

# Leadership, Social Justice and Transformation – Inspire a Leader



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## Abstract

Transformation is not impossible. In 1994 there were about 150 judges in this country. Of this number, one was female and one was black. Today there are 227 judges in South Africa, of whom 82 are female and 145 male. 34% are white and 64% are black. The judiciary has been totally transformed. This can and should happen in other areas.

## Keywords

Social justice; transformation; judiciary.

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### *Introduction and greeting*

Good afternoon to the entire student body represented here today. I greet you first because you represent the leaders of the future. I must make special mention of Mr Daniel Selamolela, Council of Societies Chairperson (SRC/SCC), the person who invited me here today. I understand that this event is a joint effort of the Student Campus Council: Council of Societies and North-West University's Faculty of Law.

Goeie Middag Dames en Here.

It is my distinct pleasure to be here today. I have been asked to speak about Leadership, Social Justice and Transformation. The organisers of this event have said that their goal for today is that I "Inspire a Leader." I really hope that I inspire more than one leader today.

### *The Constitution and its role in achieving social justice*

I want to speak first about the Constitution<sup>1</sup> and its role in achieving social justice.

The Constitution is this country's proudest and most prized possession. In its Preamble it recognises our past of injustices that left us a legacy of vast inequality and social inequity. It bravely declares its supremacy and its object, which is to usher in a system based on democratic values, social justice and fundamental human rights, and it most crucially holds itself to be the foundation upon which such a society is to be realised.<sup>2</sup>

The Constitution addresses this by obliging us to strive for equality as a founding value. The equality clause of the Constitution requires that citizens should not only be entitled to all rights and freedoms but should also be able

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<sup>1</sup> *Constitution of the Republic of South Africa*, 1996. Hereafter the Constitution.

<sup>2</sup> Preamble of the Constitution.

to fully and equally enjoy them.<sup>3</sup> The Constitution obliges the state to take legislative and other measures that are intended to ensure that everyone has access to health care, electricity<sup>4</sup>, education, water<sup>5</sup> and other social services<sup>6</sup>. These rights are encapsulated in the Bill of Rights. It is through and because of the delivery of these rights that social justice can be achieved.

Human rights litigation is an important mechanism for use in achieving social justice. Exemplary of this is the Treatment Action Campaign case decided by the Constitutional Court. The TAC brought a constitutional challenge to the state's denial of its responsibility to respond to the HIV/AIDS pandemic in its failure to provide medication to birthing mothers in order to prevent the transmission of the virus to the child. The Constitutional Court unanimously found in favour of TAC, squarely rejecting each of the government's arguments about efficacy, safety, resistance, and capacity. The Court stated the general principle that:

Where a breach of any right has taken place, including a socio-economic right, a court is under a duty to ensure that effective relief is granted. Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated.<sup>7</sup>

However, it would be remiss of me to hail the judiciary's role in social advancement without noting its limitations, which clarifies why these claims of social justice are not engaged in the Courts as much as they should.

The shortcomings of using litigation include the length of time legal matters take to resolve and the heavy financial burden it demands. And in the recent

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<sup>3</sup> Section 9(2) of the Constitution, which states: "Equality includes the *full and equal enjoyment* of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken." Emphasis added.

<sup>4</sup> *Joseph v City of Johannesburg* 2010 4 SA 55 (CC).

<sup>5</sup> *Mazibuko v City of Johannesburg* 2010 4 SA 1 (CC).

<sup>6</sup> *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC).

<sup>7</sup> *Minister of Health v Treatment Action Campaign (No 2)* 2002 5 SA 721 (CC) para 106.

spate of Constitutional Court judgments, there is a notable shift in public interest litigation to corruption and maladministration.<sup>8</sup> And in the specific context of socio-economic rights<sup>9</sup>, implementation is subject to the availability of resources.

Although these ills suffered by those who engage in litigation cannot be easily cured, this it does not mean that they cannot be avoided by relying on other ways of achieving social justice. The demand to transform the social fabric persists because the wide disparities in living standards continue to exist. As members of this society all of us, and as future leaders, all of you here today, have a responsibility to achieve social justice. You must be activists and agents of social change.

One of the recent burning issues relating to change and transformation is language.

