
SOUTHERN AFRICA

PROJECT 25th Anniversary

*South Africa:
Can Negotiations Succeed?*

Forum Proceedings

October 14, 1992



Lawyers' Committee
for Civil Rights
Under Law

The Southern Africa Project

The twenty-five year life of the Southern Africa Project has spanned perhaps the most critical period of South African history. The Lawyers' Committee for Civil Rights Under Law started the Project in 1967 with the first trial under South Africa's infamous Terrorism Act, and our work has continued through the period of the Soweto Rebellion of 1977, the explosions in the townships and the state of emergency in the mid-1980's, to the imposition of international sanctions, the disintegration of apartheid rule, the independence of Namibia, the release of Nelson Mandela and the start of negotiations for a future democratic state.

The Southern Africa Project has been an active participant through all these eras in the struggle for majority rule in Southern Africa. Over the past 25 years, the Southern Africa Project has:

- Financed the defence of thousands of political prisoners in South Africa and Namibia; assisted the families of prisoners who died of torture in detention to have legal representation at the inquests; and financed civil lawsuits brought against the security forces when they have opened fire on peaceful demonstrations;
- Established the Commission on Independence for Namibia, a bipartisan group of distinguished Americans who monitored Namibia's transition to independence;
- Produced annually a series of briefing papers analyzing legal and political developments in South Africa and Namibia;
- Organized a series of international conferences held in South Africa on constitutional options for post-apartheid South Africa which involved experts from countries world-wide; and
- Produced a series of studies used by participants in the multi-party negotiations with the South African government, which presented a comparative analysis of steps taken in other countries undergoing a transition to democracy.

Southern Africa Project

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South Africa: Can Negotiations Succeed?

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Lawyers' Committee for Civil Rights Under Law

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*O*n October 14, 1992, dignitaries from the diplomatic corps, the United States and South Africa, joined more than 350 invited guests to celebrate the 25th Anniversary of the Southern Africa Project of the Lawyers' Committee for Civil Rights Under Law. Senators Edward M. Kennedy and Paul Simon co-hosted a forum entitled, "South Africa: Can Negotiations Succeed?" The forum was followed by an awards reception at which Professor Goler Teal Butcher received the Whitney North Seymour award for a lifetime of service to the realization of human rights. The celebration was honored with a message from President Nelson Mandela, delivered by video, extending congratulations and tribute to the Project for its commitment to the struggle for equality in South Africa.

Gay J. McDougall

For 25 years, the Lawyers' Committee for Civil Rights Under Law, through the Southern Africa Project, has been an active participant in the movement to end apartheid and for an enlightened U.S. foreign policy toward South Africa.

In the course of the 25 year history of the Southern Africa Project, there have been many milestones in the road which will ultimately lead to democracy in South Africa. Certainly, the events over the past two years have been much like a pendulum, swinging back and forth between optimism and pessimism; between hope and despair.

When 1992 began, there was promise: major apartheid legislation was being repealed and the multi-party forum for negotiations, the Convention For A Democratic South Africa (CODESA) had been convened. The signing of the National Peace Accord and the formation of the Patriotic/United Front were additional milestones. The overwhelming support President de Klerk received in the Whites-only referendum to negotiate reform, created great anticipation that CODESA II would reach agreement on the establishment of an interim/transitional government by the end of June. Then in May, CODESA II faltered, and the escalating political violence prompted the African National Congress to withdraw completely from negotiations and also prompted international intervention under the auspices of the United Nations.

This forum is designed to afford an opportunity to review these recent events in South Africa and the international response to them. We have four speakers, three from South Africa and one who will speak from the perspective of the United Nations.

Allister Sparks is a fifth generation South African, born on a farm bordering the black reserve of the Transkei. He was editor of the Rand Daily Mail from 1977 to 1981 and South Africa correspondent for The Economist for 23 years. He also served as Johannesburg correspondent for the Washington Post and his insightful editorials run frequently in that paper. He was named International Editor of the Year in 1979 by World Press Review and was nominated for a Pulitzer Prize in 1985 for his reporting of racial unrest in South Africa. In 1990, he published *The Mind Of South Africa*.

Dullah Omar is an advocate (certified to appear in the highest courts in South Africa) who has primarily represented political activists. He is a member of the National Executive Committee of the African National Congress and of their Constitutional Affairs Committee. He has been personally involved in the negotiations between the ANC and the government, as one of the delegates to CODESA from the ANC. He also is the Director of the Community Law Centre of the University of the Western Cape.

Within the United Nations' Department of Political Affairs, Hisham Omayad is the Director of the Branch on Pacific Settlement Procedures in Africa. He accompanied Cyrus Vance, in July, when Vance, as Special Envoy of the U.N. Secretary General, made an initial visit to investigate the situation with respect to political violence in South Africa. Mr. Omayad then led the subsequent U.N. observer team to monitor the Mass Action Campaign in early August and traveled again to South Africa in mid-September to consider the possibilities of the U.N. playing a role as mediator in the negotiations. The U.N. currently has 50 observers deployed in South Africa.

When I first heard of Father Smangaliso Mkhathshwa, he had been arrested and was being detained in a jail in the Ciskei. That was 1983. He was charged with subversion and for addressing an illegal gathering. But that was not the first, nor was it the last time that Father Mkhathshwa spent time inside South African prisons. He has been detained without trial four times, spending long periods in detention; he's been assaulted and tortured by members of the South African Police and military intelligence; he's been banned; and his church has been stormed by the security forces. This is all because he has been a leader in the churches and in the townships. He is now General Secretary of the Institute of Contextual Theology. He will speak about the mood among grassroots South Africans; about their views on the negotiations and the violence and the prospects for the future.

