Umbutho Wamalungelo Obuntu
CIVIL RIGHTS LEAGUE
Burgerregtevereniging

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1. Editorial

In this issue we give a brief account of the Annual General Meeting in September, and in our articles handle topics in the three main areas.

Two look at the Road to a New South Africa. The distressing impact of the Further Indemnity Act, as described by Mary Burton may be contrasted with the impact on another member of the CRL of the film Sarafina.

Second, the clutter which has to be removed before one can really say that the New South Africa has arrived is represented in Margot Pienaar's informative suggestions on how to get rid of de facto apartheid now that apartheid in law has been removed from the statute book - or only partially removed, as the anonymous contribution on the implications of the Defence Amendment Act makes clear.

Third, we have two contributions on rather different aspects of rights in rural South Africa. Norman Reynolds stresses the relevance to human rights of efforts which are being made to ensure the survival of people in drought-stricken areas by the provision of funding for projects so that these communities are enabled to buy food if they cannot grow it. But this is followed by an account of an extraordinary miscarriage of justice arising out of the brutal treatment of farm workers, which has been handled by the Stellenbosch Advice Office of the Black Sash. In the light of this case, it is indeed welcome news that the right of farm workers to unionise is about to receive official recognition.

2. The Annual General Meeting 23 September 1992

Between 20 and 30 members were present in the Congregational Church Hall, Rondebosch, to hear the Comnvenor's report, delivered by Professor Hugh Corder, and to take part in a symposium on aspects of a Bill of Rights in a new constitution.

Professor Corder reported that the committee had met regularly, and sought to publicize human and civil rights issues in a number of ways. Newsletters have continued to appear quarterly, under Rodney Davenport's editorship, the February number taking the form of the booklet Routes to Democracy, of which 1000 copies were printed, with financial help from USAID, for distribution to CODESA, universities, libraries, the press, and interested individuals. It was well received.

In the course of the year several members of the CRL had sent letters to the press on rights issues. The Human Rights Education Sub-committee has been closely associated with Lawyers for Human Rights, NADEL, Street Law and other bodies, in the Civil Rights EDucation Action Project (CREAP) an umbrella body which has been very active. But the CRL's contribution has been less active than was hoped because not enough volunteers have offered help.

The CRL has also kept close contact with the Black Sash, SAIRR and Human Rights Commission. Jeremy Sarkin-Hughes attended the LHR conference at Potchefstroom in April. Rodney Davenport and Margot Pienaar took part in the Human Rights Trust workshop at Port Elizabeth in May, and were elected to represent the western Cape on a continuation committee.

About seventy people attended a public meeting co-sponsored by the CRL and the Department of Public Law at UCT, to debate the appointment of judges to superior courts in the New South Africa.

On the international front, Margot Pienaar went as invited CRL delegate to a month-long course run by the Canadian Human Rights Foundation in Prince Edward Island, and has contributed some of her experiences to the Newsletter. We also maintain contact with Amnesty International.

Professor Corder again raised the question of whether the CRL should continue, in view of the appearance of other bodies in the field. As on previous occasions, his answer was positive. With nearly forty years behind it, the CRL was one of the world's senior civil rights bodies. It had been able to attract a growing number of young members to its committee.

The financial report showed that, by contrast with last year, the League is now operating effectively within its budget. The increase in membership fees has produced an excess of income over expenditure of R3206, 85, resulting in an accumulated balance at 30 June 1992 of R5642, 53. The League is especially indebted to its large donors and corporate members for generous support.

In the Symposium on Human Rights, Lyn Jackson spoke on "Green" Rights (the right to a healthy environment), Rodney Davenport on Land Rights, and Christina Murray on Women's Rights. All speakers focussed on the issue of how best to incorporate these issues in a constitution, and tended to favour their registration in broad terms in the Bill of Rights (elaborated perhaps in specific charters), but to leave their detailed management to positive legislation, with a strong legal stiffening (perhaps through the creation of special court-s), and above all the promotion of public awareness.

