

**CONCEPT PAPER:
AWARDS TO RECOGNISE THOSE
CONTRIBUTING TO THE CELEBRATION OF THE
RIGHTS OF CULTURAL, RELIGIOUS AND
LINGUISTIC COMMUNITIES IN SOUTH AFRICA**



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1. Introduction

This short concept paper was commissioned in March 2004 by the newly-appointed Commission for the Rights of Cultural, Religious and Linguistic Communities in South Africa. The Commission was seeking recommendations on the idea of instituting an award system that would recognise those who exercise these rights in a way that contributes to nation-building.

The paper outlines some of the legal instruments and theoretical concepts underlying the notion of these rights, and situates them within the global debate on multiculturalism and conflicts of rights. In engaging with a topic such as this, it is important to get rights *right*, in the sense of reflecting on their conceptual structure. And these are concepts and ideas that repay careful consideration. It was therefore thought to be important to offer a conceptual background to the rights of cultural, religious and linguistic communities, because the work of the Commission has the potential to make a great impact on the way that South Africans conduct themselves in respect of their communal rights. This requires the Commission to have a clear idea from the outset what its goals and parameters are in respect of these rights.

The paper addresses the idea of an award system in terms of both its rationale and ideas as to how it may be put in place (sections 5-8), having regard to the conceptual framework that is offered (sections 2-4). The researchers were also asked to make recommendations on topics for possible future research. These are briefly outlined in the conclusion, and out of the topics identified there, suggested research project titles are listed for the Commission's consideration.

The paper represents an exercise in "instant research" as it was compiled over a limited period of time, and it is therefore not an exhaustive work. Rather it provides an introduction and overview of some of the ideas and debates on this topic, and seeks to situate these within the South African context. Owing to the constraints of time, the methodology employed here was desktop study, supplemented by earlier research and publications by the researchers. No doubt a more complete study will have to be conducted in the future, which will provide more detail and analysis than was possible here.

2. Background to the Cultural, Religious and Linguistic Rights of Communities

The rights of peoples or communities in respect of the exercise of their culture (or ethnicity as it is more commonly referred to in international law),¹ religion and language are sometimes seen to constitute a "neglected and forgotten category of human rights ... they are treated as the 'poor relatives' of other human rights."² Indeed, while cultural rights are enumerated with Economic and Social Rights in the 1966 *Covenant on Economic, Social and Cultural Rights* (see Appendix 1), they are quite frequently referred to either only cursorily, or not at all when the rights in that covenant, and other related instruments, are under scrutiny.

It is worth noting however, that the cultural, linguistic and religious rights of peoples or communities are quite distinct from social and economic rights, both in their genesis and their content. These rights fall into a separate category sometimes referred to as "Third Generation

¹ In much of the literature, and the international instruments that deal with the topic of these rights, "culture" is used as an umbrella term, covering communal or group rights of ethnicity, religion and language (see Symonides, 2000). However, there appears to be no discernable distinction made between the use of this as an umbrella term, or as an interchangeable one with ethnicity, as culture is regarded as broad enough to encompass both meanings. As far as possible, the South African constitutional convention will be followed here, with "culture", "religion" and "language" being referred to to denote specific categories of rights. Ethnicity in the South African context is regarded as a more complex matter, and one not to be confused or conflated with culture.

² Symonides, 2000: 175

Economic and Social Rights) owing to their collective nature, as well as their association with the "Third (Non-Aligned) World."⁴

This does not mean that these rights are of a lesser sort - their collective nature and their later arrival in the human rights family does not mean that they deserve less protection, nor that they are of lesser importance to their holders. There are two important considerations to be taken into account: a *moral* one, and a *contextual* one. The moral consideration is that these rights, like all human rights, are always and everywhere the same, and so in the same way that other fundamental human rights, such as the right not to be tortured, *ought* to be honoured equally in all circumstances (even where they are not, constituting human rights violations), so too the rights of communities to freely exercise and enjoy their culture, practice their religion and speak their language *ought* to be equally respected and supported in all countries and societies. The contextual consideration is that differences of culture, religion and language exist to *differing degrees* and have different *significance* attached to them in different countries and societies, and so the *extent* to which these rights *require* protection will vary from place to place.

However, the notion of the collective rights of cultural, religious and linguistic communities is a frequently contested one, because of the varying resonance that it has in different parts of the world. But it is not a category of human rights that is only applicable to a limited number of countries in the developing world, with minority or indigenous communities, as is sometimes supposed. Indeed, as Bryan Barry notes, with the possible exception of Iceland "all countries are ethnically mixed"⁵ to some extent. So this category of human rights is as universally relevant as any other.

South Africa is a paradigm case of diversity, and therefore the relevance of the rights of distinct cultural, linguistic and religious communities here is especially pressing. It is axiomatic that the assertion of distinct claims of culture, and the possible conflicts of value that these entail, has the potential to be divisive. However, it is increasingly being recognised, that, depending on *how* diversity is dealt with in any given state, difference need not translate into division. As Janusz Symonides remarks, "culture and respect for cultural rights have also been recognised as an essential element in the resolution of conflicts."⁶

This underscores the importance of according adequate recognition not only to the rights themselves, but also to those who are instrumental in articulating these rights in a way that promotes tolerance, understanding and national unity; rather than fomenting hatred, violence and distrust. This point was emphasised by (then) Deputy President Thabo Mbeki in 1998, on opening the debate in parliament on the establishment of the Constitutionally mandated Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities: "The fault will express itself in conflict because we would have failed to find the intelligent ways and means by which we would organize ourselves to unite as a people, around common national aspirations and a common identity, while we honour and respect our diversity."⁷

⁴ Third Generation Rights are therefore consonant with ideas articulated by the Non-Aligned Movement (NAM) that asserted a "Third World" of countries in addition to those which comprised the rival "First" (NATO) and "Second" (Communist) World blocs of countries during the Cold War. The term "Third World" was coined by French economist Alfred Sauvy in an article in the French magazine *The Observer* of 14 August 1952. The idea of Third, Non-Aligned World was articulated at the Bandung Conference in Indonesia in 1955, and was followed by the first meeting of the NAM in Belgrade in 1961. See <http://en.wikipedia.org> and <http://newsvote.bbc.co.uk>

⁵ Barry, 2001: 78

⁶ Symonides, 2000: 176

⁷ *Speech of Deputy President Thabo Mbeki Opening the Debate on the Establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*. National Assembly, 4 August 1998. <http://www.anc.org.za/ancdocs/history/mbeki/1998/tm0804.htm>

3. The Recognition of Cultural, Linguistic and Religious Rights in South Africa

In South Africa we are privileged to enjoy a rich multiculturalism that is both wide and deep. It is wide in the sense that the range of diversity of South Africans – in terms of race, culture, religion and language – is vast; and deep in the sense that our diversity as South Africans is not a superficial matter, but rather many of these elements constitute essential aspects of people's identity, and therefore may require protection and recognition.

It would be impossible to compile an inventory of the cultural, religious and linguistic elements that would cover all aspects of every South African's idea of what these should include. Part of the importance of recognising and respecting people's (as individuals and as collectives) rights to the various aspects of these is recognising their freedom to decide, and debate, what the elements of their culture, religion, and languages are.⁸ What constitutes them? Which elements are essential and static, and which are fluid and subject to change over time? No attempt is made here to embark on such an exercise, as it is taken as given that the existence of a diversity of languages, cultures and religions in South Africa is sufficiently well known for these not to need to be inventoried. However, this paper flags an exploration of the diverse nature and understandings of these concepts in South Africa as an area of future research (see section 9.1).

The recognition of the breadth and depth of this diversity, as well as the need to safeguard it, are woven into the fabric of South Africa's human rights dispensation. The main features of the law protecting these rights are outlined here. These are backed up by a number of international instruments, some of which have been received into South African law, which are also briefly outlined in Appendix 1 of this paper.

3.1 *The Constitution and the National Action Plan*

The *Constitution of the Republic of South Africa*, 1996, is frequently hailed as one of the most progressive and comprehensive in the world, especially in respect of the human rights that it enshrines in the Bill of Rights in Chapter 2. The most important of these for the purposes of the rights of cultural, linguistic and religious communities are sections 9, 15, 30 and 31.

Section 9 of the Constitution contains the equality clause, which guarantees the right to be treated equally before the law, and prohibits discrimination on the grounds of, *inter alia*, "ethnic or social origin ... religion, conscience, belief, culture, [or] language." Section 15 guarantees the (individual) right to freedom of religion, belief and opinion, while section 30 does the same for the use of the language of one's choice and participation in the cultural life of one's choice, in so far as these are consistent with the other provisions of the Bill of Rights.

The rights of "Cultural, Linguistic and Religious Communities" (collectively) are enshrined in section 31. There are two distinct rights recognised by this section: The first is the right of communities to actively enjoy, practice, and use their culture, religion, or language – this is what is termed a *negative* right, as it consists in the duty of non-interference on the part of others, both the state and other people. The second right is that to "form, join and maintain cultural, religious and linguistic associations and other organs of civil society" and again this is a negative right, as it requires the duty of non-interference on the part of others. Section 31(2) stipulates that both of these rights are subject to the other provisions of the Bill of Rights, which precludes communities from collectively exercising their right in a way that interferes with the rights of others, either individuals or collectives. The problem of conflicts of rights is referred to below, but it is important to note that this limitation on communal rights of cultural, linguistic and religious

⁸ Indeed Leslie Green points out that "[m]any cultures incorporate as part of their fabric disputes about what their ways really are" (Green, 1995: 270).

communities implies that the rights of individuals will often “trump”⁹ or outweigh those of communities when they come into conflict. See section 3.2 below.