Allister Sparks

It is very difficult to explain why there is this political violence in South Africa today. The evidence is elusive, and it is particularly difficult to do it in such a compressed form as I am asked to here today. First of all, let me focus on some of the social and economic issues that I think are at least contributing to the violence and providing the context in which the political violence has taken place.

We have to begin with an alienated generation of black youth. The so-called lost generation—many of them brutalized by the great confrontations that took place in the 1980's. But also, they are the products of an appalling system of education—more than simply a system of segregated education. It was very specifically education for inferiority; and as such, generated its own anger and rejection. And through the 1980's—that thunderous decade—the rather unfortunate slogan arose which epitomized the way black South Africans felt about the circumstances in which they were living. The slogan was “freedom now, education later.” So we have an alienated and an angry generation. Plus unemployment is running at a rate now of 43% of the economically active population.

Now that sets up a vicious cycle with the first item I mentioned. A poor educational system produced a population with limited skills and a high degree of alienation. This circumstance has led to a reduced and declining work ethic. At another level, rising violence and political uncertainty, in addition to the declining economy, produces a reluctance on the part of investors, both foreign and domestic.

Add to that a third factor, which is rapid urbanization. Since the repeal of the pass laws and influx control regulations, we have one of the fastest urbanization rates in the world. The people flocking into the cities from rural areas increase the growth of squatter settlements in and around all the cities. With that comes crime. These are poor, frequently desperate people. The crime rate has exploded—aggravated by a collapse of policing. The police force has increasingly focused on political repression for the last 20, 30, or 40 years, in an upward kind of graph. So regular crime control has been in decline, and, as a recent report indicated, even the standard techniques of policing are largely forgotten. The method of

policing now is largely to grab people and beat confessions out of them and take those confessions to court in hope of getting a prosecution. This is what we now call ‘detective’ work.

There is increasing competition for a shrinking number of jobs in a declining economy, between black and black and between established township dwellers and people in the new exploding squatter communities. There is tension between white and black job seekers. There are poor whites appearing in South African society now for the first time since the great depression. We see beggars on the streets of Johannesburg. There are even some whites who have moved into Kakaza Trading Company (KTC) squatter camp in Cape Town. So there is tension rising out of all those social and economic factors. And it is all these tensions, and rivalries and conflict that have led to the declining circumstances of life in a declining economy.

That produces a context that is conducive to political manipulation. And I'm quite sure that there is political manipulation. It appears at, at least, two levels. First of all, there are elements of the South African security forces. These are members of the white establishment who are not supportive of the changes and reforms that President de Klerk introduced in 1990. These are people who still owe their loyalty and allegiance to the former president P.W. Botha, who grew up in the era of the doctrine of “the total onslaught,” in which they perceived there to be an all out war against infusive international communism. And they were involved in destabilizing the front-line states. The strategy was to keep the ANC and its guerilla wing as far removed from South Africa as possible, and to discourage the front-line states from allowing themselves to be used as spring boards for guerilla attacks into South Africa. So those countries were destabilized, and destabilization was carried out by a whole military security under-world that was structured to perform that task. I believe that underworld has remained in existence, and a large sector of it was gravely disconcerted by the sudden u-turn that President de Klerk undertook. This group still feels itself so out of sorts that I am convinced that there is a good deal of what I call freelance destabilization that takes place. These are people who were conditioned to fight a war against the ANC and they've not been able to stop.

This brings us to President de Klerk himself. I think it is important to understand the man, and to understand the dynamic that was set in motion by his strategy. There has been a considerable misreading of President de

Klerk in the U.S. and other western countries from when he first made his rather remarkable statement unbanning the ANC and releasing Nelson Mandela in February 1990. I think the shared drama of that statement resulted in large numbers of people in the developed countries believing or concluding that he had undergone some kind of dramatic conversion—some sort of Damascus road conversion—of the heart, certainly of strategy, and that he was doing a complete turn around and heading towards a hand-over of power to majority rule. He had seen the light.

There has been a recurring problem in the western powers of an over-eagerness to read optimism into the South African situation at the slightest opportunity. The South African government has been a tricky government for many, many years, producing all kinds of new games such as the tricameral constitution. And each time, for a moment at least, many people in the West have said "aha...they've seen the light at last...they're coming to their senses." And then a few years later, one begins to see the tricks and the trip-notes in it all. Now in this instance, I think there was a failure to listen to what President de Klerk and his own ministers were saying. It has to be said for them, that I don't think they deceived anybody. It was the people out there who didn't want to hear.

Had they listened, they would have heard de Klerk saying specifically, over and over and over again, that he did not believe in majority rule. He has never said that he believes in majority rule. To the contrary, he has said frequently that he does not believe in it and will not move towards it. That is what has not been heard. What he has talked about is "power sharing"—in itself, a phrase that sounded deceptively reasonable to many westerners. But to the Blacks of South Africa, it seemed suspiciously like a continuing stacking of the racial cards to offset the Blacks' numerical superiority. That is not all that different from what Ian Smith, in Rhodesia, spoke of when he referred to power sharing and parity between the white minority and black majority. It's something of that order that de Klerk has had in mind without ever spelling it out in any kind of detail.

At all events, his strategy from then onwards has been to simultaneously try to negotiate a deal with the ANC and other legalized black political parties and at the same time to run an increasingly aggressive electioneering campaign against them, in order to undermine them. And particularly since his success in the white referendum last March, there has been a growing hope, verging on fantasy, that the white minority could indeed abolish

apartheid and still remain in power. That has been germinating for quite some time.

