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HUMAN RIGHTS IN AFRICA - THE FREEDOM CHAPTER

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Whenever

the

question human rights in AFRICA arises, I always think of my youth in our village in which a more or less communal existence was pursued.

The building of huts, hunting, cultural activities, the conduct of our initiation schools where we were taught to be men and

girls

taught

to,

be

women, the settling of disputes, at the KHOTLA

whicf was

a

council

of

elders

presided

over

by

a

hief,

the

celebration

of marriages, birth and death, the ploughing of land and harvesting were all communal activities.

When a man died, one of his brothers took over his wife and children.

Orphaned children were taken over by relatives and, in the absence of any, the Chief took them over.

It was a society in

which

one

felt

safe.

All this of course did not mean that there were no people that
were richer than others or that we did not have awfully
violent

and

evil

people.

What

ensured security were these in-built checks and
balances.

It was not surprising to me that in 1983 a German Research
group

came

out with a report that in South Africa the people in the
rural areas are inclined towards socialism

in

contradistinction

to

those in the urban areas who tended to be individualist capitalists.

It is an upbringing that has made me think that

in

these

troubled

times in AFRICA where we are often faced with the violations of human

rights,

perhaps we should start to look at our villages to find

some

;

H

the solutions where the heart and soul of AFRICA is.

I

am not being original.

The Mahatma Gandhi had advocated a similar

solution in India.

This does not mean

we

should

disregard

Western

thought

on

this

subject.

Mr. De Klerk's National Party - has produced constitutional proposals recommending a bicameral parliament with one chamber elected on a racial group basis.

Comrade

Nelson

Mandela,

the

A.N.C.

Deputy-President, has warned that if the De Klerk administration

was

"not

prepared

to

accept,

without

qualification, the principle of

one-person, one-vote, then South Africa will be on fire again".

As you are aware the Apartheid oppressive regime continues

to

flout

essential

human

rights.

They

continue

to

hold

3,000 political

prisoners.

Many continue to be held without trial under the security

legislation.

The right to life is violated by the death penalty and executions.

For

instance

during

the

last

50

years

of

capital

punishment in Britain, 632 people were executed.

South Africa hanged

more than that

in

the

last

6

years.

Africans

continue

to

be

subjected

to the slave education under the Bantu Education Act.

The

freedom to live where one chooses is denied under the Group Areas Act

which

dictates

where

the

various races are to live.

Thousands of

Africans continue to be dispossessed of their

land
under
the
same
Act.
The
police
continue
to
shoot
those
that seek to march in
protest against the draconian system.
It is true that the A.N.C. and
other organisations are unbanned and that petty Apartheid legislation
has
been
repealed.
But
this
has
been â\200\230merely
tinkering.
The
Apartheid
monster is alive, well and kicking; but these are the last
kicks of a monster we are about to
banish
to
perdition.
Only
the
implementation
of the Freedom Charter will bring real freedom to our
people.

I
have
read
and
appreciated
John
Locke's "Two Treatises of Civil
Government (1689)" in which he postulated one idea of identifying the
basic rights of man by imagining the existence of the human person in
a so-called state of nature, that
is
a
stateless
situation
or
a
depolitized condition which he pictured as the idyllic co- existence
of
individuals
in
"peace,
goodwill,
mutual
assistance
and
preservation".
The
individuals
consequently
concluded
a
social
compact whereby they joined together in a civil society
(the
pactum
unionis);

and
by
means
of
a
second
social
compact (the pactum
subjectionis) they instituted a government with
political
power
to
protect
their
respective human rights.

These compacts were for the
sole purpose of protecting the natural rights to
life,
liberty
and
property
of
the
subjects.

Other Western human rights Philosophers
like Jean Jacques Rousseau (1712-1788), and Emmanuel
Kant
(1724-1804)

have expounded almost in similar vein.