The presentations were followed by an unusually lively discussion from the floor. This seemed to suggest that if the League Committee works to encourage membership participation, a good response should be forthcoming.

Sarafina

An Invitation to Think Again and Rebuild Our Hope?

by Rodney Davenport

Sarafina should be seen by all South Africans. Not mainly as entertainment, despite the slickness of the performances by Leleti Khumalo and Whoopi Goldberg. The story is too raw for that. It evokes grim memories of brutal police interrogations and township torchings. In doing so, it reminds the viewer of the chasm of insecurity and anger which divided our peoples three years ago, and in many circles still does divide them.

But throughout the film, and bursting out at the end, there runs a mood of hope. Things do not have to go on like this. They can only get worse if they do. They could be so much better if only we want them to be, and want this with conviction. The anticipated release of Mandela provides a remarkable focus. Something to hold on to. Above all, something not to squander, whether through thoughtlessness, or anger, or ambition, or silly heroics, and especially through fear.

At the end of the film, the release actually happens. It seems we need to be told again that it did. The symbolism of those Mandela-De Klerk handshakes should be on our postage stamps. It should replace the global logo before SATV news services, perhaps even find a place on the covers of women's magazines. Somehow it must be made to sink into our addled imaginations.

That, rather than repetitive platitudes about 'getting negotiations back on track' or 'levelling the playing fields', often mouthed by politicians who had not only helped to derail the train or dig up the turf, but had no intention whatever to refrain from doing it again.

The file of clippings on which this editorial is based is brimfull with reports of such speeches by leaders of the NP, Inkatha, ANC/SACP and others; but it would be inappropriate to draw attention to them. Think rather of an article by Anthony Holiday in the Cape Times of 17 September. We do not share Holiday's political allegiances, but we can completely endorse his contribution to the coming rerailment:

"We politicians [have been] too busy ... counting the political, as against the moral, cost of what has happened. Too busy planning 'initiatives' and counter-initiatives. Above all, we were too busy apportioning blame, pointing fingers, shouting accusations and seeking culprits to bring to book ... The question we need to ask is not, 'Who is to blame?' but in words which Lenin made familiar to the present architects of the Mass Action, 'What is to be done?'"

He went on to warn that unless the leaders of his own party could eliminate this mood of confrontation "this country's future is as dark as the liquid which stained the route of the march on the capital of Ciskei".

How often do we hear of politicians censuring their own parties for misjudgment or misconduct? The ANC has got half way by confirming the public impression that barbarous activities took place in its camps in exile. Let us remember that they are further along the track than a government which still insists (against what one might term the law of probabilities) that it has nothing to declare, and yet goes to enormous lengths in its Further Indemnity Act to avoid having to disclose the nothing that is supposed to be there. This stretches credibility beyond the limit. Points made by Mary Burton in the contribution which follows are recommended to the attention of everybody.

Can we avoid the enormous step backwards into the jungle which this shallow "Crooks' Charter" implies? Perhaps our present rulers should make a special point of seeing Sarafina and, in the light of its message of hope, work out a more sanguine and more dignified way of inviting public trust.

But if the route chosen is to be that of the present amnesty legislation we will assuredly have to wait much longer for a proper mood of conciliation to arrive.

So let our political leaders see Sarafina too, and think again.

The Indemnity Act
A Return to Old Style Nat Arrogance?

By Mary Burton

The Further Indemnity Bill, after its ignominious rejection by Parliament, its hurried acceptance by the President's Council, and its assent by the State President, has now become law.

It makes provision for the following:

"O, my offence is rank, it smells to heaven;
It hath the primal eldest curse upon 't,
..... murder! ...
My stronger guilt defeats my strong intent; ...
Try what repentance can: what can it not?
Yet what can it, if one can not repent?"