It is not an altogether new concept. It is a recurring theme among the white minorities in Africa. The British have tried this frequently. They imagined that coalitions could be structured in Kenya for instance. Certainly when it came to Rhodesia, there was a belief that an alliance could be structured. Much of the strategizing that went into the Rhodesian operation was aimed at that goal with an eye towards keeping "that nasty man," Robert Mugabe, out of power. Likewise, in Namibia, we saw a concerted attempt by the South Africans to undermine SWAPO and to give secret support—huge sums of money—to the parties of the democratic alliance. The South African government was sufficiently encouraged by the results of that effort. Even though it failed once more, it did significantly better than the exercise in Rhodesia, with the result that there was a conclusion drawn: with a bigger, better operation, that kind of strategy could work at home. Since then, I believe we have seen an intensifying campaign by the government to destabilize the ANC on the one hand, and to indulge alliance building on the other, with a view to the election.

Part of that strategy has been visible in the openly partisan behavior of the police. There are huge areas of the country where it is quite impossible for the ANC to organize. First, there was deployment of some of the destabilizing units that acquired a certain infamy in Namibia, such as 32 Battalion and the "Koevoet" police unit. These were specifically deployed in some of the most sensitive townships, ostensibly to carry out peace-keeping operations. In fact, they were eventually cited by the Goldstone Commission¹ as being primarily responsible for the violence. There was a great reluctance on the part of the government to withdraw those special units from the townships. There have been random attacks and murders on commuter trains, and a very conspicuous failure on the part of the police to identify and prosecute suspects. Evidence submitted in judicial proceedings and some of the court judgements have revealed, very clearly, just how clear the police motivation is, in playing a partisan political role, in fanning some of the violence, and permitting a good deal of it to happen without effective police intervention.

Now the big question is: how much of this is de Klerk actively responsible for? And how much of it is the work of elements within the security establishment who are opposed to what he is doing; who are hostile to the whole concept of change; and who are indulging in

Dullah Omar

freelance destabilization. I think that is extremely difficult to determine. It is very, very difficult to put one's finger on it. Clearly, if you look at who stands to gain, de Klerk stands to gain politically from a certain degree of destabilization of the ANC. To the extent that it delays and inhibits the ANC's ability to organize politically; to electioneer; to get its organization established after being banned for 30 years; to get members signed up and branches established, then that demythologizes the tremendous image that Nelson Mandela built up during all those years in prison. All that is clearly to the electoral advantage of the National Party. But when it goes over the top into excessive violence—extreme violence—such as one saw in the Boipatong massacre, the Bisho massacre, and several others that have occurred, then it is equally clearly against de Klerk's political interest insofar as it causes shock abroad, further destabilizes the economy, and damages his image even to some extent within the country—within his own constituency.

So I think it becomes a very fine line to draw between what he knows, what he is permitting, and what is happening beyond his control. I suspect that his degree of control is somewhat limited, and I think we have a mixture of some destabilization that is intentional, and some excessive violence that is not. Certainly, in a general socio-economic climate such as the current one in South Africa, where there is plenty of opportunity to stir up resentment and rivalries, and to turn one group of people against another, ad hoc groups intent on destabilization and individual members of the military security establishment operating out there on their own, can easily manipulate the situation. So I do think we do have both kinds of manipulation taking place simultaneously. And I think that ultimately, the degree of control the president has over it is probably minimal.

The ANC wishes to honor the Lawyers' Committee for Civil Rights Under Law for its dedicated and unselfish commitment and support of the struggle for liberation of the oppressed people of South Africa. We want to honor especially Gay McDougall who, by now, is an honorary South African. We also want to honor Professor Goler Teal Butcher for her contribution over many years. On behalf of the ANC, I convey good wishes to her.

Based on our experience with the negotiation process, we do not anticipate an immediate return to CODESA.² Under current circumstances, an immediate return to CODESA is likely to, once again, end in deadlock. It is, therefore, preferable, in order to sustain the legitimacy of the negotiation process, that first, certain fundamental issues be resolved between the ANC and the government.

Several issues form part of the total negotiation process. First, what kind of body is going to be charged with the task of drawing up and adopting the new constitution? Second, are questions relating to the transition. Who is going to preside over the transitional process? Is the de Klerk regime going to preside over it? Are we going to have an interim government, effectively removing the white monopoly of power? What kind of transitional arrangements are there to be made? A third issue relates to the dismantling of the homeland system. How are the homelands going to be reintegrated into South Africa? How are they going to be reincorporated? Lastly, there is the question of elections. How are we going to level the playing fields? How are we going to ensure that elections are going to be fair? And working towards elections, how are we going to ensure that there is a climate for free political participation and free political activity throughout the country, including all the homelands?

With regard to the electoral process, what kind of electoral system are we going to adopt? Generally there is consensus on the need for proportional representation. But what form will that take? Will it be strictly a national list system? Or is there going to be a combination of national and regional lists? The CODESA talks tackled all of these issues.

The fundamental issue around which talks broke down related to the first issue: Who is going to write the

new constitution for the country? During the course of the discussions on that issue, it became clear that the ANC and the South African government were not working towards the same objective. Government intransigence on this issue has been clear from the beginning. Since becoming President, de Klerk has repeatedly expressed his opposition to majority rule. That position became increasingly evident in the context of CODESA. Consequently, the two principal negotiating parties came to the table on this issue with two fundamentally divergent positions.

The ANC understood "democracy" to mean non-racial majority rule (not black majority rule) and the existence of a multi-party system. The ANC also supported the concept of a Bill of Rights being entrenched in the constitution, the entrenching of regular elections, and of the right of all parties to exist and participate in all political processes. But such rights do not negate the fundamentally democratic notion that a party which wins the elections should have a right to form the government of a country. Furthermore, if there are to be coalitions, those should be voluntary coalitions. If a party does not win sufficient seats, or if none of the parties win sufficient seats to govern the country, then a process of negotiations will go on between the parties to see what kind of coalitions could be formed.

