in close liaison with civil society organizations in Cape Town to focus attention on the levels of crime, including constitutional remedies.

"A thirteen point plan to combat crime was drafted and co-operation with the Human Rights Commission at national and provincial level on anti-crime strategies is being pursued. The Centre, together with civil society organisations in Cape Town, is considering the possibility of calling for a commission of enquiry into crime in the province, as provided for by the Constitution," Steward explained future activities.

Other issues taken up by the Centre were mother-tongue education, the powers of school governing bodies and the impartiality of the judiciary.

"We are closely monitoring developments on these issues, and particularly in the dispute between education authorities and the Ermelo High School. We highlighted this specific cause through newspaper articles and close liaison with education authorities, while also providing advice to school governing bodies.

"The Supreme Court of Appeal is currently considering the application of the Ermelo High School for special leave to appeal against the decision of the full bench of the Transvaal Provincial Division (TPD) to overturn a decision upholding the right of the EHS governing body to determine the school's language policy and we are monitoring the situation closely for further developments," he said. *(Continued on p 9)*

Nepad should not be “yet another empty acronym” - FW de Klerk

MR FW DE KLERK recently called on African leaders to give greater content to NEPAD's programmes and not to allow NEPAD to become “yet another empty acronym.”

He said that NEPAD had identified Africa's problems correctly and had prescribed the appropriate remedies.

“Africa's main challenge now will be to turn NEPAD's programmes into the reality of the African Century that has been so passionately advocated by President Mbeki.”

De Klerk said that Africa needed more progress with the promotion of democracy. “Although we now have 11 fully functioning democracies on the continent, the reality is that there are still 18 dictatorships in Africa. Africa also needed to apply the peer review mechanism more fearlessly.

“This will not happen if African leaders continue to avoid criticism of countries like Zimbabwe that are in clear breach of everything that NEPAD proclaims”. De Klerk warned that NEPAD's goals would not be achieved unless African governments adopted policies that would liberate and energise their economies and that would lead to much greater intra-regional trade. Africa also needed to ensure basic standards of

governance and to root out corruption.

He said that NEPAD's first priority was to promote peace and stability. He praised President Mbeki ‘for his tireless efforts to promote peace in Africa’.

He also noted that considerable progress had been made with the promotion of democracy. Eleven of Africa's 52 states were ‘free’ multi-party democracies, another 23 were ‘partly free’ and 18 were ‘not free’. De Klerk observed that other aspects of good governance had proved to be more elusive, particularly in the areas of accountability, transparency and macroeconomic stability.

According to the 2006 World Economic Freedom Report, only three African countries were listed among the 50 freest economies in the world. South Africa was placed 53rd. Nineteen of the world's 30 least free economies were in Africa.

De Klerk said that all this had “serious implications for NEPAD's commitment to good governance and to its goal of promoting development.”

He called on Africa to stop the flight of capital from the continent. Each year Africa loses another US\$ 20 billion, which means that for every dollar lent to Africa in recent decades 80 cents has returned to the developed world.

Centre a leading roleplayer

(From p 8)

Also on the education front, the Centre is continuously in discussions with education experts, the Minister of National Education and UNICEF regarding the right to basic education, and jointly approaching, with the Human Rights Commission, Senior Counsel at the Johannesburg Bar for an opinion on the enforcement of the right to basic education. The aim of this is to accelerate a training programme for principals and other

school leaders.

Other issues the Centre is focusing on include the special education needs of visually impaired and other children with disabilities, requirements for demographic representivity in the provision of welfare services, respect for the rule of law and enforcement of court orders, the future of the provinces and the failure of service delivery. (See the full report on www.cfc.org.za)

Ermelo High School

Constitutional crisis threatening single language schools

THE tussle over the language policy at Ermelo High School (EHS) is one of the most significant recent legal wrangles. It is likely to impact on three key areas of society: the powers of School Governing Bodies (SGBs), the future of single-medium Afrikaans schools and, most seriously, the impartiality of the judiciary.

This was the reaction of Adv Paul Hoffman, Director of the Centre for Constitutional Rights (CFCR) of the FW de Klerk Foundation to the ongoing tussle regarding the right of the EHS not to allow English speaking learners into an Afrikaans medium school.

"The EHS case is not about the 19 English speaking learners who have been corralled into the Afrikaans medium school and who have become pawns in a power struggle over school language policy. If the Supreme Court of Appeal reaffirms the SGB right to determine language policy, it can be expected that the education authorities will rush through remedial legislation to limit the powers enjoyed by all SGBs. The whole affair is likely to find its way to the Constitutional Court," Hoffman said.

SGBs are autonomous entities with the power to control their schools within the parameters of the applicable laws and the Constitution. The creation of so-called SGB teacher posts means that parents can enhance the quality of education as they see fit through their democratically elected SGBs.

"Another important principle at stake in the Ermelo case is the Bill of Rights' provision that guarantees the right of everybody to use the language and participate in the cultural life of their choice. Allied to this, is the right, where reasonably practicable, to receive education in single medium public schools. The well-known Mikro Primary School case earlier unequivocally affirmed the SGBs' right to determine language policy.

"Should government decide to overrule the powers of the SGB to determine the language policy of schools, it will seriously threaten this

constitutional provision," Hoffman said.

The Constitutional principle, creating an independent and impartial judiciary, is even more important and in the Ermelo case this is also under threat.

"In the EHS case the Judge President of the Transvaal involved himself directly in the case and the National Minister of Education, who up to that point avoided such disputes, also took an active interest in the case.

"Instead of the matter reverting to the judge who granted the interdict or to the duty judge, a Full Bench took over the case, granted leave to intervene and set aside the interim interdict. In a virtually unprecedented departure from established practice the Full Bench refused to give any substantial reasons for so doing.

