

Consensus

'N PUBLIKASIE VAN DIE FW DE KLERK STIGTING

VOLUME 6 ISSUE 1

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FW DE KLERK EXPRESSES his concern over the NPA's decision regarding charges against Mr Jacob Zuma

THE CFCR ASKS the Department of Home Affairs to introduce legislation to enable all South Africans overseas to vote in future national and provincial elections

THE CFCR COMPLAINS to the Public Protector with regard to cadre deployment in the public service

THE CFCR URGES Public Protector to investigate provincial funding

FW DE KLERK EXPRESSES regret at the refusal of visa to the Dalai Lama

Consensus

aims to publicise the work and the goals of the Foundation. It provides information on the Foundation's activities and projects, and on the activities of its chairman, FW de Klerk.

Consensus

poog om die ontwikkeling van die Stigting te bevorder, en om 'n rol te speel in die ontwikkelende debat oor vraagstukke van nasionale belang.

Daar is besluit

op die naam

Consensus,

wat die Latyns vir

konsensus is,

aangesien die Stigting

in essensie poog om

konsensus te

bevorder tussen

Suid-Afrikaners

oor potensieel

verdeelbare kwessies

van nasionale belang.

DIE FW DE KLERK STIGTING
Instandhouding van Suid-Afrika se Nasionale Akkoord



EDITORIAL

The Zuma Era

SOUTH AFRICA HAS undoubtedly entered a new era with the inauguration of President Jacob Zuma. In a speech to the Royal Commonwealth Society in London on 12 May F W de Klerk spelled out his reaction to the recent election and to Mr Zuma's accession to the presidency. A full report on the speech appears elsewhere in this edition of Consensus. Mr De Klerk referred to the balancing act that the new President will have to accomplish to straddle the divide between those in his cabinet who support a continuation of the present macro-economic policies and those - like the SACP and COSATU - who seek a much more interventionist and populist approach.

Mr De Klerk said that he was optimistic that Jacob Zuma would make the right choices - and that he would confound the prophets of doom - as had happened so often in South Africa's history. At the same time he cautioned that "... South Africans - and the international community - would be well advised to watch him carefully - particularly with regard to any initiative that might undermine our constitution or the independence of our judiciary. The price of liberty is, and will always remain, eternal vigilance".

THE CONSTITUTIONAL ISSUES THAT WILL NEED WATCHING INCLUDE THE FOLLOWING:

■ **The future of the NPA:** Will the circumstances that led to the dropping of charges against Mr Zuma prove to be a temporary aberration - or will they signal a decline into a situation where government - or party leadership - will routinely decide who will be and who will not be prosecuted? The outcome of Mr Vusi Pikoli's appeal against his dismissal and President Zuma's decision regarding the appointment of a new National Director of Public Prosecutions will provide important pointers.

■ **New legislation affecting the judiciary:** It is likely that the new Government will introduce legislation to give effect to the Polokwane resolution that called for far-reaching reforms of the judiciary. New measures might include transfer to the Minister of Justice of ultimate responsibility for "the administration of courts, including any allocation of resources, financial management and policy matters".

■ **Central government interference in the running of municipalities:** Just before the election the cabinet approved a constitutional amendment that will empower the national government to interfere at will in the affairs of municipalities. Critics fear that the legislation will give the national government effective power to overrule duly elected local authorities in municipalities run by the op-

position - and in the municipalities that opposition parties may win in the 2011 elections.

■ **The establishment of a 'media tribunal':** The Polokwane resolutions called for an investigation into the establishment of a Media Appeals Tribunal to "strengthen, complement and support the current self-regulatory institutions". The MAT would be a statutory institution, accountable to Parliament, which would adjudicate over matters or complaints expressed by citizens against print media, in terms of decisions and rulings made by the existing self-regulatory institutions." The appointment of any such tribunal would be widely regarded as a serious blow to the freedom of expression - but indications are that government will back away from this course of action.

■ **The introduction of new expropriation legislation:** It is possible that government will soon introduce new expropriation legislation to replace the Bill that was withdrawn last year after widespread criticism from the private sector and agriculture. The old Expropriation Act must still be brought into line with s. 25 of the Constitution - which unlike the old Act - makes provision for expropriation in the 'public interest' rather than simply for a 'public purpose'. However, it is hoped that such legislation will be constitutionally compliant and will not - like the withdrawn bill - try to circumvent the role of the courts in determining compensation.

■ **Developments within the ruling structures of the ANC:** It will be as important to watch developments within the power structures of the ANC as it will be to watch developments in parliament and government. As we learned at Polokwane, final power resides with the faction that controls the ruling party and not necessarily with the executive and legislature. Developments in the balance of power within the ANC between the left wing (including COSATU and the SACP) on the one hand - and moderates on the other - could be of crucial importance. ●

Die Zuma Era

SUID-AFRIKA HET ongetwyfeld `n nuwe era betree met die inhuldiging van President Jacob Zuma. In `n toespraak wat gelewer is by die Royal Commonwealth Society in Londen op 12 Mei het F W de Klerk gesê dat hy optimisties is dat Jacob Zuma die regte keuses sal maak - en dat hy die doemprofete verkeerd sal bewys - iets wat al so baie in Suid-Afrika se verlede gebeur het. Ter selfde tyd het hy gewaarsku "... goeie advies vir Suid-Afrikaners - en vir die internasionale gemeenskap - sal wees om hom (president Zuma) goed dop te hou - veral met betrekking tot enige inisiatief wat ons grondwet of die onafhanklikheid van ons regbank kan ondermyn. Die prys van vryheid is en sal altyd voortdurende waaksaamheid wees".

DIE GRONDWETLIKE KWESSIES WAT DOPGEHOU MOET WORD IS DIE VOLGENDE:

■ **Die toekoms van die NVG:** Is die omstandighede wat gelei het tot die afskaffing van die klagtes teen mnr Zuma slegs `n tydelike misstap - of is dit `n aanduiding van die regering se verval tot in `n situasie waar dit - óf party-leierskap - volgens roetine sal besluit wie aangekla word en wie nie? Belangrike aanduiders hiervan sal die uitslag van mnr Vusi Pikoli se appèl teen sy afdanking wees sowel as President Zuma se besluit rakende die aanstelling van `n nuwe nasionale direkteur van openbare vervolging.

■ **Nuwe wetgewing wat die regbank affekteer:** Dit is waarskynlik dat die nuwe regering wetgewing sal instel wat die Polokwane resoluasie - wat vra vir verreikende hervormings van die regbank - ten uitvoer sal bring. Nuwe maatreëls kan insluit die oordrag van die primêre verantwoordelik van die administrasie van die howe aan die minister van justisie.

■ **Inmenging van nasionale regering in die bestuur van munisipaliteite:** Net voor die verkiesing het die kabinet `n grondwetlike wysiging aanvaar wat die nasionale regering sal bemagtig om in te meng in die bestuur van munisipaliteite. Kritici is bekommerd dat dié wetgewing die regering sal bemagtig om regverdig verkose plaaslike regerings in munisipaliteite wat deur opposisiepartye beheer word, kragteloos te maak - en ook in munisipaliteite waar opposisiepartye dalk kan wen in die 2011 verkiesings.