Other important, *supporting* rights – supporting in the sense that they provide the necessary conditions for the free enjoyment, practice or exercise of the rights outlined in section 31 – are enshrined in sections 16, 17, 18. Section 16 enshrines freedom of expression, including that of the press, information and ideas. Most importantly for the rights under discussion here, section 16 protects the freedoms of artistic creativity, and those of academic freedom and scientific research, both of which are regarded as integral to the exercise of cultural rights. Section 17 enshrines the freedom of assembly, and section 18 the freedom of association.

There are also *related* rights – those which *may* impact on the free exercise of the rights in section 31 in certain circumstances – in sections 14, 21, 22, 24 and 29. Section 14 enshrines the right to privacy, section 21 the freedom of movement and residence, and section 22 the freedom of trade, occupation and profession. Section 24, which enshrines the right to a healthy and protected environment, has enormous resonance for some cultural communities, and may therefore be critical for the exercise of their communal rights. Similarly, section 29, which enshrines the right to education, and in particular the right to establish one’s own institutions to this end, is deemed to be of importance to the practices of some cultural, linguistic and religious communities.

Chapter 9 of the Constitution establishes the State Institutions Supporting Constitutional Democracy, one of which is the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*. The functions of the Commission, as outlined in section 185, are to promote respect for these communal rights; to promote peace, tolerance and national unity among communities; and to make recommendations on the establishment of community councils. The Commission has the necessary powers that it requires to “monitor, investigate, research, educate, lobby, advise and report on issues” concerning the rights of these communities; and to carry out its functions. The Commission also has the power to report on any matter within its area of competence to the Human Rights Commission (HRC). The Commission’s composition must be representative of the cultural, religious, linguistic and gender composition of South Africa. The Constitution also makes provision for more detailed national legislation in this regard (see section 2.2 below).

Section 235 of the Constitution refers to self-determination in its national sense, but also makes provision for the recognition of the right of self-determination of linguistic and cultural communities within South Africa. This right is subject to limitations, for example such communities do not have the right to secede, nor to violate the laws of the country.

The *National Action Plan for the Promotion and Protection of Human Rights* (NAP), of 1998 is South Africa’s response to the *Vienna Declaration and Programme of Action* adopted at the 1993 World Conference on Human Rights. The Vienna Declaration recommends that states draw up a national action plan to identify the steps that need to be taken to promote and protect human rights. This is necessary because, as (then) President Nelson Mandela says in the Foreword to the NAP,

The experience of South Africans and of all peoples everywhere has taught that in order for the rights and freedoms embodied in constitutions to be realised, they must become part of the everyday reality of citizens lives, and the institutions protecting them must be deeply entrenched.

One of these institutions is of course the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*, as laid down by the Constitution.

⁹ This term is that of Ronald Dworkin, drawing an analogy with a deck of cards, where some suits have greater weight than others, which makes them “trumps.” See Dworkin, 1984

The NAP makes specific reference to the freedom of culture, religion and language. Two of the challenges identified by the NAP that are relevant to this paper are:

- Affirming diversity while at the same time building a common nation
- Promoting tolerance and respect

The NAP goes on to identify the establishment of the Commission as one of the ways to address these challenges.

3.2 *Commission for the Promotion and Protection of the Rights of Cultural Religious and Linguistic Communities Act, 2002*

The Act was passed on 30 July 2002 in order to give effect to the sections of the Constitution outlined above. In particular, the Act's purpose is to provide for the composition of the Commission, and to provide for the convening of a National Consultative Conference. The Act, in recognising the diverse nature of South Africa and the "divisions of the past," also states that "the Commission, in fulfilling its constitutional task should play a key role in assisting with the building of a truly united South African nation bound by a common loyalty to our country and all our people."

More specifically, some of the duties of the Commission, laid down in section 4, are:

- Promoting respect for and protecting the rights of cultural, religious and linguistic communities
- Promoting and developing peace, friendship, humanity, tolerance and national unity among and within these communities on a free and equal basis
- Fostering mutual respect among such communities

The term of the Commission is 5 years, and in terms of section 24 of the Act, the Commission is obliged to convene two National Consultative Conferences during each term, the first one within 12 months of a new term. The current Commission was appointed at the end of 2003, and the first of these conferences is scheduled for 29 November – 3 December 2004.

Yunus Carrim remarks that the Commission "is the outcome of two imperatives." Firstly, it was a response to the need to include the minority White, right wing in a sustainable transition; and secondly, it is necessary to reconcile the diversity of "ethnic and racial identities in South Africa" through a process of nation building.¹⁰ The Commission is therefore, at its inception, charged with developing strategies to reconcile and encourage participation in a broader debate about national identity, citizenship, and the scope and limits of toleration. This is an onerous responsibility, especially in light of the fact that it is to be done in a way that accords equal recognition to the rights of all communities with distinct cultural, linguistic or religious identities.

But as Carrim goes on to note, the Commission does not bear this responsibility alone. The Commission's work is supported by, and presumably must be in support of, the Human Rights Commission (HRC), and the Commission for Gender Equality (CGE), as these bodies have overlapping jurisdiction on questions of human rights. This is in keeping with the constitutionally defined system of co-operative government in South Africa, but also the greater imperative of "the expression of diversity as part of national unity, which is at the heart of the constitution."¹¹ Carrim points out that the Commission will also have to establish and clarify its relationship with the National House of Traditional leaders, in so far as this body "also deals with cultural questions and is made up of different language groups"; and the Pan South African Language Board.¹²

¹⁰ Carrim, 1999: 258

¹¹ Carrim, 1999: 262-262

¹² Carrim, 1999: 262

The other supporting legislation in South Africa relating to these communal identities cannot be discussed in any detail here, but it is also aimed at reinforcing the rights of distinct communities. These include the *Pan South African Language Board Act*, 1995 and the recently enacted *Traditional Leadership and Governance Framework Act*, 2003. The details of these and their specific aims will have to be postponed for discussion as part of a future, more in-depth, research project, but the Commission would be advised to make use of these existing bodies to assist and support it in its work, and, as Carrim advises, to share administrative and other resources.

In addition to the domestically enacted legislation, South Africa also has a number of obligations under international law pertaining to the rights of cultural, religious and linguistic communities. These are outlined in Appendix 1 of this paper.

4. Celebrating Diversity: Nation Building and Development

4.1 Diversity and Identity: Race and Ethnicity

Identity in South Africa is a complicated matter. The most obvious vector of identity in any country or society is race, but this has of course taken on added significance in South Africa because of the recent history of racism and discrimination. Related to race – and indeed largely commensurate with it in South Africa – is economic and social class, which can prove equally divisive, as “people on opposite sides of the socio-economic divide [are often] incapable of understanding and empathizing with one another.”¹³ However, neither of these aspects of identity capture what it is that is understood by the notion of “culture” or “ethnicity” (although the latter are of course frequently inaccurately conflated with race¹⁴). Furthermore, while race *may* still constitute a ground for discrimination where this is deemed to be fair (as in the case of affirmative action measures which are aimed at redressing past inequalities), no such discrimination is permissible on the grounds of class. As Bryan Barry remarks (paraphrasing Ernest Hemingway):

[I]f indeed ‘the very rich are different from you and me’ ... it is very different from the kind of thing that is usually thought to be worth protecting under that head ... [I]t is not a legitimate objection to redistribution to claim (even it is true) that your ‘culture’ depends on the possession of great wealth, any more than it would be a legitimate objection to the abolition of slavery to claim that your ‘culture’ depends on the ownership of slaves.¹⁵

This is an important point to note, as it discounts cultural claims that rely on discrimination based on imbalances in power and resources, and so presumably claims of gender discrimination as an aspect of culture would also be questionable in this regard. This point will be returned to in the section below. However gender is an important aspect of identity, and one that has been the source of much discrimination. This is not just the biological difference between men and women, but of course the social and cultural significance that is attached to the fact of being male or female, or indeed homo- or heterosexual. The complex interplay between gender and culture is not one that can be ignored, although it may not, on its own, constitute an aspect of identity that creates a community.

So what are the legitimate aspects of identity that the Commission *should* be aiming to promote and protect? The Constitution does not define “culture” but most obviously, one thinks of language and religion as signifiers of culture and difference, as well as different notions of “ethnicity.” There is a certain degree of overlap between these concepts in South Africa, so one can for example be a Zulu Christian (which covers linguistic, cultural and religious categories, but presumably race too), or a White, Black or Asian Muslim, or a South African member of the Greek Orthodox church (which would also straddle all of these categories) and so on. However,

¹³ Raz cited in Barry, 2001: 79

¹⁴ Carrim, 1999: 259

¹⁵ Barry, 2001: 79

again these categories as they relate to race may be confusing: For example, would we say that a (so-called) Coloured¹⁶ South African and a White South African were of the same culture, even if they shared a common language and religion?

Section 6 of the Constitution recognises 11 official languages¹⁷ but in addition the Pan South African Language Board is charged with *promoting and creating the conditions for the development and use of not only the official languages, but also the Khoi, Nama and San languages and sign language*. As far as other languages used by (largely immigrant) communities in South Africa are concerned, the Board has the slightly lesser duty in terms of section 6(5) of the Constitution to *promote and ensure respect for languages including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, and Urdu, as well as Arabic, Hebrew, Sanskrit and "other languages used for religious purposes in South Africa."*

As far as religion is concerned, South Africa is a secular state that recognises and tolerates all religions equally. Christianity is the majority religion (around 68%); followed by Indigenous and Animist religions (around 28%), Islam (around 2%), Hindu (around 1.5%),¹⁸ and Judaism (the South African Jewish community, while small in number, is very vibrant and active).

