

**HUMAN RIGHTS ISSUES FOR A
POST-APARTHEID SOUTH AFRICA**

FINAL REPORT

WORKSHOP, BANJUL, THE GAMBIA

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Elimination of Apartheid: Toward an Apartheid-
Free World

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I. INTRODUCTION

The Workshop (Category VII) on Human Rights Issues for a Post-Apartheid South Africa was organized jointly by UNESCO's Division of Human Rights and Peace and the African Commission on Human and Peoples' Rights in co-operation with the Gambian authorities from 18 to 21 June 1991 in Banjul, Gambia. This Workshop comprises part of UNESCO's activities for the elimination of apartheid and for moving towards the establishment of an apartheid-free society.

Seventeen specialists participated in the Workshop : experts from South Africa, including representatives of the ANC, PAC and anti-apartheid, democratic organizations ; the Chairman and three other members of the African Commission for Human and Peoples' Rights ; other African specialists, one specialist from Europe ; as well as representatives from the United Nations Special Committee against Apartheid, ILO, WHO, UNDP ; the Secretary-General of the Gambia National Commission for UNESCO, representatives of the Ministry of Justice and the Ministry of External Relations.

The Workshop was officially opened at 10 am, on 18 June, at the Kairaba Beach Hotel. The Secretary of the African Commission on Human and Peoples' Rights, Mr. N. Mutsinzi, welcomed the Chairman of the African Commission on Human and Peoples' Rights ; participants ; the Attorney-General and Minister of Justice of the Republic of Gambia, the Minister of External Relations, the Minister of Interior, the Minister of Health, the Permanent Secretary of the Ministry of Education, Youth, Sports and Culture ; and the representative of UNESCO. He extended warm greetings to participants, especially to those who had come from South Africa. For them, the questions being discussed were not only themes for intellectual reflection. The problem of protecting human rights from violations was part of a daily and painful existence in South Africa. He expressed the hope that the contributions of participants from South Africa would assist in finding some solutions.

The Attorney-General and Minister of Justice, His Excellency Hassan Jallow, welcomed participants, in particular those who had travelled from South Africa to the Workshop and the representatives of ANC and PAC who were at the forefront of the struggle to liberate the people of South Africa from the oppressive regime of apartheid and to gain self-determination. Apartheid or institutionalized racism was an abhorrent system. Very few violations of human rights, if any, could rival it in the extent of brutality and oppression. Apartheid, based on a doctrine and policy of racism, contravened the primordial principle enshrined in Article I of the Universal Declaration of Human Rights that "All human beings are born free and equal in dignity and rights".

It was particularly important likewise to consider human rights in the perspective of a post-apartheid South Africa. Even with the official abolition of apartheid and the establishment of a Government by the majority, it was unlikely that attitudes and prejudices nurtured over decades would fade away quickly nor would it be possible to remedy the legacy of the social, economic and cultural injustices of apartheid immediately. Positive action by the post-apartheid State would be required to redress these inequalities. The post-apartheid era would thus be as much of a

challenge to the international community as the system of apartheid. The challenge would be to bring into reality a government by and for the people, where there is equal access to the law, to the land, to work, education, housing, welfare and peace.

The Chairman of the African Commission on Human and Peoples' Rights, Professor O.J. Umozurike, warmly welcomed participants to this Workshop on post-apartheid South Africa. The Workshop would examine different aspects of the situation in South Africa and it was hoped make some useful suggestions on what should be done in the future. South Africa had been on the negative side of the news but finally there seemed to be some change which was being looked at with close interest. He acknowledged the very important role played by the United Nations as a catalyst for building up cooperation against apartheid, as well as the contribution of the OAU and progressive organizations in all parts of the world. South Africa was of course part of the continent of Africa. A post-apartheid South Africa would naturally be a member of the OAU which would also mean ratifying the African Charter on Human and Peoples' Rights. He looked forward to a future South Africa where all groups and individuals would play a commensurate role in the development of the country. South Africa was a country rich enough to afford a high standard of living for all its peoples. All were looking at the situation in this country with close interest, and it was only hoped that nothing would happen to retard that progress.

The Vice-Chairperson of the United Nations Special Committee against Apartheid, H.E. Ambassador M. Thorpe, extended warm greetings to all participants. The human rights issues to be discussed at the Workshop were central to the preoccupation of the United Nations. In December 1989, the Member States of the United Nations adopted a consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa. This Declaration commits Member States to supporting a negotiated settlement of the conflict and to working for the advent of a non-racial and democratic South Africa. It was expected that the Workshop would look into the requirements of a democratic, non-racial South Africa predicated on an equitable and non-racial constitution and grounded on a civil society. The establishment of a non-racial and democratic South Africa could only be the result of common efforts by all South Africans. It would require patience and sustained efforts on the part of the majority to claim their legitimate rights, as well as sacrifices from the privileged majority and - above all - consensus decisions to forge ahead.

Violence had to be stopped, political prisoners released, exiles allowed to return without harrassment or pressure. In order to translate constitutional blueprints and human rights charters into day-to-day reality, there should be a determined effort at empowering the black majority through intensive training and educational programmes intended to bring thousands of black South Africans into the mainstream of the economy and society.

The Representative of the Director General of UNESCO, Ms. Carrie Marias, warmly welcomed all participants, members of the Gambian Government and colleagues of the African Commission on Human and Peoples' Rights to the Workshop, which comprised part of UNESCO's activities for the Special Project Contribution to the Elimination of Apartheid : Towards an Apartheid-Free World. This Workshop was occurring at a crucial political moment. Contrary to what many sources were saying, apartheid and racial discrimination in South Africa were not

about to die at the end of the 1991 parliamentary session. Only some of the most publicized apartheid legislation was being repealed. Fundamental human rights of the majority population in South Africa were still being daily denied.

