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BRAM FISCHER MEMORIAL LECTURE



Eleventh Bram Fischer Lecture - Justice Raymond Zondo (2019)

So we really appreciate you spending time with us. Thank you very much. Thank you very much, Tandi, for those very kind words of introducing me.

Indeed, I was looking forward to be here this evening. And thank you to Dr. Maduna, also for the very kind words he said in his speech. I think that on a day when one is going to speak about such a remarkable man, it is quite good that one should have somebody such as Dr. Maduna say some of the words that need to be said about this man that I'm going to talk about this evening.

First of all, I just wish to thank the Legal Resources Center for inviting me to speak this evening. I feel greatly honored and privileged that they have invited me and asked me to deliver this lecture in honor of such a distinguished South African. Ladies and gentlemen, I believe that I should use this lecture not so much to speak in abstract, but to speak about concrete things that we may need to do if we want to honor and show appreciation for the kind of sacrifices that people such as Bram Fisher made for us in this country to enjoy the freedom that we enjoy.

I thought that it would not be necessary to give an analysis of his life, because many people who are here would be very familiar with him and his life. I thought what would be important is for us to focus on what it is that we need to do if we want to make sure that this country is the kind of country that he would be proud of. I thought that we should talk about very concrete things that each and every one of us must do in order to make sure that his sacrifices and the sacrifices of many others are not in vain.

Today, as Dr. Maduna said, Bram Fisher came from a distinguished family. He could easily have lived a life of privilege, a life that did not bring him the kind of suffering that he was subjected to because of the choices that he made. But when one thinks of the contribution that Bram Fisher made in the struggle for our liberation, one has got to go back to that South Africa in which he lived and look at the conditions that existed at that time.

I'm happy that his daughters are here because they need to know that the majority of South Africans continue to appreciate the sacrifices that Bram Fisher and many others made so that this evening I could stand before you as Deputy Chief Justice of this country because we're in it for the struggles, the sacrifices, and the suffering of many, including Bram Fisher. There is no way I would have been Deputy Chief Justice of this country. I am because so many made sacrifices.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



Bram Fisher appreciated that there could be no peace in South Africa as long as the majority was denied fundamental rights. Indeed, he said that the elimination of racial discrimination and the granting of all fundamental rights to everyone where his objective were what he had lived and worked for, for nearly 30 years before the day he stood in the dock and read his statement. The people, the majority of the people of South Africa, during that time were subjected to repressive laws by a minority. They had no rights.

They did not take part in the running of the country. They were told which parts of the country they could live in. And very often those parts of the country were far from the places of work.

Very often it was places where the land was not arable. And all that was expected was that they should supply labor. To white people.

As the struggle for freedom intensified, the minority rule intensified repression. Many leaders were arrested and detained, but Bram Fisher was one of those who made the choice that he would suffer together with the majority. He made the choice that he could not enjoy privileges enjoyed by the few while the majority were suffering.

In his statement from the dock, he explains how at a very early age he had two African friends, other boys, that he played with, that he quarreled with, but says at no stage did he ever think that any fights that they might have had had anything to do with the colors of their skins. This is how he puts it. Like many young Africaners, I grew up on a farm.

Between the ages of 8 and 12, my daily companions were two young Africans of my own age. I can still remember their names. For four years, we were, when I was not at school, always in each other's company.

We roamed the farm together. We hunted and played together. We modeled clay oxen and swam.

And never can I remember that the color of our skins affected our fun or our quarrels or our close friendships, friendship in any way. When I read this passage about Bram Fisher and his two African friends at the age between 8 and 12, I'm reminded of Martin Luther King Jr.'s I Have a Dream speech. In particular, I remember the part where Martin Luther King Jr. said, I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

I have a dream that one day there in Alabama, little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers. Indeed, Bram and his African friends at the age between 8 and 12 seem to have related to one another as



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



brothers. This is how Bram Fisher described part of his life as he grew up as a young boy on a farm.

It is quite clear from this passage that the young Bram and his African friends related to one another simply as boys irrespective of the color of their skins. It must be noted that this was not 1994. Indeed, it was not even 1980.

It must have been around between 1916 and 1920. That at that stage in South Africa, an Afrikaner boy could have African boys as his friends with whom he played and had fun says a lot about Bram Fisher's family background at that stage. Later in life, after Bram Fisher had finished school and had gone to university, he became a believer in segregation and thought that it provided a solution to South Africa's race problems.

