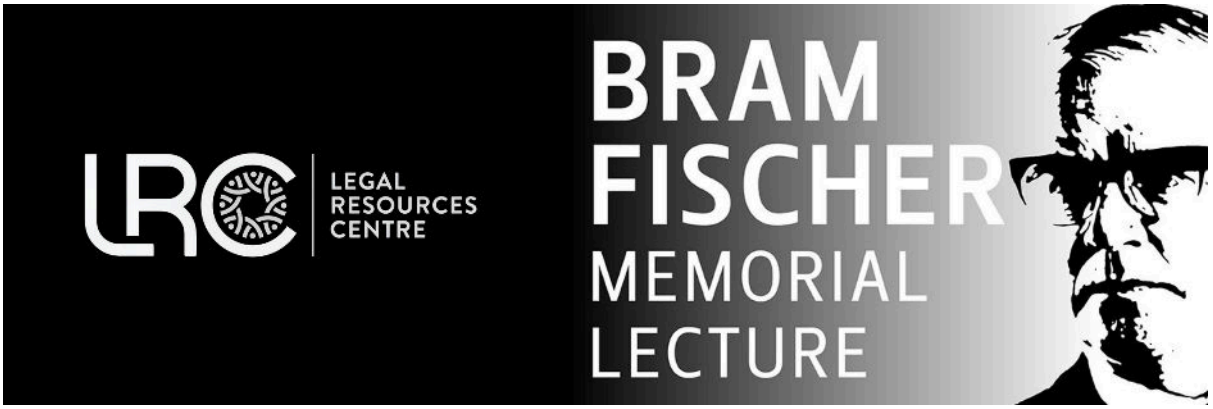


Twelfth Bram Fischer Lecture - Lindiwe Mazibuko (2023)

Thank you so much, Mamtandi. While I set myself up here, I had to bring a backup just in case one of my devices dies. I must say that it's such an honor to have Mamtandi Olayne introducing me.

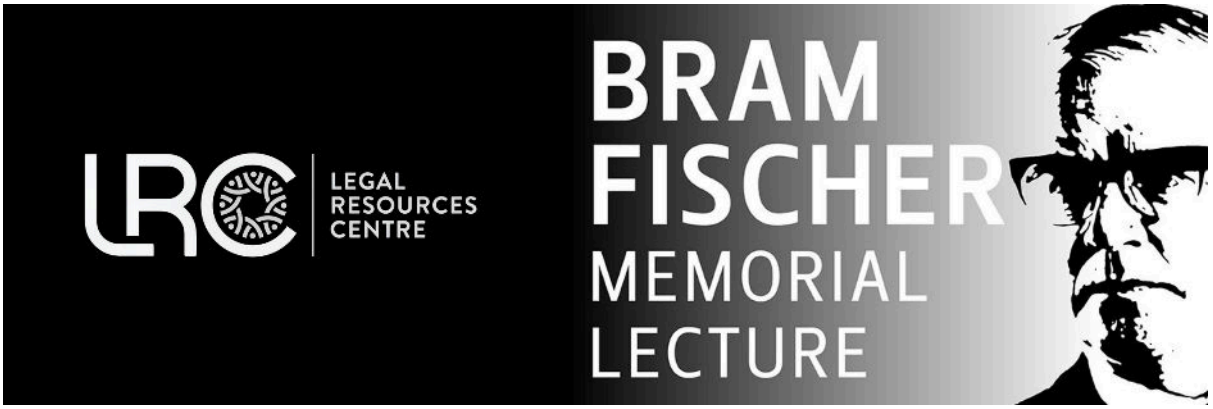
She's more than a woman in leadership whom I deeply and profoundly admire. She's also kind of like my because one of my closest friends is her son, Nkoko, with whom I went to university in Cape Town. So it's really extraordinary for me to be here today, to be introduced by you as someone of substance and worthy of this particular platform.

So thank you. Thank you to the Legal Resources Center, to the Executive Director, nurse and governor, and to the chairman for the invitation to deliver this year's lecture. I have been told that I am the first quote unquote non-lawyer to deliver this lecture and to be honored with such an invitation.

So I'm deeply terrified and intimidated by this fact, but I take small comfort in the tenuous connection that I have to your profession as a former lawmaker. I will endeavor to do justice to your confidence in me. Thank you also to Bowmans, which also happens to be the firm that represents my organization, Future Elect, on a pro bono basis for hosting us today in this wonderful venue.