Culture and ethnicity are more difficult to define, let alone enumerate, and furthermore there is a distinctly *subjective* aspect to the notion of culture. Is not one's culture what one believes it to be? However there is the external ascription of culture to people, for example beliefs about people's ways based on their religion or language. Furthermore, the notion that culture is to be *protected*, and that it is therefore exempt from outside interference is a powerful one, and one which is sometimes mobilised to defend certain practices that are thought to discriminate against members of a group, or others who are not members of the group, in the name of "tradition." These claims have to be carefully weighed, as the rights of communities in this regard do not entail the waiving of the rights of others – to put it another way, no right amounts to a right to do wrong. However, outside of the world of abstract principles, things are not so simple, as it is precisely in the course of everyday moral and political life that conflicts between people arise, and many of those conflicts entail claims of rights. How does one resolve such claims when they constitute a conflict between the rights of a community and those of an individual? Should the one outweigh the other?

There are a number of approaches that a state can adopt in this regard. On the one hand, there is the approach that holds that the state should not interfere at all in the group's practices, even if they do threaten the rights and equality of members of the group. This is known as a *libertarian* approach, as it is characterised by freedom constituted by non-interference. On the other end of the scale, there is the more *republican* approach, which regards uniformity as a good to be pursued, and so this approach holds that the state should insist that the ways and practices of all communities should conform to a shared national ideal and set of principles. On this approach, the state has the power, and indeed the duty, to intervene in cultural practices to ensure that all individuals are treated equally, and to insist upon uniformity.¹⁹ However between these two extremes are a range of alternatives, and South Africa's approach – which regards the rights of individuals and groups as being worthy of equal consideration – is one example. The idea that tolerance for traditional practices, and understanding about the equal rights of individuals, can be promoted through dialogue is a promising and potentially unifying one. However it is by definition an approach that has to grapple with difficult issues of conflicts of rights that fall between the ideal of non-interference in communal practices on the one hand, and respect for the

¹⁶ This term, like other terms of racial classification linked to the apartheid system, is a contested one, but it is used here in the absence of a known alternative. See Crawhall, 1999: 33-51 on how the term "Coloured" has been (incorrectly) ascribed to indigenous Khoi and San people in South Africa.

¹⁷ Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu

¹⁸ The source for these statistics, which are assumed to be estimates only, is <http://www.hri.ca>

¹⁹ An example of this approach in practice is the recent decision by the French government to ban all religious symbols in state schools including the wearing of head scarves by female Muslim learners.

equal rights of individuals on the other. The following section attempts to address this problem by clarifying what group rights, conceptually, entail.

4.2 Group versus Individual Rights

Rights are sometimes seen to have an *ordinal* value, in the sense that some rights are more important than others, and so when there is a conflict, the more important right outweighs – or “trumps”²⁰ – the other right. The right to life, is usually regarded as *the* trump card as far as rights are concerned, but of course no right is absolute, and so even this all-important right may be limited in certain circumstances (such as when somebody kills in self-defence). People also have a right to privacy within their own homes, and to dispose of their property as they please, which includes denying people entry to their homes without their permission. Consider however the following example of a conflict of rights: If a person was critically ill and required medical attention, but they were trapped inside a house behind a locked door (and therefore in danger of their life if they were not rescued), would it be a justifiable limitation of the homeowner’s rights in respect of their home and property for someone else to break the door down to release the trapped person, even if the homeowner was not available to give their permission? On most accounts of rights and morality one would almost certainly regard this as a justifiable limitation and easily resolved conflict of two individual rights. One can reasonably assume that while people of different cultures may not attach identical significance to life or privacy and property, most would agree that saving a life is more important than saving the door, which can after all be replaced and the right to privacy restored, in a way that the life cannot.

However where things become more difficult is when no such commensurable or ordinal value is attached to the *objects* of rights (which are the things that the rights are *to* – i.e. life, privacy, etc.). So for example, while it might seem perfectly obvious to one person that the right to healthcare (requiring the building of a hospital in a certain area) should outweigh the absolute rights of the existing owner(s) of the land on which it is to be built (such that they may not refuse to sell the land if fairly compensated); the owners of the land might object that the land has special spiritual or cultural significance, and that its expropriation would violate their communal rights in a way that could not be compensated.

While conflicts of individual rights associated with culture do of course occur, the majority of the most perplexing of these conflicts occur when the collective rights of communities are involved. It is important to understand that group rights are not just the sum of a shared individual right, but that they emanate from the distinct corporate identity of the group. This is the distinction between *collective* rights, and *corporate* rights. As Peter Jones describes the difference between these, “[a] group right properly so called is a right possessed by a group *qua* group. It is not to be confused with a right which is common to a group of individuals, but which each individual possesses as an individual.”²¹ An example of a collective (individual) right would be the right of the disabled to access buildings – notice though that while this right is deemed to be that of disabled people as a collective, it is an *aggregated individual right*. A group right in its true sense requires there to be some kind of *corporate moral standing* for the group as a whole *separate* from the collective individual identities of the members. The corporate account of group rights regards the group’s identity as not merely a sum of its individual parts, as it is in the case of a collective right. And so a corporate conception of group rights includes those things to which distinct cultural, religious or linguistic groups claim rights; as these are not merely a sum of the separate rights of the individual members of the group, but rather the group has a separate (corporate) identity and so the *group* can be seen to have rights separate from the individual rights of its members.

²⁰ See Dworkin, 1984

²¹ Jones, 1994:182-3

And this is where the possible problems of conflicts of rights appear. There are two main problems to be considered here:

- 1) Can a group's (corporate) rights override the individual rights of its members? This is known as an *internally directed right*, and it usually arises where there is concern for the rights of vulnerable members of a community, such as women and children, who may be subject to discrimination and unequal treatment.²² An example of such an internal conflict of rights would be the asserted custom of male primogeniture in the African Customary Law of inheritance, which dispossesses female heirs, in conflict with their constitutional right to equal treatment.²³
- 2) When a group's corporate rights come into conflict with the rights of people outside of the group, which right should prevail? This is known as an *externally directed right* and these are the sort of rights claims that arise when, for example, the claim of an indigenous community to a piece of land is in conflict with the rights of ownership of someone else.

One way of resolving these conflicts is to return to the question of what *purpose* human rights serve. What are they for? Why should we accord them such an exalted and protected place in our law and social practice? And the answer to this question lies in relative power and the goal of equality. Human rights assume all people to be of equal worth or value. Whatever their race, economic or social standing, age, sex, and so on; the concept of human rights is intended to give all people equal moral standing. Everyone counts equally with everyone else. So on what grounds would *unequal* treatment be permissible? As in the case with affirmative action, unequal treatment is permissible, and not a violation of human rights, when it is aimed at redressing an existing or past inequality. So claims to have ancestral land restored clearly fit this bill. However, *internally* directed claims of culture, that assert that there is a right to discriminate against members of the group cannot be justified in this way. These claims are usually aimed at *maintaining* existing inequalities and hierarchies. There is a fundamental contradiction in claiming the right to have one's culture treated with equal respect, while at the same time claiming that one has the cultural right to treat others unequally. So if it is right that we protect people's culture, religion and language in order to accord them equal status, then it is equally right that we protect *members* of communities that are threatened with unequal treatment. As Barry remarks, "[e]qual respect for people cannot therefore entail respect for their cultures when these cultures systematically give priority to, say, the interest of men over the interests of women."²⁴

While this idea may seem controversial, especially to those who would wish to uphold internally directed claims of culture that may perpetuate inequalities, it is important to remember that the state's primary responsibility – and the Chapter 9 institutions such as the Commission are one branch of the state – is to uphold the rights of the weak against the strong and give effect to the ideal of equality. When claims of cultural rights are *externally* directed, the duty of the Commission is to consider how best to redress an imbalance in power; and when claims are *internally* directed, the Commission, and related institutions such as the Human Rights Commission, have a duty to give effect to the equality and equal rights of *members* of the group, even if they are in conflict with asserted claims of culture.

A further argument that is sometimes invoked to defend such practices is that the whole notion of human rights is a Western individualistic one, and therefore inappropriate for traditional cultures, which should be exempted from these egalitarian demands. Furthermore, it is sometimes argued that what exemplifies the African (and other non-Western cultures') approach to human rights is that the claims and practices of the group supersede the rights and choices of the individual. The problem therefore is to frame human rights in such a way as not to compromise this collective consciousness and way of life. As Rhoda Howard comments, "[a] major theme of this argument is

²² See Green, 1995

²³ At the time of writing, a test case of this example was being heard by the Constitutional Court

²⁴ Barry, 2001: 127

that Africans are community or group oriented rather than individualistic, and hence the rights of the individual are not relevant to them.”²⁵ It is not disputed that that African culture and traditions are generally more communitarian than those in the West. However, as Howard argues, even if this is so, it is irrelevant to the question of the appropriateness of basic human rights norms for African people. In particular, she challenges the claim that the retention of some hierarchical norms and practices, at the expense of more vulnerable members of a group, is in some sense justified on this basis.