Indeed, he says in his statement from the dock that on one occasion he was introduced to leading members of the African community and he found it hard to shake hands with them. He says he found that this required enormous effort of will on his part. This was at the time when he had received influence on segregation.

Fortunately, later in his life, Bram Fisher became convinced that segregation was wrong and that the correct path was to build a society that would be based on human rights for all. Here is how he put it in his own words. I was a nationalist at the age of six, if not before.

I saw violence for the first time when sitting on my father's shoulder, I saw business premises with German names bent to the ground in Bloemfontein, including some of my own family. I can still remember the weapons collected, but my father and his friends were bent on preventing a second outbreak. I saw my father leave with an ambulance unit to try and join the rebel forces.

I remained a nationalist for over 20 years thereafter. And then he says, I never doubted that the policy of segregation was the only solution to this country's problems until the Hitler theory of race superiority began to threaten the world with genocide and with the greatest disaster in all history. The court will see that I did not shed my old beliefs with ease.

It was when these doubts arose that one night when I was driving an old ANC leader to his house far out to the west of Johannesburg that I propounded to him the well-worn theory that if you separate races, you diminish the points at which friction between them may occur and hence ensure good relations. His answer was the essence of simplicity. If you place races of one country in two camps, said he, and cut off contact between them, those in each camp begin to forget that those in the other camp are ordinary human beings, that each lives and laughs the same way, that each experiences joy or sorrow or pride or



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



humiliation for the same reasons, thereby each becomes suspicious of the other and eventually fears the other, which is the basis of all racialism.

And then he says, I believe no one could more effectively sum up the South African position today. In my view, when one looks at his journey, that is, Bram Fisher's journey, from the time where he entertained the idea of segregation to the time when he changed, it shows that he was a person who was in search of a solution. And when an argument was presented to him which was very persuasive and he didn't have an answer for it, he changed and never looked back.

Bram Fisher associated himself with the poor. He associated himself with the downtrodden. He associated himself with those who were not treated as citizens in their own country.

Of course, he was a communist. And he explains in his speech from the dock two reasons which he believes moved him to join the Communist Party. And he says, In my mind, there remain two clear reasons for my approach to the Communist Party.

The one is the glaring injustice which exists and has existed for a long time in South African society. The other, a gradual realization as I became more and more deeply involved with the Congress movement of those years. That is the movement for freedom and equal human rights for all.

That it was always members of the Communist Party who seemed prepared, regardless of costs, to sacrifice most, to give of their best, to face the greatest dangers in the struggle against poverty and discrimination. He continued and said, But there could be no doubt of the existence of the willingness to sacrifice. By that time, the Communist Party had already for two decades stood avowedly and unconditionally for political rights for non-whites, for blacks, and its white members were save for a handful of courageous individuals, the only whites who showed complete disregard for the hatred which this attitude attracted from their fellow white South Africans.

These members, I found, were whites who could have taken full advantage of all the privileges open to them and their families because of their color, who could have obtained lucrative employment and social position, but who instead were prepared for the sake of their consciences to perform the most menial and unpopular work at little or sometimes no remuneration. These were a body of whites who were not prepared to flourish on the deprivations suffered by others. He could have been speaking about himself, but he wasn't having himself in mind.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



He was talking about what impressed him, what made him join the Communist Party. He saw people that were concerned about the conditions of other people. He saw people that wanted to do something about the poverty that was faced by the majority of people, and he wanted to make a contribution for change to happen.

He didn't want to be on the side of those who would flourish on the deprivations suffered by others. I said earlier on, I want to talk about practical things. The kind of sacrifice that Bram Fisher, or sacrifices that Bram Fisher made are enormous.

Because he was white, he would have made many black people of the time believe because of him and other whites like him that whatever the conditions were to which they were subjected, there was no basis to say all whites wanted that to happen. He would have been a beacon of hope to many black people that indeed, there were white people who were on the side of justice, who were prepared to suffer together with them so that the whole system could change. The question that arises is what are we as South Africans in 2019 prepared to sacrifice in order to make this country a better country? What are we prepared to do in order to change things for the better for the overwhelming majority of people? Millions of people are poor.

Millions have no homes. Millions have not been afforded quality education that can give them jobs. They have been given education but it's not able to give them jobs.

What are we prepared to do? We need to start thinking about practical things. Things that I'm not going to wait for you to do before I do. Things that I can decide on my own I'm going to do irrespective of whether somebody else does them as long as I believe that it will contribute to the change that we need in this country.

