



**Speech held by Karel Frielink LL.M.  
President of the Curacao Bar Association  
on the occasion of the installation of four judges at the  
Joint Court of Justice of Aruba, Curacao, St Maarten, and of Bonaire, St Eustatius, and Saba  
on Friday 23 September 2011**

Madam President! Your Excellency ! Distinguished Guests !

What do Helmin Wiels, Ivar Asjes, Gerrit Schotte, Emily de Jongh-Elhage, Omayra Leeflang, and you and I have in common? That we all probably, just like all other people on earth, are descended from a people that lived in Africa in a far past.<sup>1</sup> Thus considered we are all brothers and sisters. One big family, one big community, but not as closely and not as strongly connected as many of us would like it to be.

In the course of history differences have increased. Differences, for example, in appearance, in color, in language, in religion, in culture, in education, in prosperity etc. And with these differences, contradictions arose: between rich and poor, religious and non-religious, developed and underdeveloped, and, at an especially sad moment in history, also between slave and

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<sup>1</sup> [http://en.wikipedia.org/wiki/Recent\\_African\\_origin\\_of\\_modern\\_humans](http://en.wikipedia.org/wiki/Recent_African_origin_of_modern_humans) (in Dutch: <http://nl.wikipedia.org/wiki/Enkele-oorspronghypothese>). For a possible other theory: [http://en.wikipedia.org/wiki/Multiregional\\_origin\\_of\\_modern\\_humans](http://en.wikipedia.org/wiki/Multiregional_origin_of_modern_humans) (in Dutch: [http://nl.wikipedia.org/wiki/Multiregionale\\_model](http://nl.wikipedia.org/wiki/Multiregionale_model)).

master,<sup>2</sup> and between black and white. It is especially these contradictions that have left deep scars in history. The consequences are still visible today.

At various moments in history attempts have been made to protect people against arbitrariness of others.<sup>3</sup> And time and again there have been people<sup>4</sup> and movements that tried to take the intrinsic value and dignity of each individual as a basic principle. After the horrors of World War II, the United Nations General Assembly adopted the *Universal Declaration of Human Rights*. Unanimously.

The *Universal Declaration of Human Rights (UDHR)*<sup>5</sup> starts off with a very fundamental assertion, namely that “*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*”. But it is also laid down that every human being has duties to society. Only via rights and duties a free and full development of one’s personality is possible.

It is as much fundamental that it is laid down in the Universal Declaration that everybody is entitled to all these rights and freedoms, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art. 2 par. 1 UDHR). As soon as a government proposes a policy or law in which, in regard to these fundamental rights and freedoms, distinction should be made based on these criteria, there is reason to worry.

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<sup>2</sup> The idea of slavery as a Western crime of the 16<sup>th</sup> up to the 19<sup>th</sup> century is not complete. Slavery has existed at least as long as history itself. Ancient Egypt, Ancient Greece, the Romans, but also modern African and Arab cultures have made frequent use of slaves. Slavery also existed in Chinese, Indian and American Indian cultures. See: <http://nl.wikipedia.org/wiki/Slavernij>. Also:

[http://www.historischnieuwsblad.nl/00/hn/nl/0/artikel/6935/Slavernij\\_op\\_Cura%C3%A7ao.html](http://www.historischnieuwsblad.nl/00/hn/nl/0/artikel/6935/Slavernij_op_Cura%C3%A7ao.html).

<sup>3</sup> For example the *Magna Carta* of England issued in 1215 (<http://www.middle-ages.org.uk/magna-carta.htm>) and the *Declaration of the Rights of Man and of the Citizen* of 1789, composed by the French Marquis de Lafayette. ([http://nl.wikipedia.org/wiki/Verklaring\\_van\\_de\\_rechten\\_van\\_de\\_mens\\_en\\_de\\_burger](http://nl.wikipedia.org/wiki/Verklaring_van_de_rechten_van_de_mens_en_de_burger)).

<sup>4</sup> Cf. John Locke, *Two Treatises of Government* (On state government) of 1690.

<sup>5</sup> The *Universal Declaration of Human Rights* is a declaration adopted by the United Nations General Assembly (10 December 1948), to lay down the basic or fundamental rights of a human being. The Universal Declaration is of great importance as a general moral and judicial standard. Reference is made to:

[http://www.humanistischecanon.nl/mensenrechten/universele\\_verklaring\\_van\\_de\\_rechten\\_van\\_de\\_mens](http://www.humanistischecanon.nl/mensenrechten/universele_verklaring_van_de_rechten_van_de_mens).

I will discuss some provisions from this Universal Declaration, and on the basis of some recent examples from Curacao practice, examine whether these provisions are indeed sufficiently observed in our society.

For many months (some) politicians and social groups have been reacting strongly to one another. Rough and unjust use of language is hereby not avoided. Personal attacks, threats, and intimidation have become an everyday reality. Substantive arguments, if any are brought up at all, are lost in verbal violence. It is, therefore, a good time to call upon each and everyone to act in accordance with article 1 of the Universal Declaration of Human Rights: *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”*.

