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University of London  
SOUTH AFRICA CONSTITUTION STUDIES CENTRE

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REPORT FOR THE YEAR ENDED 30 SEPTEMBER 1991

## 1. GENERAL

This has been a year of creative and productive turmoil. The Centre has made a direct input into the great national debate in South Africa on what should be in a new Constitution and how that Constitution should be adopted. The Director, that is, myself, and the Research Assistants have worked at full stretch, attending dozens of workshops, conferences and symposia all over South Africa and in many other countries, producing papers and giving interviews. The basic theme has been that of the role of constitutionalism in overcoming apartheid and guaranteeing democracy in South Africa.

My book prepared under the auspices of the Centre, protecting Human Rights in a New South Africa, has sold out, and a new enlarged edition is being prepared. Oxford University Press in the UK have also ordered several thousand copies for sale in Britain.

During the course of the year, I paid five visits overseas, each of which in a different way furthered the objectives of the Centre: to Chile to study the process known as Reconciliation, Truth and Justice, to France as guest of the Constitutional Council, to Norway to participate in debates on Democracy, to the Gambia to take part in a UNESCO and OAU-sponsored conference on Human Rights in Africa, to Sweden to give a paper on a human rights approach to culture, and to Germany to study the origins and functioning of the German Constitution.

In the midst of this hyperactivity, two research assistants completed training sessions at the Centre in London, one continues to work from an office at the Centre for Applied Legal Studies in Johannesburg, and a fourth recently started a work-training session in London; they all benefit from the experience of learning how to do research under real life pressure in response to urgent, important and concrete questions, but they also pay the price of receiving a large part of their instructions by fax or in rides to the airport.

One Person, One Seminar. So many workshops are being arranged by so many bodies in South Africa that the country



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is becoming seminar-saturated. The Centre has accordingly focussed more on preparing materials for seminars arranged by others than on organising seminars itself.

at the same time, the offices of the Centre in London have been the home for a continuing seminar for post-graduate students anxious to develop their skills and to keep in touch with the situation in South Africa. A more formal seminar on constitutional and economic development in South Africa was arranged with the Institute of Commonwealth studies, and a further seminar of the same kind is planned for later this year.

A more detailed report follows.

#### INTELLECTUAL FOCUS

The main themes dealt with have been:

democracy in Africa [papers in Bergen and Banjul];

Land Rights [Lawyers for Human Rights, Pretoria and SAAK, Stellenbosch University; seminar in Natal];

A Human Rights Approach to the City [Nola Green Memorial

Lecture to Natal Region of the Institute of Town Planners];

A Unitary State, Federalism and Regionalism [Ernie Wentzel Memorial Lecture, Centre for Applied Legal studies, Wits, and Human Science Research Council conference in Bloemfontein];

The Constitutionalising of Social and Economic Rights (Ernie Wentzel Memorial Lecture; Natal Workshop; Centre for Policy studies, Wits, Institute of African Studies, Wits];

Do the Rich have Rights? [Consultative Business Movement,

Cape Town, IDASA Business Meeting, East London, Business Conference, Bloemfontein];

Environmental Rights [Law students Council, Wits, Chemical Workers Industrial Union Seminar, Johannesburg];

The Right to Health [National Medical and Dental association, talks in Cape Town and Johannesburg];

The Rights of Disabled Persons [Presentation to Alexandra Disabled Persons Front];

Gender Rights as Human Rights [Black Sash groups in Durban and East London, Women Lawyers Group and the Women's Executive Club, Cape Town];

Affirmative Action [Association of Law Teachers, Pretoria, and Workshop in Port Elizabeth - 200224 paper in preparation];

Religious and Cultural Rights [presentations to various

Muslim, Jewish and Christian groups in Cape Town, Johannesburg and Durban];

Artistic and cultural freedom in a multi-cultural society (papers to the Grahamstown Arts Festival and a SIDA seminar on culture and development, Stockholm; the D.B. Qosthuizen Academic Freedom Lecture, Rhodes University)?

The Role of a Bill of Rights in a New South Africa (papers at the Universities of Fort Hare, Durban Westville, Western Cape, Cape Town, Stellenbosch, Pretoria and Wits, and presentations to COSATU, the Black Sash, the Civil Rights League and the Community Law Centre, UWC).

#### SPECIAL RESEARCH PROJECTS

The following short-term pieces of research have been or are currently being undertaken under the direction of the Centre

by research assistants or experts in the field:

Mechanisms for Enforcing anti-Discrimination Law in the UK and the USA [Jennifer Mohamed, Mercia Makgamelele];

Affirmative Action Mechanism [Paseka Ntsholo];

The Implications for Translation Services of a New Policy on Language Rights [Robin Trew];

Workers' Rights as Human Rights {interviews with Ray Alexander, Liz Abrahams and Oscar Mpetha, conducted by wolf Kodesh};

Towards a New System of Family Law in South Africa, with Special Relevance to the Future of African Traditional Law and Muslim Family Law [Professor Jack Simons and Firoz Cachalia, respectively];

The Relevance of the Indian Constitution in respect of Language and Religious Rights, Affirmative Action, and Social and Economic Rights [Joel Krige and Shenaz Meer].