That was not the view of the South African government. Under its proposed brand of governing, the South African government's system of so-called "power sharing" would ensure that a party which wins the elections will not have the right to govern the country. It will be compelled to enter into coalitions with the parties that have lost the elections. Parties losing the elections will form part of the presidency, and will form part of the executive at a national level. The government wanted this system entrenched in the constitution. The regime also insisted upon an agreement being reached on the demarcation of regions, and the allocation of powers to regional governments, even before the constitution-making body meets. It also insisted that at a regional level, the system of power sharing should be entrenched.

Clearly the de Klerk understanding of democracy is not the same as ours. And for that reason, negotiations could not succeed.

One other important issue bears mentioning. Whereas the Declaration of Intent which was adopted at CODESA I provided for a united South Africa, implying the reincorporation of Bantustans, the South African government refused to accede to the demand for a systematic program of reincorporation. While it offered

a cosmetic acceptance, "in principle," of the idea of unity through reincorporation, the government sent strong signals that ran contrary to that gesture. For instance, the government indicated that it favored reincorporation, provided that the Bantustan or homeland in question wanted to be reincorporated. It is unlikely that the government was unaware that the entrenchment of such a caveat could prove fatal to the process of total reincorporation.

At the recent summit between the ANC and the South African government, the government, for the first time, conceded that a constitution should be drawn up by an elected constituent assembly. This is what the ANC has fought for all along. It has been central to the demands of the liberation movements. After all, the only kind of constitution-making body which would enjoy legitimacy, is one which is elected by all the people of South Africa—including the people of the homelands. We were adamantly opposed to an unelected and unrepresentative body such as CODESA, drawing up and adopting a constitution. In our view, such a constitution would not have been acceptable and would not now be acceptable to the majority of the people of our country.

Notwithstanding the government's acceptance of the need for a constituent assembly, it has not abandoned the notion of an "interim constitution." That constitution, the government insists, should provide for a two chamber parliament, the first chamber to be structured on the basis of one person, one vote. The second chamber would be one in which minority parties would dominate. We call this latter chamber the "house of losers." Here too, the government is demanding a power sharing arrangement for the executive and the presidency. The proposed interim constitution would also provide for the phasing in of powerful regional governments. A Bill of Rights would also be entrenched. Such a constitution can never be interim.

When Mr. Cyrus Vance visited South Africa, Mr. de Klerk continued to push for a transitional constitution. As a concession, he agreed to a three year time limit on the transition. If, at the end of that period, a new and final constitution is not adopted, fresh elections for an interim or transitional parliament would be held. However, de Klerk did not provide an avenue through which you would be able to get out of the clutches of an interim constitution. The problem with the interim constitution is that it makes your elected, constitution-making body completely useless. It undermines that constituent assembly. It pre-empts the very issues a

constituent assembly should be addressing.

In order to give all parties a guarantee that the constitution-making body would adopt a constitution which is based upon universally accepted democratic principles, we would have a Bill of Rights that would guarantee the rights of all people. We would also ensure a separation of powers and independent judiciary. The ANC proposed that general constitutional principles be adopted during negotiations and prior to the meeting of the elected constitution-making body. This constitution-making body would work within the framework of democratic principles. But we are not prepared, under general constitutional principles, to adopt the notion that minority parties should be guaranteed the right of participation in government. This is power sharing once more.

We also reject the proposed empowerment of regional and local governments during the transitional period. We agree that the whole issue of structure of government is a very important one. We agree that there should be devolution of power. We agree that government should be close to the people, and that a proper balance would have to be found between central, regional, and local governments. But we are completely opposed to the disempowering of the central government. In the proposals which Mr. de Klerk discussed at his recent conference on federalism, it was proposed that the central government have no fiscal powers at all, and that fiscal powers be located in the regions. It was also proposed that power sharing arrangements should not only be situated at the central government level, but at regional government as well.

Thus, under the guise of general constitutional principles, the South African government is seeking to bind a future constitution-making body to produce a constitution which effectively undermines democratic majority rule. Such tactics by the government reminds us that while we have made progress in negotiations, the greatest struggle still lies ahead.

Nevertheless, we are fairly confident that irrespective of Mr. de Klerk's wishes and that of his party, the process will continue. We are confident because of the support which the ANC enjoys on the ground. The support it enjoys among the oppressed people of South Africa is demonstrated every day. Most will readily answer calls to embark upon mass-action of a kind which would strengthen the liberation movements and simultaneously weaken the apartheid regime.

Finally, it is important to bear in mind that the playing field is not level. We have a situation where the

government of the day is an apartheid government. It is an illegitimate government. It governs in terms of an apartheid constitution. This is Mr. de Klerk's government. On the other hand, you have a liberation movement that seeks to bring democracy to the country. Under those circumstances, it is doubtful that we will have an interim government of national unity before we have elections in our country.

The chief obstacle to an interim arrangement is the de Klerk government, which, given all that I have related to you regarding the positions it has taken during negotiations, will not agree to relinquish power until elections take place. Even after elections, they are likely to push for the imposition of limitations on powers which a constitution-making body should have. The agreement which was reached in CODESA provides for the de Klerk government to continue governing the country until elections. It is only after elections that an interim government of national unity will arise out of the elected constituent assembly. Under the proposed transitional arrangements prior to the election, a transitional executive authority and various multi-party commissions would be established to take charge of the electoral process and methods relating to the electoral process. All other functions would rest with the de Klerk government until elections have taken place.

Hisham Omayad

From the perspective of the United Nations, the question of the constitution for South Africa and negotiations related thereto, is the responsibility of the South Africans themselves. The United Nations is there to act as a catalyst and to assist, as necessary, but it is not our intention to get directly involved in the negotiations.