I also want to extend my sincere gratitude to Ilse Fisher-Wilson and Ruth Rice, Brown Fisher's daughters, for your presence here today, Ilse, and to both of you for sharing your father with us as South Africans. Today, we're the beneficiaries of his great courage, his intellect, and his sacrifice. And too often, I think, in this country, we forget that the liberation struggle heroes that we venerate as the forefathers and the foremothers of our democracy were fathers and mothers in their own homes and in their own right.

And that their courage and their sacrifice for the rights and freedoms that we enjoy today were also sacrifices that were made by their children and even by their grandchildren. And it is in the same vein that I also wish to extend my sincere condolences to the Mandela family today for the passing of Zulega Mandela one day before the anniversary of the birthday of her grandmother, the late Honorable Winnie Madigizela Mandela, following her devastating battle with metastatic cancer. I've long marveled at Zulega's outspokenness, her bravery, and candor as she documented her 10-year struggle with cancer on social media and in her



memoir, When Hope Whispers, something that she did as a show of solidarity with those also battling cancer.

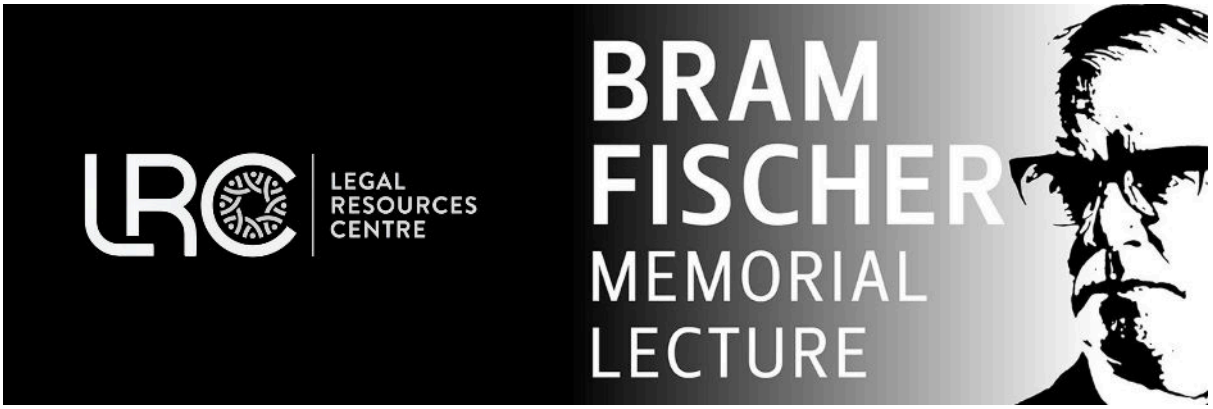
May her soul rest in peace. So next month marks the 20th anniversary of Bram Fisher's posthumous reinstatement to the Johannesburg Bar following his disbarment in 1965 for so-called conduct unbefitting a member of the Bar. Advocate Fisher's reinstatement to the role of advocates on the 16th of October 2003 by a full bench of the Johannesburg High Court was the result of an application and a concerted effort by his daughters, Mrs. Wilson and Mrs. Rice.

Their efforts led to the passage of the Reinstatement of Enrollment of Deceased Legal Practitioners Act, also known as the Bram Fisher Act, which was passed in Parliament in November the previous year. When Bram Fisher stood trial in 1966 on charges of furthering the aims of communism and conspiracy to overthrow the government, his statement from the dock articulated both his moral dilemma as a lawyer and that of apartheid and its laws, one that would ultimately come to define his great legacy. He expressed his belief in the importance of obeying the rule of law but said that, and I quote, when the laws themselves become immoral and require the citizen to take part in an organized system of oppression, if only by his silence and apathy, then I believe that a higher duty arises.

This compels one to refuse to recognize such laws. Bram Fisher's words and actions reflect how he sought that higher duty. The Afrikaner's son of a judge president fighting for the rights of the powerless, a man who could have hidden behind the shield of privilege and settled for all the securities that were afforded him but forbidden to others, chose instead to stand up to the laws and systems that perpetuated racism and injustice.