Nor would the removal of apartheid, or its substitution by euphemisms such as "own or community affairs" suffice. Apartheid and racial discrimination were strongly embedded within the social and economic structures of the society. A radical overhauling and transformation of social, economic, cultural and political institutions would be required to bring the country out of the present impasse. In order to overcome the legacy of apartheid and institutionalized racism, intolerant practices, behaviours and attitudes would need to be changed and affirmative action programmes and active human rights policies used to redress inequalities and social injustices and promote rights of the people in rural and urban areas. The people of South Africa had been courageous in struggling against oppression and were very human rights-sensitive having been deprived of their basic rights as human beings for so long.

UNESCO looked forward to a fruitful exchange of ideas and experiences, and hoped that during discussions some ways of providing a contribution to the people of South Africa in their struggle for freedom, liberty and human rights would be found.

The Workshop elected Mr. Nathaniel M. Masemola as Chairperson, Mr. Molefi S. Litheko and Mr. Raymond Sock as Chairpersons, and Ms. Fatima Meer and Mr. Siphon Sepamla as Rapporteurs.

The Workshop discussed the following topics :

1. The human rights situation in South Africa today ;
2. Needs and means for promoting the actual practice of human rights in a democratic post-apartheid South Africa ;
3. Using research, education and information to promote and develop human rights awareness in a post-apartheid South Africa ;
4. Comparative experiences in human rights protection and promotion : examples from the African continent and international community ;
5. Conclusions.

II. THE HUMAN RIGHTS SITUATION IN SOUTH AFRICA TODAY

Three presentations were delivered :

- a. by O.J. Umzurike on "The situation in South Africa in light of the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights".
- b. by Ahmed Motala and Mary Burton on "The present human rights situation in South Africa".

In his presentation Professor O. Umzurike observed that South Africa was one of the eight countries that had abstained from voting when the Universal Declaration of Human Rights was adopted without a dissenting vote by the General Assembly. Since this time, this Universal Declaration of Human Rights had become, in the view of many, part of international customary law. It represented a standard for all civilized nations and was binding on South Africa despite its abstention in 1948.

In South Africa the apparatus of Government had been geared towards the suppression of the rights of the majority, and racial discrimination was until recently the official policy of the Government. An apartheid system or a system based on the exploitation of the majority was antithetical to the African Charter on Human and Peoples' Rights. If majority rule was attained in South Africa, it would be expected that this country would also accede to the African Charter on Human and Peoples' Rights.

The African Charter on Human and Peoples' Rights incorporated first generation rights (civil and political rights), second generation rights (economic, social and cultural rights) as well as third generation rights. The right to self-determination was particularly relevant to South Africa. It ensured that people played a commensurate role in the determination of their political, economic, social and cultural future. Particularly it ensured that people decided on their type of government and it gave a free rein to democracy, the hallmarks of which were one-man-one-vote, free and periodic elections and adequate guarantees for minorities. The Charter stated in its Article 19 that : "Nothing shall justify the domination of a people by another". It followed that the Charter did not tolerate reverse domination, i.e. the domination of the white minority by the black majority.

A new chapter in human relations in the Republic of South Africa was being witnessed. South Africa had been a bastion of reaction and an enclave in which the majority of the population was kept in slavery conditions. Although South Africa was big and rich enough for all its people, it was the selfishness of the minority that had earned for it the status of an outcast in the international community. To join the mainstream of world society, South Africa needed to respect the human rights of its people. The key to the problem was the reallocation of political power and the land, not the misappropriation of these by either the minority or the majority. The sincerity of the white ruling class would be tested in its willingness to share the benefits of the land with the rest of the citizenry.

Mary Burton, in addressing the present human rights situation in South Africa, noted that various changes had occurred since February 1990. Political organizations which had been driven underground or into exile had been unbanned, and some of the legislative cornerstones of racial discrimination were being repealed, including the Population Registration Act, the Land Acts and the Group Areas Act.

Some were referring to the period ahead as "post-apartheid". Use of the term "post-apartheid" might be misleading, as it appeared as if it was believed that apartheid now lay in the past, and could be put aside, forgiven and forgotten. Furthermore, the Government which declared the birth of this supposedly new system was the same party which created and maintained the old system. Wielding enormous power, the Government was in a strong position to select the timing and the degree of change. It inherited all the old structures - the fragmentation of the country into ethnically defined "homelands" ; the tri-cameral racially defined parliament ; the large, expensive and conservative bureaucracy ; the police force and the defence force.

The opposition movements, traumatised by years of repression, lacked the resources needed to construct and coordinate a powerful campaign (funds, staff, infrastructure, access to the media). They were stretched to the limits by the need to mobilise support, to organise their structures and at the same time to respond to the numerous issues they must face :

1. the formulation and dissemination of policy proposals ;
2. coping with Government initiatives (and the lack of them) ;
3. meeting the international pressures ;
4. coping with the crisis of violence.

People in South Africa had lived for a long time under the National Security Management System (NSMS), which had great power. There was an inner circle of cabinet ministers, and a security system which functioned outside the jurisdiction of parliament. Its strategy was the two-pronged "total strategy" - which was intended to counter the "total onslaught" on South Africa - and that strategy was to address the grievances of the people and at the same time to suppress all opposition and resistance. The NSMS was discredited by some degree of exposure and had been officially disbanded. There were however indications that the dual strategy remained in place.

The experience of dealing with the Government was different in some ways from the past. Thus some helpful attitudes and discussions had been noted by the Black Sash, for instance when the National Coordination Committee of Repatriation met with the Department of Home Affairs and the Minister of Health regarding documentation and health or welfare needs. The Black Sash had engaged in discussions with a Government appointed Commission to improve the position regarding old age pensions. The labour unions made progress in their dealings with the Manpower Commission ; a joint working group on education was set up. Yet at the same time, the Department of Justice dragged its heels on the release of political prisoners and the indemnity procedures for returning exiles. Some returnees had been detained and interrogated.

What raised the greatest concern was the extent of violence prevalent in the country. Evidence of forces external to the immediate conflict in the case of township violence had been widespread. Many organizations had documented events, taken affidavits and accumulated evidence which demonstrated this. What was more difficult to prove was where the root cause lay.