This position is well supported in international law, to which the South African Constitution [section 39(1)(b)] makes specific reference in support of the interpretation of human rights. Irene Daes, who was the Chairperson of the United Nations Working Group on Indigenous Populations, remarks that in pursuing the goal of self-determination by protecting and promoting the communal rights of distinct groups, it is important to remember that the internal conduct of the group towards its members is no less a matter of concern for human rights than the internal conduct of other sovereign states. Indeed articles 8 and 9 of the *Convention on Indigenous and Tribal Peoples*, 1989 (see Appendix 1) requires that autonomous institutions be compatible with “internationally recognised human rights.”²⁶

Now again these problems are more easily solved in the abstract world of concepts than in the real world of jostling interests and competing claims. Daes argues that the solution “is not a blanket exemption from universal principles of justice, but greater local responsibility for the interpretation and enforcement of these principles in the first instance.”²⁷ So this refers back to the point made in the section above, that there is a sliding scale of options, with total non-interference on the one end, and forced uniformity on the other, but that an approach in the middle of this scale which promotes dialogue and understanding as a way to address these is perhaps the most constructive approach, even though it is more demanding.²⁸

In South Africa, where these claims are articulated daily by those with powerful and passionate interests in seeing their practices continue without interference, the matter is one which is both sensitive, and almost impossible to resolve to everyone’s complete satisfaction. For example, the claims of traditional leaders in this regard, cannot simply be neutralised with reference to political philosophy, no matter how influential its proponents are. Rather, ways have to be found for these types of issues to be aired, discussed and debated. The aim here is not nation-building via consensus and uniformity, but rather via deliberation.

However it must be noted that dialogue and understanding are themselves sometimes products of the demands of particular structural and conjunctural contexts. It is important not to “romanticise” negotiations and dialogue, as the contexts in which they occur can harbour unequal power relations that ultimately lead to biased outcomes. The framework in which dialogue occurs must be premised on equality, but not just formal equality, which regards everyone as equally able to articulate their own views, interests and rights. Rather efforts must be made to empower those who may be perhaps be marginalized by a pre-existing imbalance in power and authority, and so concessions need to be made in order to promote a more substantive, inclusive notion of equality to ensure that all who have a stake in the outcome of the negotiations are heard.

²⁵ Howard, 1990: 159-160

²⁶ Daes, 2000: 310

²⁷ Daes, 2000: 311

²⁸ It is of course much easier for the state to waive responsibility for the internal affairs of communities (one extreme of the scale); or to insist on total uniformity without regard to the differences between communities (the other end of the scale).

The idea of what is known as “deliberative democracy”²⁹ – which emphasises dialogue and understanding, rather than the attempt to reach consensus - provides a way to achieve a notion of national identity that does not require uniformity. The following section explores this idea.

4.3 Nation- Building and Civic Nationality

Diversity in South Africa is, as has been noted, both wide and deep. Andrea Baumeister makes the useful distinction between *first* and *second level diversity* in this regard. First level diversity acknowledges differences in culture, belief and background, but nevertheless regards all citizens as having the same relationship to the state. This level of diversity does not seek to assimilate different groups, but rather allows for a degree of diversity in terms of language and culture. Canada is an example of a country with first level diversity.

South Africa however may be described as having *second level diversity*. White, as we have seen, all citizens have equal rights under the Constitution, in South Africa we also afford special rights, that alter the relationship to the state, to certain groups of people, on the basis of their culture, language or religion. As Baumeister describes this relationship, “[s]uch deep diversity is associated with demands for distinct institutional and legal frameworks and typically entails claims for corporate cultural rights.”³⁰ So for example the *Recognition of Customary Marriages Act* 1998, the *Traditional Leadership and Governance Framework Act* 2003, *Pan South African Language Board Act* 1995 contribute to this separate legal framework, and the Commission itself forms part of the “distinct institutional framework” to support the “claims for corporate cultural rights” (which are outlined in section 4.2).

So how then is it possible to have some kind of unified national identity – to embark on an exercise of nation-building – in a situation of such deep diversity? The United Nations Educational, Scientific and Cultural Organisation’s (UNESCO) recent *Universal Declaration on Cultural Diversity*, 2001, may provide a solution. The Declaration begins with the statement that “the cultural wealth of the world is its diversity in dialogue.” The introduction, by Koichiro Matsuura, the Director-General of UNESCO, notes that the Declaration was adopted unanimously in the wake of the events of 11 September 2001. It continues:

It was an opportunity for states to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable clash of cultures and civilisations. Such a wide-ranging instrument is a first for the international community. It raises cultural diversity to the level of ‘the common heritage of humanity’, ‘as necessary for humankind as biodiversity is for nature’ and makes its defence an ethical imperative indissociable from respect for the dignity of the individual ... The Declaration can be an outstanding tool for development ... [and] it lays down not instructions, but general guidelines to be turned into ground-breaking policies by Member States in their specific contexts.

The Declaration therefore emphasises two main points: Firstly, that diversity can be managed and celebrated through dialogue, and that such dialogue provides the key to ensuring that diverse people need not be divided people. Secondly, the Declaration emphasises the connection between the recognition and celebration of cultural diversity and the goal of development. As article 3 of the Declaration describes this connection, “[c]ultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.” This point is worth noting as it is analogous to the contemporary discourse on the connection between gender mainstreaming and development, which recognises that without

²⁹ The primary exponent of this approach is German political theorist, Jürgen Habermas, but his ideas, and the debates that they have stirred up, have generated a huge body of literature on the subject over the past decade.

³⁰ Baumeister, 2003: 742

the full and active participation of all members of society, economic development and therefore rights and well-being, are necessarily stunted.

So how can the recognition of cultural diversity contribute to nation-building? The answer lies in considering what concept of a *national* identity, if any, people hold. Bryan Barry, in considering the problem of ethnic divisions and discrimination, argues that a formal (legal) conception of nationality is insufficient to generate the level of “equal concern and respect” for other citizens with whom one does not identify in any other way.³¹

Yet Barry is not arguing that homogeneity, or attempts to create a homogeneous national identity, is the solution. On the contrary, what is required is a more *inclusive* notion of national identity, which would entail empathy for the fate of others and an ability to identify with them. And the way to achieve this and realise a sense of solidarity, is by the sharing of institutions and a reduction of material inequalities. He makes the point that what is frequently seen as a cultural difference is in fact one of material circumstance. While it is true that the very rich and the very poor may have difficulty in empathising and identifying with one another, this is not a matter of cultural diversity,³² as is noted in section 4.1 above.

So the success of a liberal democracy, Barry argues, depends on citizens having certain attitudes towards one another, most importantly that they regard everyone’s interests as counting equally, and that they are able to identify a common good and are prepared to make certain sacrifices for that common good. Barry labels this *civic nationality*, in contrast to *formal nationality* (as embodied in a passport) and *ethnic nationality* that can prove so divisive, because of its demonising of “the other.”³³ Barry in fact insists that his definition of *civic nationality* does not explicitly include reference to culture, but nor does it exclude it. Rather culture on this account of nationality is one facet among many that make up the complex identities of every individual. The idea here is that identity is not a “constant sum game” that requires one identity be supplanted by another. Rather identity has an “additive” quality to it, which is analogous to the ability to learn to speak more than one language.³⁴ So while there must be a certain degree of overlap in people’s identities in order for the required level of “mutual recognition” and empathy with one another to exist, this does not entail expunging differences. The important point to note is that what democracy requires in order for it to succeed, is for this mutual recognition to exist. So to paraphrase Barry, “being an Indian-South African or a Jewish-South African [should be] a way of being a South African, not an alternative to it.”³⁵

Such mutual recognition can only come about through dialogue and debate, not only between citizens of different cultures; but also between citizens who share aspects of identity, such as race, class, ethnicity, language, or religion; about what their ways really are. The importance of this dialogue is two-fold. Firstly, it is important for establishing the principle that no one group or person has a monopoly on the truth about culture and identity, but rather that this is a constantly moving picture in which any number of diverse peoples may play a part. Secondly dialogue among and between diverse peoples is certainly the most effective (and probably the only) way to promote the sort of tolerance and understanding that Barry labels as mutual recognition, that civic nationality requires. This then raises the question as to how this sort of dialogue and mutual recognition can be promoted. An important first step is identifying those who are already making a contribution in this regard.

³¹ Barry, 2001

³² Barry, 2001: 79

³³ A notion of ethnic nationality is what was mobilised with such tragic results in Rwanda the former Yugoslavia

³⁴ Barry, 2001: 81

³⁵ Barry, 2001: 82. Barry makes this comment with reference to Irish- and Italian- Americans

5. Rationale and Outline for an Award System

The idea of a system of awards to recognise those who are making a contribution to nation-building by promoting dialogue that celebrates the rights of cultural, linguistic and religious communities will serve a number of purposes. Firstly, such a system of awards will serve to publicise the Commission and its work, as well as its aims and objectives. In this regard the awards will serve to draw attention to the fact that the Commission is now in place, what it does, and perhaps how it relates to the other Chapter 9 institutions.

Secondly, and possibly most importantly, such a system of awards will serve to stimulate the participation of people in different communities in deciding who should be nominated for these awards, and furthermore to generate debate about what should be recognised in this regard. By stimulating this type of engagement, the award system will help to identify best practices of multicultural engagement, encourage dialogue, educate diverse people about one another, and also promote the notion of civic nationality and nation-building.

The outline for the award system could follow other similar initiatives in this regard, such as those which invite public participation in nominating people to be selected to carry the Olympic torch. The aim here is not to recognise people who are already celebrated for their efforts in this regard, but rather to uncover some of the, as yet, unrecognised people who are making an impact. The emphasis will need to be on dialogue and nation-building, and promoting the communal rights of the groups concerned in a way that protects human rights, and promotes tolerance and understanding. There are various media that can be deployed in this regard. The most widespread and accessible medium in South Africa is the radio, and it has the added advantage that it is broadcast in all of the 11 official languages, and is cost effective. The print media can also be used, as can television and the internet. Furthermore, applications can be made available in post offices, municipalities and Home Affairs offices around the country.