Hamlet Act III Scene 3

- A National Council on Indemnity shall consist of the number of members deemed necessary by the State President and who a reappointed by him. The Council will meet in camera, its members will swear an oath of secrecy, evidence presented to it will be privileged and not admissible in any trial, and the records of the Council itself will not be open to inspection. The Council will consider cases referred to it (by the State President, or the courts, or by any person wishing to claim indemnity) and shall norify the State President of its findings.
- The State President may order the release of any long term prisoner (in the case of a life sentence, after consultation with the Council) convicted of a politically motivated offence committeed before 8 October 1990. (The State President is able to extend that date by proclamation in the Gazette with the concurrence of all three Houses of Parliament).
- The State President may (after consultation with the Council) grant indemnity to any person who had "advised, directed, commanded, ordered or performed" any politically motivated actionprior to 8 October 1990. No proceedings shall be instituted orcontinued in any court of law against any such person for suchaction. The State President may authorise ex gratia payments ifhe deems it necessary or expedient.

The National Council on Indemnity is to start work as soon as possible. The memorandum on the objects of this legislation says the reason for holding secret meetings is in order to "encourage prospective applicants to submit their application with confidence".

During the debate in Parliament, as well as in speeches and at press conferences, National Party representatives argued that this Bill was necessary, and urgent, in order to give effect to the government's September 26 Record of Understanding with the ANC. ANC representatives have denied that the organisation agreed to any "general blanket amnesty", or to secret hearings. Opponents from a variety of political perspectives have alleged that the government's motive for pressing ahead so urgently with this legislation is its need to protect agents of the state who have carried out illegal actions, including torture and assassination, and those who ordered them to do so.

It is greatly to be regretted that this legislation has been passed at this particular time, by this particular government, and in this form. An amnesry, given due consideration and very wide consultation, might well prove to be a necessary part of a process of reconciliation. (Amnesties were declared in both Namibia and Zimbabwe, as well as in Argentina and Chile. There are useful lessons to be learnt from their examples).

The advantages of an amnesty can include:

- encouraging admissions of past offences (with all the concomitant blessings of repentance and confession)
- enabling victims, accusers and witnesses to come forward without fear of reprisals, and according them the respect of a proper hearing
- making it possible to discover and reveal the truth of what happened in the past
- allowing for public recognition that all parties have committed transgressions of human rights, and that after full judicial investigations it may be necessary to pardon the transgressors before a process of reconstruction can begin
- ensuring that the society as a whole acknowledges responsibility for the past and is able to transcend it.

The examples that we have of amnesties in other countries show how difficult this is to achieve. Those who hold power even after major changes in society are reluctant to jeopardise what is often a precarious stability. New governments seek to cover their own pasts, or are powerless to force disclosure from opponents or from influential sectors such as the security forces. Even where much has been achieved, fear, suspicion and anger continue to simmer.

The Further Indemnity Act is seriously flawed. It denies the possibility of full disclosure, and it is seen as a onesided tactic by the government to exonerate itself. The danger is that it may have so tarnished the concept of amnesty that we shall be unable to return to it in the future.

"Whiter than White" Conscription in the New South Africa

by an Anonymous Contributor

[Section 2 of the Defence Act No. 44 of 1957 states that the Act "shall not apply ... to females or persons who are not white persons as defined in Section One of the Population Registration Act 1950 ... provided that the State President may with the approval by resolution of both Houses of Parliament by proclamation in the Gazette, apply any provision of this Act to females or ... such persons who are not white persons as so defined" (provided that non-whites may engage voluntarily for service in the SADF). Although the preamble to the Defence Amendment Act 132 of 1992 states the intention "to withdraw the power to make regulations differentiating between persons on account of race", there is no reference in the Act to the Population Registration Act which has in the meantime been repealed, and there has been no amendment to Section 2. The appeal by the End Conscription Campaign against the decision of the Transvaal Supreme Court seeks to contest the Court's judgment that discrimination by race in the matter of military call-ups is lawful].

Apartheid is alive and well, and living in the system used for conscription into the South African Defence Force.