There is no doubt that Bram Fisher wanted for this country a society that has no discrimination. A society that is based on human rights. He wanted a society that would respect all human rights and give everybody human rights.

Indeed our constitution makes it quite clear that we as a people have committed ourselves to establishing a society that is based on democratic values on social justice and on human rights. The preamble to our constitution proclaims to the whole world that while recognizing the injustices of the past and honoring those who suffered for justice and freedom in our land we adopted a constitution aimed at healing the divisions of the past and establishing a society based on democratic values social justice and fundamental human rights. Our preamble goes on to say that we seek to improve the quality of life of all citizens and free the potential of each person.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



We seek to build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations. That part of the preamble that is to the effect that we seek to establish a society based on democratic values social justice and fundamental human rights means that whatever we do both among ourselves as a people and with the outside world we shall respect observe love, defend protect and promote human rights. This part of the preamble defines who we are and all nations of the world are entitled to expect that wherever we go and whatever forer we may be at we shall protect human rights.

Given our history of colonialism oppression, racism and a denial of fundamental human rights it is not surprising that we chose that post-apartheid we would be a society based on human rights. Dealing with the type of society that we as South Africans have chosen to be the constitutional court had this to say a few years ago the principle established in Mohammed has a direct connection with the provisions of section 7-2 10, 11 and 12 of the constitution and the values upon which our new constitutional democracy is based. When we first democratically elected parliament and parliament adopted our constitution we as a nation turned our back on a very ugly past which had caused untold suffering to many in our society.

We committed ourselves to the building of a new society founded on the values of human dignity the achievement of equality and the advancement of human rights and freedoms non-racialism, non-sexism and the supremacy of the constitution and the rule of law. We sought to create a society whose cornerstone is our bill of rights which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. One of the values of our constitution on which our new society is based is the advancement of human rights the effect of our commitment to a society based on among others.

This value is that as a nation we have committed ourselves to advancing human rights in all that we do. It is therefore important that all of us whether we are within the country or we are outside the country and also whether we interact with other countries that we remember that we have chosen that for better or for worse are a society that is based on human rights and that at all times we will act in order to advance human rights. That is not something that everybody will agree with but that is in our constitution that is the choice we have made and in my view it is a choice to be proud of.

In my view it is a choice that Bram Fisher would be proud of. Indeed if we stick to the advancement of human rights this country will go quite far because we will respect everyone's rights. We will respect everyone's human rights.



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RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



The challenge is for us to identify as individuals as groups what I am going to do from tomorrow to reflect the legacy and the spirit of Bram Fisher. It is not good that we should just speak and we end there. We must adopt actions that will advance his legacy and therefore advance our society as well.

Bram Fisher is an outstanding South African. We will never forget his contribution. He made huge sacrifices because he chose the side of the oppressed.

Program director, at this stage, please allow me to deal with two topics that have been on the minds and lips of our nation over the past few weeks. Those topics are the violence inflicted by men against women and children in our country and the attacks on foreign nationals and the looting of their businesses by some in our nation. I start with the violence against women and children.

In the recent past, we have heard of very serious attacks on women and children by men. Each and every woman or child who has been attacked or sexually violated is important, but we cannot mention all of them. The brutal rape and murder of the UCT student allegedly by a man employed by the post office and the murder of baby Lee, allegedly by her romantic partner, and the murder of four children in Pine Town allegedly by their father who was going through a divorce with their mother have gripped the nation, have gripped the attention of our nation.

All members of our society should condemn these despicable acts by men against women and children. Violence by men against women and children is a very serious problem in our country. It has been a serious problem for many years.

Soon after the attainment of our democracy, the first democratic parliament realized that this problem was so enormous that special legislative measures were necessary in order to try and cap it. The result was that parliament passed the so-called minimum sentence legislation in 1998. That was the Criminal Law Amendment Act 105 of 1997.

In terms of this legislation, the court's power to grant bail to persons accused of murder or rape under certain circumstances was significantly restricted with the result that in those cases, a court may only grant bail under very limited circumstances. Furthermore, in terms of that legislation, the discretion that a court normally has to determine what the appropriate sentence is that should be imposed on an accused who has been found guilty of murder or rape was, in certain circumstances, severely restricted with the result that the courts became obliged to impose a life sentence in such cases unless in the limited circumstances provided for in the law. This has been the position since about 20 years ago.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



For the past 20 years, our courts have been implementing the minimum sentence legislation. But it seems that these minimum sentences have not had the deterrent effect that it was thought they would have. It seems that no matter how harsh the sentences are that the courts impose on men found guilty of acts of murder and rape of women and children, the men are not deterred.