■ **Die stigting van `n 'media tribunaal':** Die Polokwane resoluasies wat `n beroep doen op `n ondersoek na die stigting van `n 'Media Appeals Tribunal' om "huidige selfregulerende instellings te versterk, aan te vul en te ondersteun". Die aanstelling van só `n tribunaal sal wyd gereken word as `n ernstige terugslag vir vryheid van uit-

drukking - maar aanduidings is dat die regering nie hierdie roete sal volg nie.

■ **Die instelling van nuwe onteieningswetgewing:** Dit is moontlik dat die regering binnekort nuwe onteieningswetgewing sal instel om die wetsontwerp te vervang wat verlede jaar onttrek is, nadat dit wye kritiek ontlok het in die private sektor en landbou. Die ou Onteieningswet moet steeds in lyn gebring word met artikel 25 van die Grondwet waar dit - anders as in die ou wet - voorsiening maak vir onteiening in 'openbare belang' eerder as vir `n 'openbare doel'. Die hoop is egter dat sulke wetgewing grondwetlik versoenbaar is en nie - soos die wetsontwerp wat onttrek is - probeer om die rol van die howe in die vasstelling van vergoeding te omseil nie.

■ **Ontwikkelinge binne die regerende strukture van die ANC:** Dit sal net so belangrik wees om ontwikkelinge binne die magstrukture van die ANC dop te hou, as wat dit is om ontwikkelinge in die parlement en regering dop te hou. Soos ons te wete gekom het by Polokwane, berus die uiteindelijke mag by die faksie wat die regerende party beheer en nie noodwendig by die uitvoerende gesag en wetgewing nie. Ontwikkelings in die balans van mag binne die ANC tussen die linkse vleuel (insluitend COSATU en die SAKP) aan die een kant - en gematigdes aan die ander - kan van kritieke belang wees. ●

“Die prys van vryheid is en sal altyd voortdurende waaksaamheid wees.”

FW DE KLERK RESPONDS TO

The Election and The Zuma Presidency

IN A SPEECH TO THE ROYAL COMMONWEALTH SOCIETY

The Election and The Zuma Presidency

IN A SPEECH TO THE Royal Commonwealth Society in London on 12 May, F W de Klerk spelled out his response to the recent election in South Africa and to the prospects for the Zuma presidency.

He said that democrats would welcome the stronger showing of opposition parties and the fact that the Democratic Alliance had won the Western Cape Province outright. They would take note that, for the first time since 1994, the ANC's share of the vote had declined and that, by a whisker, it no longer had the two-thirds majority that it required to change the Constitution.

F W de Klerk said that it was disappointing that voters continued to vote according to race and not political principle or their satisfaction with the performance of government. This meant that the DA - "despite its energetic and competent leader Helen Zille" would find it difficult to increase its support much above the 20% represented by the white and coloured minorities. He observed that COPE had probably reduced ANC support by 6% or 7% - which the ANC had partially regained by attracting votes away from the IFP.

After fifteen years of constitutional democracy South Africans found themselves "balanced between justifiable pride over our undoubted achievements and deep concern over our unresolved problems". "The question that engages us all is how the incoming government of Mr Jacob Zuma will affect this balance: will he continue to build on the constitutional and economic progress that we have achieved? Will he be able to address the enormous societal problems that continue to confront us?"

Mr De Klerk observed that no-one knew what a leader would be like until he became the leader - particularly in Africa. Unfortunately, Mr Zuma would not be acceding to the presidency in the happiest of circumstances. "Until last month he was facing serious charges related to South Africa's ongoing arms procurement scandal". The manner in which the charges had been dropped raised disquieting questions regarding the continuing independence and integrity of our National Prosecuting Authority.

Another cause for concern related to the influence of the SACP and COSATU. They had played a major role in Mr Zuma's victory at Polokwane and expected to be fully rewarded. They had also been critical of former finance minister Trevor Manuel and wanted more interventionist and populist approaches. At the same time moderates - like Treasurer General Matthews Phosa - supported by Zuma himself - had repeatedly assured domestic and foreign investors that there would be no change to the existing macro-economic policies.

"Although the ANC prides itself on being a broad church," it was De Klerk's view that it would not be able to straddle this divide: "either it will retain its present economic policies, in which case COSATU and the SACP will be seriously alienated; or it will lurch to the left - in which foreign and domestic businessmen will refuse to invest in the economy". There was also a possibility that the ANC might try to satisfy both sides and end up satisfying no-one.

The announcement of the Cabinet provided some valuable pointers regarding the direction that the Zuma presidency will take:

■ The most significant development is that veteran Finance Minister Trevor Manuel has been appointed Minister in the Presidency responsible for the National Planning Commission. In effect, this will enhance Manuel's role and gives him the status almost of a Prime Minister. It is accordingly likely that the Zuma administration will continue the responsible macro-economic policies that Manuel implemented while he was Minister of Finance.

■ Trevor Manuel will be replaced as Finance Minister by Pravin Gordhan, who, in his previous post, made the SA Revenue Service the most effective organ in the state. "The fact that President Zuma has appointed a second minister in the presidency to monitor and evaluate government performance indicates his seriousness in improving service delivery and in holding his ministers and public servants to account."

■ The appointment of leading businessman, Tokyo Sexwale, to the post of Minister of Human Settlements (housing) will help to strengthen the moderates in the Cabinet and counter-balance the influence of the SACP and COSATU.

■ President Zuma's decision to appoint Pieter Mulder as Deputy Minister of Agriculture might mean that his administration will adopt a responsible approach to land reform and will seek to engage Afrikaans farmers in the development of a workable approach to this sensitive issue.

The next five years would deeply affect the future of South Africa for the coming decades - and South Africa's success would, in turn, be a major factor in determining the future success of the rest of sub-Saharan Africa.

De Klerk said that, personally, he was optimistic that Jacob Zuma would make the right choices - and that he would confound the prophets of doom - as had happened so often in South Africa's history. "He has many of the qualities that will be necessary to deal with the difficult challenges that will confront him during his presidency".

"But by the same token, South Africans - and the international community - would be well advised to watch him carefully - particularly with regard to any initiative that might undermine our constitution or the independence of our judiciary. The price of liberty is, and will always remain, eternal vigilance".



Mr FW de Klerk




"... will he continue to build on the constitutional and economic progress that we have achieved? Will he be able to address the enormous societal problems that continue to confront us?"

Human Rights REPORT CARD

Human Rights

ON HUMAN RIGHTS DAY, 21 MARCH, the Centre for Constitutional Rights thought that it would be appropriate to assess the degree to which we have succeeded in making the rights in the Constitution a reality for South African citizens. It accordingly prepared the following report card in which

- A** = Excellent
- B** = Good
- C** = Average
- D** = Poor
- E** = Very Poor

At the same time, the ,  and  signs are used to indicate whether things are getting better, staying the same or deteriorating. If the grades that we have awarded are averaged out, our overall performance in human rights is average. Warning lights are, in our opinion, flashing for Equality; Freedom of Expression; Political Rights; Freedom of Trade, Occupation and Profession; Property; and Language and Culture.