M. Burton considered it essential that monitoring of violations of human rights take place and be seen to be done by those who had no interest vested in one political party or another (although of course a concern for human rights should properly be part of every political grouping). But it was acknowledged that this impartiality was very difficult to hold onto in a scene as complex and as conflictual as the one in South Africa.

It was crucial that human rights upholders monitor the legislative process and the legal system, critically assess events and re-interpret them. She gave some examples of shortcomings in the repeal of legislation during the 1991 parliamentary session. The repeal of the Population Registration Act, on which the whole edifice of the society was established, could not in itself eliminate discrimination. The Group Areas Act was about to go, although qualifications about "neighbourhood standards" would make allowance for the protection of privilege and exclusiveness. The Land Acts of 1913 and 1934 would no longer exist to dictate, on the basis of racial classification, who could have access to land. However, there was no provision to redress past expropriation and forced removals, nor for the restoration of land.

In these examples as well as in means used to evade the repeal of the Separate Amenities Act (e.g. by charging entrance fees to those outside the neighbourhood, or selling a public facility) there were clear signs of the "privatization of apartheid", resulting in the ability of the wealthy to enjoy the benefits of privilege and to deny others access to them.

The Internal Security Act was being amended, but - in its amended form - stipulated that the period of detention for the purpose of interrogation could last up to 14 days, which was not an adequate safeguard. The Public Safety Act remained and allowed notably the proclamation of "unrest areas".

In conclusion, M. Burton made some proposals, among which that the police should be re-trained and re-educated so that it understood its role as servant and not master of the public. Groups should be urged to move away from tactics which promoted divisiveness and a focus on ethnicity. It was necessary to promote understanding of human rights throughout all levels of our society and to foster a climate of political tolerance, making use of lessons learned in other countries of the world, the 1948 Universal Declaration of Human Rights and the many conventions and charters which followed it. Affirmative action would help close the gaps created by the past. Finally, and perhaps most urgently, it was imperative to move towards really free and fair elections, first for a constituent assembly. Then, under a new constitution with an entrenched Bill of Rights, elections should be guaranteed on a regular basis for the new form of truly representative and democratic Government under which human rights would be protected and fostered.

Ahmed Motala, in his presentation, examined the situation with regards to civil rights in South Africa since the unbanning of political organizations and the release of Mr. Mandela. Many had been hopeful of speedy incisive change taking place in South Africa. The great majority, however, expressed cautious and sceptical optimism. Looking back over the past sixteen months it was undeniable that dramatic changes had taken place. People who were not so long ago considered enemies of the State were sitting at the same negotiating table with the Government. Discriminatory laws had been repealed. However, behind the facade of change, hope and optimism, the real face of oppression and human rights violations was hidden. Scrapping apartheid laws would not be sufficient. Positive steps needed to be taken to address the injustices of the past and to rid the country of the haunting ghosts of apartheid.

The burning issue of the moment was the release of political prisoners. 1013 political prisoners had been released by the Government to date, in keeping with its undertaking as a precondition for negotiations. According to the Human Rights Commission, 972 were still under detention, the Government claiming only 234. 133 of these were in the homelands where the Government said it had no jurisdiction. The others, the Government claimed had committed murder, rape, robbery and bodily harm. This attempt to depoliticize and criminalize political prisoners added new qualifications to the terms of the Pretoria Minute agreed with the ANC. The prisoners themselves had protested through hunger strikes.

A. Motala explained that, although township violence was being portrayed as Black on Black violence, at its source was competition for land, water and other scarce socio-economic resources as well as the failure of the police and South African security forces to act against violence. While there was sufficient evidence of police involvement or failure to act, the Government had made no concerted effort to regulate the security forces.

Although a moratorium had been placed on executions in February 1990 and a review panel set up to consider cases already on death row, the procedure was complex, the representative of the death row prisoner did not have access to arguments and submissions of the Attorney General, nor was he notified of the basis for the panel's decision. The panel moreover called for evidence outside the court record requiring the assistance of psychologists and social workers which time and financial constraints did not permit. Finally judges continued to pass death sentences, despite the legislation granting the courts wider discretion.

Prisoners were dependent on prison guards for access to medical treatment and to legal representation. Prison guards often acted viciously and prisoners were frequently prosecuted for complaining. The magistrates in such cases were often unsympathetic. Prison conditions were overcrowded, facilities often inadequate and prisoners punished to saltless diets and solitary confinement.

The Supreme Court was constituted of white male judges, there being only one white woman judge on it. The decisions with few exceptions supported the state rather than pursuing individual liberty.

The homelands were a mirror of the repression occurring in the country, except that conditions were worse. Thus for example changes in legal provisions relating to

the imposition of the death sentence had not been duplicated by the bantustan governments. The security forces in the homelands had been acting with a ruthlessness that was reminiscent of South Africa in the late 70's and early 80's.

In conclusion, A. Motlala noted that, while the possibility of a constitution with a bill of rights was within reach, it might yet be another few years before it became a reality. In the interim, human rights needed to be protected and promoted. The South African authorities should not wait for a future government to enact legislation to protect human rights. Just as it was abolishing discriminatory laws, the Government should enact positive legislation to address the inequalities and injustices of the past. One of the pieces of legislation which needed urgent enactment was that which would make racial discrimination and its advocacy an offence. However, any measures adopted by the Government could not be implemented unilaterally. The Government had to act in concert with the representatives of the majority. The problems of legitimacy of any legislative changes by the South African Government could be overcome by the election of an interim government and a constituent assembly.

There was a great deal of discussion on various points raised including a thorough examination of problems of violence, the manipulation of ethnicity, and the vital question of return of land to the people ("nayibuye Africa").

One participant opened the discussion by stressing the need to carefully document the activities of the Government, to point out contradictions, and to monitor human rights abuses which were still occurring at the same time that apartheid laws were being abolished. He expressed concern about the success of the propaganda efforts of the Government, and the risk of leaving out information on the struggle and demands of South Africans for freedom and justice.