For a useful model or template of how the call for nominations may be structured, the Commission can refer to the Call for Nominations for the South African National Orders, which is currently being carried in local newspapers. The body co-ordinating these is the Chancery of Orders in the Presidency. The Chancery would provide a useful source of assistance to the Commission in instituting its awards system. A copy of this Call for Nominations is included as Appendix 3 to this paper.

It would also be useful to consult with, for example, the Sports Ministry, in finding out how they organised and funded their Olympic torch initiative. The support and participation of other Departments, such as those of Arts and Culture, Science and Technology, and Education in both advertising the awards and collecting nominations would be critical. Parties from the other Chapter 9 institutions, such as the CGE and HRC, should also be approached for their support and assistance, in addition to the role that they will be invited to play in nominating the judges for the awards (see section 8 below).

These awards would be supplemented with a published set of biographies of those being recognised in this way. Again the purposes of this would be manifold. The publication would on the one hand serve to highlight and publicise the Commission and its work, but it would also serve to illustrate the ways in which communal rights can be exercised to contribute to nation-building. This would assist in building a model of best practice, and serve to encourage participation. Appendix 2 gives a fuller account of the rationale for these biographies.

It is suggested that the Commission make 10-15 awards in the overlapping categories outlined in the following section.

6. What Should be Recognised?

It is important to stress that in as much as culture, religion and language are interrelated and often overlapping categories as far as identity is concerned (see section 4.1 above), so too are the categories that should be acknowledged by an award system of this kind. For example, while someone may be recognised for a literary piece that is written in a particular language, it may also be a celebration of a particular culture or religion. So too, many forms of artistic expression are also forms of recreation, or are educational in their aim, or scientific in their content. The Commission should therefore see these categories as a set of overlapping, interrelated guidelines, rather than hard and fast, hermetic items, with the need to acknowledge each and every one separately.

The dynamic nature of cultural activities also needs to be emphasised, in that they can change over time. These awards should therefore also be seen as recognising innovation, particularly in so far as it contributes to dialogue and nation-building. The following categories have been identified from the literature on the subject as those that are most commonly encompassed by communal cultural rights, but this is not to suggest that there are not other equally important categories that could also be added.

6.1 Arts and Literature

The freedom of artistic expression is one of the oldest cultural rights, as is the right of authors to the protection of their moral and material interests, which dates back to 1952. There are many things that could be included under this heading. The visual arts alone consist of fine art, such as painting, sculpture, and installation art, as well as films, photographs, documentaries and the like. A remarkable example of a recent exhibition focusing on the lives of the San people is “The Bushmen Experience” exhibition at the Art of Africa gallery in Cape Town (at the time of writing). These pieces are an unusual and eclectic mix of media, as they break with the tradition of rock painting, using oils on canvas instead to present “body maps” of the artists. As one reviewer remarked, “[t]he body maps perform a historical function, fill an educational need, and are lovely pieces of art.”³⁶ This is of course just one example, but it serves to illustrate how art can play an educational and nation-building role in this way by highlighting diversity and encouraging debate.

The performing arts also fall under this heading, and consist of a wide variety of things such as (but not exclusively) music, dance, and drama. Literature is a similarly wide and flexible category and could be extended beyond the usually considered books, plays and poems to include contributions in the field of journalism, and particularly for the purposes of these awards, in local newspapers and newsletters. There is also no reason why forms of artistic expression that are not usually recognised, such as oral histories, murals, or posters and pictorial forms of communication that have an educational, artistic or informative function could not be included.

This category overlaps with all of the others to some extent. Dance and music for example, are also forms of recreation, as well as a means of artistic expression, and can also serve an educational function. Similarly, many works of literature (in its broadest sense) are educational, as well as scientific in their focus.

6.2 Science and Innovation

This is also one of the older forms of cultural expression recognised under the category of communal rights. All people have the right to share in scientific advances and innovations, many of which may be products of universal influences. However, in addition, there are many forms of

³⁶ Review by Chris Roper in the *Mail and Guardian*, 5–11 March 2004, Friday section: 1

cultural and indigenous knowledge that could be recognised in this regard, as these should also form part of a universal body of knowledge to be shared by all. The other areas that this category covers are innovations that deal with environmental challenges, or national needs. The emphasis here is on people learning from one another, and so this category overlaps with education too. Traditional remedies and alternative forms of medicine and healing would also come under this category. What is important to emphasise here, again, is dialogue and promoting tolerance, co-operation and understanding with a view to nation-building.

6.3 Education and Academic Freedom

Education, as has been pointed out above, is one of the most important aspects of the exercise of cultural rights, especially in so far as this relates to the right of communities to educate their children in ways that are important for their culture, and to do so in institutions of their choosing. However, this category covers a great deal more than just formal education. It feasibly also includes efforts that have been made in educational institutions to promote unity and tolerance, by encouraging dialogue and understanding. This area is also the one that has the greatest potential impact on the country's youth, who are the bearers of culture, and so it is important that education is commensurate with their rights in this regard, while at the same time promoting civic nationality.

Academic freedom is also an important aspect of this category. This is because, as Symonides notes, academics are involved in "the search for new solutions, change and reform of existing structures, political, economic and social" but that this is silenced in many countries as a threat to the *status quo*. Thus academics as a community are entitled to the protection and promotion of their rights, but furthermore they have an important role to play in educating the nation, and finding new ways of nation-building in diverse societies. They also sometimes act as a powerful social conscience in times of persecution, and expose areas where the state has been remiss in honouring its duties equally towards all citizens, or all communities.

6.4 Sport and Recreation

This category draws on the phenomenally unifying effect that sport and recreational events and achievements can have in a country. Think, for example, of the national elation when a South African sportsperson does well in an international event. This category however is one that is also of special relevance to the youth, and its unifying potential should be encouraged.

A current example that has been in the news is (Black) teenager Candy Philani who took up the traditionally (White) Afrikaner game of Jukseki, and has excelled at it to such an extent that he has been selected to represent South Africa in Canada at a tournament of Indigenous Games later this year. Efforts to encourage youth to participate in sports and recreational activities across the boundaries of communal identity has proven to be highly efficient in building a strong culture of unity among diverse groups, and promoting a culture of team-building and learning from one another. Those who promote such initiatives should be encouraged and recognised in particular by the awards.

7. Who Should be Recognised?

The recipients of the awards are those who have been involved in acts that promote dialogue between groups or communities with a background of tension between them. In doing this, they should emphasise empathy for the rights of others, and promote a climate for nation-building. The Commission should aim to particularly recognise those who have found innovative solutions and activities to facilitate these aims.

As far as the particular categories of recipients are concerned, it is, again, important to realise that these may not be hard and fast categories. However, consideration should be given to the following in choosing who should be recognised with an award, and subsequently fêted in the biographies.

7.1 Groups, Institutions and Individuals

The Commission will need to give some consideration to the recognition of both individuals who have made an extraordinary contribution to nation-building in respect of the articulation of communal rights, as well as groups. In so far as these rights are most often articulated by communities collectively, there is some merit in considering making some of the recognition awards to groups, rather than individuals. For example, if a particular school, or college, or a sporting or recreational collective, like a sports team or a dance group, has made a remarkable contribution, then this should be collectively recognised, rather than honouring one particular individual among them.

7.2 Women and the Disabled: The Importance of Mainstreaming

One of the most important aspects of the Commission's mandate is to promote ideals of non-discrimination. To this end, they should aim to *mainstream* women and the disabled in the system of awards. This does *not* mean singling out women or disabled people for a special award in a separate category. On the contrary, it means identifying within the overlapping categories outlined above women and disabled contributors who deserve to be recognised, and especially encouraging their nomination.

7.3 Community Leaders

Community leaders need not be those that are already well-known, or who are usually regarded as leaders, such as religious office holders. Rather it would be important to consider as a criterion for an award people who had played an important *leadership role*, individually or collectively, in promoting the rights of cultural communities in a way that promotes nation-building. Think for example of someone who encourages and co-ordinates the marketing and sale of a community's traditional works of art, to their benefit, and also promotes knowledge about that community. Consider also "ordinary" people such as teachers, who often play an important *leadership role*.

7.4 Community Members

This category could feasibly operate at two levels. Collective recognition in this regard would be effective if it seeks to identify where there are *communities* in South Africa that have met across the divide of culture, language and religion and worked together to promote values of tolerance and understanding. However it is important not to exclude exceptional individuals who have sought to bring communities together in tolerance and understanding by promoting mutual respect for one another's rights. By recognising these kinds of "best practice" the Commission will be encouraging their furtherance and spread.

7.5 Youth

This category should probably be separate from the others, but it should be emphasised that it is no less important for that. As has been indicated, youth are the bearers of culture, and so initiatives among the youth that meet the criteria of promoting dialogue and understanding with a view to nation-building in any of the overlapping categories identified in section 6, are to be especially nurtured and encouraged.

8. Who Should Select those to be Recognised?

This paper does not attempt to put forward a list of names of those who should be appointed to select the individuals and groups to receive an award from the Commission. Indeed it was felt that it would be inappropriate for the HSRC as a national research council to have an influence on the selection of specific recipients. Our mandate rather is to suggest the *method* by which the judges may be selected in order to ensure that the selection process is fair and impartial, and that it represents as diverse a range of cultural, religious and linguistic interests as possible. Most importantly, we felt that it would be imperative to avoid having political interests represented in this process, and we would also caution against the representation of commercial organisations, as this may skew the agenda away from the nation-building focus.