EQUALITY

A **B** **C** **D** **E**

- According to the UNDP South Africa is the twelfth most unequal country in the world. The situation has hardly improved since 1994 and inequality has grown within all communities.
- The recent abolition of the Scorpions and dismissal of Vusi Pikoli from the post of National Director of Public Prosecutions and the early parole of Mr Shabir Shaik have seriously eroded the concept of equality before the law.
- The increasing imposition of unconstitutional demographic representivity often leads to unfair racial discrimination.
- Continuing gender discrimination undermines the equality of women - particularly in the rural areas.

HUMAN DIGNITY

A **B** **C** **D** **E**

- The human dignity of all South Africans must be protected and promoted, inter alia through the provision of the full spectrum of human rights.
- However, the human dignity of between 30% and 40% of the population is impaired by degrading levels of poverty and persistent unemployment.
- Human dignity is also impaired by crime, inadequate education and poor service delivery.

LABOUR RELATIONS

A **B** **C** **D** **E**

This right is freely enjoyed.

LIFE



More than 250 000 South Africans have been murdered since 1994 (more than 20 times the number of South Africans who died in World War II).

FREEDOM AND SECURITY OF THE PERSON



The very high incidence of assault, rape, wife-beating and child abuse seriously undermines the right to freedom and security of the person.

SLAVERY, SERVITUDE AND FORCED LABOUR



There are few instances of slavery, servitude or forced labour - apart from instances of the so-called 'white slave trade'.

PRIVACY



The privacy of citizens is generally respected. Sufficient safeguards exist with regard to state interception of written, telephonic and electronic communication.

freedom

FREEDOM OF RELIGION, BELIEF AND OPINION



Freedom of religion, belief and opinion is widely enjoyed by citizens and organisations.

FREEDOM OF EXPRESSION



- There is general freedom of expression within the limits set by the Constitution.
- However, the recently adopted Broadcasting Amendment Act gives the majority party in parliament unacceptable control over the national broadcaster through its ability to dismiss the entire SABC Board.
- Disturbing proposals have also been made for the establishment of a Media Tribunal.

FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKET AND PETITION



This right is generally enjoyed. However, the establishment of 'no-go areas' in some parts of the country - particularly during national elections - is a matter of concern.

FREEDOM OF ASSOCIATION



This right is universally and freely enjoyed.

POLITICAL RIGHTS



- South Africa is a fully-fledged constitutional democracy enjoying universal adult franchise, a national common voters' roll, regular elections and a multiparty system of democratic government.
- The extension of the franchise to some registered voters overseas has further expanded political rights.
- However, effective control of both the legislature and the executive lies in the hands of those who control the majority party. Last year this made it possible for the new (unelected in any national election) leadership of the majority party to dismiss a duly elected president.

CITIZENSHIP



Citizenship rights are generally acknowledged and enjoyed. The dysfunctionality of the Department of Home Affairs in quickly and effectively issuing passports, IDs and other documents sometimes seriously hampers enjoyment of this right.

FREEDOM OF MOVEMENT AND RESIDENCE



This right is freely enjoyed.

FREEDOM OF TRADE, OCCUPATION AND PROFESSION



Although the freedom is formally available, high unemployment of 33%+ effectively deprives millions of South Africans of this right. Unbalanced affirmative action increasingly prevents some South Africans from practising the trade, occupation or profession of their choice. Increased state control of professional bodies is cause for concern. →

Human Rights

ENVIRONMENT

A B **C** D E



South Africa is one of the world's major emitters of carbon dioxide. Some fisheries and other natural resources are under serious pressure. On the other hand, South Africa is a world leader in many areas of conservation.

PROPERTY

A **B** C D E



Property rights are still generally secure. However, some mineral rights have, in effect, been expropriated and the recently withdrawn Expropriation Bill would have seriously undermined property rights.

HOUSING

A **B** C D E



South Africa has succeeded in providing housing for 13 million people since 1994. This is a considerable achievement - even though there are still unacceptably large backlogs and problems with housing lists.

HEALTH CARE

A B C **D** E



South Africa has the world's worst HIV/AIDS problem. Some of this can be ascribed to denialism under the Mbeki government. ARV drugs are now being provided - but the reality is that life expectancy has declined from 62 to 50. Service in many clinics and state hospitals remains unsatisfactory.

FOOD, WELFARE AND SOCIAL SECURITY

A **B** C D E



The Government has succeeded in providing access to electricity, water and sanitary services to 72% of the population. Welfare payments have increased dramatically and are now received by almost 13 million children and old-age pensioners.

CHILDREN

A B C **D** E



The ample children's rights guaranteed by the Constitution are often unavailable in practice to millions of children. Child abuse is widespread and there are tens of thousands of child-headed households and street children.

ACCESS TO INFORMATION

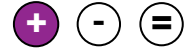
A B C **D** E



Although the right is granted by the Constitution it is often difficult or impossible to obtain relevant information from the state.

EDUCATION

A B C D **E**



Despite enormous allocation of funds education since 1994 has been a disastrous failure. South African children fare very badly in international literacy and numeracy tests - even when compared with results in the poorest African states.

LANGUAGE AND CULTURE

A B C **D** E



- English has become the de facto single official language.
- Very little has been done to develop indigenous languages as required by the Constitution.
- Afrikaans education, particularly at universities, is under pressure.

CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

A **B** C D E



Cultural, religious and linguistic communities are generally free to pursue their interests - although the state sometimes tries to impose requirements for demographic representivity in community-based charitable organisations.

JUST ADMINISTRATIVE ACTION

A B **C** D E



The decline in service delivery and standards - particularly in some poorer provinces - has made it difficult for some people to claim their right to just administrative action. Fortunately, the courts generally uphold this right when they are approached.

ACCESS TO THE COURTS

A B **C** D E



The courts are theoretically accessible. However, many citizens who do not have the resources to appoint lawyers, find it difficult to press their claims unless they are assisted by legal resources centres.

ARRESTED, DETAINED AND ACCUSED PERSONS

A B C **D** E



In practice, prisons are overcrowded and dysfunctional. People in the prisons system are subject to wide-scale abuse by gangs. Awaiting trial prisoners are subjected to unacceptable delays due to the collapsed criminal justice system. ●

DONATIONS

TO THE FW DE KLERK FOUNDATION AND THE CENTRE FOR CONSTITUTIONAL RIGHTS

Defence of the Constitution and the rights that it contains provides one the best ways of ensuring the continuing success of the new South Africa. However, this function requires effective watchdog organizations. The F W de Klerk Foundation is actively engaged in initiatives to uphold the independence of the judiciary and the national prosecuting authority; to entrench the right of all South African citizens living abroad to vote in national and provincial elections; to counteract the practice of cadre deployment in the public service; to protect property rights; to work for balanced and effective transformation policies; to protect language rights and the right to mother-tongue education - among many other initiatives.

SHOULD YOU WISH TO HELP US CONTINUE AND EXPAND OUR WATCHDOG ACTIVITIES PLEASE DONATE TO THE FOUNDATION. Donations are tax-deductible.

