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Transformation of the Constitutional Identity in South Africa after the Fall of Apartheid

Abstract: This article investigates the designed transformation of South African political identity and its constitutional framework as a core aspect of the democratization of South Africa. It compares the racist and exclusive identity of the apartheid state with a redesigned identity of an inclusive and open 'Rainbow Nation', a concept coined by Archbishop Desmond Tutu and spearheaded by Nelson R. Mandela along with the African National Congress. The study considers changes in the legal framework of identity politics, from the Republic of South Africa Constitution Act of 1983 (and the previous apartheid republican Constitution of 1961) through the interim democratic Constitution of 1993 to the Constitution of the Republic of South Africa of 1996. It discusses the possible significance of the 18 amendments to the act regarding South Africans' social and political identities, and establishes a complex and detailed portrayal of the republic's legal framework of identity politics. The study combines legal, political, and cultural analysis of the role of law in formatting social and political identities, using survey results to test its impact on society. In conclusion, the paper considers the effects of post-apartheid identity transformation in South Africa.

Keywords: apartheid, constitutional identity, democratization, Rainbow Nation

Introduction

In December 2023, the application instituting proceedings against Israel before the International Court of Justice (ICJ) and the request for provisional measures (Judgment of the International Court of Justice, 2023) focused international attention on South Africa, inspiring contrasting opinions on its motivations and its respect for fundamental human values (Keitner, 2024). In the application, South Africa emphasized its legal and moral obligations to prevent genocide; Section 13, quoting the state's ambassador to the United Nations, referred to the South African identity and the painful heritage of apartheid as reasons to protest against Israeli actions in Gaza. The motivation resembles controversial references to national and constitutional identities in the European legal debate (see Corrias, 2016; Fabbrini & Sajó, 2019).

This article investigates the development of South Africa's constitutional identity as a core aspect of the nation's democratization process, comparing the apartheid identity of racial democracy, the interim transitional identity, and a democratic and inclusive identity designed in the Constitution of 1996. It follows Mazey's opinion that 'law shapes individual and group identity, social practices as well as the meaning of cultural symbols, but all of these things [...] also shape law by changing what is socially desirable, politically feasible, [and] legally legitimate' (2001, p. 46). Thus the paper considers constitutions as primarily cultural texts and applies the concept of constitutional identity as a theoretical framework for legal, political, and cultural analysis of identity politics. This approach follows a remark about the peculiarity of South African constitutionalism directly expressed in the Constitutional Court's jurisprudence, considering the law as a transformative means of political ethos (Judgment of the Constitutional Court of South Africa, 1995, para. 262).

1. The constitution and a legal framework of identity politics

Within its complexity, national identity integrates culture, heritage, religions, social structure, political community, and normative judgments, propagating core values as a root of the nation. Jacobsohn (2006, pp. 364–365) discusses the complex role of a constitution in identity politics, considering it a constitutive foundation of political and social relations in a community and thus an axiological 'constitution' of national identity. However, he argued that the act is more of a declarative ideation of the imagined community, and the national identity is entrenched in extraconstitutional cultural factors, suggesting that the strongest constitutional identities mirror the culture in their axiological foundations. In his later book, Jacobsohn (2010, pp. 12–13) explains the role of constitutions in identity politics as declarative (defining principles of the community), expressive (displaying codified declarations of the core values), and self-defining (mapping the topography of national identity).

Constitutional norms and their legal or ideological interpretations primarily express and explain the nation's core values, either developed from shared morality and normative judgments or produced in a constitution-making process by lawmakers or the judiciary (Śledzińska-Simon, 2015, p. 126). These constitutional core values define a unifying existential common ground and the essential homogeneity of a political community (Mahlmann, 2005, pp. 307–308). Therefore, the interpretation of constitutional core values is, in fact, a delimitation of national identity in the dialogue between cultural and legal norms (Polzin, 2017, p. 1597).