It might be difficult today in 2023 to imagine an advocate of the high court being disbarred for upholding what are now considered to be self-evidently morally sound values and principles. This in itself is a statement and a testament to the legacy of leaders like Bram Fisher. But today we live in an international climate of democratic repression where autocracy is on the rise and nationalism and violence against women and members of the LGBTQIA community have become increasingly the norm.

In such a climate we should be seized by the many ways in which these values, the values championed by Bram Fisher, are under threat both in our country and on our continent.



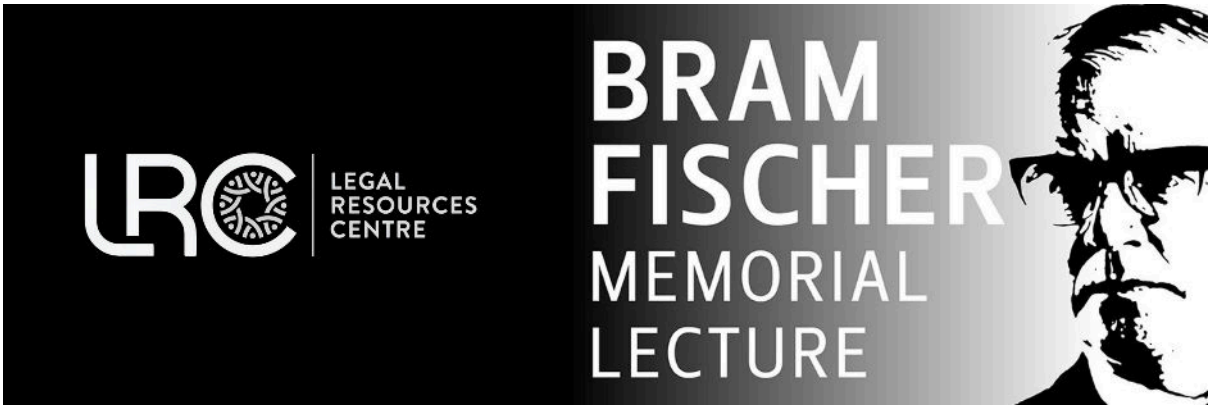
These include the resurgence of military coups, displacing democratically elected governments, ethnic racial and religious nationalism, and in South Africa in particular the nationalism that takes the form of violent xenophobia and afrophobia, the challenge of ethical leadership and democratic good governance in an era where online misinformation and disinformation are legion, and the reality that we have much to do if we are to achieve the objectives of our hard-won democratic transition and our constitution. We have it within us as a country to resist this decline and to embrace the future promised by our transition, but that work begins with identifying and acknowledging these challenges and their underlying causes.

Ten days ago, shortly after the president's departure for New York City to attend the UN General Assembly, reports began to surface on social media that Congo Brazzaville was about to fall in the military coup. The government moved very swiftly to deny these claims. Had they been true, Africa would have recorded eight successful coups and three unsuccessful coups since 2020.

The Africa Governance Report in 2023 focuses on the unconstitutional change of government in Africa, and one of its findings is that this represents one of the biggest threats to constitutionalism, state legitimacy, the rule of law, and good governance on our continent. Finding that most post-independent states were destabilized by unconstitutional changes of government. This was further supported by Jide Martins-Oneke and Fatima Ahmed, who explored the impact of constitutional amendments on the recent rise of coups in Africa.

They argue that constitutional manipulation, which seeks to extend term limits for heads of state, often retrospectively, diminishes the peaceful transfer of power. It creates a dangerous precedent where leaders seek to perpetuate their rule, stifling political competition and reducing opportunities for fresh ideas and fresh leadership. The authors further argue that without the appropriate checks and balances to guard against unconstitutional changes that have enabled incumbents to exploit legal ambiguities, this will erode the rule of law and the integrity of democratic institutions on the continent.

Many recent coups have been popular with young people, particularly in northern Central Africa and the Horn of Africa. This is often in reaction to the removal of despotic leaders who assumed and held a grip on power through electoral manipulation. We might be



tempted to consider this phenomenon as entirely alien to our region here in southern Africa, but it was just such a coup which resulted in the removal of Robert Mugabe from the presidency of Zimbabwe in 2017.