Whilst

we

must

always

adopt the attitude that human knowledge and
thought is universal, I think it is important

to
look
to
our
own
historical
existence
when
we
seek solutions to questions of human
rights.
We should not forget that
when
for
instance,
John
Locke
expounded his philosophy it was a direct outcome of the (17th century
constitutional crises in England surrounding the despotic rule of the
Stuart
Kings.
It
was
the basis of an indictment of KING JAMES II
(1685-1702)
rule.
Rousseau,
Voltaire,
Diderot
and
all
the
Encyclopaedists were the fomenters of the French Revolution.
It
is
in

this

context

of

seeking an African solution that I was

excited to read in the preamble Of THE AFRICAN CHARTER ON

THE RIGHTS OF MAN

AZJD

PEOPLES' RIGHTS (Nairobi, June 1981),

this statement:

"Convinced that it
is
henceforth
essential
to
pay
a
particular
attention
to
the
right to development and that civil and political
rights cannot be
dissociated
from
economic,
social
and
cultural
rights
in
their
conception
as
well
as universality and that the
satisfaction of economic, social and cultural rights is
a
guarantee
for the enjoyment of civil and political rights".

It
is in this context that we must understand the Freedom Charter of
the AFRICAN NATIONAL CONGRESS.

As early

as

November

1943

at

our

annual

conference the ANC had adopted a document entitled "AFRICANS'

CLAIMS

N SOUTH AFRICA, including the ATLANTIC CHARTER from THE STAND

POINT OF AFRICANS WITHIN THE UNION OF SOUTH AFRICA"

A Bill Of Rights

was an integral part of this document and it covered both

civil

and

political

rights

as well as cultural and economic rights.

The list

included the right to choose the form of government,

abandonment

of

the

use

of

force,

land,

labour

and

educational

rights,

full

citizenship rights and the removal of discriminatory legislation.

We

made no distinction between first generation rights (i.e. traditional

civil and political

rights)

which

the
state
is
prohibited
from
violating,
and
second,
the
rights
which tend primarily to impose
duties on the
state,
for
example,
to
provide
education,
health
Welfare etc.

THE FREEDOM CHARTS} DOES NOT.

(READ IT)

We
are not unique in this thought process.

Professor H. J. LASKI of

OXFORD UNIVERSITY in a 1948 publication "LIBERTY IN THE MODERN STATE"

"An interest in liberty begins when men have ceased to be overwhelmed
by the problem of shared existence; it is when they have a chance for

I

leisure

the opportunity to reflect over their situation, in a degree

in which if small, is nevertheless real, to recognize that they

need

U

L

not helplessly accept

the

routine

in

which

before,

they

seemed

helplessly

immersed.

Economic sufficiency and leisure of thought â\200\224

these are the primary conditions of a freeman"

ALEX AMANKWAH Of the

UNIVERSITY

of

PAPUA,

NEW

ZEALAND,

recently

published

an

article entitled "CONSTITUTIONS AND BILLS OF RIGHTS IN

THIR

W RLD NATIONS: ISSUES OF FORM AND CONTENT" which is

much

more,

relevant to our continent.

He says:

"The

fundamental

problems of the developing nations today are food,

shelter, education, medical care etc.

A Bill of

Rights

which

does

not
specifically
address
these
problems
is a sham, since for the
people to exercise civil and political
rights
they
must
live
not
merely exist.

To the question of why such matters should be embodied
in a constitution, our answer is the same reason that the traditional
rights
are embodied in a constitution, viz, it makes the path of the
transgressor more difficult; in our case because if they are embodied
in
the
constitution they cannot easily be ignored by the power that
be"

Let me now turn to South Africa.

As you are
aware
we
are
at
the
preâ\200\224negotiation
period
in
terms
of
the

O.A.U.

endorsed

in arrears

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Declaration.

The Apartheid Government

has

appointed

a

Commission

which

has

produced

a ' working

paper

on

Group and Human Rights.

Suffice it

to

say

that

this

effort

which

ostensibly

used

the

universal

precepts

of Human Rights such as the right to security of

property and compensation, the right of

protection

of
minorities,
(Group Rights) is calculated to keep 80% of South Africa in the White
minority's hands and to perpetuate their dominance by the exercise of

.

A

J
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veto over any decision taken by the Black majority. Indeed, if you
read the Guardian of the 25/10/90 you will find

a

report

that

the

President's

Council

â\200\224

a parliamentary body dominated by

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