One participant mentioned a national survey prepared by the Institute of Black Research which revealed that violence was not perpetrated on an ethnic basis. Another participant drew attention to the fact that urban areas functioned in a multi-ethnic fashion, and that ethnicity was only playing a divisive role in uni-ethnic areas that the Government had created, in particular in the bantustans and in hostels, or in cities where one group dominated (such as Durban). It was observed that Khosa/Zulu violence did not exist before July 1990 and that violence was being orchestrated to give the impression to the outside world that black people were fighting against each other.

One participant pointed out the mammoth task faced in reflecting on how to dismantle structures of social, economic and political inequality put into place in South Africa three centuries ago. Several participants referred to the "double speak" of the Government, its abuse of language and distortion of concepts ("the language of neo-apartheid" designed to confuse the public). It was proposed that a dictionary of neo-apartheid language was needed in order to understand how the Government used words to mean the opposite along the lines of Leslie Rubin's dictionary of apartheid.

The Workshop spent a great deal of time examining the land question, with participants from South Africa explaining the present dilemma and asking for colleagues from other African countries to provide them with some insights based on

their own experiences. The land question was the hottest issue in South Africa, which would be far from resolved by the abrogation of the Land Acts. Just to leave land open to free market economy forces would not be a solution, as the black population would not have funds to buy back land. According to the PAC representative and another participant, the issue of land was simply not negotiable, especially with the present Government. The land must be returned to the indigenous people of the country. This was also the view of many young people, who were impatient for action.

There was little clarity in present land policy ; only freehold title was really considered. But what about for example policies for tenure with regard to communal lands in the present bantustans ?

The ANC advocated and many participants supported the need to establish a lands claim tribunal, which should be an independent, representative body of specialists who would look into the question of land, its fair sharing and redistribution, and questions of compensation. There was the problem of the 3 1/2 million people displaced over the past three decades and of land access and rights for those who had been historically deprived. The Government did not wish to consider restitution of the land.

III. NEEDS AND MEANS FOR PROMOTING THE ACTUAL PRACTICE OF HUMAN RIGHTS IN A DEMOCRATIC POST-APARTHEID SOUTH AFRICA

Presentations were made for this agenda item ,

- a) by Albie Sachs on "South Africa and human rights in Africa" ;
- b) by Sipho Sepamla on "The enrichment of cultural life for the people of South Africa" ;
- c) by Fatima Meer on "Affirmative action and the inclusion of gender issues on the policy agenda for a democratic post-apartheid South Africa".

Albie Sachs, in introducing his presentation, mentioned three views of his country : the South African Government view that it was a white peoples' country and the backyard was the place for blacks. Another view was that this was a black person's country, and whites were settlers. He proposed a third vision for the country : we are all South Africans, human beings and people of this country. There should be a new South Africa constructed on the basis of equality and equal protection for all, which would draw on universal human rights norms. These were human rights that belonged to the people of South Africa, and had been painfully struggled for by the majority population of the country. Human rights grew out of the experience of South Africans and were not an import from Europe ; they were universal.

The South African Government had an official policy and intentional programme to deny human rights. Yet the country had witnessed the emergence of

a strong alternative human rights culture. There was a consensus that South Africa must be humanized, South Africanized, and that a concrete human rights programme must be put on the policy agenda and into a Bill of Rights. This Bill of Rights would reflect agreed upon fundamental and common values, introduce the concept of guaranteeing and protecting human rights, and promote equal citizenship. There would be an ideology of human beings. The white population would need to shed its chauvinism, arrogance and racism.

In this new Government, there would be no more hit squads or states of emergency. Basic political and civil rights should be guaranteed. Every person would count, political pluralism could exist and free political campaigning. All major languages would be languages of the country.

Social, economic and cultural rights would incorporate the following objectives :

- a) Equal protection and equality for everyone, including in public expenditure ;
- b) Affirmative action for the most disadvantaged, after exhausting equal benefits of public expenditure and in order to tackle a huge structured system of inequality ;
- c) An expanding floor of minimum economic, social, cultural, educational and welfare rights, conditioned by availability of resources ;
- d) Redistribution from richer to poorer areas.

For protecting and enforcing these human rights, several institutional mechanisms were proposed : a representative, impartial, constitutional court ; a human rights commission to investigate patterns of violations and to receive individual complaints ; a social rights commission ; an ombudsperson to deal with any unfair practices of public officials. The crucial role of non-governmental organizations in a democratic, civil society in promoting human rights and the need to provide them with constitutional space was also stressed.

It was hoped that eventually it would be possible to bring the concept of a "non-racial, democratic South Africa" to the world.

After hearing A. Sachs' presentation, one participant remarked on the parody of the constitution of the place where he lived, Bophutswana. Its so called Bill of Rights had been amended so much to cause a real confusion.

The danger of constitutionalizing ethnicity in the South African context was stressed, as this would serve to buttress the privileges of a minority. Non-racialism meant equal protection for all. The model of the African Charter on Human and Peoples' Rights could appropriately be referred to. It supported the concept of peoples' rights. One participant endorsed A. Sach's insistence on the universality of human rights and stressed the need to benefit from the richness of the African experience in notions of human rights universality.

One participant urged UNESCO and the African Commission on Human and Peoples' Rights, in cooperation with the relevant United Nations bodies, to get ready to assist the people of South Africa in confronting problems and with a view to preparing for an apartheid-free society, with particular reference to activities in education, culture and science with a specific focus on human rights. Despite the supposed wealth of South Africa, it had not used these resources in favour of the majority population, as was notably evident from the few black graduates from universities and the 700 black lawyers in the country at present. He wished to draw the attention of the United Nations to the need to strengthen programmes for preparing for a new South Africa within the framework of action for the Second Decade to Combat Racism and Racial Discrimination.

It was mentioned that the human rights movement was not as strong in rural areas as in urban areas, although para-legals and organizations like Black Sash were active there.

Sipho Sepamla delivered his presentation on the enrichment of cultural life for the people of South Africa. Culture related directly to the social and economic position of a society. He pointed out one of the objectives set forth in the UNESCO Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It : "To enable everyone to have access to knowledge, to enjoy the arts and literature of all people and to contribute to the enrichment of cultural life". He himself was working at an institution, the FUBA Academy, which aimed at enriching the cultural life of the disadvantaged people of South Africa.