■ THE BANK DETAILS OF THE FW DE KLERK FOUNDATION

BANK NAME: Absa Private Bank
ACCOUNT TYPE: Cheque
ACCOUNT NAME: The FW de Klerk Foundation
ACCOUNT NUMBER: 4060092839
SWIFT CODE: absazajj
BRANCH CODE: 632005

SKENKINGS

AAN DIE FW DE KLERK STIGTING EN DIE SENTRUM VIR GRONDWETLIKE REGTE

Die beskerming van die Grondwet en die regte wat dit vervat is een van die beste maniere om die voortdurende sukses van die nuwe Suid-Afrika te verseker. Hierdie funksie vereis egter effektiewe waghond-organisasies. Die F W de Klerk Stigting is aktief betrokke by inisiatiewe om die onafhanklikheid van die regbank en die nasionale vervolgingsgesag te onderhou; om die stemreg van alle Suid-Afrikaners oorsee in nasionale en provinsiale verkiesings te verskans; om die praktyk van kaderontplooiing in die staatsdiens teen te werk; om eiendomsregte te beskerm; die beywering van gebalanseerde en effektiewe transformasie beleide; om taalregte en die reg op moedertaalonderrig te beskerm - asook baie ander inisiatiewe.

INDIEN U ONS GRAAG WIL HELP OM VOORT TE GAAN MET ONS WAGHOND-AKTWITEITE EN OM DIT UIT TE BREI, MAAK ASSEBLIEF 'N SKENKING AAN DIE STIGTING.

Skenkings is belastingaftrekbaar.

■ DIE BANKBESONDERHEDE VAN DIE F W DE KLERK STIGTING

NAAM VAN BANK: Absa Privaatbank
TIPE REKENING: Tjek
REKENINGNAAM: The F W de Klerk Foundation
REKENINGNOMMER: 4060092839
SWIFT KODE: absazajj
TAKKODE: 632005

VACANCY

The F W de Klerk Foundation is seeking the services of a lawyer with 5 - 10 years experience to assist with the functions of the Centre for Constitutional Rights. The duties will include monitoring and analysis of parliamentary legislation; preparation of submissions to parliamentary portfolio committees and select committees; drafting of legal opinions; assistance to organizations and individuals to claim their constitutional rights; articles on current constitutional issues; assistance with the organization of conferences and campaigns etc.

Candidates must have a passion for the Constitution and for the protection of the full spectrum of constitutional rights. Remuneration will be in accordance with experience, current market trends and the limited resources of NGOs.

■ Please contact Pat at 021 930 3622 or at fwdkfoun@mweb.co.za

Moedertaalonderrig

IN SUID-AFRIKA

21 FEBRUARIE IS INTERNASIONALE MOEDERTAALDAG

TAALREGTE IN SUID-AFRIKA is deur die outeurs van die Grondwet as van sulke kardinale belang beskou dat dit reeds in die grondliggende bepalings van die Grondwet aangespreek en beskerm word. Almal het ook die reg om onderrig in die amptelike taal of tale van hul keuse te ontvang in openbare onderwysinrigtings, mits dit prakties haalbaar is. In die implementering van hierdie reg moet die staat alle redelike alternatiewe in die onderwys oorweeg, met inbegrip van enkelmediuminstellings. Op skrif blyk dit dus dat daar geen twyfel behoort te wees oor die reg op moedertaalonderrig nie.

Die realiteit is egter dat moedertaalonderrig in die gedrang is - en dat dit in die geval van swart inheemse tale nooit 'n werklikheid geword het nie. In die onlangse verlede moes beheerliggame of belanghebbendes van 'n groeiende aantal Afrikaanstalige skole hul tot die howe wend om die ondermyning van enkelmedium instellings - wat hulle as essensieel vir die behoud van moedertaalonderrig beskou - te betwis. Mees onlangs was dit die geval met Hoërskool F.H. Odendaal. Die ouers is hoofsaaklik bekommerd oor die skrikwekkende daling in die aantal enkelmedium Afrikaanse skole sedert 1993. Navorsing deur Dr. Bertie du Plessis onthul dat daar teen 2003 slegs 839 enkelmedium Afrikaanse skole oor was. Van die 1396 wat daar in 1993 was, het 150 omgeskakel na dubbelmediumonderrig, 377 na parallelmediumonderrig en 30 het heeltemal verengels.

Volgens art 29(2) van die Grondwet is Suid-Afrikaners geregtig op onderrig in die amptelike taal of tale van hul keuse, mits dit redelikerwys doenlik is. Dit is belangrik om daarop te let dat art 29(2) nie spesifiek na 'moedertaalonderrig' verwys nie, maar na die taal van 'hul keuse'. Aangesien skoolkinders nie bevoeg is om self te besluit oor die taal van onderrig nie, berus die keuse vir alle praktiese- en regsdoeleindes in die hande van hul ouers of voogde wat op skoolbeheerliggame dien. Hierin lê die probleem - want die oorgrote meerderheid swart ouers verkies dat hul kinders so gou as moontlik na Engels as onderrigtaal moet oorskakel - met baie nadelige gevolge vir hul kinders se onderwysvooruitsigte en ook vir die oorlewing van inheemse tale en kulture.

Selfs Afrikaanssprekende ouers is louwarm oor moedertaalonderrig. In 'n ondersoek na Afrikaansmedium onderrig deur Hermann Giliomee, Chris Heese en Lawrence Schlemmer (24/1/05) is onder andere bevind dat daar nog nie 'n besondere kommer onder ouers is oor die kwyning van moedertaalonderrig nie. Baie ouers blyk volgens die studie om ook nie bewus te wees van die opvoedkundige waarde van moedertaalonderrig nie en dat hulle die invoer van Engelsmedium klasse as 'n aan-

wins eerder as 'n bedreiging sien. In die periode waarin die studie onderneem is, was daar ongeveer 60% wit Afrikaanse kinders in enkelmedium Afrikaanse skole, 25% in parallelmedium staatskole en 14% in Engelsmedium staats- en private skole. Terwyl 87% van die ouers moedertaalonderrig as abstrak belangrik of baie belangrik ag, het 35% nie beswaar teen die toenemende gebruik van Engels nie. Net 17% sal hierteen protesteer en slegs 11% is bereid om ekstra te betaal vir moedertaalonderrig. Sowat 59% sal wel sterk optrede steun as Afrikaanse moedertaalonderrig nie meer beskikbaar is nie.