Only white males have been liable to render compulsory military service since the beginning of the call-up system. The Defence Act is expressly said to apply only to persons defined as 'whites' in the Population Registration Act. A 'white' person for this purpose is defined as 'a person who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person'. By all accounts it seems that the Government did not intend to alter this position when the Population Registration Act was repealed in 1991, and the idea seemed to be that the conscription road-show would simply roll along as before into the 'New South Africa'.

In fact legal opinion was divided on the question of whether or not the repeal of the Population Registration Act affected the basis for white conscription. A number of subtle legal arguments were suggested to indicate that the SADF would act unlawfully if it continued to call up only 'white' persons after 1991. These arguments were presented to a full bench of the Transvaal Provincial Division in September of this year, in the course of a test case brought by the End Conscription Campaign to challenge the validity of the whites-only call-up. The application was dismissed, and the Court held that the definition of race in the Population Registration Act continues to be a valid basis for conscription after 1991. The ECC is currently seeking to appeal against this judgment.

While the call-up thus continues to be valid in law, it is hard to tell whether the law is being complied with in practice. There have been numerous unconfirmed reports about massive failures to report for military service in recent months. In September the SADF announced that it would not prosecute those people who had in the past failed to report for service, as long as such people applied to the newly-constituted 'Board for Conscientious Objection' to be classified as 'conscientious objectors'.

The status of 'conscientious objector' is a new one that was introduced by the 1992 amendments to the Defence Act. Before these changes it was only religious objectors who qualified for alternative service, and the amendments were designed to widen the ambit of objection so as to include 'moral or ethical' grounds (which must of course be 'sincere and deep-rooted') for objecting to military service. Conscripts classified as conscientious objectors by the Board still suffer a significant penalty in that they will be obliged to complete alternative service of one-and-a-half times the length of normal military service. This prospect is unlikely to appeal to many conscripts.

The state of flux in South African politics is such that there is a widespread perception that the whites-only campaign is falling apart. The ECC has launched a recent campaign calling on conscripts to refuse to co-operate with the SADF in any way. It is very difficult to predict whether the SADF will be prepared to put its money where its mouth is and suffer the political embarrassment that will inevitably attend on the prosecution of a white conscript who fails either to report for military service or to apply to the Board for Conscientious Objection for alternative service.

One thing about which there can be no doubt is that the system of call-ups for white males only is on the way out. Its repeal is a question of when rather than whether. Until that day comes, white comscripts will continiue to face agonizing decisions and many skilled white graduates will no doubt elect to emigrate. Meanwhile the rest of us, starved for entertainment as we are, will continue to watch in wonder as Government ministers attempt to explain how the conscription of whites only in the 'New South Africa' is not racist.

Moving Towards a Right to Work: Responding to Drought

by Norman Reynolds

Launched by the Independent Development Trust as a response to drought, the new approach passes all decision making to communities or groups. Drought relief is to be effected by labour intensive construction under public works.

South Africa has yet to implement a full rural development programme. At best there have been short-lived ad hoc official programmes and various responses by NGO's to land issues and poverty. A new approach is now in the field which, it is hoped, will demonstrate the national advantages of a properly designed community owned scheme.

A team of about fifty professionals (mostly engineers) and field agents drawn from each region runs the programme. Communities under social and economic stress receive a budget within two to three weeks of identification. This avoids the unknowns of how much the donor will fund, when, and for what.

Wages account for 60% of the budget and overheads 40% The wage component is calculated by a simple formula: the number of people in households without regular income times four months times R1.25 per day. This budget covers both the wages of workers and their training in either management or basic skills of benefit to the community, or to equip individuals to provide a local service or to enter the labour market.

The overhead budget, which amounts to two thirds of the wage budget, is to pay training fees, hire facilitators if the community cannot come together, and pay for equipmenr: materials (cement), transport etc. The recipient communities decide at public meetings how they would like to spend the budget. Their proposals have to be adopted democratically, and ensure that poor families have access to work and so to income, and that the activities proposed add to the productive capacity or provide physical, manpower, institutional or systems benefits for the community.