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## PUBLICATIONS

Ag SOON as papers are prepared, they are revised and then printed as desk-top publications and put into immediate circulation. [Funders should have received copies from time to time). Many have been re-printed in journals and magazines in various parts of the world. A number of these new papers will appear in a second book to be published in March 1992 by Oxford University Press under the title: More

about Rights in South Africa.

In order to ensure the regular flow of publications in the coming year, a deskâ\200\224top publications liasion officer will be retained in Cape Town to provide computerâ\200\224use guidance and to supervise the lay-out and production of pamphlets.

## SEMINARS

The Centre proposes continuing with its policy of supporting seminars organised by other, larger organisations, targetting special forms of pre-seminar research. The themes co tackled are mentioned in the section Special Research projects, all of which are undertaken with a view to

preparing publications for discussion at seminars.

The informal seminar for post-graduate students held from

time to time at the Centre's offices in London will continue. On a more formal basis, two days have been set aside at the Institute of Commonwealth Studies later this year for discussions, first with the Friends of the ICS, and then with invited scholars and others.

## PERSONNEL AND THE POSSIBILITY OF RE-LOCATING THE CENTRE TO SOUTH AFRICA

Most of the work of the Centre is now being done in South africa. Partly in recognition of the work being done by the Centre, I have been made Professor Extraordinary at the University of the Western Cape and Honorary Professor at the University of Cape Town. As the titles indicate, the positions do not carry any galary; I give occasional lectures and try to contribute to and benefit from the general intellectual life of both these Universities, without being drawn into time-consuming activities which would prevent me from dedicating my energies to the Centre.

Having an office in London has, however, been useful:

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it facilitates access to libraries, to international scholars and to South Africans working and studying abroad;

it acts as a springboard for organising visits to Europe, North America and West Africa;

it has been convenient for the training of research

assistants and giving them access to specialist libraries and contact with world culture and ideas;

it gives the Centre a smooth-running administrative base in a good intellectual atmosphere, and tight budgetary control [at times, very tight].

Dorothy Williams, the Administrative Secretary, is at present visiting South Africa for the first time since she left in 1969, and we are investigating the possibilities of re-locating the Centre here. If the Centre is to continue with its work after the end of the coming year, it would seem logical for it to have its administrative as well as its operational and intellectual base in South Africa. At the same time, it would be a loss to give up completely its connection with the ICS in London.

Preliminary discussions with the Director of the ICS indicate that it could well prove convenient in future for both sides to maintain some sort of link, but on a less substantial basis than is the case at present.

I have purchased a notebook computer in Cape Town and begun desk-top publishing of manuscripts which I prepare at home.

Fortunately, an office has for the foreseeable future been made available to me in the centre of Cape Town on a gratuitous basis by a firm anxious to contribute in some way to promoting constitutionalism in South Africa. Coupled with the support given by the Centre for Applied Legal Services in Johannesburg, a sufficient administrative base exists for our Centre to function in South Africa without extra

expense.

Should the Centre continue to function after next year, however, a more permanent and secure administrative base, possibly at one of the Cape Universities, would have to be considered.

## RESEARCH ASSISTANTS

Mbali Mncadi completed her stay in London as Research Assistant doing a little bit of everything. She has now returned to South Africa and is attached to the Community Law Centre at the University of the Western Cape.

Mercia Makgamelele has also returned to South Africa after working as Research Assistant for four months, focussing on anti-discrimination law. During her stay in London she represented the Centre at a Conference organised on Freedom of Speech, and also accompanied me on a short lecture tour to Norway. A paper by her on the experience of a black person living in a township and commuting to the city centre, is included in a wider paper on the theme: A New city for A New South Africa.

Jennie Mohamed did research under the direction of the Centre on the issue of UK and US experience in creating mechanisms to deal with race and gender discrimination. She visited London and New York, and her full report is still awaited.

Firoz Cachalia has now entered his second year as Research Assistant for the Centre, based at the Centre for Applied Legal Studies at Wits University in Johannesburg. He may be described as truly well-Centred, in that he participates actively in the life of both Centres. Apart from helping to organise CALS Seminars on constitutional questions, collecting documents and doing special research on the future of Muslim Family Law in South Africa, he makes his office available as a base for our Centre's activities in the Transvaal. Indeed, liaison with CALS has been most fruitful for ourselves, and, we trust for CALS as well [as has working together with the Centre for Human Rights at the

University of Pretoria].

The most recent person to start work as Research Assistant for the Centre is Paseka Ncholo, who is awaiting examination at the University of London on a Ph.D. dissertation on the subject of affirmative action. A graduate of the informal seminars which the Centre has organised in London, he is at present gathering and sending materials which we need for our work in South Africa.

Negotiations are under way for research work to be done for the Centre in Cape Town by Susan Rabinowitz, a Masters graduate in South African history and politics from the University of Cape Town. She will focus on the question of social and economic rights, with special emphasis on the rights to nutrition, education, clean water and electricity.