Mr. Cyrus Vance, Special Representative of the Secretary-General, visited South Africa at the end of July 1992, to talk to political parties and organizations to find out what the international community could do to assist the people of South Africa to put an end to the political violence and to advance the peace process. Here again, I should like to emphasize that the objective was to act as a catalyst to create the necessary conditions for South Africans to get together and to resume multilateral negotiations.

Mr. Vance met with all the major political parties and organizations in South Africa during the ten days in the country. He talked to the Government, met with President de Klerk, Mr. Mandela, Chief Buthelezi and other national leaders. He also met with senior officials of the National Peace Secretariat and the National Peace Committee—the structures established under the National Peace Accord including the Goldstone Commission—to find out what the international community, together with these structures, could do together to assist in putting an end to the political violence in the country.

Based on the findings of the Vance mission, the Secretary-General submitted a report to the Security Council, in which he made a number of recommendations. He called on the international community to support the efforts of the Goldstone Commission and for the recommendations of the Commission to be fully and speedily implemented by the Government. These included, among others, those related to a ban on the public display of dangerous weapons and the securing of hostels. He also recommended that, in order to create a new climate for the peace process to move forward, a clean slate should be created, by releasing all remaining political prisoners. At their meeting on 26 September 1992, President de Klerk and Mr. Mandela reached the same conclusions on these three key issues as a basis for moving forward the peace process.

Agreements reached between President de Klerk and Mr. Mandela at their meeting on 26 September 1992, should clear the way for a resumption of multilateral negotiations with the co-operation of all concerned. The negotiations at this stage are envisaged on two fronts. First, there are bilateral discussions to clear the way for the resumption of multilateral discussions which would involve all the other parties. The objective is to proceed from the bilateral to the multilateral as soon as possible to bring in all the other political parties. The weakness of CODESA was that it did not involve some of the political parties. It would definitely be an improvement and a step forward to extend the process to include all parties concerned.

During the period of the mission of Mr. Vance, it became apparent that South Africans as a whole would welcome a role for the United Nations in the peace process. It was not so before. In fact, until about a year ago, it was the liberation movements that were calling for UN involvement. The Government and the other parties were opposed to any UN involvement in what they called the internal affairs of South Africa. Today it is different. The Government of South Africa now recognizes that the UN has an important role to play to assist the people of South Africa as a whole in moving forward towards a democratic, non-racial and united South Africa.

At the conclusion of Mr. Vance's visit, Mr. Mandela suggested to the Secretary-General of the United Nations to send UN observers to South Africa to observe the week of mass-action in the first week of August. The Government of South Africa also agreed to have UN observers in South Africa during that period. Consequently, we had 10 UN observers in South Africa to observe the mass-action for that week. It was generally agreed that the presence of the UN observers—only 10 of them—made a lot of difference and that their presence had had a salutary effect on the political situation in the country. The presence of UN observers had a positive impact on political rallies and activities, because everybody was aware that the international community was represented and that we would report to the UN any party responsible for violence or for breaking the peace. The parties extended their co-operation to the United Nations team of observers, for which we were indeed most grateful. This was our experience during the week of mass-action.

Unfortunately, there was a lot of violence during this period too—but not at any of the functions which were

witnessed by our UN observers. We started with 10 observers at the beginning of August, who returned to New York after a week of observing mass-action. Subsequently, the Secretary-General decided in September, based on a mandate by the Security Council, to send 50 United Nations observers to South Africa to work in close co-ordination with the structures established under the National Peace Accord, in order to assist in putting an end to political violence.

Twenty observers from the Commonwealth are scheduled to join their UN colleagues shortly in South Africa. The European Community will also field 15 observers in the very near future. The OAU, for its part, will bring 10 additional observers, so that by the end of the year we shall have 100 international observers in South Africa. The international observers are working with the National Peace Secretariat, as well as with all the political parties. They have full mobility, with helicopters, winged-aircraft and four-wheel drive vehicles at their disposal to facilitate their observation - and they are doing a very fine job.

As to the future role of the UN, it has grown in the last six months on the basis that all the parties have told us what they want from the United Nations. As the months go by, in consultations with the parties, we will be able to define a clearer role for the UN, and also add to the responsibilities we have assumed on the basis of requests which we will receive from the parties.

Remarks

Father Smangaliso Mkhathshwa

Negotiations and violence are very closely related. There is organized and well orchestrated violence in South Africa for the simple reason that there are elements that are determined to ensure that democracy will never see the light of day. Consequently, for black South Africans, violence is no mere academic interest. It is a very cruel and brutal reality. Just before I left South Africa, a very dear friend of mine, Prince Mhlambi, who was a great leader at Phola Park squatter camp, was gunned down and killed. For us, this is a daily experience.

I, like so many South Africans committed to the struggle for liberation, wear many hats. I am a church-person, a pastor dealing with workers and with young people living in the midst of hundreds and thousands of so-called informal settlers. I am also the President of the Central Transvaal Civic Association, where there are more than 7 million members. I also serve as the general-secretary for the Institute for Contextual Theology. And as a grassroots activist, I associate with hundreds of thousands of ordinary people. On the basis of those multifaceted experiences, I have been asked to articulate the aspirations and the mood of the grassroots people. I'll try my best.

What we're struggling for in South Africa is to ensure that there is democracy; that there is peace; and that there is progress and prosperity. Under those circumstances, negotiations became a necessity. However, we cannot just have negotiations for their own sake. Negotiations are not an end in themselves. They are for a specific purpose.