Daar kan egter geen twyfel wees oor waar die belang van die kind lê nie - aangesien dit nou algemeen aanvaar word dat moedertaalonderrig vir ten minste die eerste sewe jaar van onderwys essensieel mag wees. Dr. Michael le Cordeur verwys na moedertaalonderrig as 'n mensereg eerder as 'n voorreg. Volgens hom het navorsing bewys dat gedwonge vreemdetaal-onderrig grootskaalse ongeletterdheid veroorsaak. Dr. Kathleen Heugh, 'n kenner op die gebied van moedertaalonderrig, is van mening dat die vroegetydige onderbreking van moedertaalonderrig kognitiewe- en akademiese ontwikkeling onderbreek. Dit is byna onmoontlik vir leerders om genoeg van die tweede taal te leer in drie jaar om in staat te wees om in Graad 4 na daardie taalmedium van onderrig te skuif. In lande waar daar goed opgeleide onderwysers, voldoende klaskamers en genoeg boeke is, het kinders gewoonlik tussen ses en agt jaar nodig om 'n tweede taal te leer voordat hulle dit as 'n medium kan gebruik. In swakker toegeruste skole kan leerders moontlik eers in Graad 9 in staat wees om die skuif te maak. Swak prestasies in geletterdheid, wiskunde en wetenskap hou ook verband met vroegetydige onderbreking van die moedertaal as onderrigmedium. 'n Studie deur T J Horne het vasgestel dat slegs 12% van stedelike matrikulante van 2004, wat nie in hul moedertaal onderrig is nie, funksioneel geletterd was - 'n skrikwekkende statistiek wat ons enorme werkloosheidsyfer selfs nog verder sal vergroot.

Daar kan ook geen twyfel wees oor die behoefte van moedertaalonderrig vir die oorlewering van ons inheemse kulture nie. Giliomee, Heese en Schlemmer wys in hul studie daarop dat dit wêreldwyd die tendens is dat die kleiner taal (dit wil sê die taal van minderheidsgroepe) groot druk ervaar in situasies waar dit saam met 'n wêreldtaal soos Engels bestaan in 'n parallel- of dubbelmedium omgewing. Daarbenewens lei die versnelde pas van verengelsing ook tot die drastiese vermindering van enkelmedium Afrikaanse skole. Die posisie van swart inheemse tale is selfs meer kwesbaar. Waar Afrikaanse moedertaalonderrig op skool- en tersiêre vlak redelikerwys doenlik is, is dit glad nie die geval met swart inheemse tale nie. Sprekers van amptelike swart inheemse tale behoort dus te eis dat die tale akademies ontwikkel word om sodoende moedertaalonderrig in hul onderskeie tale moontlik te maak. Ongelukkig is daar baie min prominente figure en leiers uit hierdie taalgroepe wat in die openbaar veg om moedertaalonderrig te ontvang.

Volgens art 28(2) van die Grondwet is 'die kind se beste belang van oorheersende belang in elke aangeleentheid rakende die kind'. Aangesien dit nou algemeen aanvaar word dat moedertaalonderrig in die beste belang van die kind is - behoort hierdie oorweging voorrang te geniet bo die ouer se reg om die onderrigtaal te kies. Dit is eenvoudig so dat indien die Regering nie onmiddellike stappe doen 'om die omstandighede te skep vir die ontwikkeling en gebruik van al ons amptelike tale', soos vereis word deur art 6(5)(a) van die Grondwet nie, die vooruitsigte vir ons inheemse tale - en vir die toekomstige opvoeding van kinders uit die betrokke taalgroepe - uiters negatief sal wees. En dit beteken bo alles dat veel groter erkenning verleen moet word aan die rol van moedertaalonderrig in ons onderwysstelsel. ●

“Baie ouers blyk volgens die studie om ook nie bewus te wees van die opvoedkundige waarde van moedertaalonderrig nie en dat hulle die invoer van Engelsmedium klasse as ‘n aanwinst eerder as ‘n bedreiging sien.”

“Ongelukkig ontbreek daar tans prominente figure en leiers uit hierdie taalgroepe wat in die openbaar veg vir die reg om moedertaalonderrig te ontvang.”

VERKLARING DEUR VOORMALIGE
PRESIDENT FW DE KLERK AAN DIE
IVP FORUM: CENTURION, 27 MAART 2009

Wat is die Kredo van die Afrikaners IN 2009?

Wat is die Kredo van die Afrikaners?

Ons Afrikaners het al hartseer, verontrustende en soms roemryke tye gehad in die geskiedenis. Ons het baie krisisse deurmaak en oorleef:

- op die grense van die Oos-Kaap;
- gedurende die swoeg en sweet van die Groot Trek;
- by Dingaan se kraal en in Weenen;
- op die oorlogsvelde en in konsentrasiekampe van die Tweede Vryheidsoorlog.

Ons het oorwinnings en nederlae geken.

Ons het geworstel om ons mense weer op te bou ná die verwoesting wat deur oorlog gesaai is en die armoede wat voortgebring is deur die groot depressie.

Ons is onderdruk - en ons was die onderdrukkers.

Ons het die simpatie en solidariteit van die wêreld ervaar - en ons is geïsoleer en verwerp deur die wêreld.

Ons het ander oorheers en - in wat ek glo een van ons grootste oomblikke is - ander en onself bevry.

“Saam met alle Suid-Afrikaners is ons trotse lede van die internasionale gemeenskap.”

Nou, vyftien jaar later, word ons gekonfronteer deur nuwe eksistensiële uitdagings:

- Ons is nie meer in beheer van die regering nie;
- Soos minderheidskulture regoor die wêreld word ons oral gekonfronteer deur die vloedgolf van die globale Engelse kultuur. Te veel van ons besluit nou om ons kinders in Engels te onderrig - ander, met die vermindering van enkelmedium Afrikaanse skole en universiteite, het weer min keuses.
- Oral waar ons gaan, herinner ander ons aan ons 'skuld' en probeer om ons skaam te laat voel oor ons geskiedenis en oor ons vorige leiers.
- Die meeste van ons was voorspoedig in die nuwe Suid-Afrika - maar ander bevind hul nou in ellendige armoede.
- Baie van ons het voortgegaan om vrylik te kompeteer in ons professies - maar dit is al hoe meer die kleur van 'n mens se vel - en nie 'n mens se karakter of meriete nie - wat aanstellings, bevorderings en die toekenning van tenders bepaal.
- Soos baie ander Suid-Afrikaners word ons gekwel deur onaanvaarbare vlakke van misdaad.
- Vir al hierdie redes het baie van ons kinders al geëmigreer. Van hulle sal terugkeer - maar baie is waarskynlik verewig weg.

Dit is die negatiewe aspekte - maar daar is ook belangrike positiewe aspekte:

■ Ons kan nou ons mede Suid-Afrikaners in die oë kyk as vry en gelyke burgers in 'n grondwetlike demokrasie.

■ Suid-Afrika behoort aan ons - net soveel as wat dit behoort aan enige ander Suid-Afrikaners.

■ Die Afrikaner identiteit is net soveel deel van die breër identiteit van Suid-Afrika soos enige ander identiteit. Daar is nie plek in ons grondwetlike stelsel vir rasse- of kulturele hegemonieë nie.

■ Baie van ons was voorspoedig in die nuwe Suid-Afrika - na veertien jaar van ononderbroke ekonomiese groei. Alhoewel Suid-Afrika ook die uitwerking van die huidige globale krisis sal voel, hoop ons dat dit nie so ernstig vir Suid-Afrika sal wees soos wat dit vir baie ander dele van die wêreld sal wees nie.

■ Saam met alle Suid-Afrikaners is ons trotse lede van die internasionale gemeenskap. Ons kan reis en handel dryf waar ons wil en ons kan baie suksesvol kompeteer op die sportvelde van die wêreld - spesifiek met rugby en krieket.