Unfortunately there was no cultural life for most of the people of South Africa. There were no more writings by Africans in the country. This all started in 1913 with the Land Act which took away the right of black people to own land. The population was arbitrarily separated and divided up into locations for blacks, Indians, coloured, whites. There existed no right to build one's own facilities. Halls were built for use in weddings, funerals, football matches, but not for plays, concerts, etc.. The black population had to adapt these halls to use for everything. Development of the arts was thus controlled in the townships right from 1913. It became worse however after the 1950's.

The 1950's were a time of many local cultural activities in the townships, with famous singers like Miriam Makeba, an active literary scene, the emergence of political leaders like Mandela and Tambo. Some people referred to this period as the golden cultural age.

Suddenly all this creative activity died in the 1970's, due to a number of governmental measures. The Entertainment and Publications Act in 1963 led to a great number of African writers being listed and banned, even if they were not in politics. Many left the country. Censorship was tightened even further by the Publications Act in 1974. Under this law, access to literature from abroad was forbidden. Censorship operated on two levels. Officially it functioned through a Censorship Board. On the other level, superintendents in the townships (supposed to be collecting rents, repairing street lights, etc.) became censors. If a play was written, it could not be performed unless the superintendent considered it suitable for the audiences.

The Censorship Board itself was discriminatory, authorizing publication of books by white writers even if politically critical, whereas anything written by a black writer, especially in English, was banned. The Censorship Board distinguished between possessing a book and distributing it. You could keep a banned book, but run the risk of it or a manuscript being picked up by a policeman at your home. It was only when writers like Nadine Gordimer or André Brink were banned that public outcry and protests occurred. Black creative activity was brought to a standstill.

Because of the Group Areas Act, even when you traveled to a library, you could not borrow a book but only consult it there, at best. This depressed state of the cultural scene was aggravated by the kind of education received by Africans. Other groups were allowed to study arts at school.

Fourteen years ago, S. Sepamla took the initiative to set up FUBA Academy, where students could be taught music, drama, dance and fine arts. Five years ago academic subjects were added to allow some students to proceed on to university. FUBA Academy students were beginning to initiate their own projects and it was hoped that FUBA Academy would serve as an inspiration and model for other art training centres and as an impetus to include arts training in school programmes.

S. Sepamla was critical of the type of education provided for black children, which gave them few alternatives and no possibility for training in fields of fine arts, music, museums, theatre, etc..

So far the Government had done very little, and real change could only be expected when a representative Government took over. In the meantime urgent assistance and donations would be welcomed from the international community : in terms of qualified teachers, arts equipment, construction of premises, etc.. The cultural boycott was maintained as far as pressure on apartheid structures was concerned, but relevant assistance to the majority population should be stepped up, as was recommended by the United Nations Symposium on Cultural and Academic Links with South Africa (Los Angeles, 10-12 May 1991).

Several aspects of culture and cultural participation were mentioned in the discussion. Although in certain respects culture could have a certain negative connotation in the South African context due to the manipulation of culture by the Government for purposes of domination, one African participant noted that culture could also serve as a useful means for promoting comprehension and communication. In this respect, one participant mentioned the positive cultural impact of returning exiles who in many cases were bringing back inheritances that had been denied to South African arts and culture for a long time. The conversion of Inkatha, originally a cultural organization, into an organization with political objectives was mentioned, as well as systems of patronage for social and economic resources operating within the bantustans.

In response to a question, S. Sepamla noted that African people in South Africa had been completely cut off from the continent ; they did not have access to African literature or black literature from other countries. Bookstores were still in the hands of white people. One publisher in Cape Town had however been trying to

obtain previously banned books by South African and international writers. Attempts were being made to use such books in schools established outside the governmental system.

In the presentation on "Affirmative Action and the Inclusion of Gender Issues on the Policy Agenda for a Democratic Post-Apartheid South Africa", Fatima Meer prefaced her remarks by pointing out that apartheid was not about gender inequality or gender domination : it was about racial inequality and racial domination.

Women's freedom in South Africa, should not just be considered in the context of apartheid society, but likewise in the context of a male dominated society, a domination that occurred across race and class.

The discrimination against women operated in the first instance in South Africa in the ethnic communities, largely through the compliance of women themselves. Each cultural and ethnic group was grooved in systems of values that perceived women as second class citizens. The apartheid State had simply confirmed these values and in instances incorporated them into its legal system. Without such incorporation, many customary gender discriminations might well have become obsolete in the process of industrialization.

Women's oppression occurred in two closely related areas, the domestic and the public spheres. For any effective affirmative action, both areas would have to be addressed simultaneously.

To overcome gender discrimination, one had to overcome its ideological underpinnings and reset society in a whole new matrix of values, a formidable task, more formidable than that of de-socialising one's psyche, and comparable only to overcoming caste prejudices as they existed in India. After almost half a century, the prejudices remained and the difficulty in overcoming both gender and caste prejudices lay in the fact that they drew on divine sanction and therefore had the cooperation of the oppressed party.

Radical feminists saw the family as the foundation of women's oppression. The vast body of women, particularly the Afro-Asian, experienced the family as a source of emotional strength and the theatre of their self realization. Where radical feminists viewed women's liberation as emancipation from the drudgery of unpaid housework, Afro-Asian women valued their roles as mother and home workers. Their separation from the sphere of capital and power made them less utilizable, relatively unambitious, far more value-centered than men and far more dependant on the family for their well being.

In South Africa, women had waged the liberatory struggle from the family, in response to oppression experienced by the family, in the family - unlivable wages, inadequate or nil schooling, poor or non-existent housing, inadequate or no medical services, and so on. In the process of that struggle, they had come to understand their own potential and had laid claim to their own freedoms.

Far from experiencing the family as an institution of oppression, African women traced the subjugation of the African people to the violation of the African family and

the commoditization of family members, of mothers, fathers, husbands, wives, sons and daughters, into labour units transferred from the home to the labour markets.