Proposals are vetted by a local professional officer, who will indicate if he or she considers that the criteria will not be met. Experience so far suggests that communities have discussed carefully the opportunities the budget represents. Most questions are technical and concern the certification of payments upon proper construction.

The communities take all the decisions. They propose: the professionals approve. Key decisions are taken as to wages and the basis of payment. Communities know from the budgets how much they can earn as wages. The question, as with householders contemplating spending their own money, is not how much per day - as against an employer - but what output can be achieved with a given fund. They have to work out how best to correlate labour use with the overhead budget so that the community obtains the best correlation of expertise, training and materials. The logic of the two part budget is that communities will set low wages, thus exhausting the wage and the overhead budgets together, and achieving the optimum output.

Communities have to decide how far they can use skills within the community, or wait while they are upgraded through training - perhaps on a worksite - as against the engagement of experts. The budget formula means that, probably for the first time in any country, communities learn what outside help costs. For instance, a community in Venda hiring an engineer will have to pay for that expert's transport, hotel and fee. A small road project would involve several trips and many thousands of rands. In the process of paying and therefore knowing the bill, the community will

make certain they learn as quickly as they can what the expert can offer.The expert, being paid by the poor rather than a large agency, will use the time with the community constructively and probably not bill all possible items.

Already some communities have downgraded their first construction proposals to save money, and sought local skills. There are a growing number of instances of remarkably good constructions organized and supported within communities alone.

In the case of a more complex public works project, the building of periodic markets in villages encircling a town, some planning and architectural skills ate needed. In Stutterheim architectural students joined forces with communities. The first completed document was a training manual so that the six market communities in that regional project could be trained to construct the complexes of buildings with minimum outside help using locally available materials. In the case of four villages building a periodic market, it has been agreed that the three villages that do not have a market site will build irrigation schemes so that they can produce for sale in the nearby weekly market.

The budget places responsibility on communities, whilst helping them and their advisors to explore the 'opportunity costs', the relative merits of alternative ideas, projects, methods and procedures. For the first time poor communities enjoy the same right to make mistakes enjoyed by national, donor, and NGO agencies. But for a community, the cost will be real and the lessons therefore adopted.

The programme was launched following the organization and formation of the National Consultative Forum on the Drought in early July. This step was vital to provide a legitimating umbrella body whereby this and other programmes could share ideas and information. In the short four months since then, over R50 million have been allocated to over 140 communities. The volume of work keeps growing. Now the focus is shifting to the support of communities in turning their budgets into implementable projects.

At the start advisers from every quarter argued that there was no 'community' in South Africa. Apartheid, paternalism, 'tribal' versus 'comrade' and political factions had rendered community a myth. The programme's response was not to step back, hand out money or food, spend funds and time on ten modules to train the poor to run committees and meetings, etc. Rather it was to place community at the core of the programme; to believe in people if they in turn were given the means and could acquire on their own terms the expertise and knowledge to beneficiate their own environment - socially, physically and economically.

Thus far 'community' is proving resurgent. The poor are as clever, even ingenious, as the best professionals. The team managing the programme look forward to the next few months with great exitement. Everyone is learning. There is a national effort afoot.

Where things go wrong - and the budget model is designed to quickly reveal this since no expenditure can proceed before corrections - then attention has to be paid as to why. In some communities, divisions will prove too deep. The strength of the model is that all will know that benefits are being held up, both members of the communities and programme managers. Perhaps too ambitious ideas were entertained. Or more funding is needed to reach a common rather than group goal. The budget allows for further exploration, for training, and the budget itself can be increased since it is based only on a formula.

The budget conveys a right to communities; not legal, but programmatic. The intention is to provide communities with further budgets whilst arguing that the programme has already demonstrated, as its authors argued at the very beginning, that South Africa can afford and desperately needs an on-going rural public works programme.