■ Ons beskik oor vaardighede wat on-ervangbaar is vir die sukses van ons land en ons maak bydraes in alle sektore van ons samelewing en ekonomie wat veel groter is as die persentasie wat ons uitmaak van die bevolking.

■ Ten spyte van die regering se mislukking om al die taal- en kultuur regte wat in die Grondwet vervat word, te verseker, vaar die Afrikaanse taal goed: ons literatuur, teater en musiek floreer.

■ Afrikaans sluit nou 'n veel wyer gemeenskap in as ooit tevore en word trots as huistaal gebruik deur meer as sewe miljoen bruin-, wit- en swart Suid-Afrikaners.

Wat moet ons ingesteldheid en benadering nou wees?

Ons moet aanvaar dat die toekoms van

ons taal en kultuur in ons eie hande lê. Dit is ons wat sal besluit of Afrikaans oorleef en floreer, en of dit agteruit sal gaan en uitsterf. Ons is nie van die regering afhanklik vir ons oorlewing nie. Ons het nie die Britte in die begin van die vorige eeu toestemming gevra om Afrikaans te praat en ontwikkel nie. Ons het dit eenvoudig net gedoen.

Nou moet ons weer dieselfde doen. Ons het 'n grondwetlike reg om ons kinders in die taal van ons keuse te onderrig. Ons moet Afrikaans kies. Ons kinders kan en moet ook Engels, die wêreldtaal, leer - maar hul grondslag moet Afrikaans wees. Ons moet verseker dat daar genoeg enkelmedium skole is wat onderrig kan bied. In gemeenskappe waar daar nie genoeg Afrikaanssprekende kinders is nie, moet ons aandring op effektiewe parallel- en dubbelmedium onderrig. Ons moet verseker dat ten minste twee van ons universiteite 'n oorheersend Afrikaanse karakter behou, en Afrikaanssprekende studente op die ander tradisioneel Afrikaanse universiteite moet in staat wees om in hul eie taal te kan studeer.

Niks hiervan sal egter gebeur indien ons dit nie self láát gebeur nie. Ons moet saamstaan rondom basiese onderwys-, taal- en kulturele objektiewe en strategieë aanneem wat sal verseker dat ons ons doelwitte behaal.

In die breër Suid-Afrikaanse samelewing moet ons aandring op ons grondwetlike regte en moet ons al ons pligte uitvoer.

■ Tussen 1993 en 1996 het ons 'n plegtige verdrag gesluit met ons mede Suid-Afrikaners rakende die toekoms van ons samelewing. Niemand mag dink dat hulle stil-stil enige aspek van daardie verdrag kan erodeer of oorboord kan gooi nie.

■ Ons moet ons mede Suid-Afrikaners met waardigheid en respek behandel.

■ Ons het 'n reg op gelykheid. Ons moet nuwe vorme van rassisme ver-

“Afrikaans sluit nou ‘n veel wyer gemeenskap in as ooit tevore en word trots as huistaal gebruik deur meer as sewe miljoen bruin-, wit- en swart Suid-Afrikaners.”

werp wat voorkom onder die skyn van ongebalanseerde regstellende aksie en die toepassing van demografiese verteenwoordiging op alle terreine van die ekonomie en samelewing.

■ Ons moet wegbreek van die apologetiese standpunt wat sommiges van ons tot dusver aangeneem het. Ons is mede skeppers van die nuwe Suid-Afrika en geniet morele gelykheid met al ons mede burgers.

■ Ons moet al ons talente, vaardighede en hulpbronne gebruik om te help om 'n suksesvolle grondwetlike demokrasie te ontwikkel wat sekuriteit, voorspoed en selfrespek sal bied vir al ons mense.

Deur hierdie dinge te doen kan ons die huidige uitdagings oorkom net soos wat ons die uitdagings en krisisse van die verlede oorkom het. Ons kan verseker dat daar 'n permanente en gerespekteerde plek vir Afrikaners en alle Afrikaanssprekende Suid-Afrikaners is in ons wonderlike, unieke en pragtige land.

UNIVERSITIES, DIVERSITIES AND THE CONSTITUTION:

Demographic Representivity AND THE Pursuit of Excellence

IN A SPEECH AT THE University of the Free State on 26 February 2009, Dave Steward, the Executive Director of the F W de Klerk Foundation, discussed the role that universities should play in preserving and promoting diversity - and the dichotomy between requirements for demographic representivity and the pursuit of excellence.

Demographic Representivity and the Pursuit of Excellence

Diversity is central to our constitution, perhaps because language, culture, religion and opinion make up the fabric of our identity and thus of our human dignity. Diversity is in all respects preferable to uniformity - especially within the context of the pursuit of academic excellence.

Although the Constitution provides broad protection for language and cultural diversity, virtually every provision that does so has been ignored or diluted:

- English has become the single de facto official language of the country. The supposed official status of the remaining ten languages is an illusion.
- Government is not conducted in two official languages at the national level and provincial levels.
- Our languages do not enjoy parity of esteem - and are not treated equitably.
- Little or nothing has been done to develop our indigenous languages.
- The organizations that were established to develop and promote our languages and cultures, PANSALB and the CRL Commission, are under-funded and under pressure.

The requirement for language and cultural diversity is derived not only from the Constitution. There are also strong philosophical and practical reasons why it is essential:

- In a rapidly globalising world cultural and language diversity are under threat. More than half of the world's 6 000 languages will disappear before the end of the century. How many South African languages will survive? How will people retain personal identities which are so deeply rooted in, and dependent on, their cultures and languages? The struggle to retain diverse identities in an increasingly homogeneous world will be one of the great challenges of the century.
- We need language and cultural diversity because the state has a duty to communicate with its people in languages that they can understand. English is the home language of less than 10% of our people - and yet it is increasingly becoming the sole language of administration. The Constitution requires government to use two official languages at the national and provincial levels precisely because it accepted the need for people to receive services in their own languages.

■ Finally, we require cultural and language diversity because children need to be taught in their mother tongue for at least the first six years of their school careers. Interruption of mother-tongue education at too early a stage disrupts cognitive and academic development. Poor performance in literacy, maths and science is also associated with early interruption of mother-tongue education.

Our universities can play a leading role in developing indigenous languages to the point where they can also become academic languages of instruction. They can also serve as the repositories and guardians of our rich and diverse histories and traditions.

In addition, universities have an important role in promoting other diversities. Academic excellence requires the diversity of opinion and expression that is protected by the Constitution. No-one should have the right to interfere with the untrammelled pursuit of knowledge. No university should feel itself constrained to subscribe to any form of political correctness.

According to S.16 (1) (d) of the Constitution, freedom of expression specifically includes academic freedom and the freedom of scientific research. It also includes freedom of artistic creativity and the freedom to receive or impart information or ideas. These freedoms encapsulate the very essence of the role of universities in free societies.