However, not all scholars appreciate the concept of constitutional identity; Fabbrini and Sajó (2019, pp. 468–470), in their critical review of its legal applications, argued that the influence of a constitution on identity politics inspires indeterminacy – as constitutional core values can be interpreted within the ‘spirit’ of the act – and arbitrariness – because political ideologies make the constitutional identity uncertain and variable. In conclusion, they state: ‘Constitutional identity has increasingly become a weapon in the armory of apex national courts to resist the application of supranational law. [...] Constitutional identity suffers from a dramatic indeterminacy, which leads to arbitrary use. [...] It is due to this shortcoming that it is so easy to turn it into an arbitrary tool of judicial identity politics and populism’ (2019, p. 472). However, their criticism does not neglect the relevance of constitutions in defining, codifying, mapping, or delimiting political identities, but they reject applying its politicized interpretations as an extraordinary source of law. The role of constitutional identity should, rather, have reverse logic, being considered as a means to influence society and its shared values (Rosenfeld, 2012).

2. South African constitutional identities

2.1. The exclusive identity of the apartheid state

In 1948, the Afrikaner-Boer nationalist Nasionale Party (NP) won the South African elections, rejecting racial equality (*gelykstelling*), a political franchise for non-white citizens, and promoting the politics of racial separation (apartheid). In the following years, the NP introduced legislation aimed at ‘the drawing of a clear dividing line between white and non-white, thereby removing all possible causes of clashes of interest between white and non-white’ (Welsh, 2009, p. 21), as declared in the Sauer Report. In practice, they established an oppressive, ultraconservative, and racist regime, as described by the 1984 Nobel Peace Prize laureate Archbishop Desmond Tutu:

Under apartheid, a small white minority had monopolized political power, which gave it access to all other kinds of power and privilege. It had maintained its tight control by vicious and immoral means. This white minority used a system of ‘pigmentocracy’ to claim that what invested human beings with worth

was a particular skin color, ethnicity, and race. Since these attributes were enjoyed by only a few, the pigmentocracy was exclusive to a limited number of [...] human beings. (2000, p. 10)

Apartheid South Africa was a country of deeply-rooted legal and political paradoxes. Its identity combined Protestant religious fundamentalism, white supremacy, and nationalism based in 'acquired African indigeneity' with republican constitutionalism and civil liberties (for white citizens only), integrating Western-style development with legalized racialism and gross human rights violations (Edwards & Hecht, 2010, pp. 619–620). Apartheid's legal and political logic of separation and white racial superiority created an exclusive identity and culture, with a system of institutions socializing people into racial ideologies (Adam, 1995, p. 460). The idea of 'separate development' incorporated into the exclusive identity served merely as a philosophical facade for racial injustice and the exploitation of underprivileged ethnic groups (Taylor, 1990), deepening the paradox of formal democratic measures in a non-democratic state.¹

The first apartheid republican constitution was enacted in January 1961, after a white-only referendum on the replacement of the Union of South Africa and leaving the Commonwealth was held in October 1960. Considering the unfavourable results of the referendum in the Natal and Cape provinces caused by opposition from anti-republicans and English speakers, the Constitution tried to combine Afrikaner nationalism with some British colonial heritage, as noticeable in the national symbols that were introduced. However, the Constitution mirrored the conservative ideology and identity of the Boers. The Preamble was deeply inspired by religious fundamentalism, political determinism, and intergenerationalism, establishing 'a constitution best suited to the traditions of [...] the land' to protect the integrity and freedom of the country, maintain law and order, and improve the spiritual and material welfare of the republic. The President's Oath (Section 12) affirmed the same core values in its contents.

The 1961 Constitution established a 'racial democracy' with separated powers, self-governance, and the rule of law, with the government having exclusive control over the Bantu (black) administration and education. While members of the House of Assembly were elected in general elections (Section 41), the electoral system excluded non-white citizens, and only a white person was qualified to be a member of the parliament (Section 46). The Constitution introduced a republican state (Section 1) with the sovereign people 'guided by God' (Section 2). It did not include a bill of rights, though, nor were democracy, pluralism, and human rights mentioned in its

1 The advancement of apartheid ideology in the South African legal system differentiated the nation from the political paths of Dutch and British societies, which shared cultural roots with the white South African community.

contents. Moreover, it covered freedom of speech only when considering the provincial authorities (Section 75) and did not directly guarantee rights and freedoms to citizens. Equality referred only to the equal status of English and Afrikaans as the state's official languages, marking the limits of the exclusive identity.