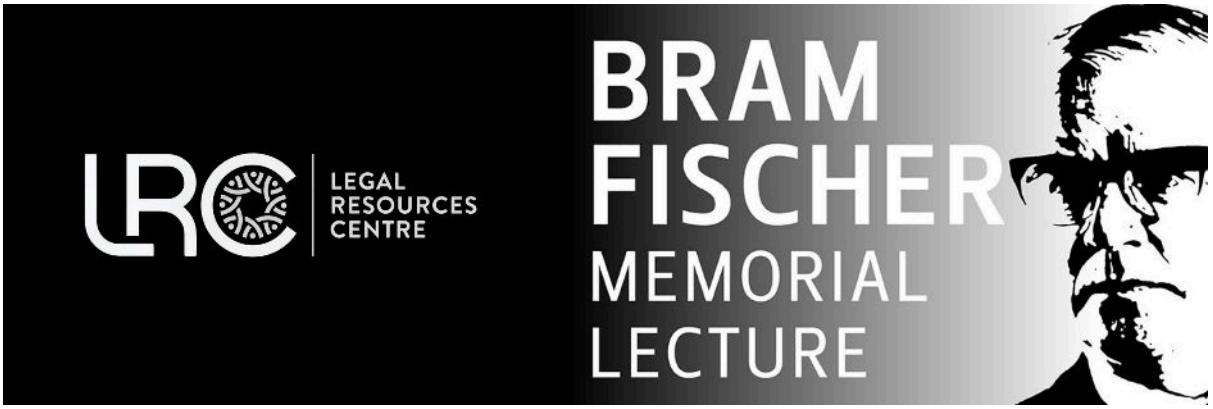
And then, as now, news of the coup led with visuals of citizens in Harare embracing and taking selfies with military personnel in celebration of Robert Mugabe's removal as head of state. The military overthrow in Zimbabwe was accompanied by denials from the military that this was even a coup in the first place. And even as the junta seized control of the state broadcaster, its leaders were at pains to point out that this was a coup in defense of the people rather than a callous power grab undermining the principles of democratic process.

Yet the promise of Zimbabwe's political transformation following the military's installation of former vice president Emerson Mnangagwa as state president was painfully short-lived. And this should have been expected because there is no such thing as a coup in defense of democracy. History has shown us time and time again that such upheavals lead to further oppression and instability.

Not chillingly, the sentiment around coups exists even within our own borders. According to a 2021 study by Afrobarometer, the non-partisan public attitudes research network, two-thirds or 67 percent of South Africans said that they would be willing to give up elections if a non-elected government could provide security, housing, and jobs. Nearly half, 46 percent, say they would be very willing to do so with higher levels of support amongst younger and more educated respondents.

The report noted what had been the majority view in all survey rounds since 2006 but that in 2021 amid the health and economic crises presented by COVID-19, the proportion who said they would be very willing to give up regular elections for an unelected but efficient government shot up by nearly half, 46 percent. Now we know that there are many research studies that suggest and even demonstrate that there is a positive correlation between democracy and things like GDP per capita. Democracies tend to have higher average incomes compared to autocratic or authoritarian regimes.

However, many African states through democratic leadership are still crippled by poor governance, weak institutions, as well as high levels of corruption, weak legal systems, and a lack of transparency across government despite the fact that they themselves identify as



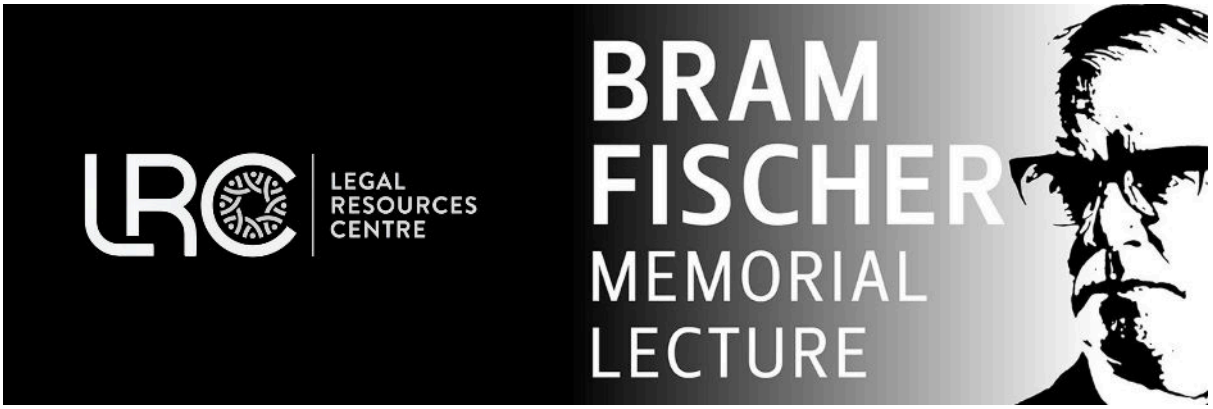
democracies. Researchers found that democracy is generally associated with things like better maternal health outcomes, including lower maternal mortality rates. Democracies tend to have more transparent and accountable healthcare systems that can lead to improved maternal health.

