



John Jeffery, MP, Deputy Minister of Justice and Constitutional Development

# The birth of the South African Constitution

It was a grey and drizzly Friday in Dublin. The year was 1987. The place was Kader Asmal's kitchen table. At the table sat Kader Asmal and Albie Sachs. Between them a blank sheet of paper. The task at hand was to write the first draft of our Constitution's Bill of Rights. This would evolve into the draft that formed the basis of the constitutional negotiations and later the Constitution.

**As Justice Sachs told the *Irish Independent*, they deliberately sat down “with a blank sheet of paper – no Universal Declaration, no international conventions, no Constitution from any country – on the basis that a Bill of Rights should speak out from the soul, the fundamental rights that belong to every human being and shouldn't be a list of items gleaned from an encyclopaedia or legal dictionary or textbook.”**

Our Bill of Rights does indeed speak from the soul. It speaks from the soul of a divided nation, a nation which still today has to deal with the legacy of centuries of human rights abuses. It speaks of hope for a better future.

As we celebrate the 20<sup>th</sup> anniversary of the 1996 Constitution this year, it is a time to reflect on our country's journey from apartheid to a constitutional democracy, on how far we have come to build a human rights-based culture, and what still needs to be done.

Human Rights Month is commemorated in March to remind us about the sacrifices made in the struggle for democracy in South Africa.

The 1960s were characterised by systematic defiance and protest against apartheid and racism across the country. On 21 March 1960, the community of Sharpeville and Langa townships, like their fellow compatriots across the country, embarked on a protest march against pass laws. The apartheid police shot and killed 69 of the protesters at Sharpeville, many of them shot while fleeing.

Today the Constitution is the ultimate protector of our human rights. We commemorate Human Rights Day to reinforce our commitment to the Bill of Rights enshrined in our Constitution. Given the recent rise of racial incidents in our country, we know that there is still much to be done.

In 2014, the South African Human Rights Commission (SAHRC) confirmed that it had received more than 500 reports of racism – of which a large part were on social media. In 2015, the SAHRC said that hate speech cases on social media increased to 22% of matters investigated, compared to 3% in the same period the previous year.

The rise and growing popularity of social media is a two-edged sword – on the one hand, bringing us closer to world events, giving us live feeds on happenings and allowing us to participate in debates in the public arena. On the other hand, it can become a breeding ground for racism, prejudice and intolerance. Under the convenient guise of anonymity, cyberspace allows



people to say things to one another – things that they would never dream of saying to someone in person.

The overall majority of our people are not racist. The challenge, however, lies in not becoming complicit through silence.

It is time to speak up and say #RacismNotInMyName #RacismNotInMyCountry.

One is inevitably reminded of the quote by Martin Niemöller, the German pastor who emerged as an outspoken critic of Hitler and the Nazis and spent seven years in the Sachsenhausen and Dachau concentration camps. He talks about complicit guilt and writes:

*First they came for the Socialists, and I did not speak out — Because I was not a Socialist.*

*Then they came for the Trade Unionists, and I did not speak out —*

*Because I was not a Trade Unionist.*

*Then they came for the Jews, and I did not speak out —*

*Because I was not a Jew.*

*Then they came for me — and there was no one left to speak for me.*

Niemöller realises that he himself was complicit. He was a decorated German soldier in World War I and even initially backed Hitler's run for power. But by 1933, Niemöller started to realize what was happening under Hitler's rule and knew that it was wrong. Niemöller then formed a group opposed to the Nazis and became a fierce opponent of Hitler.

Like Niemöller, many white people in our country today are standing up and saying that, although they may have supported the apartheid system at the time, they now realize that it was wrong. They realize that apartheid was a crime against humanity.

The challenge for all of us, as South Africans, is to fight racism, racial prejudice and intolerance. The Institute for Justice and Reconciliation's 2015 Reconciliation Barometer, released in December last year, shows that the majority of respondents (61.4%)

feel that race relations since 1994 have either stayed the same or deteriorated. Only 35.6% of the sample indicated that they experience no racism in their daily lives.

Moreover, trust between the country's historically defined racial groups remains low – 67.3% of all respondents noted that they have little to no trust in their fellow citizens of other racial groups. Only about one in three people did not believe that it was difficult to confront someone they knew when he or she spoke or behaved in a racist manner.

As we celebrate Human Rights Month, let us be mindful of the human rights of others.

We must never be complicit.

Whether we are at the work place, within our communities, in our schools, or with our partners and children, we all need to demonstrate the kind of responsibility that we would

like to see in our country's future. ●

Let us take a stand.

**Let us say #RacismNotInMyName #RacismNotInMyCountry.**

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