In 1983, the South African parliament enacted the second constitution of the apartheid era, which followed the ideological framework of identity politics established in 1961 and its inspiration in religious fundamentalism, political determinism, and intergenerationalism. The Preamble listed the goals of the new constitution, again including the country's integrity and freedom, maintenance of law and order, and improving the welfare of all (but primarily white) citizens, but also adding the protection of the separation of powers and the rule of law, guarding human dignity, life, liberty, and property, upholding Christian values and 'civilized norms' (with freedom of religion emphasized), developing a free-market economy, and supporting the self-determination of the people. However, it applied self-determination in an illiberal context as a legal justification for semi-independent Bantustans (Transkei, Bophuthatswana, Venda, and Ciskei), granted autonomy on the grounds of the 1971 Bantu Homelands Constitution Act.

The major political shift in the 1983 Constitution was the Tricameral Parliament, franchising Coloured and Indian communities, with the House of Assembly for white members (Section 41), the House of Representatives for Coloureds (Section 42), and the House of Delegates for Indians (Section 43); however, it excluded any representation of black Africans.² The denial of black representation was akin to the 1980 President's Council, which replaced the Senate with members representing whites, Coloureds, Indians, and the Chinese, but not the black communities of South Africa. Thus the legal and political transition of the racial democracy did not affect the majority of South Africans, who were still deprived of political representation. Discussing the Constitution in 1987, Jisheng noted that 'through the adoption of the 1983 constitution, the South African authorities intend to improve their image [...] to further consolidate racist rule. [...] The resistance of the blacks, Coloureds, and Asians is still in progress, and strong condemnations come from the international community' (1987, p. 22).

Austin emphasized the facade of the democratic shift in the apartheid regime and the lack of change in authoritarian policies, describing how 'the rhino whip [a type of police baton, *sjambok*], tear gas, sneeze machines, plastic bullets, real bullets, detention orders, arrests, stone-throwing, petrol-bombs, and concerted abuse – all the familiar accompaniments of non-White protest and police reaction – welcomed the dawn of *consociational* democracy' (1985, p. 194). Analysing the 1983 Constitution, Toit and Heymans concluded that the 'basic lesson is that peaceful transformation

2 While the term 'coloured' is considered offensive in many parts of the world, it is accepted within South Africa to describe people of mixed race (see Adhikari 2005)

will not come from constitutional models but from the power that can be mobilized by those who seek change and the extent to which such power is used peacefully' (1985, p. 84). Constitutional reform of apartheid was impossible because of its deeply rooted exclusive identity and the illiberal nature of Afrikaner nationalism; however, it took four years to open informal negotiations between the government and the banned African National Congress (ANC), including the imprisoned Nelson Rolihlahla Mandela, and four more to open the Convention for Democratic South Africa (CODESA 1) with political representation of the regime and the opposition (Marszałek-Kawa et al., 2017, pp. 167–168).

2.2. The interim democratic constitution of 1993

Inaugurated on 20 December 1991, CODESA 1 was the first attempt to formalize multi-party negotiations about a future democratic settlement and end the disturbing violence in South Africa, signified by a constitution reached by consensus. It was attended by several political organizations, most notably the ANC, the NP, and Joe Slovo's South African Communist Party. However, not all significant parties entered the initial constitutional debate: the white Conservative Party, the black consciousness movement's Azania People's Organization, and the radical Pan-Africanist Congress boycotted the summit for varying reasons. After a deadlock between the ANC and the NP, on the majority needed to make constitutional changes, led to the failure of CODESA 2 in 1992, it became clear that the democratization of South Africa depended on compromise between the progressive wing of the NP and the mainstream of the ANC.