Another key diversity is the diversity represented by civil society. There is a whole sphere of non-governmental activity in which the state has no business to interfere - beyond the necessary and impartial regulations that might be required by legislation. Civil society includes our professions, charitable organizations, clubs, sport associations and our universities. To flourish and survive civil society must have the widest degree of autonomy within the law.

One of the greatest threats to diversity is the increasing imposition of demographic representivity throughout society.

The constitutional requirement of non-discrimination cannot be equated with a requirement for demographic representivity in all aspects of national life. The Constitution calls for broad demographic representivity in only two areas - public administration and the judiciary. However, even in these instances representivity is subject to general requirements of competence and suitability. There is no general requirement for demographic representivity in the private, non-governmental and academic spheres - provided always that there is no unfair discrimination or exclusion on any of the grounds rightly prohibited by the Constitution.

Current attempts to impose demographic representivity in all areas of our national life - including our universities - are irreconcilable with the constitutional protection of diversity. Demographic representivity of this nature would, in effect, make minorities subject to majoritarian domination in virtually every sphere of their existence: in the businesses where they work; in the institutions where they study; in the sports teams in which they compete and in the civil society organizations through which they seek to contribute to society. Multicultural societies, on the other hand, flourish best when people are able to pursue their legitimate interests within the framework of the manifold communities and associations to which they freely choose to belong.

President Mbeki once said that it would, perhaps, be better for our national teams to be demographically representative, than always to win. That is the crux of the whole debate on transformation confronting our society and our universities: Should we as a nation pursue the political goal of across-the-board demographic

representivity - or should we pursue excellence? Will our universities become political flashpoints if they do not conform to external pressure to accept demographic representivity - or should they continue to pursue the goal of academic excellence regardless of that pressure? Do we want to be a demographically representative nation - or do we want to be a winning nation?

In the ruthlessly competitive environment of the global economy there is no room for second-raters or habitual losers. We must strive for excellence - but we must do so on the basis that has been prescribed by the Constitution:

- all forms of discrimination and exclusion are unacceptable;
- there is no place for old-boys clubs and glass ceilings that insidiously lock out new arrivals;
- there is an absolute requirement for us to identify and advance those who have been negatively affected by past discrimination.

But there is no requirement for us to sacrifice excellence in the process.

Universities should take their stand on the academic freedoms assured by the Constitution. They should resist pressure from whatever quarter to lower standards and should renew their commitment to academic excellence. They should preserve the diversities of culture, language, argument and research within their institutions and resist attempts to impose new orthodoxies and uniformities.

The proper function of universities is the untrammelled pursuit of academic excellence and the education of new generations of South Africans whose skills will be essential for the future success and happiness of all our people. ●

THE NEED FOR A Two-Tier Labour System

A Two-Tier Labour System

WORKERS DAY, 1 MAY, THIS YEAR gave us the opportunity of once again considering the unemployment crisis - which lies at the root of many of the other problems we experience - including poverty, inequality and crime.

We need to ask what we can do to reduce the unacceptably high levels of unemployment in South Africa - which among black South Africans reached 25.9% in the fourth quarter of 2008. In contrast, unemployment among coloureds was 17.9%; 11.7% among Asians; and only 3% among whites.

StatsSA's unemployment figures might be optimistic, not only for whites, but for all population groups. In March this year Zwelinzima Vavi of COSATU said that "we cannot believe the latest employment statistics from Stats SA". His own estimate was that if "1,1m-discouraged work seekers are included, unemployment rises to 5,2m at a rate of 29,2%". This figure would be even higher if extrapolated to the black population.

Whatever the figure, the consequences for our society and for the people concerned are devastating. Unemployment is at the root of the deep poverty in which half of our population subsists; it is inevitably interwoven with unacceptable crime levels; and it is one of the main causes of the persistent inequality which negates one of the foundational values of our Constitution. South Africa is one of the most unequal societies in the world. Its GINI coefficient (which measures inequality in society) has remained virtually constant (.665 in 1994 and .660 in 2007) - despite the requirements of our Constitution and a government dedicated to the promotion of equality!

How could it be that black unemployment has climbed from 8% in 1983 to +/- 30% today - during a period of 14 years of uninterrupted economic growth - even taking into account that the 1983 statistic excluded the black homelands? There are a number of factors that should be considered in this regard:

■ The first is the dismal failure of our education system to produce properly educated and trained candidates for the labour market. Of the 1.67 million children who entered the school system in 1995 only 565 000 (34%) made it to matric in 2007. Of these only 368 000 (22%) passed matric, 85 000 (5.2%) with the exemption required for university. Only 25 400 (1.5%) passed maths at the higher grade. Clearly, inadequate education must be one of the main factors affecting high unemployment among black South Africans. However, there must be other considerations because

it is hardly likely that the black workers in 1983 were better educated and trained than their counterparts today.

■ Another factor might be that after 1994 we were able to open our besieged economy to increasing international competition. This has also had an effect on employment - particularly in the clothing and textile industries. On the other hand, the expansion of car exports and the rapid growth of our tourist industry have been major sources of new employment. In any event, our international marketers claim that unit labour costs in South Africa are still relatively low and compare well with competitors in other emerging markets such as Hungary, Malaysia, Mexico and Singapore.

■ A third factor must be the effect of progressive labour legislation and practices. After 1994 COSATU became a major determinant of labour market relations. Inevitably, it sought a better and more secure dispensation for its members and for workers in general through the influence that it could bring to bear on its alliance partner, the ANC, to adopt labour-friendly legislation. The result has been to increase not only labour costs, but also the general 'hassle factor' of employment. Employers were prepared to co-operate, but often at the cost of cutting jobs. This has probably been a major factor in the decline of employment in agriculture from 1.5 million in 2002 to 764 000 at the end of 2008; and in mining from 613 000 in 1994 to 321 000 at the end of 2008.

■ A fourth factor could be the influx of uncounted millions of work-seekers from other African countries - from as far a field as Somalia.

It would appear that there were elements in the Mbeki administration that were aware of the negative impact of progressive labour practices on employment. Before the ANC's 2005 National General Council meeting, they floated the idea of a dual labour system:

"Some European countries with similar generous labour regimes to our own have experimented with accommodating some amount of duality in the labour market as a means of raising employment prospects for those outside the labour market. A dual labour market model is an attempt to break the insider-outsider divide. The model looks something like this: One set of labour laws (the existing ones normally) are used to govern one set of employees and more flexible labour laws apply to another set of people. This is often done informally through policy rather than legislation. More flexibility is accommodated (sometimes temporarily) rather than formally legislated".

Greater labour flexibility could be advanced by creating special industrial development zones; by making it easier to hire and fire young job seekers; and by exempting small businesses and entire industries from the application of rigid labour laws.

The proposals were shot down in flames by COSATU and its allies.

Unemployment undoubtedly is one of the greatest challenges that South Africa faces. The new Zuma government should perhaps give renewed consideration to the possibility of introducing some of the solutions advocated at the ANC's National General Council meeting four years ago. And it should double the priority that it will be giving to improving the education system. ●

"We need to ask what we can do to reduce the unacceptably high levels of unemployment in South Africa ..."

"Greater labour flexibility could be advanced by creating special industrial development zones; by making it easier to hire and fire young job seekers; and by exempting small businesses and entire industries from the application of rigid labour laws."