The violation of the African family and the violation of African land rights were interdependent. Alienated from the essential means of production, the African social world collapsed, and African culture was reduced into a fragment of itself. The return of the land was a primary facet in the return of the African family and the reintegration of African culture.

The generality of women in South Africa, and this was confirmed in interviews with almost a thousand women working in factories in Durban (Indian, African and Coloured), accepted their subordination and did not project a sense of oppression. Neither did they reflect, as a generality, feelings of alienation from their men, for they saw them as the most proximate victims of white domination. It was after all their men who fought and lost to the colonizer, and it was the men who constituted by far the larger casualties in political protest and suffered more extensively the brutal exploitations of capitalism.

This does not imply a blindness to gender oppression, but an inbred understanding that the major conflict in the country was racial and the people had to be galvanized to resolve that conflict, that any deflection to subordinate conflicts like class and gender could only weaken the struggle.

By struggling alongside the men and not against them, women had influenced the men to accept in principle their right to equal participation and equal representation. Thus, the ANC accepted the ANC Women's League as an integral part of its body, had reserved 17 of the 32 ex officio seats on the national executive for it, and quotas had been stipulated for the election of women on regional structures.

The post-apartheid Government, to justify itself, would have to be an affirmative action Government, redressing imbalances that had accumulated over more than three centuries. Women were at the lower rung of the social ladder, in practically every respect and stringent measures would have to be enacted especially in education and skills training to bring their socio-economic standards on par with other people.

Untrained, uneducated and largely confined to the rural areas, the vast majority of African women remained excluded from the job market. 57% of those in gainful employment were employed as domestic servants and agricultural labourers, and as such remained outside unionisation, and hence exposed to the whims of their employers with regard to wages and conditions of work. A third of the African urban dwellers lived in shacks and women predominated in the shack population.

71% of African women lived in rural areas, the vast majority in abject poverty, and 50% were left solely responsible for their children, grandchildren, the aged and invalid who were dumped into the reserves. 25% of these families were wholly dependent on the land for their subsistence, the rest received support from migrant workers who on average were able to spare 20 % of their wages. Only 2.43 million

hectares of the 17 million hectares that made up the reserves were suitable for dry farming.

These material conditions would have to be redressed but over and above that a vigorous educational programme would have to be instituted to change the perception that men and women had of each other. The vast majority of South African women accepted their subordination ; most men on the other hand took their dominance for granted. The family and the State would have to work co-operatively to instill ideas of gender equality. The perception that women and women's work were inferior must change. Motherhood and domesticity were not oppressive in themselves. Oppression resided in demeaning and dismissing women's work.

In the discussions several participants noted the cohesive role of women in the family and in traditional society. They had ensured family survival under apartheid, bringing up children in unbearable circumstances. Women were now also claiming a place in the new society, in the professions, the unions, etc.. The alternative human rights culture was supporting women's rights, women's organizations were active and women's desks had been established in organizations like the South African Council of Churches. Lawyers for Human Rights had recently organized a workshop on "Putting women on the agenda". The ANC was referring to a future non-racial, non-sexist democratic society.

Women who were returning from exile tended to be more feminist than their sisters who had remained in the country. When moving towards the post-apartheid society, the country could not afford to leave aside the contribution of women. Women should be allowed to choose whether they wished to contribute primarily to the family or move into the public sphere as well.

One participant questioned F. Meer's reference to "women's values" and wanted to know what she meant by that. F. Meer replied that she did not mean to imply that there were values specific to women, but that women were more sensitive to positive, non-utilitarian values than men, because women had not been drawn to the same extent as men into the capitalist market. They consequently remained less affected by its utilitarian demands that obliterated pre-industrial humanistic values. Women were less competitive, less geared towards accumulating power, less selfish, more caring and more sharing. She emphasized that humanistic values needed to be resuscitated and women had a greater capacity to do so than men.

IV. USING RESEARCH, EDUCATION AND INFORMATION TO PROMOTE AND DEVELOP HUMAN RIGHTS AWARENESS IN A POST-APARTHEID SOUTH AFRICA

Ihron Rensburg delivered a presentation concerning directions in education in South Africa and how these affected human rights of the majority population. He warned that one must not get swept away by current government rhetoric, or appropriation and misuse of concepts such as "decentralization", "localization of

control" and "desegregation". The very Government which had put apartheid into place, was now trying to reform it and attempting to project an image of negotiation versus supposedly unreasonable, intolerant mass organizations. The demise of apartheid would present challenges, in particular the need to ensure that apartheid did not continue in new forms of domination.

Current reforms in education were not leading to increases in the quality of education, nor democratization, nor affirmative action. The privatization of education and its opening up to market forces and to local control for admission constituted a serious danger and was designed to reproduce discrimination and inequality. The Government kept pushing for constitutionalized ethnicity.

The various human rights activists and organizations had a major task ahead to critically assess directions of reform and change, to monitor the human rights situation in all areas, and to give advice to those in need. Among these human rights NGO's figured organizations present at this workshop, the National Association of Democratic Lawyers, the Black Lawyers Association, the Transvaal Rural Action Committee, the South African Health Workers Congress.

The need for supporting the development of a strong human rights culture for South Africa was stressed, from early age onwards in all educational establishments, through workshops, the radio, and human rights associations throughout the country. Lawyers for Human Rights and the Civil Rights League had already organized human rights teaching in some schools, and various workshops to discuss and disseminate information on human rights issues had been convened. Resolutions had been passed by the African Commission on Human and Peoples' Rights urging States to incorporate human rights into the educational system at all levels. UNESCO had an on-going programme for human rights teaching, research and information. It was recommended that networking should be arranged for human rights research, teaching and information between institutions in Africa, to include South African anti-apartheid and human rights organizations, and with the African Commission on Human and Peoples' Rights and international organizations such as UNESCO.

South Africa was an example where people suffering from oppression could and were beginning to make use of human rights standards and values. Human rights protection to be effective should be fought for at grass roots level and not simply come down from the top. The question was raised by several speakers to what extent assistance could be provided to the people of South Africa during this transition and expected interim period. This was a major issue of policy since pressure likewise needed to be maintained upon the Government to promote fundamental changes and was being examined *inter alia* by the national liberation movements recognized by the OAU and the United Nations system.