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A contract is being prepared in terms of which she will contribute her work on a voluntary basis, receiving a small fee to cover expenses.

Finally, we plan to employ Louisa Zondo to work at the Socio-Legal Studies Centre at the University of Natal to do research on the enforcement of gender rights in a democratic South Africa.

#### TRAVEL

Transition in South Africa means transit for South Africans. Like all of us involved in working on constitutional questions, I am in constant shuttle. The funds originally set aside in the grant for travel would have been quite inadequate - given the new circumstances - were it not for the fact that a large part of my journeying is funded by host organisations.

#### FINANCIAL MATTERS

A separate financial report is being prepared by the Finance Officer of the Institute of Commonwealth Studies. It will be seen that spending has been very close to budget in terms of salaries, office accommodation, travel, and publications. The underspending on office supplies is counterbalanced by extra items on equipment necessitated by doing most of the Centre's work in South Africa.

as far as any underspending on research assistants and seminars is concerned, this is expected to be made up for in terms of special research projects of an intensive kind which are contemplated for the coming period. They will be geared towards the enrichment of seminars, and relate to urgent issues that crop up from time to time of the kind that have been mentioned above; the importance of training will not be ignored.

#### THANKS

The work of the Centre has been greatly helped by the sensitive and friendly cooperation offered by personnel from the three funding bodies, namely, SIDA, the Ford Foundation, the Royal Norwegian Ministry of Foreign Affairs. We are sure that they all take pleasure in seeing that the principles of democracy and free enquiry and debate which they have long supported, are making steady progress in South Africa. To them, our thanks, and also to the staff of the ICS in London and CALS in Johannesburg, who have sustained our freneticism with estimable equanimity and professionalism.



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## THE FUTURE

As constitutional negotiations become more concrete, so do the research imperatives. People need to know what the issues are. The tougher the problems, the greater the necessity for open debate. For the Constitution to work, it must be regarded by as many persons as possible as â\200\230theirâ\200\231 constitution, one for which they have worked, one which they understand and support.

The Centreâ\200\231s hyperactivity will undoubtedly be maintained in the coming year.

[A separate note is being prepared concerning the possibility of extending the work of the Centre, with some

adaptations, for a further two years after its original three-year period of functioning ends in September 1992.]

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ALBIE SACHS, DIRECTOR

CAPE TOWN, 25 SEPTEMBER, 1991

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SOUTH AFRICA CONSTITUTION STUDIES CENTRE

PRELIMINARY ENQUIRY ABOUT THE PROSPECTS OF A RENEWAL OF GRANTS.

This note, which accompanies the Report of the Centre on its second year of operation, enquires about the possibility of the Centre continuing to receive funding after its initial 3-year period of functioning ends on 30 September, 1992.

The ongoing debates on constitutional questions in South Africa are intense, and the Centre is working at full stretch. One can hardly imagine a more appropriate time anywhere for â\200\230hands-onâ\200\231 research. The need for principled debate and the diffusion of ideas is greater than ever; it is also an unusually rich period for on-the-spot preparation of the nuclei of persons who will be the first generation to work within the new human rights agencies contemplated for the Constitution.

Our proposal is that the Centre continues to operate with its main base in South Africa and a foothold in London for the period 1 October 1992 to 30 September 1994.

Its functions will be threefold:

research - as the basic format of a new non-racial constitution begins to take shape special themes begin to demand attention, especially in relation to questions of providing a constitutional framework for dealing with property rights, land claims, minimum social and educational rights and the whole difficult area of affirmative action. in addition, much more work needs to be done on the enforcement of gender rights and anti-discrimination law;

training - we need affirmative action within affirmative action, that is, a search for and intensified training of persons, especially but not exclusively, from the sections of the community deprived by apartheid of access to skills and operational experience, who will be able to function with confidence and sensibility in the area of the enforcement of human rights law; the mode will be short-term â\200\230apprenticeshipsâ\200\231 under the guidance of persons who possess University degrees.

debate =. while continuing to participate in debate with scholars and political scientists, and to publish articles and books, the Centre will make a point of encouraging debate with and within public and private bodies [referred to by many in South Africa as organs of civil society].

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Personnel. I will carry on as Director and Dorothy Williams will remain as Administrative Secretary. We will continue to operate according to the principle that the results of all work done for or on behalf of the Centre will be in the public domain, and that the normal standards of objective scientific enquiry will apply.

There will be a natural overlap between my work as member of the Constitutional Committee and of the National Executive of the ANC and as Director of the Centre, but neither activity will dictate in any way to the other. Similarly, my posts as Honorary Professor at the Universities of the Western Cape and Cape Town, respectively, will give me access to university communities while not obliging me to sit on university committees.

We would be grateful to hear whether you would be interested in receiving a more formal application with more precise details, and if so, whether you have any comments or counter-suggestions. If needs be, I would be happy to visit yourselves both to report on the work currently being done and to discuss future possibilities.

Sincerely,

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