But it is still important for us to acknowledge some of the ways that democracy hasn't always adequately policed the excesses in our societies. It is in our democracies, for example, that crises like income inequality, the financial crisis, the climate crisis, and the mismanagement of the pandemic have taken place. These are some of the ways in which it can be legitimately seen to have failed our young people, which has deepened distrust for the system rather than distrust for the wrong leaders occupying that system.

Closer to home, when we consider 30 years of democracy and 26 years of our constitution, we can point to a myriad challenges in which some of our leaders have left our country worse off than when they find it. These include the challenges of the HIV-AIDS epidemic, state capture, and the corruption of state entities, corruption at the highest levels, youth unemployment, an energy and water crisis, and education outcomes that are so poor that grade four learners in South Africa were found to have the worst reading ability in the world in a study published in May this year, with 81 percent incapable of reading for meaning. As such, can it really be a surprise that young South Africans are slowly losing faith in the concept of a constitutional democracy? They struggle to connect constitutionalism with the possibilities for a life that isn't mired in poverty and desperation.

This is consistent with the data surrounding voter turnout, with research findings from the IEC in the Democracy Divided report illustrating a general decrease in interest in voting over the years, an alarming trend in such a new democracy. The report further poses the question regarding the so-called duty to vote. The 2021 local government election occurred in the context of the lowest perceived duty to vote in our democratic history.

Three million fewer South Africans turned out to vote than in the previous local government elections. South Africa's youth comprise more than 20.6 million people, about 35 percent of the population, yet they feel continuously locked out of decision making, of access to prosperity, and they feel embroiled in a cycle of passive engagement with the state. A 2016 study on youth civic participation by the Institute for Security Studies found that young



people do not feel competent enough to even engage in politics because it often seems too complicated.

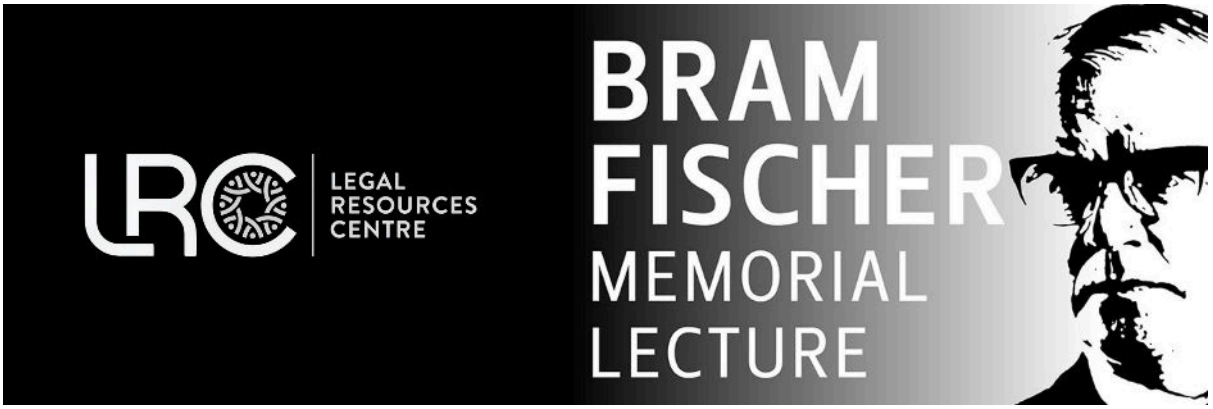
This drives our young people to either dissociate from the democratic process or to resort to protest action to have their voices heard and their needs met by those who they perceive as holding political power. For our part, we believe very deeply that increasing youthful civic involvement and political participation are absolutely imperative to building an inclusive society and strong democratic institutions in South Africa. We also know that in context of socioeconomic deprivation, particularly when it comes to insecurity and economic uncertainty, nationalism, and especially race-based nationalism, become threats that emerge when people decide they need to label who deserves to get what and why.