This compromise came through the transitional constitution, mainly a consensus between the Afrikaner progressives and the ANC leadership. In many ways, the document was an ANC–NP negotiated settlement, complete with contributions from the smaller parties present – including the Zulu secessionist Inkatha Freedom Party (Marszałek-Kawa et al., 2017, pp. 170–172) that Scher (2010, pp. 4–5) notes had been brought back to the negotiating table thanks to a series of concessions by the ANC and NP. The transitional constitution blended Mandela's idea of a non-racial society, Tutu's vision of reconciliation based on the truth, and Slovo's controversial 'sunset clause' that protected the interests of the white minority and some privileges of the apartheid apparatus. As a result, the idealism of anti-apartheid leaders and the non-racial and inclusive project of the Rainbow Nation was bridged with the pragmatism of Afrikaner nationalists, who were guarding white economic and political privileges. This shift was noticeable during the Multi-Party Negotiating Process in 1993, which reached an agreement in July, and the Interim Constitution was enacted by the Tricameral Parliament (Barnes & De Klerk, 2002, pp. 27–29). Its Preamble presented the motivations of the negotiators, listing the creation of a new democratic order based on equality, the protection of the human rights of all citizens, the promotion of national unity, and the restructuring of the South African government. A piv-

total inclusion was Section 6, which offered a political franchise to all adult citizens, entitling them to vote in elections and referenda. For the first time in the nation's history, the constitutional identity included equal electoral rights, formally ending the colonial and apartheid oppression of black citizens.

Notably, the Interim Constitution was the first in South African history to introduce a bill of rights. Despite the attempts of the democratic opposition, the apartheid Constitution of 1983 did not include formal protection of human rights, even those limited to white citizens. The act of 1993 covered fundamental rights in its third chapter, in 29 sections; the list included equality and non-discrimination as the core values of the democratic society (Section 8), numerous civil, political, economic, environmental, and cultural rights, including children's rights (Section 30), and the rights of those detained, arrested, and accused (Section 25).

The Interim Constitution mentioned democratic values in the Preamble and referred to democracy in further sections, including 'an open and democratic society based on freedom and equality' (Sections 26, 33, and 35), democratic election of local government (Section 179), the state's responsibility for the wellbeing of anti-apartheid heroes (Section 189), and the call for reconciliation in the final provision, 'National Unity and Reconciliation'. This provision offers an insight into the projected constitutional identity, as it emphasizes human rights, democracy, peaceful co-existence, equal development opportunities, national unity, reconciliation, humanitarian principles, and 'a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization' as core values of the inclusive and democratic South African society. Schedule 4, which included the constitutional principles of South Africa, influenced the new constitutional identity. It discussed the state's sovereignty, equality, non-discrimination, protection of human rights, language and minority rights, the rule of law, separation of powers, the judiciary's independence, democratic representation, multi-party elections, self-governance, civil society, traditional leadership, trade unionism, openness and freedom of information, and self-determination of the people, along with the political franchise to all adult citizens, constituting the core values of democratic South Africa.

The Interim Constitution allowed the country's first democratic elections in April 1994. Seven political parties won national representation, with Mandela's ANC gaining 62.6% of the vote and 252 seats in the Parliament, the National Party 82 seats, and Inkatha 43 seats. The Freedom Front (9 seats), the Democratic Party (7 seats), the Pan-Africanist Congress (5 seats), and the African Christian Democratic Party (2 seats) also had their representatives as members of the House of Assembly (Lodge, 1995, pp. 471–472). The newly established democratic parliament became a central institution for negotiating the post-transitional constitution to replace the interim act and enhance democratic governance. The ANC-dominated assembly faced the challenge of creating a more permanent constitution that would realize the principles of the Interim Constitution, continue the post-apartheid transformation, and balance

the ideological impact of political parties with a pragmatic equilibrium to reach constitutional and political stability (Kotzé, 1996, p. 156).

2.3. A democratic and inclusive identity

The 1996 Constitution of the Republic of South Africa was a milestone in the nation's history of democratic legislation and identity politics. It was adopted by the first fully democratically elected South African parliament and promulgated by its first democratic president, and the icon of the anti-apartheid resistance, Nelson Rolihlahla Mandela. Replacing the transitional Interim Constitution, the act was an ambitious attempt to unify the conflicted society and introduce a utopian vision of reconciliation based on human rights, tolerance, and democratic values, permanently establishing the legal framework of the Rainbow Nation identity. Sauter noted that the South African Constitution:

described as one of the most liberal in the world, [...] outlaws racial discrimination, guarantees full rights for gays and lesbians, [...] and has separate sections on rights for children and prisoners. It solidifies South Africa's new political order by scrapping the interim multi-party government and guaranteeing multi-party parliamentary election. This was a shining moment for South Africa. [...] The South African Constitution is not just a legal document, but a rhetorical document. (2015, p. 190)

In a 1995 judgment, the Constitutional Court agreed that the Constitution is the nation's principal law and its moral and ethical guidelines (Malherbe, 2000, p. 65; see Judgment of the Constitutional Court of South Africa, 1995).