It is as if these men have declared war on women and children and have vowed that nobody and no sentence will stop them. This is most regrettable. However, we cannot throw our hands in the air.

We are forced to pause, reflect on the whole situation and ask ourselves the question, what are we to do? While condemning this violence against women and children has its place, that cannot be all we do. We must also examine what it is that we have been doing over the past 20 years about this type of violence which has not worked, because we cannot keep on doing the same things that we have been doing over the past 20 years in the same way about this violence which has not worked, but hope that in that way we can defeat the scourge. If we keep on doing the same things in the same way, the violence against women and children will simply get worse and worse.

It seems to me that one of the things that we men must do is to stop speaking about this scourge as if the men who perpetrate this violence are people from another planet or are people we do not live with or work with. We as men must all confess that as men we have committed violence against women and children. We must confess that it is us men who rape women, who rape children, including our own children, who rape elderly women and women with disabilities.

We must confess that it is us men who commit such despicable crimes even as raping our own mothers. And it is us men who rape and strangle our partners. It is us men who do these things and we must be ashamed of ourselves.

In a speech I delivered last year on the subject of gender-based violence at a gala dinner hosted by the South African chapter of the International Association of Women Judges, I said, and I would like to repeat, I can hear the cries of women in the streets of Johannesburg. I can hear the cries of women in the streets of Soweto. I can hear the cries of women in Gwamashu and Umlazi.

I can hear the cries of women in Cape Town, in Gwalang, in Pretoria, in Bloomfontein, and all over the villages, the towns, and the cities of our land. I can hear the cries of women in all corners of our country saying to us men, what have we done wrong? What have we done wrong? Is our sin our femininity? As I hear these cries of women, I ask the question to us



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



men, how are we going to respond to those cries? How are we going to bring peace in the lives of women? What do we need to do to make sure that the tiny minority among us who give us such a bad name stop this violence against women and children? What are the extraordinary measures that we need to put in place in order to turn South Africa into a country where women and children are not subjected to this violence? Where a woman can walk the streets of our cities, townships, suburbs, and villages at 12 midnight alone without the slightest fear that she will be attacked by men. We need to work with women and their organizations to identify the special measures that we need to take.

The other issue that has been on our minds and on our lips has been the episode of attacks on foreign nationals. In the past three weeks, there have been many reports of such attacks in Johannesburg and other parts of our country. The visuals we have seen on our television screens have been visuals of people looting certain businesses.

Almost all newspapers have also carried articles and pictures of looting. Unfortunately, this episode was not the first, nor was it the second. There have been a number of such attacks and looting, the first one having been in 2008.

Whatever it is that the foreign nationals may be said to have done wrong cannot justify any physical attacks on them and the looting of their businesses, nor can it justify taking the law into your own hands. The tiny minority among us who may be responsible for that need to face the full might of the law. This is not to say that if foreign nationals have acted in breach of our laws, they should get away with it.

No, whether you are a South African citizen or a foreign national, you are subject to our laws and our laws must be applied with no fear, favour or prejudice. Taking the law into your own hands is unacceptable in any country that is based on the rule of law. The beating up of people, whoever they may be, is completely unacceptable.

The looting of businesses is a shame on us as a nation. Whatever grievances people may have, violence and self-help have no place in our constitutional order. People from Zimbabwe, Mozambique, Zambia, Nigeria, Lesotho, Ethiopia, DRC, Kenya and all other countries on the continent are our brothers.

They are our sisters, our sons, our daughters, our fathers, our mothers. We belong to the same continent. We are one.

We share the same mother, Mother Africa. We breathe the same air. Let us embrace them.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



If there are any disputes or issues, let us sit down and discuss those issues with them. If no solution is found through discussion, let us report those issues to relevant authorities. That is what people who live in a democracy do.

That is what people who live in a country based on the rule of law do. That is what people who have adopted a constitution and have said in their constitution, we seek to build a society based on democratic values, social justice and human rights do. The beating up of people does not define us.

We are not like that. We are a people who seek to establish a society that is caring, a society that respects other people's rights. And as I say that, I have absolutely no doubt that it is in line with what Bram Fisher would have said also, if he were with us.

With those words, I take this opportunity to thank you for listening. For me, it's been wonderful to be with you this evening. Thank you.