The researchers are also mindful of the imperative of gender representivity as an aspect of the Commission's mandate, as well as the requirement that it work in cooperation with the other Chapter 9 institutions, such as the HRC and the CGE. A difficult consideration was whether or not traditional leaders should be especially consulted, but it was decided that, as they are already represented on the Commission, and bearing in mind that traditional leaders are recognised by Chapter 12 of the Constitution (and the recent supporting legislation) which imbues them with considerable powers, including some political functions, it would be unnecessary and inappropriate for them to be consulted in this way, as it may amount to "double dipping." Furthermore, many traditional leaders in South Africa are presumably themselves candidates for the awards, and so it would compromise the impartiality of the selection process if they were also specifically represented as a category making the selection.

The recommendation of this paper is that the committee to select those to receive an award should be composed as follows:

The Selection Committee should consist in total of 11 members, with the 11th person acting as a chairperson with the deciding vote in the event of a deadlock. The Commission itself should put forward 3 members of this Committee, with one of these acting as the Chairperson. This ensures that the Commission oversees the process, without dominating it. It also ensures that the important principles and ethical considerations contained in the conceptual section of this paper are effected in the decisions made by the Committee. The CGE and the HRC, as the other related Chapter 9 Institutions, should each be invited to nominate 1 judge, either from their own ranks or a person who they regard as competent to make this selection with due regard to their purpose and ethos. The Commission should also request a national interfaith organisation to nominate 2 judges, 1 of whom should represent the religious academic community, and the other of whom should be a religious practitioner with a commitment to interfaith dialogue. Similarly, the Pan South African Language Board should be requested to nominate 2 judges, one of whom should represent the linguistic academic community, and the other a practitioner committed to the protection and promotion of South Africa's languages. The final 2 judges should be nominated to represent the artistic community and the sporting community, and so the national arts and sports councils should be requested to assist in this regard. It would be especially useful if these were to be representatives of art and sport in its broadest sense, so as to include all expressions of visual, performing, and literary art as well as a wide range of cultural recreational activities. All of these bodies who are asked to assist in appointing judges for the awards should be encouraged to nominate people who would meet the requirement of gender parity, as well as the need to have disabled people at the centre of the process.

The following table outlines these recommendations:

Suggested Categories of the Selection Committee for the Awards

Judges Panel	1
The Commission on Human Rights	1
Rights of Cultural, Religious and Linguistic Communities (1 of whom shall sit with a deciding vote)	1
Judges Panel	1
The Commission on Human Rights	1
The Human Rights Committee	1
Judges Nominated by:	
The Pan South African Language Board	2
National Interfaith Organisation(s)	2
National Arts Council	1
National Sports Council	1
Total:	11

As far as the method for selection of those to receive awards is concerned, the Selection Committee should be required to select a shortlist of 30 candidates from all of those nominated, by ranking the nominees according to a set of criteria based on the categories outlined above, with those with the highest scores comprising the shortlist. Each judge should then select 5 finalists from the list of 30 – given that there will be some overlap in these selections, a final list of 10-15 of those to receive awards and to be researched for the biographies should result. In the event of a conflict or a deadlock, the chairperson will have the deciding vote. It would be important for this selection process to be as consultative as possible (rather than just a formal process of putting ticks and crosses in a box) as the judges are selected for their expertise, and therefore much could be learned from their process of dialogue and debate with one another. The Selection Committee should also be requested to compile a Foreword to the biographies when they are published, accounting for their choices and highlighting the achievements of those they have selected in terms of their contribution to nation-building.

The following are the criteria that the Selection Committee should employ to identify those to receive an award. The recipients should:

- Affirm the equal human rights of others
- Promote nation-building in a way that is inclusive of diversity
- Promote dialogue between groups, or groups and individuals that have tensions between them
- Encourage and facilitate the understanding of others

It is important to emphasise again the importance of the biographies for achieving the desired aims of the awards. These are to highlight the work of the Commission, as well as serve to encourage and reward those who set an example of how diversity can be dealt with in a way that unifies, and promotes human rights and tolerance.

9. Conclusion: Areas of Future Research

This paper concludes by outlining briefly some of the future areas of research that the Commission may wish to take up as part of its work. These arise out of difficult questions that the communal rights of culture, language and religion raise, but that demand consideration with a

view to understanding how they may be overcome. Some specific research projects are proposed at the end.

9.1 “Unpacking” the Concepts: *Culture, Language, Religion, Community and Human Rights*

The concepts of culture, language and religion are multidimensional and quite open-ended, in the sense that the need to be inclusive (in order to give effect to equality in this regard) means that an endless succession of each of these may be asserted for consideration. There are also racial and class dimensions to these issues that cannot be overlooked, and so a deeper consideration of what these categories comprise in the South African context would be useful. However this should not be just an inventory of all the cultures, religions and languages currently being asserted in South Africa, but rather provide an analysis of what ought to be considered, and how they ought to be protected and promoted. Furthermore, the intersection of the communal rights of culture, language and religion may pose difficult problems for the individual rights of members of those communities. What about members of a religion, or language who wish to opt out of all or some of the community’s practices? Or what about people who qualify to be members on one of the grounds of a culture, but not another?

The concept of “community” is similarly difficult. What should count as a community? Are all communities equal? What about the gay community? What about those communities whose values conflict with other communities? Incidentally, there is no constitutional reason why the gay community should not be recognised and included in the Commission in terms of the demand of gender representivity. Indeed how would the Community counter a claim of discrimination on the part of the gay community in South Africa in terms of section 9(3) of the Constitution? A further problem is who should speak for communities? Community leaders? Or should community members be consulted? Many would claim that community leaders should represent them, but this is in conflict with the demands of equality, and it seems to project onto communities an existing set of values upon which they are all assumed to agree. Why should dissenting voices be silenced in this way?

Again it seems as if dialogue may be the only constructive answer; but these are the types of issues upon which the Commission needs to have a unified stance, and which ought to be raised at the national conference. While these issues are not unique to South Africa, they are nevertheless ones with which we must engage with the ultimate goal of national unity.

Furthermore, the Commission has the ability to contribute to the global discourse on cultural rights and to share South Africa’s experience in this regard in the international sphere. It would therefore be a worthwhile joint venture for the Commission, in conjunction with the other Chapter 9 institutions, and the HSRC, to support a project that enquires into the conceptual nature of these rights, and reflects on the South African experience. In doing this, a contribution can be made to the discourse around conflicts of collective and individual rights, and how these may be resolved.

9.2 *Education, Language and Identity*

As has been noted in this paper, education constitutes an important area of self-determination for distinct cultural, religious, or linguistic communities. However, education administered by the state can also have an important role to play in nation-building by ensuring that children from diverse backgrounds learn about one another and one another’s ways and traditions in a way that promotes respect, tolerance and understanding. In post-apartheid South Africa this has proven to be a difficult path to tread. There have been numerous instances of conflict in schools and universities that ostensibly have language or culture as their cause, but which in fact appear to be racially motivated. In particular, language has been used as a criterion for excluding children of a certain “cultural” or “linguistic” (read racial) background from attending a particular school that

has traditionally been dominated by a different “cultural” or “linguistic (but in reality racial) group.

These are difficult and perplexing problems but they are ones that the Commission is urged to grapple with at the earliest opportunity. The potentially damaging nature of these conflicts in their effect on the youth, and the potential for these prejudices based on difference to be carried forward to future generations cannot be ignored.

9.3 *Different Values and Conflicts of Rights: Women and Children's Rights*

Another difficult area for communal rights of culture and religion in particular, but possibly language too, is reconciling the practices of the community with the individual rights of group members when they are in conflict. This problem has been briefly outlined in section 4.2 above, but given the tension in South Africa between, in particular, the rights of women and certain traditional practices, this is an especially pressing area. The newly enacted legislation affecting the powers of traditional leaders (the *Traditional Leadership and Governance Framework Act*, 2003 and the *Communal Land Rights Act*, 2004) will have to be monitored and evaluated over time, especially in so far as the equal rights of women members of these communities are concerned. This constitutes a critical area of intervention that the Commission can make, and it is especially one in which they can encourage and promote dialogue as a method of conflict resolution.

Furthermore, different communities may hold different ideas and have different practices regarding the treatment of children,³⁷ some of which may be in conflict with South Africa's obligations in terms of the *United Nations Convention on the Rights of the Child*, 1989 (see Appendix 1). The types of conflicts that may arise are restrictions on educational content, the withholding of vital medical treatment, or even notions about the appropriateness of certain types of work for children. Again the approach to be taken here is to facilitate dialogue and understanding with a view to reconciling the rights of (individual) children with communal cultural practices. Furthermore, as this is an issue that has global resonance, South Africa could draw from international best practice and debate in this regard, and the Commission is urged to take up and facilitate this.