"This point was never argued before Judge Prinsloo, who granted the interdict, and flies in the face of established authority on joinder issues and overlooks the High Court's status as upper guardian of all minors within its jurisdiction," Hoffman said.

The SGB's application for leave to appeal against the Full Bench decision was turned down despite the fact that the matter had already been disposed of by another judge and blatantly ignored the binding authority of the Mikro judgment.

Hoffman said that the Full Bench had departed from established practice that leave to appeal is routinely granted in any case where another court could come to another decision. This was clearly so with EHS's application. The SGB has subsequently filed a petition with the Supreme Court of Appeal.

"One hopes that the educational authorities will reconsider their determination to emasculate SGBs and single-medium schools which are making such a valuable contribution to quality public education. Even more importantly, executive-mindedness on the Bench has no place in the new constitutional order in South Africa," he said.

FW de Klerk receives honorary doctorate in USA

MR FW DE KLERK, former State President, Nobel laureate and chairman of the FW de Klerk Foundation, recently received an honorary doctorate from the Salisbury University in Maryland, United States of America.

De Klerk received the Doctor of Laws, *causa honoris* degree from Dr Janet Dudley-Esbach, President of the University at a special ceremony in March.

His visit marked the 15th anniversary of the Center for Conflict Resolution and a decade and a half of conflict resolution growth at Salisbury University.

De Klerk addressed the University as part of the "One Person Can Make a Difference" lecture series.

"Today you are receiving an honorary Doctor of Laws in recognition of your courage and conscience in seizing the opportunity to end apartheid and leading your country to a more equitable and democratic system of governance.

Your actions were a triumph for the cause of equality, human rights, and hope for positive and lasting political change," Dudley-Esbach said in her presentation speech.

She said De Klerk had made substantial fundamental changes in his country's political processes, most notably in bringing an end to racial segregation and the disenfranchisement of the black majority.

"Your life experience reveals an evolution in political philosophy that validates the wide-ranging effects that can be wrought through one person's openness to growth and new insights. You stand as an example and inspiration to all who work steadily for change in the face of entrenched forces of injustice," she said.

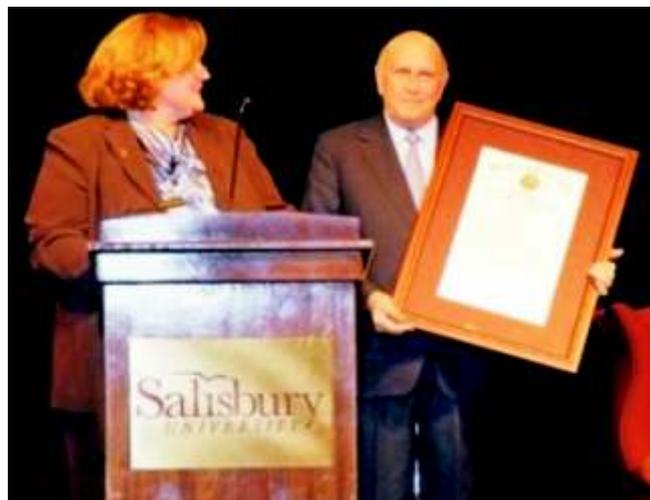
De Klerk was on an extensive overseas visit and also addressed an audiences of approximately 11 000 representatives of the United States National School Board Association in San Francisco on Saturday, 14 April.

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www.fwdklerk.org.za and
www.cfcr.org.za



Mr FW de Klerk receives his honorary doctorate from Dr Janet Dudley-Esbach, President of the Salisbury University in Maryland, USA earlier this year.

Conrad Sidego joins Board of Trustees

MR CONRAD SIDEGO, former Senior General Manager of Corporate Affairs of Media24, is the newest member of the Board of Trustees of the FW de Klerk Foundation and was welcomed to the organisation at the first Board meeting of the year held at Meerendal, Cape Town on 11 May.

Mr Sidego was born in Knysna but grew up in the Boland town of Tulbagh. He started his career as teacher in 1969, but realised one of his dreams when he became a journalist with *Die Burger*. This eventually led him to join the *Rapport* team and in 1971 he was appointed editor of *Rapport Ekstra*.

Sidego then joined Anglo American Corporation as Manager Corporate Communications and was later appointed as South Africa's ambassador to the Royal Kingdom of Denmark.

In 1991 he received honorary citizenship of his home town of Tulbagh for his achievements on political and economic levels.

Apart from his position at Media24, Conrad is a director of various companies, including Business Against crime (BAC) and formerly of M-Net and Super Sport. He is the chairman of the Stigting vir die Bemagtiging

deur Afrikaans, the Fleur du Cap Theatre Awards and the Greater Good SA Trust. In addition he also serves as trustee of the University of Stellenbosch and is an elected member of the Afrikaanse Handelsinstituut.

Conrad is married to Amy and they have two sons Conrad-Jay (21) and Jonathan (17).



Mr Conrad Sidego (left) with Mr FW de Klerk, chairman of the FW de Klerk Foundation, at the first Board meeting of 2007 held in Cape Town. Mr Sidego recently joined the Board of Trustees of the Foundation.

Mr FW de Klerk recently launched the 2007 UCI B World Cycling Championships in Cape Town. Over 70 countries have entered for this event which takes place from June 26 through to July 1. With him are back (from left): Councillor Garin Cavanaugh (Chairman of the city's sport portfolio committee), Alec Lenferna (Event Director: 2007 UCI B World Championships) Rodrigo Savoi (Intakatech) and Lawrence Whittaker (President: Cycling South Africa). In front are (from left): Gert Bam (Director: City of Cape Town Sports and Recreation), Dr Gaston Savoi (Ceo: Intakatech) Mr De Klerk and Selwyn Lewis (MD: Treble Entertainment)