A proposal was made to use the media in South Africa to see what the future of a democratic, non-racial society could be. The National Party had not so far been using the media to show options and provide open discussions on the future of the country.

V. COMPARATIVE EXPERIENCE IN HUMAN RIGHTS PROTECTION AND PROMOTION : EXAMPLES FROM THE AFRICAN CONTINENT AND THE INTERNATIONAL COMMUNITY.

Presentations were made by Raymond Sock, Director of the African Centre for Democracy and Human Rights Studies ; by Marjorie Thorpe, Vice-Chairperson of the United Nations Special Committee Against Apartheid ; by Mahmoud Ourabah, Deputy Director of the ILO Dakar Regional Office ; by Hillary Ojiambo, the representative of WHO ; by Carrie Marias, Division of Human Rights and Peace, UNESCO ; by Isaac Nguema, member of the African Commission on Human and Peoples' Rights ; and by Ngabishema Mutsinzi, Secretary of the African Commission on Human and Peoples' Rights. Specialists from Namibia and Zimbabwe had originally been scheduled to speak, but were regrettably unable to attend the Workshop.

Raymond Sock informed the Workshop that the African Centre for Democracy and Human Rights Studies was established in 1989 through an Act of Parliament as a non-governmental, regional body aimed at promoting the observance of human and peoples' rights through education, training, research and publications. Human rights procedures, both international and of the African Charter on Human and Peoples' Rights, often were unknown and seemed quite remote to most people on the African continent. The intention was to explain and increase the flow of information on the use of these instruments, through a newsletter and training courses. The Centre had a research programme, currently was conducting studies on prison conditions in selected African countries and on national human rights institutions, and planned studies on corporal punishment, human rights and development, and women and human rights. The Centre hoped to organize a seminar around October or November 1991 on the role of the police in protecting human rights in cooperation with an international non-governmental organization. The Centre ran an international human rights internship programme. It cooperated closely with the African Commission on Human and Peoples' Rights and undertook joint activities with NGO's, institutions and United Nations bodies concerned with human rights.

Marjorie Thorpe presented some information on the activities of the United Nations Special Committee Against Apartheid, which in cooperation with the United Nations Centre Against Apartheid, kept the international community updated on the situation in South Africa, by producing information and interpreting events. The United Nations Special Committee Against Apartheid was assisted in this analysis by representatives of national liberation movements recognized by the OAU who were members of the Special Committee, and from time to time experts from South Africa were invited to speak to the Special Committee and attend seminars in order to give a first hand account of what was happening and suggestions for advancing the dismantling of apartheid. The Special Committee also assisted anti-apartheid NGO's in other countries in order to encourage them to put pressure on their Governments and develop public awareness on apartheid. It advised Member States on how their actions might hinder the elimination of apartheid. The Special Committee worked with Member States in order to secure an international consensus on the need to abolish apartheid.

Mahmoud Ourabah, mentioned that the problems of apartheid remained a priority question for the ILO, and were the subject of the Annual Special Report by the Director General on the Application of the Declaration Concerning the Policy of Apartheid in South Africa. The abolition of juridical bases of apartheid was not enough. Preparation for the post-apartheid period would require economic assistance, redistribution of resources and a change of mentalities. The ILO would plan to lend its accumulated experience in the area of employment and social rights to a future government.

Hillary Ojiambo stressed the need to take health questions seriously in planning for a post-apartheid South Africa. Health was defined by WHO as a state of complete physical, mental, social and material well-being, and was part and parcel of social and economic development.

Unesco's programme of social sciences research, action and information on problems of apartheid originated as part of the Organization's programme for the elimination of all forms of racism, prejudice and intolerance. In November 1989 the General Conference of UNESCO adopted a Special Project Contribution to the **Struggle Against Apartheid : Towards an Apartheid-Free World**, as part of the **UNESCO Third Medium Term Plan, 1990-1995**. While continuing the more traditional anti-apartheid activities, the focus now had shifted towards action to assist the people of South Africa in preparing for a new apartheid-free society. Cooperation with national liberation movements recognized by the OAU continued, and was widened to include anti-apartheid, democratic forces within the country. A focus was placed on assisting ANC, PAC and the people of South Africa in examining policy options for a post-apartheid South Africa in the Organization's field of competence, with workshops held on education, human rights issues and access to science and technology in 1991.

UNESCO was, together with the United Nations system, looking into the best ways to provide some technical and moral assistance to the people of South Africa during this politically delicate transition period and with a view to moving into a democratic, non-racial apartheid-free society as soon as possible.

In dealing with the sequels of apartheid and racism, it was hoped that UNESCO could assist, together with other concerned United Nations bodies, in the area of affirmative action and in applying normative instruments against discrimination, in particular the UNESCO Declaration on Race and Racial Prejudice. UNESCO should also share its experience in human rights research, teaching and information.

Isaac Nguema informed the Workshop that the African Commission on Human and Peoples' Rights was created by the African Charter on Human and Peoples' Rights. The Charter was signed in 1981, and entered into force in 1986. Eleven Commissioners were elected in 1987. The African Commission on Human and Peoples' Rights was assigned the responsibility of promoting human and peoples' rights and ensuring their protection in Africa. Promotion activities included preparing studies on African problems in the field of human and peoples' rights, organizing conferences, disseminating information, encouraging national and local institutions in this field, cooperating with African and international institutions concerned with human and

peoples' rights. The African Commission on Human and Peoples' Rights examined communications presented to it by a State Party concerning alleged violations of the provisions of the Charter by another State Party to the Charter, and could also consider communications other than those of States Parties to the Charter, subject to the provisions of Article 56 of the Charter. Quite a number of African countries had not yet ratified this Charter. The African Commission on Human and Peoples' Rights, while not dealing with South Africa, closely followed all activities of the OAU dealing with the problem of apartheid.