Our common experience is that we cannot trust the de Klerk government. First of all, we did not vote that government into power. And even in the best of times, lots of people are very distrustful of politicians and governments. We are very suspicious of that regime for the simple reason that the way people have been dying has led us to have very little respect, even for law. We're very distrustful of most of the people in authority.

Gone are the good old days when, in 1990, de Klerk made his famous speech which led to the release of Nelson Mandela and the unbanning of political organizations. At some stage, people in the townships even referred to him as Comrade de Klerk. Now, however,

we really believe that Mr. de Klerk is largely responsible for the continuation of the violence at such an alarming rate. He simply is not putting enough effort into stopping the violence. The South African security forces have always been known as very efficient in tracking down so-called "terrorists" who were opposed to apartheid. Now, suddenly those same security forces are so inefficient that over the past seven or eight years, over 15,000 people have perished, and not a single criminal has been convicted for these acts of political violence. Over 15,000 Black South Africans have died and so far nobody has been imprisoned for causing the death of so many people.

In the black township, the perception is that this violence is organized. The so-called black on black violence is designed to destabilize the black communities. It is designed to stop as much as possible, the march to democracy. Whoever coined the phrase 'black on black violence' did us a great disservice, because that has caused a lot of confusion in the minds of people—especially people who are not South Africans. It has left the impression that these blacks cannot govern themselves because of their extremely violent tendencies. That impression inevitably leads to the conclusion that it is preferable to have de Klerk in power, in order to ensure stability in the country. Obviously as black people, we're very unhappy about the violence. We're also very embarrassed because it certainly gives a very untrue picture of what really is going on in that country.

The Pan Africanist Congress,³ AZAPO,⁴ ANC, and the UDF⁵ lived side by side for many years. There was not the kind of violence that exists today. This fact strongly supports the argument that the violence we have seen since 1990 is designed precisely to sow distrust, suspicion, and to sow havoc in the black community—to ensure that there is ongoing disunity.

Black life has become very cheap. White life is precious and secure. There are endless funerals and burials in the black community and there are very few of them in the white suburbs. The death of so many black people is not news anymore. In that way, the media sometimes plays a very unhelpful role in the way the violence is reported. You get the impression that either it is not all that important or that the victims of the violence are to blame. The security apparatus is still intact. It is still partisan and controlled by the president of the regime. Consequently, the people do not generally trust the security services. We have a situation also where big business tends to be very sympathetic to the de Klerk regime. Therefore, it is the feeling of the majority of

people on the ground that we also cannot trust big business.

Now what can the international community do? First of all, in the final analysis, we, the people on the ground, the victims of the violence, the people of South Africa, will ultimately have to find a solution that is satisfactory. But there is a role that the international community can play.

First of all, apartheid is not dead. That must be made abundantly clear. Apartheid is a violent system, and that system continues to sabotage negotiations. Even though some people say apartheid is dead, some of us are still waiting for the day when we shall be invited to the funeral. It is important to continue putting pressure on President de Klerk and his regime. As we have seen, the international community can exert a lot of creative and constructive pressure on our government. Your governments have done this in the case of Saddam Hussein. But when it comes to the white minority in South Africa, especially Western Europe and North America, seem to be dragging their feet for reasons which are not always very clear to us.

We believe that an interim government and a constituent assembly will help to bring about democracy. We are hopeful that these institutions will also bring about a kind of security force that will effectively control, or if possible, eliminate the political violence. We hope that you and your government will continue to support the organs of civil society, especially the civics in South Africa. The civics are essential because they deal with the people on a day to day basis—fighting bread and butter issues. They help to organize people and to promote the culture of political tolerance that is necessary to curb the violence and to ensure that people live together peacefully.

Mass action is something that is positive. It is a democratic right of the people to protest. And under the present circumstances, it remains one of the very few, if not the only means of real effective protest available to black South Africans. It is also a weapon which we will continue to use because it promotes peace, not violence. We're quite aware that it is being demonised. Many people want to give the impression that there is something wrong—something evil and immoral about it. The opposite is definitely the truth.

Finally, it is important to note that, we are not very enthusiastic about general amnesty for South African security forces who have committed crimes against our people. The same security force members for whom amnesty is being proposed by the government, have

committed very serious crimes and continue to do so with impunity. For the people who are responsible for these crimes to forgive themselves without disclosing, revealing and exposing the crimes that were committed, is unacceptable.

In addition, the role of international observers and monitors is a very worthwhile one. However, certainly it is not going to be a panacea by itself. For instance, the violence, despite the presence of UN observers, continues. Practically every day people are gunned down. People are slaughtered and killed by the so-called traditional and cultural weapons. The concept of "traditional, cultural weapons," which have been central to an ongoing debate in our country, has become somewhat of a joke. A true traditional or cultural weapon is something of an artifact and is not really meant to harm or to kill people. Once it begins to be used for that purpose, I don't think it truly becomes a cultural weapon anymore. It becomes an instrument of death and must therefore be banned. It has also been very strange that for many many years South African blacks were not allowed to carry such weapons until last year, when out of the blue, de Klerk unbanned the carrying of so-called traditional cultural weapons in public.

Finally, it is important to emphasize the need for democracy education. Our people have never voted. Even Nelson Mandela who is received like a head of state around the world, is not allowed to vote in South Africa. It is as simple as that. Even I, at my age, have never exercised my right to vote as a citizen of South Africa. Some of our organizations are involved in programs to help prepare people for the elections. I sincerely hope that you will also, in one form or the other, support those initiatives.

Tribute

Dullah Omar

Ladies and gentlemen, my first task is to congratulate Professor Goler Teal Butcher on the award which she has just received. We are very much aware of the contribution which she has made. As a son of Africa; as an African, and as a member of the ANC, I would like to tell you that we, in the liberation movement, honor you and wish to extend to you our gratitude and thanks for the contribution which you have made. We shall remember your contribution and we hope that you will be with us for a very long time to ensure that we, ourselves, observe the guidelines and the values which you have so ably enunciated.