9.4 *The Rights of Indigenous Communities*

According to Nigel Crawhall, in considering the threat to the identity of Khoe³⁸ and San people as a result of threats to their languages,

South Africa, which has taken a leading role in setting a standard for democracy and human rights in Africa and around the world, may find itself facing some difficult challenges from a people whom it forced dangerously close to the edge of extinction. Dealing with aboriginality means dealing with other aspects of the apartheid-generated framework by which we understand identity in South Africa. Racial concepts of “coloured”, “white” and “African”, and the labels we use for ethnic and language groups all become tinged with doubt when Khoe and San people are allowed to tell their story.³⁹

Crawhall is particularly concerned that the debate around rights and culture in South Africa has been displaced, as its focus is primarily on “cultures” that are part of a ruling (Black) elite. Therefore land restitution “primarily affects land expropriated from people classified as ‘native’ or later as ‘Bantu’ or ‘African.’ This leaves most Khoe and San people without legal recourse for

³⁷ See Bentley, 2004

³⁸ The spelling of this word follows that used by Crawhall, 1999

³⁹ Crawhall, 1999: 34

their losses despite the similarities of their experience.⁴⁰ Crawhall argues that in order to prevent the demise of these indigenous languages, claims over resources, in particular land, need to be taken seriously, which is in keeping with ILO Convention 169 dealing with the rights of indigenous people in independent countries (see Appendix 1). The details and merits of this argument cannot be explored here, but it is an important future area of research. The Commission may wish to take up as an area of advocacy and intervention the equivalent recognition of the rights of South Africa's Khoe and San people in respect of their culture and language, as well as control over resources.

9.5 *Immigration and Xenophobia*

South Africa has a long history of immigration from many parts of the world. Since the demise of apartheid, South Africa has become a haven for many immigrants from other parts of Africa where there are ongoing violent conflicts, such as the Great Lakes region and Somalia. Other immigrants to this country are economic refugees (a category not usually recognised as being eligible for refugee status, but important to note none the less) from Zimbabwe and Malawi for example. While an influx of refugees is not a problem that is unique to South Africa, it is one that inevitably creates tensions, even in situations where jobs and resources are not scarce, as they are in South Africa.

An increasingly worrying trend is rising xenophobia among South Africans towards immigrants who have fled war and poverty in their own countries. The Commission may wish to consider what duties it has in this regard, and whether or not immigrant cultural, religious and linguistic communities fall under its aegis. It may wish to seek legal advice on the matter, especially in light of recent Constitutional Court judgements upholding the equal rights of immigrants.⁴¹ The Commission may wish to consider the threat to South Africa's nascent national identity if discrimination of this kind is not confronted in respect of immigrant communities.

The following are the titles of projects that the Commission is urged to take up in terms of its duties in respect of nation-building:

Proposed Project Titles

- 1) A Conceptual Analysis of Culture, Language, Religion, Community and Human Rights in South Africa
- 2) Promoting Tolerance in Schools and Universities: An Assessment of Current Initiatives and Proposals for the Future
- 3) Traditional Communities and Conflicts of Rights: Gender and Equality
- 4) The Scope and Limits of the Rights of South Africa's 'First' People's
- 5) The Cultural, Religious and Linguistic Rights of Immigrant Communities

⁴⁰ Crawhall, 1999: 43

⁴¹ In *Khosa and others v Minister of Social Development and others CCT13/03*, the equal entitlement of permanent residents to receive social grants was upheld, while in *Lawyers for Human Rights and another v Minister of Home Affairs and another CCT18/03*, the detention of illegal immigrants at ports of entry in terms of the Immigration Act was held to be in contravention of their human rights to freedom and security of the person, and the rights of detained persons.

Appendix 1: International Instruments

The aim of this paper is not to give a detailed inventory of every international instrument as it relates to communal rights, but rather to indicate, and briefly explain, those that have relevance in South African law. Section 39(1)(b) of the Constitution creates the obligation to take account of international law in the interpretation of human rights, and in addition South Africa has some specific obligations under international law relating to the rights of cultural, religious and linguistic communities. South Africa is undoubtedly a leading democracy in terms of its recognition of these rights in the Constitution and in South African law (see section 3 above). However it is important to understand the global context in which such rights are asserted, as many of the difficulties presented by deep multiculturalism in South Africa, are ones which are experienced in other countries, and so the international experience is one which contains important lessons.

In the post-1994 era since South Africa's first democratic elections, there has been a concerted move towards accession to all the major human rights treaties and conventions in keeping with the avowed priorities of the government in promoting and protecting the human rights of all.

The provisions of the *Universal Declaration of Human Rights* (UDHR), are so widely accepted that they are regarded as forming part of customary international law.⁴² The UDHR has as its core the belief that human rights are informed by the norms of *equality* and *universality*. The former rests on the belief that human rights are normatively those of all people, and all people are normatively regarded as being of equal worth and dignity; and the latter rests on the assertion of a "common standard of achievement for all people's and all nations." The UDHR recognises cultural diversity, but it does not conceive of this as being in conflict with basic human rights norms. The articles of the UDHR that relate specifically to cultural rights are articles 1 and 2, which establish the equal worth of all people in terms of their rights and human dignity, article 18 which asserts the freedom of religion, and article 27 which establishes cultural rights, and makes specific reference to the arts and sciences.

South Africa is also a party to the two 1966 *International Covenants on Civil and Political Rights* (ICCPR), and *Economic Social and Cultural Rights* (ICESCR). It is interesting to note that the former is more relevant to the communal rights under consideration here in two ways. Firstly it contains a greater number of relevant provisions (despite what their names might indicate) and secondly, while both have been signed by South Africa, only the ICCPR has been formally ratified, which makes it a legally binding part of South African law. The ICCPR recognises the right of (national) self-determination (article 1.1), as well as equal worth (article 2.1). Article 18 guarantees the freedom of religion, while article 22 guarantees freedom of association. Article 27 is particularly worth noting as it guarantees the *communal* rights of ethnic, religious and linguistic communities. While South Africa has not ratified the ICESCR, article 15 of this covenant reiterates article 27 of the UDHR which recognises cultural rights. It is curious that these rights receive so little attention in this particular instrument. As Symonides notes, while they are "enumerated together with economic and social rights, they receive much less attention and quite often are completely forgotten."⁴³ This relates back the point about these rights being regarded as the "poor relatives" of the human rights family, but it also highlights South Africa's notable commitment to these as a specific category of human rights in the ways described in section 3 of this paper.

As far as regional human rights instruments are concerned, South Africa is bound by the *African "Banjul" Charter on Human and People's Rights* of 1985. The Banjul Charter retains all the standard basic human rights clauses, but it also has a distinctly "liberationist" flavour in that it

⁴² This means that a state does not have to be a party to an instrument for it to be deemed to be binding

⁴³ Symonides, 2000: 175

emphasises the struggle against colonialism and apartheid in its preamble. It is also mindful of the more collective conception of rights that is often associated with non-western cultural traditions in that it includes the rights of “peoples” (as collectives) as well as the rights of “humans” (as individuals). Article 17 formulates the right of every individual to freely take part in the cultural life of their community. Article 18 of the Banjul Charter also emphasises the family as “the natural unit and basis of society” as the family is regarded as “the custodian of morals and traditional values recognised by the community” (sections 1 and 2). However article 18(3) goes on to indicate that the state also has a duty to ensure that discrimination against women is eliminated, and to protect their rights. The Banjul Charter also differs from other human rights instruments in that it contains a chapter on the duties of the individual, including a duty of tolerance in article 28 - this is “the duty of individuals to preserve and strengthen positive African cultural values in their relations with other members of the society, in the spirit of tolerance, dialogue and consultation.”⁴⁴ The Charter also includes particular duties towards the family, and in the case of children, to respect their parents. There is thus implicit within the Banjul charter the idea of the retention of “traditional” norms, including some hierarchical ones.

Also of significance, although not binding under international law as a ratified treaty or convention, is the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992. The Declaration was “[i]nspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities” and considers that “the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.” Article 1 of the Declaration creates the responsibility on the part of the state to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and [to] encourage conditions for the promotion of that identity” and to “adopt appropriate legislative and other measures to achieve these ends.” Other articles worth noting for the purposes of this paper are article 4(4) which creates the duty on the part of the state to “take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory”; and article 6 which stipulates that “states should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.”

UNESCO has adopted “a number of impressive standard-setting instruments concerning cultural rights” as “by its constitution, [it] is obliged to give fresh impetus to the spread of culture.”⁴⁵ It is not possible to outline here the more than 30 instruments in this regard that have been developed in the last 50 years, however, it is important to note that these

[c]onventions, declarations, and recommendations adopted by UNESCO protect and develop the rights to education, to cultural identity, to information, to participation in cultural life, to creativity, to benefits from scientific progress, to the protection of material and moral interests of authors, and to international cultural cooperation.⁴⁶

Most importantly for the purposes of this paper, it is necessary to note the recent *Universal Declaration on Cultural Diversity* of 2001. This was developed in the aftermath of 11 September 2001, as a response to the potentially divisive nature of cultural, religious and linguistic diversity, to propose a model of “intercultural dialogue [as] the best guarantee for peace.” This idea is explored as a means to further the rights of cultural, religious and linguistic communities in South Africa from the perspective of promoting a broader national culture of tolerance and understanding through dialogue in section 3 of the paper.

⁴⁴ Symonides, 2000: 184

⁴⁵ Symonides, 2000: 184

⁴⁶ Symonides, 2000: 185

International Law that is aimed specifically at protecting the rights of potentially vulnerable categories or people, such as women, children, and indigenous communities, is also worth noting. The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) of 1979 was intended to overcome the ongoing “extensive discrimination that continue[d] to exist”⁴⁷ in spite of the numerous human rights instruments that preceded it that held the equality of women to be an implicit facet of human rights. Article 3 asserts women’s normative equality in all areas of life, including culture. Article 5 places on state parties the responsibility of taking measures to “modify social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Article 16 places a duty on the state to act against discrimination against women within marriage and the family, and to ensure that men and women have equal rights within marriage and the family.