The formal economy will not handle the unemployment problem for many years to come. The large informal sector peaked some years back and has little ability to contribute to economic growth, only to split service jobs. The only area of the economy that can tolerate stimulation is the countryside (communal and commercial farming). There are large production increases possible if productive infrastructure is created anbd communities and individuals become better equipped. Public works are labour intensive, low foreign exchange investment systems. They also have low foreign exchange consumption patterns since they begin with the poor buying better and more food, clothing, shelter, education, health and the means to earn a living. Money spent on rural public works has a multiplier of from 6-8 over eighteen months. As a result public works can stimulate the economy in very efficient ways, notably by supporting national production for mass consumer goods anbd basic services.

A national Rural Public Fund to which all communities enjoyed direct access is now needed. It would be the neatest way to alter the homeland government system rowards national and open administration. In doing so, the programmed right to work on public works construction could become enshrined behind a socially and economically dynamic programme that attacks poverty and the post-apartheid social and institutional chaos directly through community.

Popular Racial Discrimination Can it be Eliminated in The New South Africa?

by Margot Pienaar

Articles 1 and 2 of the Universal Declaration on Human Rights of 1948 read:

1. 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.

2. Everyone is entitled to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Now that South Africa is moving towards compliance with the Universal Declaration regarding de jure racial discrimination, the issue of (f)actual racial discrimination has become pertinent. Affirmative action in order to rectify the wrongs and disadvantage caused by racial discrimination in the past is only one aspect of the issue. At a time when a new constitution is to be drafted and South Africans are considering the values on which the new South Africa is to be based, the extent to wqhich racial discrimination can be prohibited by law and the constitution is of concern to many people.

Do civil rights also embrace human rights?

The aspirant discriminator would claim that human rights are those held by the individual against the state, and that although the state in terms of human rights theory may not discriminate on a racial basis, individuals may. The human rights advocate will wish to prevent all forms of racial discrimination because they detract from the ultimate purpose of human rights, i.e. human dignity and peace.

This raises the question whether the new constitution should permit the privatisation of discrimination, or to what extent such privatisation can be prohibited. May shop owners refuse to serve people of certain races? Can municipalities raise the price of facilities so as to exclude certain segments of the population? Housing rights, credit facilities, employment, health and education, as well as access to vacious social amenities such as restaurants, public swimming pools and libraries, are potential targets for private discrimination.

How can a conflict of rights be resolved?

While some people believe that racial discrimination whether public or private is out of the question and should be absolutely prohibited by law, others maintain that forcing someone not to discriminate is an infringement of their individual freedom of choice. While these two viewpoints may be motivated by the respective intentions to combat or perpetuate racism, they represent disagreement on the interaction between two principles which are both found in the Universal Declaration.

The first principle is embodied in article 7 and prohibits racial discrimination:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against sany incitement to such discrimination.

The second principle is embodied in articles 18 and 19:

(18) Everyone has the right to freedom, conscience and religion

(19) 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

The 'equal protection of the law' (against discrimination) clause may appear to the racist to clash with his or her right in terms of the 'freedom of opinion, conscience and expression' clause, to express racist sentiments, for example by prohibiting people of certain races from entering a restaurant, or by publishing posters promoting racism.

The question is not which of the two principles supersedes the other, but how they interact with one another within the context of the spirit of the Declaration in which they are contained.This is not an easy question and has produced volumes of jurisprudence in both Europe and the United States.

How applicable in the New South Africa?

Should the new South African constitution prohibit racial discrimination, and if so, to what extent? The answer depends on the values of our society and whether we want a society which rejects racist principles or not. If the majority in a democratic society chooses to adopt a constitution prohibiting public and private racial discrimination the question then concerns the extent to which racial discrimination can be prohibited by law. Furthermore, if private discrimination is prohibited, what are the remedies of the 'discriiminatee' against the 'discriminator'? Can an injured party obtain reparation for an act of discrimination? Are the normal laws of iniuria sufficient or should such claims be provided for in the constitution or other legislation?