Our leader, Mr. Nelson Mandela, has asked me to also thank the Lawyers' Committee for the dedication to human values—human rights—and to the suffering people of Africa and other parts of the world, and the example which you have set for us about the universality of human values.

I myself as a lawyer who began to practice law before the Lawyers' Committee came into existence, can testify to the tremendous contribution that the Lawyers' Committee has made. Enabling people to be defended in court is in itself a tremendous contribution. The 1960's represented a very difficult period in our history. The ANC and PAC had been banned in 1960. We were living through a very dark period. Political activity was underground, and we literally had hundreds and hundreds of people in prison. Our people simply did not have the capacity to provide legal defense. And it is in that kind of situation that the Lawyers' Committee stepped in and empowered us—empowered our people—to ensure that legal defense was provided. That contribution of course, went on over a period of time.

But there were also other areas of work. There was pro-active work. There was looking into the future; how to shape the future, what do we need to ensure that the kind of human rights violations which take place in our country today will never again be repeated—whether against black people or white people, or any one else. So it is the task of building up a human rights culture in our country to which the Lawyers' Committee has also contributed. And at present, as our President Mr. Mandela said, we receive assistance from the Lawyers' Committee to enable us to negotiate more effectively with the South African government. We do not have

equal resources. We face an adversary that has access to the State treasury. They use taxpayers' money in order to have all kinds of experts available to advise them during the negotiations. Before CODESA, during CODESA, and after CODESA, you need expert advice and guidance on many many aspects of constitution-making and transition.

We have been involved in fighting the regime all these years. We have been fighting for survival. We never thought in terms of constitution-making, and what it takes in order to create a new constitution for the country. Our first priority was survival. But having survived with the support of the Lawyers' Committee and many others in the U.S. and other parts of the world, we suddenly find ourselves in a period where we have to think of how we consolidate the victories which we have achieved? How do we ensure that the institutions which we created will in fact be democratic in the real sense of the term? How are we going to entrench human rights into the new constitution? How are we going to make sure that the Bill of Rights which we talk about will be a Bill of Rights for the poor and the oppressed, and the exploited people—and not for the privileged—which a Bill of Rights can so easily become!

But the Lawyers' Committee has been solid as a rock and I can tell you that during the negotiations, we would pick up the phone, or we would send a fax and we would say for example "Gay, what happened in Portugal? How did that Constituent Assembly work?" Within days we would have the information. We would be armed. We'd be able to go back into CODESA, or whatever discussions we were in, and we would be empowered. We would have a better understanding of the problems before us and the pitfalls to be avoided. It helped to illuminate our way.

So we are very grateful to the Lawyers' Committee and to lawyers who have given their services free of charge. To them I want to say a special word of thanks as well. But if you would allow me to mention one name—and that is Gay McDougall. I don't know where Gay gets all the energy from, I don't know whether she sleeps at night. Gay has never said no. I think for us she has been a tower of strength. And I want to say to you Gay that we are very happy to be here this evening to participate in this program, and on this 25th Anniversary of the Southern Africa Project, to say a special word of thanks to you as well.

Let me say in conclusion that what you and other supporters of the anti-apartheid cause have done, is to create for us a terrible debt. We owe a huge debt to the

international community. I don't know how we are going to repay that debt. Perhaps the only way we can do it is to ensure that when we do have the opportunity to write a new constitution for our country, that we bring into that constitution those universal values of human rights, of justice, of democracy about which you have spoken, have taught us and with which you have assisted us.

And so one day when we do win an elected constituent assembly, and when that constitution is written, and you see that those democratic principles are inscribed in that Constitution, and we have a Bill of Rights which entrenches civil and political rights, social and economic rights, welfare rights, the right to development, the right to a clean environment—if you see all those values entrenched, I think you can say to yourself that those principles in that constitution are principles which we, the Lawyers' Committee and the international community as a whole, helped to put in. You'll be able to say with pride that you helped to write the new constitution for South Africa. So thank you very much.

Professor Goler Teal Butcher

Goler Teal Butcher has been a member of the Board of Directors of the Lawyers' Committee for Civil Rights Under Law since the early 1970s and since that time has been actively involved in policy decisions of the Committee. Goler serves as Secretary to the Committee, and was the first woman appointed to the Executive Committee of the Board. She is also involved in the day-to-day work of the Southern Africa Project, serving as the co-chair of the Project's sub-committee since 1984. She has been co-counsel on virtually all of the lawsuits that the Project has filed in U.S. courts since 1974 and has testified on several occasions before congressional committees on behalf of the Project. Goler was an active member of the Commission on Independence for Namibia. In that capacity, she made two trips to Namibia to monitor that country's transition to independence.

Few people exemplify the spirit and commitment to civil rights at home, and human rights world-wide more than Goler Teal Butcher. She has brought to the quest for human rights a unique sensitivity born out of her experiences as a woman and an African American. She has always had the insight to ask the tough questions and the integrity to do what might be difficult. In accepting the award, Professor Butcher made the following remarks:

It is especially an honor to receive an award from the Lawyers' Committee, whose commitment I first learned to respect when I worked at the State Department with the noted human rights protagonist Charles Runyon. He had a keen interest in the South African question and rejoiced that the Lawyers' Committee was addressing the problem. With his enthusiasm he imbued his legal staff, Liz Verville and me, with commitment to the work against apartheid. I know that in his retirement he is smiling now with deep satisfaction, yet concerned lest the framework for a free society not be secured.