NEWS

■ FW DE KLERK EXPRESSES his concern over the NPA's decision regarding charges against Mr Jacob Zuma

At a press conference in Cape Town on 16 April 2009 F W De Klerk said that the decision to drop charges against Mr Zuma would be regarded "as the most serious blow to the rule of law since the dawn of our new constitutional democracy". Adv Mpshe, the NDPP, had not withdrawn the charges because of any flaw in the evidence against Mr Zuma - but simply because of the reported manipulation of the prosecutorial process relating to the timing of the charges. In the opinion of the Centre for Constitutional Rights, the Acting National Director of Public Prosecutions, Adv Mpshe, had erred because the NPA has stated on affidavit that it had "a firm basis for the institution of a prosecution;" the timing and motives of the decision of the former Director of the DSO to charge Mr Zuma would not now affect Mr Zuma's right to a fair trial; and the Supreme Court of Appeal had ruled that "A prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition, reasonable and probable grounds for prosecuting are absent".

Mr De Klerk said that the decision could not be seen in isolation. It followed the abolition of the NPA's Directorate of Special Operations (the Scorpions); the questionable dismissal of the previous NDPP, Adv Vusi Pikoli, and the early release from prison of Mr Schabir Shaik on medical grounds. ●

■ THE CFCR ASKS the Department of Home Affairs to introduce legislation to enable all South Africans overseas to vote in future national and provincial elections

The CFCR has asked the Department of Home Affairs to introduce draft legislation as soon as possible to enable South African citizens abroad to both register and participate in future national and provincial elections. The CFCR pointed out that in its recent judgment in *Richter v Minister for Home Affairs* the Constitutional Court had extended the right to vote to South African citizens living abroad only in national elections and only if they were already registered voters. In its findings, the Court re-affirmed the foundational value of the right to vote but declined to extend it to unregistered voters, and refused to grant it even to registered voters in respect of provincial elections. It did so because of the claims of the Independent Electoral Commission that this would cause unmanageable administrative and financial burdens, given the lateness of the application. The Court respected the principle of the separation of powers and decided that the design of the necessary legislation to assure the right of South Africans overseas to vote in future elections fell squarely within the jurisdiction of the executive and the legislature. Hence, the CFCR's request to the Department of Home Affairs, at this early stage, to take the necessary steps to amend the Electoral Act so that it complies with the unqualified right of adult suffrage. ●

■ THE CFCR COMPLAINS to the Public Protector with regard to cadre deployment in the public service

The CFCR has lodged an official complaint against the practice of cadre deployment in the public service because it breaches the constitutional requirement for a clear separation between the ruling party and the institutions of state. The CFCR pointed out that the practice violated sections 195 and 197(3) and (4) of the Constitution, as well as provisions of the Public Service Act, 1994. The CFCR's request was in reaction to a demand by the ANC's provincial secretary in Limpopo that the Premier should rescind "with immediate effect" his decision to transfer the head of Safety and Security to the post of head of Public Works because this undermined "organisational deployment processes". The complaint was also based on a case in the Eastern Cape where the Amathole District Municipality had appointed the municipal manager purely as a result of an instruction by the ANC's regional leadership, despite his being found to be a weaker candidate by an 11-member representative selection panel. The decision was set aside by the High Court which stated that "... the involvement of the Regional Executive Council of the ANC... constituted an unauthorised and unwarranted intervention in the affairs of ... (the) council. It is clear that the councillors of the ANC supinely abdicated to their political party their responsibility to fill the position of the Municipal Manager with the best qualified and best suited candidate....". The CFCR requested both the Public Protector and the Chairman of the Public Service Commission to investigate, report on and take remedial action against cadre deployment on the part of the ANC in the public service. ●

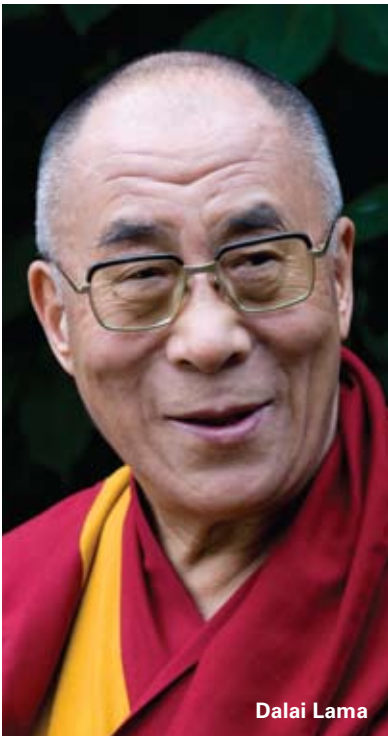
■ The CFRU URGES Public Protector to investigate provincial funding

In April 2009 the CFRU requested the Public Protector to investigate incidents where provinces had made funds available to political parties, despite the fact that this is a function that is reserved by Section 236 of the Constitution for the national level of government. Nevertheless, according to recent media reports at least seven provincial legislatures have passed laws that enable them to fund political parties with money from the provincial treasuries.

The Public Funding of Represented Political Parties Act 103 of 1997 carefully governs the allocation and accounting procedures to be followed by each political party receiving funding from the relevant fund, namely the Represented Political Parties Fund. In terms of section 4(1) of the Act, the administration of this fund is placed in the hands of the Chief Electoral Officer under the oversight of the Independent Electoral Commission. Amongst other provisions, the Act expressly prohibits the payment of any direct remuneration or other benefit to any elected representative of a party. Despite this, individual payments have in terms of the draft Provincial legislation been approved for elected representatives in the Northern Cape in an amount of approximately R 336 000. Thus not only is the empowering draft legislation unconstitutional and ultra vires, but the method of payment envisaged is also unlawful.

The CFRU has requested the Public Protector to take appropriate remedial action should the reports prove to be true. ●

“... according to recent media reports at least seven provincial legislatures have passed laws that enable them to fund political parties with money from the provincial treasuries.”



Dalai Lama

■ FW DE KLERK EXPRESSES regret at the refusal of visa to the Dalai Lama

On 23 March 2009 FW De Klerk reluctantly announced that he would not participate in a Peace Conference in Johannesburg on 27 March if a visa was not granted to the Dalai Lama to attend the conference as well. Mr De Klerk said that he felt honour-bound to respect the invitation that Nelson Mandela, he and Archbishop Tutu had sent to Dalai Lama last November, at the request of the organisers of the peace conference.

Mr De Klerk took the decision with the greatest reluctance because he fully supported the concept and goals of the Peace Conference - which was being held in conjunction with the 2010 World Soccer Cup in South Africa. He said that he had been informed the previous week by the Dalai Lama that the South African High Commissioner in New Delhi had requested him to postpone his forthcoming visit to South Africa.

Mr De Klerk contacted the offices of the Minister of Foreign Affairs and of President Motlanthe to express his concern and to urge that a visa should be granted to the Dalai Lama. Unfortunately there was no response. Mr De Klerk fully identified himself with the views that Archbishop Tutu had expressed in questioning the government's decision. ●



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