

Fighting racist court decisions

In an article in the 1969 South African Law Journal, Prof Barend van Niekerk wrote "that a considerable number of replying advocates, almost 50 per cent in fact, believe that justice as regards capital punishment is meted out on a differential basis to the different races, and that 41 per cent who so believe are also of the opinion that such differentiation is 'conscious and deliberate'." He was commenting on replies received from advocates to two questions in a survey. The questions were concerned, firstly, with the possibility of the intrusion of the racial factor into the imposition of the death sentence and, secondly, the "conscious or deliberate" nature or otherwise of such intrusion. Barend van Niekerk was charged for contempt of court as a result of this article, but was acquitted by the Transvaal provincial division of the Supreme Court. That was in 1969.

During more recent times, especially the past 12 months, there has been a trend which conclusively proves that equality before the law is not a human right enjoyed by all the citizens of this country.

The Universal Declaration of Human Rights stipulates in Article 7 that all are equal before the law and entitled without discrimination to equal protection of the law. It is this right which Lawyers for Human Rights is trying to protect and enforce.

Lawyers for Human Rights has found this distressing trend of a lack of equality before the law in a number of cases. In instances where a group of black people are involved in a killing, invariably as many as can be identified are charged with murder on the common purpose doctrine and vigorously prosecuted, resulting in most of the accused being sentenced to death. On the other hand where a group of white people (particularly farmers and policemen) are involved in the killing of a black person, only the main perpetrator is charged with murder; the others are charged with offences ranging from culpable homicide to assault. The prosecution proceeds almost

The distressing trend of lack of equality before the law in South Africa has moved Lawyers for Human Rights to embark on a special project to help restore this right to those who are denied it. Project director AHMED MOTALA (right) reports . . .



apologetically and the accused are given relatively light sentences.

Black people convicted of murder, particularly when the victim is white are sentenced to death in disproportionately high percentages. White people convicted of murder, particularly when a black person is the victim, are sentenced to death only in minute percentages. For example, in 1983, of 21 whites convicted of murder of blacks, not one was sent to the gallows. Barend Strydom is one of the very few exceptions.

As a result of blatant racial discrimination in the administration of justice in this country Lawyers for Human Rights has resolved to establish a special portfolio to monitor prosecutions, convictions and sentences in appropriate cases. This programme will be referred to as Lawyers for Human Rights Project Article 7. In making this allegation about discrimination in the administration of justice, we are mindful of the fact that there are many judges and magistrates who dispense justice fairly without considering the race of the accused. Those judicial officers who are racist in their application of the law discredit the entire judiciary and legal system in South Africa. For the sake of civilised standards and a future democratic South Africa this programme is aimed at eliminating racial discrimination in the administration of justice so that all citizens

can be equal before the law.

In launching the project, Lawyers for Human Rights has notified the offices of various community organisations, including Black Sash and Idasa, as well as members of Lawyers for Human Rights. This will ensure a flow of information from all parts of the country in regard to cases relevant to the project where there has been discrimination in the administration of justice. The media have also been called upon to render their assistance.

After receiving information of cases, we will investigate them and take appropriate action. We intend to investigate each case thoroughly and then to highlight injustices which we find. Through the media we will inform the public of cases where there has been inequality before the law. It is our belief that the judiciary will take appropriate steps to curb discrimination, to protect its image and credibility.

All cases will be scrupulously documented and at the end of each year, a report will be prepared and published for both national and international consumption. We will make copies available to international human rights forums including the appropriate United Nations bodies.

In some cases where it is necessary we will make representation to either the appropriate chief magistrate, or the appropriate judge president or to the chief justice.

On a practical level, where we are able, we will assist with appeals, either by providing a lawyer through our Pro Bono Scheme, that is where the person is unrepresented or if the person is impecunious and cannot afford further legal representation, we will consider an application for funding through our Litigation Trust Fund.

Lawyers for Human Rights looks forward to the assistance of organisations and their members in making this a successful project, strengthening its endeavours to restore to those who are denied it, the right to equality before the law.

was fostered. Shy people mixed and spoke freely in the groups, dominant and aggressive persons were aware that their behaviour in groups was sometimes destructive and often undemocratic, we learned to listen better to one another and we were all made aware of just how little we still know and understand about democracy.

There was consensus in the group that the weekend was a big success; that it equipped us better with the essential tools and skills to have democratic debates about serious issues which directly affect the lives of all of us; that we contributed in a small way towards the nurturing of a democratic culture in the school and in society; that we acted out the concept of non-racial nation building and in so doing managed for a short moment to embrace the future.

But the greatest achievement of the weekend was that, despite apartheid and apartheid schools, we managed to transcend (albeit briefly) the race, class and historical divisions of our society, having come to accept each other as equal human beings.

□ André Zaïman is the Regional Director of Idasa in Pretoria.

Tieners kweek begrip vir mekaar

Dit is een ding om te intellektualiseer oor nierassigheid en demokrasie, maar iets heel anders om direk daarmee gekonfronteer te word. So ook moes 35 Afrikaanse en township tieners die verskille en ooreenkomste met mekaar uitklaar op 'n naweek saam in die Franschhoek berge wat in September deur Idasa gereël is.

Die verskille was duidelik. Tieners het gepraat oor die verskille in hul skool leerplanne en die omstandighede waaronder hulle skoolgaan, hoe hul sosiaal verkeer en hul familie situasies. Daar was verbasing toe een meisie hoor dat haar groepmaat nie 'n badkamer in haar huis het nie, en verstomming toe dit blyk dat niemand in die hele woongebied so 'n luuksheid het nie.