In South Africa, xenophobia, or rather Afrophobia, is an example, as is the nationalism that animated our previous autocratic apartheid government. Responsible, compassionate, evidence-based leadership is therefore necessary to respond to these threats which endanger lives and threaten to take us back to the dark days in our country when opportunity was allocated based on crude markers of identity. Digital disinformation and misinformation have become pervasive issues in modern democratic policies and dangerous tools in the armaments of those advancing narrow nationalist interests.

As digital campaigns continue to evolve, the rapid spread of misleading or false information poses a serious threat to the integrity of public discourse on democracy and elections. In Africa, the growing sophistication of deepfake technologies and artificial intelligence was on display in the recent Nigerian presidential elections. This included social media posts of deepfake videos shared on verified social media accounts.

In fact, according to the ACSS, Russia's information manipulation activities in particular have targeted at least 16 African countries, including Angola, Cameroon, Cote d'Ivoire, Ghana, Madagascar, Mozambique, South Africa, and Zimbabwe. This avalanche of falsehoods clouds public understanding of critical issues and contributes to undermining trust in democratic structures and institutions. Low confidence in democratic structures results in low voter participation, and low voter participation results in illegitimate democratic leadership.

In our recent work developing civic education programming at Future Elect, we were shocked to discover how many people don't know that we as citizens in fact do not elect the

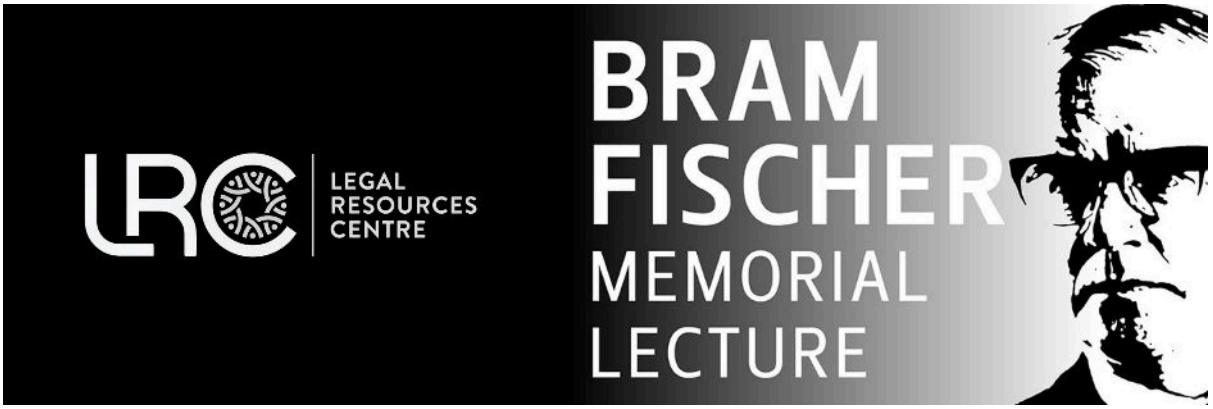


president, an indictment of our ability to demonstrate and communicate the value of democracy in our country. In order to safeguard democratic participation, it is imperative that we address these issues head-on and foster an informed and engaged citizenry through improved civic education. Effective civic education can equip citizens with the tools they need to participate actively in public discourse, take ownership of their democratic outcomes, identify and reject misinformation, and hold political leadership accountable for their actions.

So, how do we restore the confidence in the integrity, value, and efficacy of the democratic system, which we are slowly losing, and help young South Africans resist the lure and the easy answers of authoritarianism? Next year is the year of the superdemocracy, or what I like to think of as harmonized elections, which are taking place worldwide. The largest number of democracies in the world's history, with almost 70 elections in many critical democracies, including Taiwan, South Korea, Mexico, the United States, Senegal, Namibia, Egypt, Botswana, Ghana, India, and South Africa. In South Africa, we can emerge as an important example of good democratic governance and a thriving civil society, or we can emerge as a cautionary tale at a time when the world is experiencing much too much of the latter.