The political objective of the act was straightforward. After the Constitutional Assembly adopted the final text on 6 May 1996, its chairperson, Cyril Ramaphosa, declared:

[it] is the mirror of South African society. It reflects [...] the history from which we have emerged and the values we now cherish – human dignity, equality, and freedom. It celebrates the richness of the diversity of cultures, religions, and beliefs of South Africans and affirms that all belong as equals in our one nation. [...] Through this constitution, we hope to transform our society from one based on injustice and strife to one based on justice and peace. (Quoted in O'Malley, 1996)

However, as the democratic continuation of the negotiated settlement, the Constitution followed an idealistic belief that the law and institutions might redefine social structures and promulgate *any* political identity adopted by the lawmakers. Thus, it delivered the vision of an imagined future; however, it did not address the historical roots of South African injustices and inequalities, which are closely linked to colo-

nization and to what Ramose (2018) called the doctrine of discovery, which allowed and protected the unjust acquisition of economic power via large-scale theft of land and natural resources by Britain and then the apartheid regime.

The 1996 Constitution is a developed and detailed document precisely defining political and legal systems, public institutional networks, and core values of the democratic state. In 14 chapters, it established a modern and liberal democracy, with justice, inclusiveness, and the protection of human rights as its focal points. The Preamble indicates the political motivations of the lawmakers, emphasizing recognition of historical injustices, remembrance of national heroes, and a future-oriented belief in 'a nation united in its diversity'. It clarifies core values, listing democracy, the rule of law, personal freedom, human rights, self-determination of the people, sovereignty, social justice, and an open society. Therefore, it defined a progressive legal framework for a political vision of the inclusive Rainbow Nation; however, its focus on the idealistic imagined future omitted the inevitable obstacles of racial, social, and economic disparities rooted in colonialism and apartheid (Sall, 2018, p. 2).

Section 1 declares that democratic South Africa is founded on human dignity, equality, human rights and freedoms, non-racialism and non-sexism, constitutionalism and the rule of law, free elections, and universal adult suffrage. The equality of all citizens is further detailed in Section 3, establishing a legal framework for inclusive political identity. The Founding Provisions mention the protection of language rights, including the indigenous languages of South Africans, and declares 11 official languages of the state to be equal (Article 6). The second chapter of the Constitution portrays the imagined inclusive and democratic society in the progressive Bill of Rights, considered 'a cornerstone of democracy in South Africa' (Section 7(1)). The core values and protected rights are extensive, including:

- civil rights: equality (Section 9),³ inherent dignity (10), the right to life (11), individual freedom and security (12), prohibition of slavery and forced labour (13), freedom of religion, belief, and opinion (15), freedom of expression (15) and assembly (16), and children's rights (28),
- political rights: freedom of association (Section 17), multi-party representation and free elections (18), access to public information (32), a just administration (33), access to independent and impartial courts (34), fair treatment of arrested, detained, and accused persons, and their fair trial (35),
- economic rights: fair labour practices (Section 23), the right to a healthy and protected environment (24), protection of private property (25), and access to adequate housing (26),

3 The Constitution protects equality as a non-derogable right, concerning discrimination solely on race, colour, ethnic or social origin, sex, religion, or language (see Table of Non-Derogable Rights, Section 37).

- cultural rights: the right to education (Section 29), and language and religious rights (30 and 31).

The Bill of Rights bridged the legal framework of democracy with the promulgated identity politics of the Rainbow Nation and its narratives on a non-racial and inclusive society, a shared heritage, a peaceful transformation based on equality, and reconciliation achieved through truth and fairness (Wawrzyński et al., 2015, p. 26). However, it failed to support the interpretation of democratization as a final stage of decolonization, placing the protection of private property over economic empowerment and agreeing with the doctrine of discovery. Without addressing the historical roots of social injustices, the vision of the Rainbow Nation (and its constitutional framework) was not able to prevent the cementing of racial stereotypes and inequalities, diminishing democratic progress in South Africa (Montle, 2020).