Die eerste oefening waaraan die groep



Kaapse tieners byeen in Franschhoek.

deeltgeneem het, was om na 'n video, "Blue Eyes Brown Eyes", te kyk. Dit handel oor 'n oefening wat gedoen is in Amerika met laerskool kinders. Die kinders is geïdentifiseer op grond van die kleur van hul oë. Sekere voordele is eers aan die kinders met blou oë gegee, en later aan die kinders met bruin oë.

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New era dawns for Africa's last colony



Twee tieners diep in gesprek tydens die naweek.

Tieners byeen

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Die doel van die oefening is om kinders in die situasie te plaas waar hulle teen gediskrimineer word op grond van iets waarvoor hulle geen beheer het nie. Die invloed wat hierdie drie-daagse program op die betrokke kinders het, is merkwaardig. Beste maatjies baklei, kinders verloor hul selfversekerdheid, bitterheid en onvergeeflikheid neem toe, klaspunte daal of styg afhangende van die oogkleur wat die dag bevoordeel word. Van die groepe wat op laerskool deel was van die oefening is nou volwasse en stem saam dat dit 'n direkte invloed op hul lewens gehad het.

Baie vrae is in hierdie sessie gelug wat die naweek beantwoord moes word.

Die groep tieners is die naweek verdeel in kleiner groepe wat kompetierend deelgeneem het aan verskeie kulturele, sport en leerprogramme. Almal het groot genot geput uit 'n program waarin die groepe mekaar Afrikaans en Xhosa moes leer. Sokker en vlugbal is gespeel en 'n marathon is gehardloop voordat die gordyn Saterdagmiddag opgegaan het vir 'n puik konsert. Die groepe het gesing, gedans, toneelgespeel en later 'n bespreking gehad oor hul rol in Suid-Afrika en wat 'n voorreg dit is om in so 'n kultuurryke 'n land te woon.

Die verhoudings wat gebou is oor die naweek en die voorveronderstellings wat afgebreek is, was duidelik toe die groepe plakkate gemaak het. Die een wat gewen het se woorde was, "We All Stand Together". Dit het aangesluit by die les wat die aanbieder van die eksperiment in die video haar leerlinge wou leer. Moenie 'n ander persoon oordeel totdat jy in hul skoene geloop het nie. Al het hierdie groep nie — en al sou hul waarskynlik nooit nie — het hulle 'n pad saam gestap op die weg na begrip en verdraagsaamheid.

Marion Shaer
Regional Co-ordinator



Vuurmaaktyd in die berge.

The political framework under which Africa's last colony will attain its independence will shape the economic fortunes of the new state. The extent and nature of external dependence — variously expressed in budgetary assistance from South Africa, in transport and level of economic integration — implies that Namibia's economic fortunes are to a considerable extent a reflection of that of South Africa.

To be sure, Namibia has scope for more autonomous development and for new patterns of intra-regional trade, especially within the framework of the Southern African Co-ordination Conference (SADCC), but its current dependence on the extractive sector — mining accounts for 34 per cent of GDP and 80 per cent of export earnings — may limit domestic political sovereignty to some extent.

Immediately after independence, vulnerability in the area of public finances will be especially acute, following Pretoria's earlier decision to cut its budgetary assistance from R308 million in the 1988/89 fiscal year to a mere R80 million in the current financial year.

Assets

In contrast to most of its neighbours, Namibia is well served by a modern, extensive physical infrastructure relative to the size of the population. It boasts nearly 43 000 km of roads (4 382 km tarred), 2 383 km of railways, a strong communication infrastructure, an electricity grid of 5 300 km integrated into that of South Africa via Aggenys in Namaqualand and an adequate broadcasting service.

In assessing the new state's development potential, various real and potential constraints and assets, need to be considered. The real development assets include:

- Natural resources (finite) — base metals, diamonds, uranium, zinc;
- Viable agricultural sector (extensive pastoral); off-shore fishing resources;
- Strong physical infrastructure;
- Tourism;
- Low national population density.

The potential development assets include:

- Intensive crop farming (Kavango, Caprivi);
- Energy sector (Ruacana, hydro-power, Kudu gasfield);
- Some scope for local beneficiation;
- Diversification of trade (SADCC, Lome arrangement that governs trade and economic relations between third world and

Whatever the precise nature of it has the features of a small state with dependence for years t

industrial countries, Preferential Trade Agreement).

Among the real development constraints are the marginal ecology in parts; shortage of skilled manpower; economies of scale difficult to attain; high transport/market costs; high export dependence of economy; high population growth rate (3 per cent per annum) and uneven spatial distribution of population; high rate of urbanisation.

In addition to these, external economic involvement is chiefly located in fishing and mining. Consequently, Namibia has a weak, underdeveloped industrial sector and limited control over local financial and mining capital. Similar economies elsewhere show that exclusive reliance on extractive industries

The leadership qualities of Swapo president Sam Nujoma will be a crucial factor in the transition period.



is not particularly helpful in overcoming socio-economic problems. Deteriorating terms of trade tends to depreciate the value of commodity exports.

Agriculture

The agricultural sector is vitally important to Namibia. Although there are only 4 500 commercial farmers (6 000 commercial farms), this sector employs 33 000 or 16 per cent of the total labour force and sustains more than 300 000 people (almost 25 per cent of the total population). Some 872 000 Namibians are within subsistence agriculture.

The fishing industry — after mining the biggest investment South African companies have in Namibia — recently showed a mild recovery. While the 1987/88 catches have been the best since 1976, these were still well below the record 1975 catch of 760 000 tonnes. Over-exploitation of this important protein source by overseas and South African vessels remains a serious problem.