#### *Language and transformation*

There is no doubt that language continues to play the role of facilitating access to higher education for some, while curtailing access to higher education for others.<sup>10</sup> Such a reality is contrary to the principles of equality and social justice and requires action.<sup>11</sup> This being said, the issues surrounding language and language policies are not simple and elegant, but are instead complex and challenging. This was recognised by the drafters of our Constitution when it came to determining which languages should be included and given constitutional protection. Language does not merely make it possible for us to communicate. It is not just convenient and

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<sup>8</sup> *Black Sash Trust v Minister of Social Development (Freedom under Law NPC Intervening)* 2017 9 BCLR 1089 (CC). Also see *South African Social Security Agency v Minister of Social Development* (CCT48/17) [2018] ZACC 9. Also see *Economic Freedom Fighters v Speaker of the National Assembly* 2018 3 BCLR 259 (CC).

<sup>9</sup> Not all socio-economic rights are subject to progressive realisation. Examples of these are s 26(3); the right not to be arbitrarily evicted, and the socio-economic rights of detained persons in s 35 of the Constitution.

<sup>10</sup> Tjabane M & Pillay V "Doing Justice to Social Justice in South African Higher Education" 2011 *Perspectives in Education* 10-18.

<sup>11</sup> Mwaniki M "Language and Social Justice in South Africa's Higher Education: Insights from a South African University" 2011 *Language and Education* 213-232.

functional. It also involves complex issues of identity, empowerment and disempowerment.<sup>12</sup> It is for this reason that issues around language can be as emotive as language itself.

Historically, language has been employed in South Africa as a tool to create division and a hierarchy of privilege and disadvantage, particularly by depriving potential learners from access to education.<sup>13</sup> However, in our new dispensation language has the capacity and capability to bring people together as a nation and to contribute towards meaningful transformation.

Transformation requires access to higher education, but language is still a stumbling block for many South Africans. Nelson Mandela said that education is the most powerful weapon which you can use to change the world.<sup>14</sup> I would add that education is the most powerful weapon which you can use to change your life. I would add further that education is the most powerful weapon which you can use to change your community and your society.

It is here that Universities can contribute to meaningful transformation. A university should strive to develop policies which aim to make education accessible to all, and at the same time such policies should deracialise, foster unity and promote reconciliation. Our Constitution provides that every South African has a right to be taught in a preferred official language. However, it must be remembered that this right is not absolute and unqualified – its delivery must be reasonably practicable. Effective access to the right to be instructed in an official language of choice must be given, but without undermining equitable access.

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<sup>12</sup> Sachs A "The Language Question in a Rainbow Nation: The South African Experience" 1997 *Dalhousie Law Journal* 5-16, 6.

<sup>13</sup> Nudelman C "Language in South Africa's Higher Education Transformation: A Study of Language Policies at Four Universities" (Unpublished LLM dissertation UCT 2015) 98.

<sup>14</sup> Mandela N "Lighting Your Way to a Better Future", Address by Nelson Mandela at the launch of the Mindset Network in Johannesburg on 16 July 2003.

Language rights and practicality should not be seen as principles in collision but rather as mutually interacting concepts and in order for rights to become meaningful they must be claimed in a reasonable fashion and with all reasonable steps being taken to ensure their realisation. The creation and adoption of language policies should emulate the approach of our Constitutional drafters. The approach to language policies should be, as far as is practicable, accommodative rather than competitive, inclusionary rather than narrow, and developmental rather than prescriptive.

*Challenge to the student body as a collective and as individuals*

What is your role as students and part of the student body in this process of transformation? You must be part of and embrace positive change; change that will improve the lives of the majority. You must be and behave like responsible, conscientious members of society who are committed to the realisation of social justice.

The youth of today have to exist and survive in a society that is still faced with the vestiges of a fraught, divided past. This manifests in high levels of unemployment among the youth and barriers to entry to education. The alleviation of poverty is a matter of justice and not charity.<sup>15</sup> I will repeat this because it is important. The alleviation of poverty is a matter of justice and not charity.

Taking further cognisance of these challenges, it is imperative to recognise that social justice cannot be legislated or achieved by means of international conventions or declarations. It requires that all citizens should take the responsibility to protect, advance and promote the values, principles and ideals of social justice through their own initiatives. These may take various forms.

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<sup>15</sup> Jackson B "The Conceptual History of Social Justice" 2005 *Political Studies Review* 356-373, 360.

A manifestation of student-led social change is the #FeesMustFall campaign. Students of higher education across the country with their fervour, bravery and intellect challenged the status quo that perpetuated social inequality and impeded access to higher education.

There are so many issues relating to social justice affecting students. Student hunger is a grave deprivation and has been shown to affect over 50% of the student population in some higher education institutions.<sup>16</sup> It is an issue that lurks inconspicuously because it is understandably accompanied by shame. The entry into University is applauded but the resources that are needed to sustain students until graduation are often insufficient.