Ngabishema Mutsinzi pointed out that one of the areas of most vigorous OAU action had been and continued to be the struggle against apartheid which constituted part of the Organization's concern with decolonization and self-determination of all countries of the continent. Namibia was the last country to be decolonized on the continent, it had finally gained its independence and now the problem of apartheid remained.

VI. CONCLUSIONS

A. STATEMENT FROM THE UNESCO/AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS WORKSHOP ON ISSUES OF HUMAN RIGHTS FOR A POST-APARTHEID SOUTH AFRICA (Banjul, The Gambia, 18-21 June 1991)

This meeting held in Banjul, the Republic of the Gambia, from 18 to 21 June 1991 between representatives of UNESCO, the United Nations Special Committee against Apartheid and the African Commission on Human and Peoples' Rights and participants from South Africa with experience in the struggle against apartheid and for human rights, has opened a valuable dialogue. As South Africa moves into a new phase in its history, the outcome of which is not yet clear, it is important that contact and understanding be fostered between its people and the people of other countries in Africa. The South African participants express their deep appreciation of the warmth with which they have been received and looked after by their Gambian sisters and brothers, a concrete manifestation of the unity of the people of our continent.

We all look forward to South Africa being re-united with the rest of the continent and taking its rightful place as an honoured and dignified member of the family of African nations. This can only happen when we have a non-racial, non-sexist and democratic Government in South Africa, chosen by all the people in free and fair elections, enjoying internal and external legitimacy. We note that, despite the welcome repeal of certain apartheid statutes, legislative, executive and judicial power is still in the hands of a racially-based minority regime. Apartheid is far from dead.

Violations of human rights continue on a daily basis. We welcome the work done by the organizers of this Conference as well as by bodies such as the OAU, the

United Nations Special Committee against Apartheid, the ILO, the WHO and other bodies represented here, in keeping the spotlight on continuing abuses of human rights in South Africa. The South African people are far from being free. In welcoming new initiatives, we should not forget that a long road has to be traversed. The struggle against apartheid has made the great majority of South Africans particularly sensitive to the importance of respect for human rights.

Many organizations have distinguished themselves by the way in which they have contributed towards defending human rights in the country.

We feel that their work needs to be better known both inside and outside South Africa, and look forward to these organizations pooling their efforts towards achieving this end. In particular, we would like to see more exchange of materials and experiences between these South African bodies and the African Commission on Human and Peoples' Rights with a view to developing collaboration both in this transitional stage and in the post-apartheid period.

We further note with deep appreciation the work of UNESCO over the years in combatting racism and promoting respect for the essential dignity of all human beings and of all cultures in all continents.

The struggle against apartheid has been a struggle against the ignorance, division and cultural oppressiveness fostered by apartheid. We have to push open the doors of learning, culture and science, and look forward to the support of UNESCO in our efforts to do so.

The South African participants commit themselves to reporting back on the Conference to bodies and individuals in South Africa committed to the promotion of human rights.

We need to build on and enrich the dialogue.

B. RECOMMENDATIONS

The participants in the Workshop came to the following conclusions :

1. Africa as a whole stands by the liberation struggle in South Africa. The struggle of the South African people is the struggle of Africa, for Africa.
2. There is an active human rights movement in South Africa. It is feasible that at the end of the travail not only South Africa will be free, but that it will make a special contribution towards promoting human rights.
3. The transitional period to a non-racial, non-sexist democracy is delicate and dangerous, and the people of South Africa should continue to receive support from the international community in their anti-apartheid liberation struggle.

4. There is a need for a plan of action for human rights to assist the people of South Africa during this transitional phase. In this respect, the collaboration of UNESCO, the OAU, together with the United Nations Special Committee against Apartheid, UNHCR, the United Nations Centre for Human Rights, ILO, WHO and UNDP would be appreciated.
5. The ANC and PAC have observer status with OAU, the United Nations and UNESCO. The time may have come to extend this status to other *bona fide* anti-apartheid political and human rights organizations on a selective basis.
6. UNESCO should take responsibility for continuing contact with liberation and human rights organizations and compile a list of these. There should be exchanges of information and literature, and organization of further meetings, workshops, etc., so that problems can be understood and appropriate responses planned.
7. The Workshop further recommends the compilation of a glossary of neo-apartheid terms used by the National Party Government to clear up the resultant confusion.
8. It is recommended that ILO, in cooperation with UNESCO and the United Nations Special Committee against Apartheid, organize a workshop on the right to work and labour-related issues in South Africa during the transition period.
9. The Workshop proposes that UNESCO, the African Commission on Human and Peoples' Rights and OAU consider organizing further consultations. It in particular endorses plans of UNESCO to convene a workshop in 1992 on problems of nation-building and of moving into a culture of peace and democracy, which should preferably take place close to South Africa, in one of the Front-Line States.
10. Since South African writers and cultural creators have been banned for so long and in order to make their works known, it is proposed that UNESCO and anti-apartheid organizations consider the possibility of preparing a mobile exposition of artists and writers on the theme of the struggle for liberty, freedom and human rights, as well as of helping to mobilize support for the translation of books of major African writers from South Africa into other languages.
11. It is proposed that, as soon as politically feasible, UNESCO, together with the United Nations Special Committee against Apartheid, WHO and other interested United Nations organizations consider sending a fact finding mission in order to assess needs of the people of South Africa in education, health, culture and sciences.
12. It is proposed that the results of this workshop be brought to the attention of the United Nations General Assembly and the OAU.

C. VOTE OF THANKS TO THE GOVERNMENT OF THE REPUBLIC OF GAMBIA

We, participants at the Workshop on Human Rights Issues for a Post-Apartheid South Africa, organized by UNESCO and the African Commission on Human and Peoples' Rights in Banjul, the Republic of Gambia, from 18 to 21 June 1991, put on record our deep appreciation to the Government and the People of The Gambia for the warm hospitality accorded to them and the excellent facilities put at their disposal to enable them to fulfil the purposes of the Workshop. We further request the Secretary of the African Commission on Human and Peoples' rights to transmit this vote of thanks to the President of the Republic of Gambia.

Written this 21st day of June 1991.

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