In my opinion, democracy must become somewhat more feminine. Right now, a ‘macho’ culture is predominant in the political debate. Personal attacks are the rule rather than exception. In-depth debates are hardly conducted or not at all. There are even politicians who openly declare they do not find other people’s opinions relevant, simply because they are in power.

The parliamentary immunity enjoyed by Members of Parliament appears for some of them to be an excuse to say whatever they like in Parliament: they unfoundedly label organizations as criminal<sup>6</sup> and accuse well-intentioned businessmen of money laundering. Why does not the President of Parliament intervene when organizations and citizens of Curacao are being so unjustly attacked? More than once, the President of Parliament has talked about the importance of ‘respect’, but that should also include action. Moreover, isn’t it time to set limits to the parliamentary immunity, so that obvious excesses may be combated under criminal and civil law? If a citizen insults a politician, he may be punished harshly in court, but if a politician in Parliament attacks a citizen personally, the citizen is powerless.

The will of the people shall be the basis of the authority of the government, according to article 21 paragraph 3 of the Universal Declaration. Politicians rely on ‘the people’ at opportune and mainly inopportune times, but is the voice of the people really being heard? Democracy does

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<sup>6</sup> Reference is made to *PS haalt fors uit naar Ctex, [PS lashes out to Ctex]* Amigoe of 12 Augustus 2011.

not entail that one can do whatever one feels like simply because one has been elected.<sup>7</sup> This attitude completely ignores the fact that a politician is elected to serve the people, and not oneself or those he or she favors or those who have generously provided the means to have him or her elected.

Everyone has duties to the community. These duties include certain limitations of the rights and freedoms conferred by the Universal Declaration. These limitations do not go any further than is required for the due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order, and the general welfare in a democratic society (art. 29 par. 2 UDHR).

These duties imply, among other things, that certainly as a politician one has to observe due care in dealing with an institution such as the Public Prosecution. A frivolous accusation made against the Public Prosecution, namely that the investigation in the ‘*Bientu*’ case, which has been going on for several years already<sup>8</sup>, is motivated by politics<sup>9</sup> does not show much sense of responsibility. It does show a lack of respect for the Public Prosecution as such and for its role in the state governed by the rule of law. In view of the known facts, it is difficult to understand that a parliamentary inquiry into the functioning of the Public Prosecution has been proposed. The fact that the Public Prosecution also investigates cases in which people are involved who have ties with a certain politician or political party is only logical, and it does not warrant a parliamentary inquiry. Besides, the Public Prosecution would disqualify itself if it would drop certain cases on the argument that the suspects would in some way be related to politics. If that would become the criteria, it would be quite difficult for the Public Prosecution to perform its

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<sup>7</sup> Reference is also made here to my President’s speech ‘Deugdzaam leiderschap’ [*Good Leadership*] of 24 September 2010, included in Karel Frielink and Mirto F. Murray, *Twee Curaçaose Meesters*, [*Two Curacao Masters*] Nijmegen: Wolf Legal Publishers 2011, in particular p. 97: “*My conclusion is that there is not a sufficiently broad understanding of the fact that in a democracy it is not about majorities, but about minorities. The fact that a democracy is really about minorities, is actually apparent from the fact that most of the time the majority (the coalition) is composed of minorities. That fact alone compels responsibility, level-headedness, and tolerance*”. In its judgment of 26 January 2004 (KG 13/04) in the matter of the Amigoe and Nederlof versus the Country of the Netherlands Antilles, the Court rightfully found that: ‘*Democracy does not stop after the citizen, once in a while, has cast his/her vote. Then it only begins*’.

<sup>8</sup> <http://www.rnw.nl/caribiana/article/amerikaanse-tegoedendos-santos-toch-bevroren>.

<sup>9</sup> Cf. Agreement on parliamentary inquiry into justice, Amigoe of 27 August 2011.

duties properly in a small community such as Curacao. The Public Prosecution must be able to function as an impartial governmental body, even in cases in which the government, politicians or friends of politicians are involved. In view of the separation of powers, politicians must exercise restraint when criticizing the Public Prosecution.

Article 12 of the Universal Declaration reads: *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks”*.

May I remind you that our Prime-Minister showed a private person’s bank data to the people of Curacao on television.<sup>10</sup> Not only was this an appalling display and unworthy of the Office of Prime-Minister,<sup>11</sup> but this event also raised some important legal questions. How did the Prime-Minister get this confidential information? From the Security Service perhaps? And if so, how did the Security Service get this information? Did a bank employee in charge of the account pass these documents on to the Prime-Minister or to our Security Service? Has this been sorted out already? And at least as important: is the right of privacy for us as citizens of Curacao well protected? Which major public interest caused the Prime-Minister to decide to show private information of citizens to us (the people of Curacao)? This would appear to be a serious threat of the rule of law. Where is the parliamentary inquiry now to get to the proverbial bottom of this?

Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of any frontiers. (art. 19 UDHR). This right also includes freedom of the press. The freedom, therefore, of journalists to criticize e.g. the government of their country without being threatened.<sup>12</sup>

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<sup>10</sup> Ref. <http://www.antilliaansdagblad.com/nl/commentaar/3211-damage-control.html>.

<sup>11</sup> The same applies to the statements made by the Prime-Minister on the radio that a board member of Aqualetra supposedly offered a temporary worker a fixed contract, on the condition that she has sex with him (Ref. Antilliaans Dagblad of 9 September 2011, p. 1 and 8).

<sup>12</sup> In this connection reference is also made to articles 10 of the ECHR and 19 of the ICCPR.

Helmin Wiels, the leader of Pueblo Soberano, apparently thinks differently. He started a crusade against the media that are critical of the Schotte administration.<sup>13</sup> Over a month ago, Wiels started drafting a list of companies and institutes that sponsor radio station Radio Direct, because Wiels was not pleased with the criticism that could be heard on Radio Direct. He called on the population to stop doing business with these companies and institutions. According to Wiels, this is lawful and normal practice, pointing out the fact that such practices also occur in South America. There is, however, no essential difference between a government banning certain newspapers or radio stations, and a party in government attempting to silence certain media by trying to destroy them financially. In both cases it concerns a violation of freedom of expression, a violation of freedom of the press, and a form of intimidation and censorship that do not belong in a democracy under the rule of law. Whoever does not wish to respect the rules of the game and basic principles of a democracy under the rule of law may choose a dictatorship for themselves,<sup>14</sup> but this cannot be imposed on Curacao. Curacao is still a state under the rule of law and we all have to act accordingly.<sup>15</sup>

Journalist Dick Drayer of Radio Netherlands Worldwide<sup>16</sup> recently complained that since the present Government took office the media has hardly been invited for meetings and activities, but must make do with photos and press releases of the personal press officer of the Prime-Minister.<sup>17</sup> According to Drayer: *“Instead of the press monitoring politics, politics monitors the press. Our Government itself determines with whom it wishes to talk. And also about what it wishes to talk. As a result, the weekly press conference of the Council of Ministers has become*

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<sup>13</sup> <http://kkc.curacao.nl/viewtopic.php?f=74&t=813>.

<sup>14</sup> A characteristic of dictatorship is there is no or insufficient separation of powers; it lacks a well functioning system of ‘checks and balances’. In a dictatorship, government has power over or strong influence on: the police force and justice system, the security service, the media, education, healthcare, commercial activities, cultural institutes and the labor market. In a dictatorship, a call for civil disobedience, as done by Helmin Wiels, may be better understood (Ref. Antilliaans Dagblad of 9 September 2011, p. 1).

<sup>15</sup> Nelson Mandela may serve as an example to our politicians for that matter. Ref. the analysis of *The New York Times*: <http://www.nytimes.com/1999/05/17/opinion/south-africa-after-nelson-mandela.html?src=pm>

<sup>16</sup> <http://www.rnw.nl/caribiana/article/opinie-twee-onvoldoendes-voor-cura%C3%A7ao>.

<sup>17</sup> A practice that has already been condemned in 2004, as is shown by legal ground 3.6 of the judgment of the Court in First Instance of 26 January 2004 (KG 13/04) in the matter of the Amigoe and Nederlof versus the Country of the Netherlands Antilles.

*an obligatory session with ministers who do not tolerate questions about subjects that are not on the agenda they themselves drew up”.*

Every person needs contradiction (the same applies to rulers), every human being must allow criticism and must remain in debate. If rulers may not be contradicted, they become, as Montesquieu has already indicated, quite naturally, corrupt.<sup>18</sup>

Judges, in their own way, take part in the debate by giving judgment. However, just as well, their statements are, from time to time, a subject of criticism. That is a good thing and it should remain so. However, a debate should focus on the contents and be based on arguments. And that is exactly that is missing at the moment with too many people.

On behalf of the members of the Association, I congratulate you whose installation is celebrated today. One of your tasks will be to safeguard the rule of law. And although this state under the rule of law, as we have seen, now and then just groans and cracks, and it suffers under what is ahead of us, it does have a firm basis that is imbedded in a long history.

I conclude with a quote from chapter 24 of the book by Lao Tzu, *The Tao Te Ching*.<sup>19</sup> The quote is about 2400 years old:

*“Those who are on tiptoes cannot stand  
Those who straddle cannot walk  
Those who flaunt themselves are not clear  
Those who presume themselves are not distinguished  
Those who praise themselves have no merit  
Those who boast about themselves do not last”*

I thank you kindly!

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<sup>18</sup> Charles Montesquieu, *De l'Esprit des Lois* (On the Spirit of the Laws) of 1748.

<sup>19</sup> <http://www.taoism.net>, *Tao Te Ching: Annotated & Explained*, published by SkyLight Paths in 2006.