

ADDRESS BY RETIRED JUSTICE Zak Yacoob AT THE AWARD OF AN
HONORARY DOCTORATE BY THE UNIVERSITY OF THE WITWATERSRAND ON
5 JULY 2018.

Programme Director, esteemed guests and colleagues, members of the university establishment and, most importantly, all the admirable students who will graduate today:

First, I congratulate each and every real doctoral graduand with all the warmth at my disposal—there is a great deal of warmth in me right now. Unlike me, each and everyone of you has worked very hard, with determination and with much creativity to deserve the conferral of a doctorate upon you today. I wish you every success in your future careers and have no doubt that each of you will, in your own way, contribute to the achievement of what I call the Constitutional project: the achievement of a truly non-racial, non-sexist, equal society based on the values of dignity, equality and freedom. Let us not make the mistake of believing that the kind of society envisioned by our Constitution is already a reality. We have, of course, made much progress along this difficult road in the 24 years since the passing of the interim Constitution, but much of our society remains racist and sexist, and discrimination against people on the basis of their sexual orientation, disability age and other grounds prohibited by our Constitution continues. Our Constitution does much more than confer rights and privileges upon all the people in our wonderful country. It imposes upon all of us a singular duty (indeed it urges us) to do all we can to create the human rights order contemplated by it, to work towards the improvement of the quality of life of all people, especially poor and vulnerable people, and to respect the rights of everyone. What is more, while it is true that the duty is imposed on everyone, human beings who are more privileged and less vulnerable have, in my view, a more compelling responsibility than people who are poor, weak or vulnerable. And almost each one of us present here is relatively less vulnerable, more powerful and definitely more privileged. We cannot use our privilege for OUR pleasure and benefit alone. Obviously we must have reasonable resources to keep house and home together, and having done that, we should make an effort to bring about change in our society.

But how do we do this? The struggle to rid our society of injustice, discrimination and poverty did not end with the

adoption of our Constitution. If it did anything at all, our Constitution has ushered in a new phase in the struggle. The Constitution is, if you like, a launching pad for this new phase of struggle to create and deepen our value-based democracy. We need to continue to organise and mobilise but on a different plane. The first step in this process is for us to read the Preamble together with the first 39 clauses of our Constitution, which comprise mainly of the Founding Values and the Bill of Rights. But we must do more than just read it. Each of us needs to understand these values, internalise them and live them on a day to day basis so that they become integral to us. The next step would probably be to persuade others largely by example but also by forceful propagation to also internalise and live these values and to persuade more and more people to do precisely that. And we would be engaging in serious self-deceit if we were to believe that the process of understanding, embracing and living non-racism, non-sexism and non-discrimination in general is an easy one. I confess that I was a racist and sexist once and that I, for many years, as a young man, talked the language of non-racism and non-sexism. And I found that to live these values was much more difficult. So don't be too concerned if the struggle within yourself is difficult and complex. That will perhaps be a good test of real insight, self awareness and change.

And all institutions in society including universities have an obligation to contribute to this Constitutional project. I think I have already made clear that the Preamble, the Founding Values and the Bill of Rights are not the preserve of lawyers and law students alone. This reputable university, and all other universities must proclaim without delay their commitment to the values of the Constitution over and above the commitment to academic excellence. I would go so far as to suggest that, in South Africa today and in the future, the commitment to Constitutional values is probably an absolute pre-requisite to any constitutionally compliant programme to realise academic excellence. The vision and mission of every university in the country should include the creation of a university community that embraces and lives by the values of the Constitution.

And any university programme aimed at producing this result must start during the student orientation at the beginning of each year. Every student should receive a copy of the Preamble and the first 39 clauses of the Constitution with a session or sessions explaining these values to all students.

The university will in this way make an invaluable difference to the realisation of the values of the Constitution in society at large. I have suggested this in many a talk at many a university, but no university has yet begun to implement this recommendation though promising to do so. I truly hope I succeed this time. And if I do not, I trust that responsible students will exercise appropriate pressure on management to do this.

Let us now have a brief look at the preamble and the values of our Constitution. The relevant part of the Preamble, after an account of past suffering, injustice, struggle and sacrifice, states the objectives of our Constitution to be to:

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

This preamble speaks for itself and creates a compelling compass defining broadly our direction to a worthwhile and grand future. All I do now is to emphasise that it is our obligation to achieve social justice, our obligation to create a society in which fundamental human rights prevail, and it is our duty to build a constitutional order that will improve the quality of life of all our people.

And now to the values proclaimed in section 1:

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

(b) Non-racialism and non-sexism.

(c) Supremacy of the constitution and the rule of law.

(d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

A matter to be stressed right now is that our Constitution is not simply a liberal Constitution that places a particular emphasis or highlights the special significance of freedom or liberty. Freedom and/or liberty are not self-standing rights in our Constitution either. It is worthy of note that the values put together in one sub-clause are those of dignity, equality and freedom, NOT freedoms alone. This approach is also taken in Section 36 of our Constitution which specifies the circumstances in which a law of general application may limit or curtail the rights in the Bill of Rights. A limitation is permitted only to the extent that it is justifiable "in an open and democratic society based on human dignity, equality and freedom". The democratic society to which we must have reference is certainly not one that is based on freedom alone but one that is committed to dignity, equality AND freedom. In my view, the notion of freedom in our Constitution is qualified by human dignity and equality. In other words, to permit freedom at the expense of human dignity or equality would be inconsistent with the values of our Constitution. But the qualification or limitation of freedom in the sense of absolute liberty in the interests of promoting respect for human dignity or greater equality or even affirmative action might well be justified. And both human dignity and equality are, unlike freedom, protected by self-standing provisions of our Bill of rights. Freedom is protected only in the context of, for example, the freedom and security of the person and the freedom of association, expression, religion, and movement.

Conclusion: The difficulty we face is that there is, for want of a better concept, a disconnect between the values of our Constitution on the one hand and those values practised and supported by many people in our country at present. When I refer to the people of our country, I refer to Black African, Indian African, so-called Coloured African and White African people alike. I trust that everyone here will agree with my conviction that Court judgments and statutory enactments can not bring about true democracy on their own. They are indeed

necessary but not enough in themselves. We need a social revolution which I have tried to describe. I live in the hope that more and more people including everyone here will dedicate themselves to the Constitutional project. The only way in which I can express my appreciation to this University for the incredible honour bestowed on me is to re-dedicate myself to the Constitutional project. I do so now and join you with tremendous appreciation.

Thank you.