We have a remarkable constitution, the envy of many around the world, yet one of the most potent symbols of inequality in South Africa is the differentiated access that people in our country have to their legal and constitutional rights. Our human rights-centered constitution is hailed as revolutionary by the foremost legal scholars and practitioners the world over, noted for its emphasis not only on the realization of negative rights and liberties, including the right to life, equality, human dignity, political affiliation, and expression, but also on the realization of our positive rights, including education, housing, environmental protection, and the rights of children to parental care and food and shelter. It is a document that could only have come out of our unique and peculiar history and whose high aspirations we have a duty to work harder to achieve.

It is our first political manifesto, the one that matters more than any of the others. It demonstrates above all else the course we have charted to form governance that is predicated on the rule of law, on accountable leadership, and on the right to freedom and



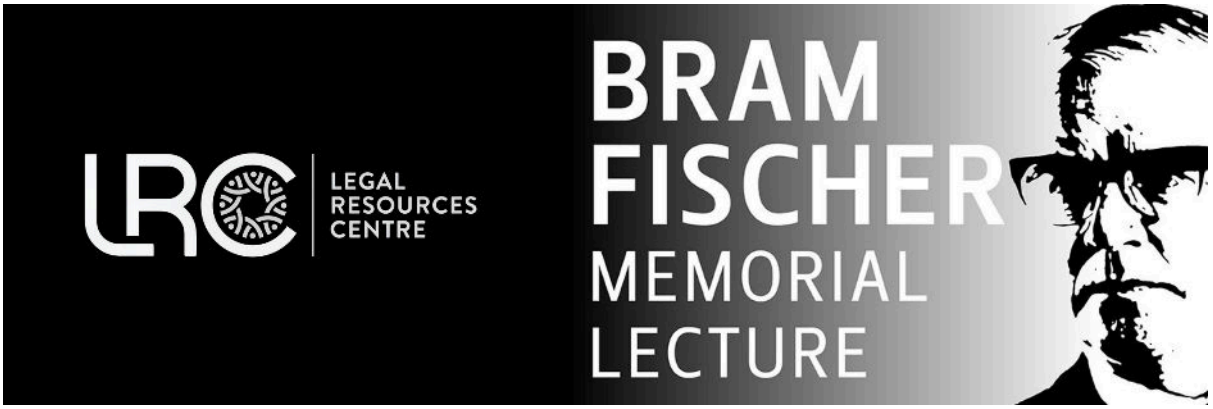
prosperity for all. This is the foundation that we need to get right before we can move on to additional policy ambitions and aspirations.

Otherwise, we will find that our democracy rests on shaky and dangerously unstable ground. It cannot be that the rights that are so fundamental to our society's identity and its prosperity are also subject to its most persistent inequalities. The late United States Supreme Court Justice Ruth Bader Ginsburg was famously derided by conservatives in her country for stating that a post-conflict society should not look to the U.S. Constitution, that if a country is drafting a constitution in 2012, it might look to the constitutional framework in South Africa.

She said, and I quote, this was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights and had an independent judiciary. It really is, I think, a great piece of work that was done. Some of the reasons that I have devoted this particular chapter of my political career to developing and supporting a new generation of ethical democratic leaders capable of reflecting the aspirations, hopes, and fears of their generation is because democracy is now their lodestar.

If young people are not the face of democratic governance, if they are not the ones articulating its value, its meaning, and its purpose, then we will never be capable of facing the challenges posed by a global order that threatens the gains that were made by our forefathers and our foremothers. We must place renewed importance on young people taking, and I place the emphasis on taking, in competitive democratic processes, power from their forefathers, even from their liberators. As we reflect on the principles that buttress our constitution and its freedoms, and the freedoms that our forefathers and foremothers fought for, it is imperative that we remember that this path requires hard work and vigilance, continuous and active participation.

It's not an ideal conceived in theory and then forgotten, but something that must be enshrined in action. I think once again of Advocate Fisher's speech at the Dock where explaining his decision not to recognize the laws that sought to divide and oppress, he stated, my conscience does not permit me to afford these laws such recognition as even a plea of guilty would involve. Hence, though I shall be convicted by this court, I cannot plead guilty.



I believe the future may say that I acted correctly. Thank you.