The principle of non-discrimination will be high on the agenda of the drafters of the new constitution. They are not entirely without guidelines, however. The experience of other countries as well as work being done by the United Nations on combatting racial discrimination can be of some use to us. The United Nations is currently in its Second Decade to Combat Racism (1983-1993). In its Programme of Action for this decade (approved by the General Assembly in Res 38/14 of 1983), the UN recognised the importance of national legislation as well as judicial and administrative action in order to combat racial discrimination. It especially emphasised the necessity for procedures of recourse to institutions specifically geared towards the elimination of such practices.

The Namibian and other examples

While different states vary in the methods they employ to eliminate racial discrimination, it may for obvious reasons be useful to consider the Namibian approach. Article 10(2) is the basic anti-discrimination clause:

No person may be discriminated against on the grounds of colour, ethnic origin, religion, creed or social or economic status.

The constitution fleshes out precisely what it means by this in article 23:

(1) The practice of racial discrimination shall be prohibited and by Act of Parliament such practices, and the propagation of such practices shall be rendered criminally punishable

(2) Nothing contained in article 10 ... shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been ... disadvantaged by past discriminatory laws.

In the only Supreme Court case dealing with the issue thus far, the court held that the 'ethos' of 'revulsion of racism ... must preside and permeate the processes of judicial interpretation and discretion ...' (S v Van Wyk, SC 29-10-91). The Racial Discrimination Prohibition Act 26/1991 has forbidden all racial discrimination including the incitement of racial hatred or conflict. Contravention of the Act can result in fines of up to R80 000 or 15 years in prison or both. If the Namibians whose situation is a lot less volatile and violent than that in South Africa consider it necessary to impose such strong measures in order to combat racism and ethnic conflict, perhaps we should look to them more closely for guidance on the way forward.

Other states have imposed similar strict measures which include provision for affirmative action, the criminalisation of racist acts, the prohibition of acts which have a discriminatory impact (even though the acts themselves are not directly racist in nature) as well as of groups and associations which promote racism. Many states provide fcor institutions whose aim is to promote racial harmony anbd for recourse procedures in the event of racist acts. Remedies include provisions for redress and measures to prevent both continued or potential racist acts. In states where racist acts have been criminalised the punishment varies from the payment of fines to imprisonment. Since racism is often the result of misinformation and a fear of the unknown, another possibility might be to 'sentence' an offender to spend some time living in a community whose members were the target of his or her discrimination.

The Centre for Human Rights Studies in the University of Pretoria has already embarked on a research project on the appropriate means to combat de facto racial discrimination. Suggestions and any other contributions from those concerned about human rights and who have a particular interest in combatting racism in the new South Africa would be welcomed.

Assaults On Farm Workers - Must They Go On And On?

By Ben Schoeman and Talbot Plater

[In this article two members of the Stellenbosch Centre for Rural Legal Studies handle a problem of human rights with a very long history. Some say it reflects an attitude born in Company days, when the rights of a landlord over his slaves' bodies was almost absolute (though the Roman Dutch law did not grant him the right of life and death). The information given here is stark enough. Readers may wish to reflect on aspects of the problem which touch not only on the inadequacy of legal protection, especially in magistrates' courts, but also on wider aspects of landlord-labour relations, such as the irrationality of extreme physical violence as a punishment for not turning up for work].

There is a lack of effective legal protection for farm workers in South Africa against physical violence by their employers or overseers. It is a common law crime to assault or kill a farm worker, but many cases illustrate that serious assault, leading to death, can happen without serious repercussions for the assailant.

Although national statistics are not available it is clear that physical violence by farmers on their workers is extremely common. Pressclips South Africa has records of at least 40 cases of serious assault reported in the press over the past three years. The Stellenbosch Advice Office dealt with 40 such cases between mid-1987 and late 1989, 11 in 1990 and 13 in 1991. Many of these cases occurred within a 20-kilometre radius of Stellenbosch - supposedly a bastion of liberal farmers.