The third chapter offers principles of cooperative governance, emphasizing the role of self-governance and the interdependence of authorities (Section 40). The authorities are responsible for the maintenance of peace and national unity, securing the wellbeing of the people, and respecting the constitutional order (Section 41). As detailed in Section 83, the president is primarily accountable for defending the Constitution and promoting national unity, becoming a central institution of the nation's identity politics. The Constitution established the Human Rights Commission to promote, monitor, and assess the protection of rights in South Africa (Section 184) as a supporting democratic institution involved in identity politics. Similar functions were designated to the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities (Section 185) and the Commission for Gender Equality (Section 187). Moreover, the Electoral Commission was declared responsible for free and fair elections, and the broadcasting authority was accountable for media fairness (Section 192).⁴

The 1996 Constitution introduced a liberal democratic and inclusive framework for the new political identity of South Africans, continuing the path of the negotiated settlement and the transitional ideology of a nation united in its diversity. Focusing on equality and human rights protection, it has not delivered applicable guidelines for overcoming the economic and social legacy of apartheid. The lawmakers hoped to achieve an identity transformation with legal measures. Nevertheless, as progressive as it is, the Constitution has not addressed the historical roots of South African injustices and inequalities, declaring formal equality but not offering the means to accomplish the objectives in a racially divided and conflicted society. Therefore democracy in South Africa inherited a pivotal obstacle to its progress from the transitional ne-

4 The broadcasting authority was then the Independent Broadcasting Authority (1993–2000), and since 2000 has been the Independent Communications Authority of South Africa.

gotiated settlement – liberal property rights benefiting apartheid elites and predominantly white property owners (Welsh, 2009, p. 578).

2.4. Amendments to the 1996 Constitution

The South African parliament has amended the act 18 times, but the changes have limited influence on the constitutional identity of core democratic values. The most controversial issue has been understanding voters' political representation, affecting changes in floor-crossing legislation in national and provincial legislatures. The Eight and Ninth Amendments of 2002, followed by the Tenth Amendment of 2003, introduced after the ruling of the Constitutional Court on the Loss or Retention of Membership of National and Provincial Legislatures Act, 2002, allowed members to change political affiliation without losing their seats under some circumstances. However, the changes were repealed in the Fourteenth and Fifteenth Amendments of 2008, which came into force in April 2009.

The legal and political debate over floor-crossing influenced constitutional identity in South Africa, answering the question of whether voters are represented by individual members of the legislature or by political parties that gained their support during elections. The Constitution protects parties as an essential means of civic power over the government and people's principal representation in national and local politics. In practice, floor-crossing promoted stronger parties (the African National Congress and the Democratic Alliance), weakening citizens' trust in democratic procedures and institutions; thus it was discussed as a threat to democratic consolidation (Hoeane, 2008; Kanego Masemola, 2007).

The Constitution emphasized the significance of self-determination and the self-governance of the people. While the Third Amendment of 1998 aimed at increasing civic influence on self-governance, introducing in the new Subsection 6A of Section 155 a highly democratic option to establish a municipality extending across provincial boundaries, the change was reversed in the Twelfth Amendment of 2005. In 2001, the Seventh Amendment increased the government's financial control over provincial authorities. More significant were the consequences of altering provinces' boundaries in the same Twelfth Amendment; it resulted in the Matatiele Municipality case against the president in the Constitutional Court (see Nyati, 2008) and the Thirteenth Amendment of 2007 confirming the transfer of the municipality from KwaZulu-Natal to the Eastern Cape. Moreover, the transfer caused prolonged civic protests and political opposition (including a boycott of the 2006 local elections) in Khutsong, Merafong City Municipal Area, which was retransferred to Gauteng from North West Province in the Sixteenth Amendment of 2009 (see Matebesi & Botes, 2011), ending the conflict and proving the significance of the constitutional rule of people's self-determination.