South Africa signed and ratified CEDAW without reservations in 1995, and since then efforts have been made to equalise the position of women in law. However, the role of the family, and the customary inequalities therein remain a complicated matter, and which has not been entirely resolved. As Tomasevski notes:

[CEDAW], as much as any other human rights treaty, lays down human rights norms which are necessarily worded in abstract terms. Human rights treaties are negotiated during protracted and sometimes conflictual intergovernmental meetings. In the case of the Women’s Convention, ‘the drafters had to face the difficult task of preparing a text applicable to societies of different cultural characteristics and traditions. The ways in which discrimination against women manifested itself varied from one culture another. The Convention therefore represents a constructive compromise.’⁴⁸

South Africa reported for the first time to CEDAW in 1998.⁴⁹ The report noted the establishment of the Office on the Empowerment of Women in the Office of President, the Office on the Status of Women located in the Office of the Deputy President and the Commission for Gender Equality, all of which are aimed at gender mainstreaming in South Africa and giving force to the equality of women. However, South Africa’s representative also noted “that continuing deep entrenchment of patriarchy and customary, cultural and religious practices contributed to widespread discrimination against women in South Africa.”⁵⁰ The problem of conflicts of rights, in particular in so far as these are constituted by a conflict between the rights of individuals and communities, is discussed in section 4.2 of the paper, but it is important to note here that very often these conflicts of rights are generated by different conceptions of gender, and different views about women’s equality. This is inevitably a matter of grave concern in the South African context.

Also worth noting here is the *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* 2003. Article 5 commits state parties to eliminating “harmful practices” against women, and article 17 asserts the right to a positive cultural context, which also creates the duty on the part of the state to promote women’s participation in this regard.

As far as children’s rights are concerned, the most important international law in this regard stems from the *United Nations Convention on the Rights of the Child* (CRC) of 1989. South Africa signed and ratified this convention in 1995, and so it is also binding in South African law. As far as communal rights of culture, language and religion are concerned, the CRC establishes the principle of non-discrimination in article 2, and article 14 recognises freedom of religion. Article

⁴⁷ See the preamble to CEDAW

⁴⁸ Tomasevski, 2000: 234, citing U.N. Doc. RS/CEDAW/1992/WP.1 24 March 1992

⁴⁹ At the time of writing, the South African delegation was delivering South Africa’s second country report in New York

⁵⁰ See the *Report of the Committee on the Elimination of Discrimination Against Women*, Nineteenth Session: 59

24(3) creates the duty on the part of state parties to abolish traditional practices that may be harmful to the health of the child. Article 30 establishes the communal rights of culture, language and religion in respect of children. Article 31 relates to more specific rights in this regard, as it states that "states parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts" and "states parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity."

Another increasingly acknowledged area of communal rights is that of indigenous people or "first" peoples. The most important instrument in this regard is the International Labour Organisation (ILO) *Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, which was adopted in 1989. The Convention revises ILO Convention 107 of 1957, and applies to

tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws and regulations, and to those peoples of independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographic region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

The Convention is based on the basic tenets of *respect* for the identity of indigenous peoples, and their *participation* in decision-making about their rights and well-being, as well as in the elective and administrative bodies of their country. The state therefore has duties in this regard, as well as the duty to consult with indigenous peoples on legislative or administrative measures that may affect them. Indigenous peoples also have the right to determine their own developmental priorities and have control over their own economic, social and cultural development. The Convention is especially concerned with the land rights of indigenous peoples, and their access to land that is of cultural significance to them. The Convention also provides for the right of equal educational access for indigenous peoples, including their right to be taught in, and use, their own language where possible. Similarly with health care, indigenous peoples have rights of access, but also the right to have their own traditional methods of healing recognised, preserved and developed.

Importantly for the purposes of this paper, the Convention obliges states to "promote ... respect, tolerance and understanding of indigenous peoples, through educational measures providing accurate and non-biased depiction of the past and values of these people." This has particular resonance in the South African context, given that the history of the Khoe and San communities, especially in so far as their identity under apartheid is concerned, is a highly contested matter, and is an issue that has been highlighted as an area of future research and intervention for the Commission (see section 9.4 of the paper). However, South Africa is not yet a party to this Convention,³¹ but given its importance in the South African context, this may constitute an area of advocacy for the Commission, as the cultural and linguistic identities of these communities have not received the attention they deserve, both during the apartheid era, and in the post-apartheid era since 1994.

³¹ Introduction to ILO Convention No. 169

³² Only 14 countries – Argentina, Bolivia, Columbia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay and Peru – are at present parties to this Convention, but the increasing recognition of its importance means that its potential as an international human rights instrument is yet to be developed.

Appendix 2: Rationale for Biographies of the Recipients of the Awards

The notion of the rights of individuals and collectives is complex. Clearly, this means that it will also be difficult to identify and recognise individuals who represent, in a worthy way, the values with which the Commission intends to identify. These individuals will need to represent a collective spirit of “nation-building,” but in such a way that this is commensurate with an inclusive tolerance rather than narrow ethnic, racial, religious, cultural or linguistic exclusivity. It should also be asked if such “nation-building” should be defined in relation to those assumed not to be of that nation. South Africa would presumably wish to avoid attitudes, widespread in many parts of Africa and elsewhere, where people are excluded from civic life on account of their birth or the birth of their parents on the other side of a politically-defined boundary, or where immigrants are expelled because they do not fit into the current definition of “the nation.” “Nation-building” can in fact be a potentially dangerous concept used to override and subsume other identities rather than nurturing them (see section 4.3 of the paper).

In choosing those whom it wishes to recognise with an award, the Commission will be making an important choice, because collectively these figures will be seen as representing a vision of the South African nation. Without anticipating the choice of the Commission, it would, for instance, be unfortunate if there were no women represented, if all those chosen were already famous, if all came from one ethnic group, race or religion, if all those chosen were political figures, and so on. The 10-15 individuals and groups chosen should therefore collectively represent diversity, hopefully a diversity that is typically South African but does not “other” those from outside the state.

The biographies should therefore be more than a series of disparate résumés. The methodological framework for their writing should be that of social history, so as to demonstrate the diversity of South African society, and its potential unity. The aim here would be to highlight the role of individuals and groups in the context of their societal experience. There should be no attempt to shy away from this diversity, or to ignore the fact that this may lead at times to strenuous argument, and sometimes even irreconcilable disagreement, between individual and collective interests. Some of the 10-15 individuals and groups chosen for recognition might disagree fundamentally on various matters, and this would be entirely acceptable, as long as with this disagreement went a willingness to affirm the right of an opponent to assert his or her position.

The point that should emerge from these biographical studies is that “nation-building” in the South African, and perhaps any, context should not consist of the construction of a hegemonic narrative, but rather should consist precisely of the affirmation of variety, complexity and even disagreement. The uniting theme of these biographical studies will be the values of tolerance, openness and inclusiveness, and a rejection of the stifling of debate in the interests of supposed national values. It is hoped that these biographies will demonstrate these values through the lives of the carefully chosen South Africans and the communities in which they live.

Appendix 3: Call for Nominations: South African National Orders

CALL FOR NOMINATIONS: SOUTH AFRICAN NATIONAL ORDERS

National Orders are the highest form of recognition that a country can bestow on deserving citizens. The President, as the Grand Patron of National Orders, award these Orders, which are inclusive and represent all South Africans.

The Chancery of Orders is inviting nominations from members of the public, non-governmental organisations, civic-based organisations and faith-based organisations for individuals deemed worthy recipients of the following National Orders:

The Order of Mapungubwe (Category: I Platinum, II Gold and III Bronze)

This Order is awarded to South African citizens who have accomplished excellence and exceptional achievement in the international arena

The Order of Baobab (Category: I Gold, II Silver and III Bronze)

The Order is awarded to South African citizens who have made exceptional and distinguished contributions in the following categories: community service, business and the economy, science, medicine and technological innovation.

The Order of Luthuli (Category: I Gold, II Silver and III Bronze)

The Order is awarded to South African citizens in recognition of outstanding contributions in the struggle for democracy, nation building, building democracy and human rights, justice and peace as well as for the resolution of conflict.

The Order of Ikhamanga (Category: I Gold, II Silver and III Bronze)

The Order is awarded to South African citizens who have excelled in the field of arts, culture, literature, music, journalism and sport.

The Mendi Decoration for Bravery (Category: I Gold, II Silver and III Bronze)

The Order is awarded to South African citizens who have distinguished themselves through extraordinary acts of bravery through which their lives were placed in great danger or who have lost their lives. This includes trying to save the life of another person or by saving property, in or outside the Republic of South Africa.

Particulars of candidate:

Full names:

Citizenship:

Work and/or home address:

Telephone and fax numbers:

E-mail address:

Present occupation/post:

Previous occupation/post:

Academic qualifications:

Membership of organisations and societies:

Publications written/edited or other projects completed by candidate:

Orders, Decorations, Medals and Awards already received:

Order and category for which nominated:

Particulars of nominator:

Name:

Designation:

Organisation:

The nomination must be on a separate page. It must include:

- an introductory paragraph with a summary of the nominee's achievements
- a list of exceptional milestones reached by nominee in his/her career and/or the international arena
- a description of the exceptional, outstanding, dedicated service or act of bravery rendered by the nominee.

Nominations will be accepted until 12:00 on 28 March 2004.

Postal Address: The Chancery of Orders, Private Bag X1000, Pretoria, 0001

Nominations can also be issued for: (012) 300-5759 or e-mailed to: mandla@po.gov.za

It can also be delivered to the following address: Chancery of Orders, The Presidency, Room 26, West wing, Union Buildings, Pretoria, 0001.



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