This is something that can be addressed by the student body. The establishment of a Foodbank is a distinct possibility. Through fund-raising activities, or donations if you have the means, each one of you can make a contribution to alleviate the hunger of a fellow student. Such initiatives speak to the idiom of *motho ke motho kabatho* - a person is a person through other people.

You, the future leaders of this country, must be social justice warriors. Measure your impact on society not in the "likes" you receive on Facebook but in the lives you touch. Nelson Mandela also said that real leaders must be willing to make sacrifices.

We can change the world and make it a better place. It is in your hands to make a difference. I say to the student body here at North West University today that it is in your hands to make this university, this community, a better place.

I will end the language question with a short story on how language affected my life. I grew up in Wentworth in KwaZulu-Natal, which was predominantly

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<sup>16</sup> Fekisi L & Jaffer Z "Hungry Students: A Public Health Crisis" *The Journalist: Context Matters*, available at <http://www.thejournalist.org.za/kau-kauru/hungry-students-a-public-health-crisis>.

English speaking. The only university open to brown people like me at that time was the University of the Western Cape, and that was predominantly Afrikaans medium. From the time I was born my parents had the vision that I would attend university. They knew I would cope better at university if I understood Afrikaans, so when they enrolled me in grade 1, they enrolled me at the only Afrikaans medium school for brown people in Wentworth. My first days at school were a nightmare. I did not know Afrikaans at all but that was all I was surrounded with at school. Then when I got to high school my father decided that I knew enough of Afrikaans and would complete my schooling in English. My first year at high school was very challenging. At that stage English as a first language was foreign to me. I did not know what a square root was, I only knew a "vierkantswortel". I didn't know what geography was; I only knew "Aardrykskunde" and that "drie tot die derde mag" was three cubed. I was silent for my first year at high school.

At the end of my matric year I received the prize for being the best English as well as the best Afrikaans student.

### *Transformation*

I can speak about transformation in the context of the judiciary. In 1994 there were about 150 judges in this country.<sup>17</sup> Of this number, one was female and one was black. In March 2016 there were 227 judges in South Africa, of whom 82 are female and 145 male. 34% are white and 64% are black.<sup>18</sup> The judiciary has been totally transformed. This can and should happen in other areas. I was appointed as a judge in 1999, in that wave of transformation. You see, transformation is not impossible.

It would not be proper to speak about social justice at this time in our country without mentioning the late Mama Winnie Madikizela Mandela. She fought

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<sup>17</sup> Nel A "Judiciary to Mirror SA: Transformation of the Legal Profession a Necessary Imperative as Envisaged by SA's Constitution" *The New Age* 10 May 2013, available at <http://www.judgesmatter.co.za/opinions/south-africa-judges/>.

<sup>18</sup> Judges Matter "The Make-up of South Africa's Judiciary" 29 March 2017, available at <http://www.judgesmatter.co.za/opinions/south-africa-judges/>.



all her life for social justice. I urge you to continue the fight for social justice; to be social justice warriors.

Mrs Michelle Obama delivered an address at Regina Mundi church in Soweto in 2011 as part of the June 16 commemorations and she said that true leadership is leadership that lifts families, leadership that sustains communities and that transforms nations. That kind of leadership rarely starts in palaces or parliaments.<sup>19</sup>

We have freedom today because of the sacrifices made by people such as Madiba, Walter Sisulu, Mama Winnie Mandela and so many other people from that generation.

Today, it is possible for me to stand before you as a judge of the Constitutional Court because of the freedoms won by that generation.

Now, this is the question – what kind of generation are you going to be and be remembered as? The generation who took the most selfies? I am sure that is not your goal. Mrs Obama also said:<sup>20</sup>

You can be the generation that holds your leaders accountable for open, honest government at every level, government that stamps out corruption and protects the fundamental rights of every citizen.

I leave you with this – you can be the generation that will ensure that there is access to good quality higher education and that the right to reasonable healthcare will be realised.

You can be the generation that will ensure that no child, no adult, will go to bed hungry.

You can be the generation that ensures that violence against women in any form, in any place, will not be tolerated and that it is eradicated.

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<sup>19</sup> Michelle Obama "Remarks by the First Lady during Keynote Address at Young African Women Leaders Forum" Regina Mundi Church Soweto on 22 June 2011, available at <https://obamawhitehouse.archives.gov/the-press-office/2011/06/22/remarks-first-lady-during-keynote-address-young-african-women-leaders-fo>.

<sup>20</sup> Obama 22 June 2011.

You see, that is the history that your generation can make.

Thank you for showing up today. In advance, I am going to thank you for being agents of social change.

Thank you again to the organisers for inviting me here today.

*Ke a leboga.*