The third issue covered in constitutional amendments was the separation of powers and the judiciary's independence. The Sixth Amendment of 2001 strength-

ened the judiciary's authority in the state, symbolically renaming the president of the Constitutional Court as Chief Justice. From 2013, the Seventeenth Amendment increased the role of the Chief Justice in the judiciary system and consolidated the High Court of South Africa, reinforcing the constitutional independence of the courts. However, despite its political position and identity politics, the South African judiciary failed to gain public trust in its fairness, with a level of distrust at 53% in 2021, compared to 27% in 2006 (Moosa & Hofmeyr, 2021, p. 8).

The latest amendment, adopted on 2 May 2023, introduced South African Sign Language as an equal official language of the state, gaining the same status and legal protection as Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sepedi, Sesotho, Setswana, siSwati, Tshivenda, and Xitsonga. However, the legislation has not yet come into force.

Conclusion

South African democratization attempted a broad reconstruction of the conflicted society, inspiring a transition from the exclusive identity of apartheid racial democracy to the inclusive identity of the Rainbow Nation based on equality, non-racialism, reconciliation, and human rights protection. However, South African democratic identity inherited a transitional 'sunset clause', following the doctrine of discovery (Ramose, 2018), in the Bill of Rights, which liberally protected private property. It has caused inevitable conflict between the designed democratic equality and economic inequalities rooted in colonialism and apartheid. In the fifth volume of its report, the Truth and Reconciliation Commission addressed this conflict, suggesting that 'reconciliation requires a commitment, especially by those who have benefited and continue to benefit from past discrimination, to the transformation of unjust inequalities' (1998, p. 435).

A 2022 World Bank report indicated high and persistent economic inequalities in South Africa, compared with Southern African and developing nations, with a Gini coefficient of 66.96 (68.4 in 2001). This results from the social legacy of apartheid and the historically unjust distribution of ownership, but also from unequal access to education and professional training. However, the report emphasized that 'race was the largest contributor to inequality in South Africa, with its contribution rising over time. [...] Race remains a key driver of South Africa's high inequality of opportunity, largely because of its influence on the education and labour market pathways to better outcomes' (2022, p. 22). Therefore equality in South Africa is rather declarative than self-defining or expressive, and economic inequalities constitute the nation divided by race (see Nattrass & Seekings, 2001).

The latest South African Reconciliation Barometer Report praised the nation's progress from the systemic violence of colonialism and apartheid to a diverse and

democratic society. However, the survey showed decreasing trust in democratic leadership, with distrust among 79% of participants, compared to 18% in 2003, and lowered confidence in national democratic institutions and the judiciary (Lefko-Everett, 2023, pp. 13–14). Simultaneously, South Africans believe in democracy, expressing active electoral attitudes and political participation; considering the growing support for the radical Economic Freedom Fighters, it suggests there is increasing rejection of post-transitional elites and negotiated democratic settlement.

Though economic inequalities fuel the radicalization of South Africans, they do not cause rejection of the constitutional identity and its core values. The Institute for Justice and Reconciliation (IJR) report proved the increasing commitment to forgiveness and reconciliation, but more ambiguous attitudes to redistribution (reparations and compensation) and memory politics. Still, racial reconciliation is not universal, and in the last two decades, the involvement of white, Indian, and Asian citizens has decreased (Institute for Justice and Reconciliation, 2023, pp. 29–30). Moreover, economic inequalities were considered a principal barrier to further integration. Almost half of South Africans consider their society divided, while less than a third see it as unified; however, a need for unity remains strong among black citizens, has increased in white, Indian, and Asian participants, and is only lower among the Coloureds (Institute for Justice and Reconciliation, 2023, p. 36). Therefore, the core South African democratic values – equality, reconciliation, and unity – continue to inspire the populace, mirroring the designed constitutional identity.

Three decades after the democratic transformation, the legacy of apartheid remains a significant aspect of political, social, and economic relations in South Africa. Despite increasing mistrust in democratic leadership and institutions, South Africans maintain their democratic identity and believe in core constitutional values – equality, reconciliation, unity, and human rights protection. While the nation is far from realizing the concept of an inclusive and non-racial Rainbow Nation, its constitutional identity continues to serve as a framework for an imagined future, inspiring the belief in a nation united in its diversity, as is noticeable in the results of the IJR survey. Moreover, the dispute over the Twelfth Amendment proved that South African constitutional identity might prevail over political interests, while the ICJ application against Israel suggests that it influences strategic decision-making in state affairs.

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