A prevailing attitude amongst farmers seems to be that physical violence is an acceptable means of enforcing discipline. When farmers are actually charged for assault the relatively light punishment reinforces this belief. A result is that farm workers have little faith in the legal system's ability to protect them and to prosecute offenders. This results in only a fraction of cases being reported.

The Death of Charlie Thompson

In November 1990 Rudolf Rix, manager on Watergang Farm in Stellenbosch (one of the Koopmanskloof estates owned by a prominent local farmer, Wynand Smit), assaulted five farm workers with a pick handle, killing Charlie Thompson and seriously injuring three others.

According to evidence led during his trial Mr Rix went to the workers' houses late one night because he wished to confront those who had nor arrived for work on that day. Mr Rix said at the trial that he took the pick handle with him to protect himself. He leaned through a window and hit Charlie Thompson (who was sleeping on the floor) and his brother Andrew Thompson (who was lying on a bed). He then entered the house and beat Charlie and Andrew again, ignoring their cries for mercy.

The medical examination conducted on Charlie Thompson before he died revealed that he had sustained a broken arm, a broken thigh bone, crushed facial bones and a fractured skull. Andrew Thompson suffered a fractured arm, a fractured leg and three broken ribs.

Mr Rix then attacked Godfrey Williams, who was sleeping nearby under a bush. He entered another house and beat the sleeping Johannes Wikus, a sickly 78-year old, breaking his arm. In another house he assaulted Susan Gxuluwe, injuring her arm and head.

Although the South African Police were called that same night the investigation took an extremely long time and only bore fruit after considerable pressure from the Stellenbosch Advice Office and the attorneys acting for the workers. Mr Rix was not detained or arrested. Workers claimed that, during the period prior to the trial, he assaulted at least two more people on Watergang farm.

The Criminal Case

After long delays by the prosecution Mr Rix was charged with one count of culpable homicide rather than with murder and three counts of assault with intent to do grievous bodily harm. A prosecutor at the Stellenbosch Magistrate's Court remarked to a para-legal adviser that the charge should have been murder. This was echoed by the Magistrate from the bench, when he said the crime 'bordered on murder'.

Mr Rix was found guilty of culpable homicide and on two counts of assault with intent to do grievous bodily harm. He was sentenced to three years in prison, of which 18 months were suspended, and a R250 fine. He had shown no remorse during the trial or when sentence was handed down, appearing confident that he would not be punished.

Mr Rix appealed against the decision of the court and against the sentence. In August 1991 the Cape Town Supreme Court rejected his appeal and sent him to prison to serve the 18 months.

So Rudolf Rix entered prison on 23 August 1991. But he was unconditionally released on 29 August, having served exactly six days. A spokesperson for the Department of Correctional Services explained that Mr Rix, as a first offender, had qualified for three different amnesties and, because his sentence was counted from his first conviction (he was on bail until 23 August) only six days remained to be served.

The Civil Claim

A civil claim was brought against Mr Rix by Godfrey Williams and the estate of the late Charlie Thompson. On 2nd November 1992 the Cape Town Supreme Court ordered Mr Rix to pay R20 000 into the estate of Charlie Thompson, R30 000 to Godfrey Williams, and costs. Mr Smit, owner of Koopmanskloof, agreed to settle the claims without accepting liability for the assaults. His insurers, Sentraboer, agreed to pay the settlement by 15 November 1992.

The Message

It is an old adage that justice must be seen to be done. The message from S. v. Rix and the subsequent civil claim is quite clear: it requires pressure from outside agencies to bring the perpetrator to court, the sentence will be comparatively light, little time will be spent in prison and, if there is a civil claim, the employer's insurers will settle it. Charlie Thompson's case is not unique: it is only recent and startling.