Charles C. Diggs, who was the Chairman of the House Foreign Affairs Subcommittee on Africa, gave me further opportunity to work intensely on United States policy towards South Africa. We were determined, and so hopeful that the power of the United States government would make a difference. Eventually it did with the sanctions, until they were mindlessly and prematurely lifted.

The decision to establish the Southern Africa Project followed the visit here of the noted South African

Defense Attorney, Joel Carson. In his meeting with the Lawyers' Committee he pointed out the similarities between racial repression in the United States and racial repression in South Africa. The Committee, which was already working on civil rights issues in the United States, decided to extend its active concern for civil rights and human rights to Southern Africa, where civil rights and human rights were being trampled upon, and where the rule of law itself was in jeopardy.

Our stewardship of the "Project," the Lawyers' Committee Southern Africa Project, established from that decision, has been one that has given us great credit. Under the signal leadership of the Committee and the Directors of the Project, including Gay McDougall, whose leadership as director is shown by her internationally acclaimed work in Namibia, we have seen the unsettling of apartheid through the blazing of new trails through pursuit of human rights issues.

Just as the story of the ascent of man, a primitive man, up from the depths of nature is an eternal theme, just as the exploits and daring of Prometheus in bringing the gift of fire from Mount Olympus to humanity still define uncommon courage in our thoughts, so the winning of human rights in South Africa and the work of the Southern Africa Project will be told and stand forever as a beacon of courage, freedom, and commitment to justice. The vision of the Lawyers' Committee encompasses human rights in all their breadth and universality all over the world.

It is with joy and a deep sense of humility that I accept this award. As I thank the entire Lawyers' Committee for the Whitney North Seymour Award, I want to stress the criticality of continued vigilance with respect to the situation in South Africa. There are three things we must do.

First, keep alive the Project in order to monitor the developments in the building of a framework for a free South Africa. That is, we must monitor the constitution drafting process.

Second, keep alive the Project by getting involved in its support. The Project is in danger because the traditional donors on South African issues are no longer supporting organizations in operation outside Africa. Yet the function, performed so ably in Namibia by the Southern Africa Project, of monitoring the establishment of the constitution building blocks for a free society, is critical and must go forward if the human rights of all South Africans are to be protected.

The third task is like the second. Think of new ways to forge the path to financial stability for this Project, so

vital to set the compass for progress toward racial and "across the board" equity. Support the trailblazing work of the Southern Africa Project!

Keep alive the Southern Africa Project. Vigilance after apparent victory is imperative. In the old English story, Beowulf had come across the seas to Denmark and slain the monster, Grendel, that had preyed upon the castle and terrorized its inhabitants for twelve long years. At the end of a day of rejoicing in the castle, the people retired with a collective sigh of relief for their deliverance, until a new monster, Grendela, the very mother of Grendel, came up into the great hall and spread terror among the people. The Southern Africa Project of the Lawyers' Committee—like Beowulf of old—must stand armed and vigilant, ready to enter the fray again and again, to ensure that human rights are to be finally, firmly secured in South Africa for all people and in America for all people. Lawyers' Committee for Civil Rights Under Law, we stand thankful for the 25 years being commemorated here, yet we must remain on guard and armed and not forgetful of the undying evils of racial discrimination.

For our struggle here has focused first on helping our government see clearly both the human rights issues and our obligations under international law, and second on working to set the compass of U.S. policy.

Now, we are moving into the thicket of increasingly complex facts and puzzling issues and we remain in need of the type of enlightenment the Project gives us.

We must hold to the magnificent principles in human rights. Human rights is the contribution to civilization of the second half of this century, and we must hold to its principles. We must be sure that no impure and unseemly compromise is accepted. Weapons of steel and even of strategy fail, but the basic principles of human rights, of law and of respect for every person will propel us all to the noble victory that we seek. Let the celebration go forward.

But wait Southern Africa Project. Where are you going in your next 25 years? "Quo Vadis?" The answer to the question "Quo Vadis?" surely must lie in our staying alert to the kinds of human rights violations which impelled us to start the Southern Africa Project in the first place. We must stay alert until these violations are eradicated and until we have established justice and equality in the law throughout the universe as the birthright of every human being. Oh yes, doubts arise. Doubts of direction in our regular work, when we are confronted more and more with the realization that civil rights and justice are inextricably woven with the

question of economic justice. We must answer the question: Do we shy away from these because they are not pure civil rights issues? There are, and will be many questions on policy. Of course, we must work on every human rights issue, whether on the international level or in the domestic arena regardless of its packaging.

Let us not delay our steps into our future. Let us pursue this quest: Justice throughout the planet and into the universe. Wherever humanity is, justice must follow.

Thank you, Lawyers' Committee for this Whitney North Seymour Award. As I leave you, may I take this vow, I am on the battle-field for human rights, and I promise you that I will stay there until I die.

Notes

- 1 This Commission which is chaired by Appellate Court Judge Richard Goldstone, was established in 1991 with the mandate to conduct inquiries into acts of political violence and intimidation and to make recommendations to the State President, based on its findings.
- 2 CODESA, Convention for a Democratic South Africa, is the multi-party negotiation forum convened in December 1991, in which participating parties attempted to come to an agreement on terms for the transition to a Democratic South Africa. Talks broke off in June 1992.
- 3 The PAC was formed in 1959 by a group of former ANC members who viewed aspects of the ANC Freedom Charter as too conciliatory vis a vis the white minority government.
- 4 Formed in 1978 as part of the Black Consciousness movement, AZAPO (Azanian People's Organization) totally rejects the concept of working within apartheid structures to achieve liberation or involving non-Africans in the struggle.
- 5 The now defunct **United Democratic Front (UDF)** served as an umbrella organization for most of the anti-apartheid organizations in South Africa during the 1980s.

