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2011

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Published in the United States of America in 2011 by
Lynne Rienner Publishers, Inc.
1800 30th Street, Boulder, Colorado 80301
www.rienner.com

and in the United Kingdom by
Lynne Rienner Publishers, Inc.
3 Henrietta Street, Covent Garden, London WC2E 8LU

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Library of Congress Cataloging-in-Publication Data
Encyclopedia of South Africa / Krista Johnson and Sean Jacobs, editors.
p. cm.
Includes bibliographical references and index.
ISBN 978-1-58826-749-8 (hardcover : alk. paper)
1. South Africa—Encyclopedias. I. Johnson, Krista. II. Jacobs, Sean.
DT1714.E53 2011
968.003—dc22

2011020125

British Cataloguing in Publication Data
A Cataloguing in Publication record for this book
is available from the British Library.

Printed and bound in the United States of America

The paper used in this publication meets the requirements
of the American National Standard for Permanence of
Paper for Printed Library Materials Z39.48-1992.

5 4 3 2 1

and the aspirations of the Constitution will require decades, perhaps even generations, of see-saw progress.

Since democratization, the beginnings of the requisite language infrastructure have been put in place:

- The Pan South African Language Board (PANSALB), representative of all the official languages as well as the South African sign language, responsible for advising government on language policy;
- Nine Provincial Language Committees, whose main task is to represent PANSALB and to oversee the implementation of official language policy at the provincial level;
- Thirteen National Language Bodies, whose main task is to promote the corpus development of their respective languages; and
- Eleven Lexicographic Units, each of which ultimately creates and maintains a comprehensive monolingual explanatory dictionary for the respective language.

Two important language policy initiatives include the National Language Policy Framework, approved by the cabinet in 2002, and the South African Languages Bill, similarly approved by the cabinet but not yet placed before the National Assembly. Given the long delay in passing the bill, in March 2010 a court ruled that the government must pass a language act by 2012.

Except for the South African Broadcasting Corporation, which has an improving record as far as the use of indigenous languages, most media, the public service, and the vital tertiary education sector have tended to join the slide toward a unilingual public policy delivery, in spite of the fact that this disposition favors the English-speaking elite and thus deepens the asymmetry of power relations in South Africa. Because each province has its own official language, the Provincial Language Committees play a potentially decisive role with respect to developments on the ground. In practice, however, few of them have the necessary skills and resources at present, and the de facto language policy in most provinces is a laissez-faire English-mainly policy.

The key challenges that have to be addressed at the beginning of the twenty-first century are the increasing hegemony of English; the need to raise literacy levels by means of, among other things, the successful implementation of appropriate language-medium policies in both the schools and the universities; and the need to demonstrate the positive relationship between functional multilingualism and economic efficiency and productivity. The inculcation and nurturing of a culture of reading in African languages is the key to all of these issues.

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—Neville Alexander

Law and Society

The relationship between law and systems of social domination in modern South Africa can be closely tracked. The legal system was intimately

integrated into COLONIALISM and the system of racial exploitation known as APARTHEID, which emerged after World War II. While the law and the legal system have been considerably reformed since the advent of democracy in 1994 and have created opportunities of redress for previously exploited individuals and communities, the system faces new challenges.

Law and Apartheid

The system of apartheid, underpinned by a racial ideology of white supremacy and implemented by a minority white government in South Africa in 1948, increasingly became one of the most reviled legal system of the twentieth century. Apartheid was implemented at the same time that the United Nations Charter was adopted by the international community of states and negotiations were under way for the drafting of the Universal Declaration of Human Rights. Subsequently, apartheid evolved as a contrast to the principles underlying the human rights declaration and was deemed as a crime against humanity by the United Nations in 1973.

The apartheid system violated the most basic tenets of international human rights law and policy, embodying a harsh combination of state-sponsored authoritarianism, militarism, race and gender discrimination, and economic exploitation. Therefore, the South African legal system was always of great concern to the international community, with some international legal scholars arguing that apartheid was a key factor in the development of international law as it relates to the principle of nondiscrimination and state sovereignty.

The processes of law underpinned the apartheid political project and largely kept the project intact throughout its duration. The law regulated every aspect of people's lives—for example, where they lived, where they went to school, whom they married, the association(s) they belonged to, and what they read. The legal system existed to bolster white rights and white privileges and, despite its formal edifice, was entirely stacked against the black majority population. The trappings of law and legality performed an important symbolic role for the white minority government, allowing it to believe that it belonged to the Western democratic world. It also allowed white South Africans the psychological reassurance of living in a "civilized" state regulated by law.

Of particular relevance were the ubiquitous pass courts, which rendered life enormously insecure for millions of Africans over the entire period of apartheid. Part of the legal system, the pass courts enforced the PASS LAWS and the system of influx control, which regulated the movement of Africans from the so-called homelands to the white urban centers. Africans were only allowed in South Africa's cities to provide labor, and permission was only granted under the most stringent and often arbitrary conditions. Some historians have argued that the pass system was the most hated aspect of the apartheid legal system, rendering the majority of black South Africans aliens in their own country. It also caused Africans to be labeled criminals for merely pursuing activities, such as traveling to seek work or to live with a spouse, regarded as legal in any democratic society.

Transition to Constitutional Democracy

The end of apartheid in South Africa came with the establishment of a constitutional democracy in 1994. In its founding provisions, the new CONSTITUTION outlines the human rights principles on which the new democratic state is premised, including nonracialism, nonsexism, and human dignity. The South African Constitution reflects the influence of the global human rights framework and is a byproduct of that framework. For example, the Constitution embraces international law in several ways, and the Constitution's comprehensive BILL OF RIGHTS is drawn entirely from several human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. The Bill of Rights is expansive, incorporating a wide range of civil and political rights, as well as economic, social, and cultural rights.

The second way that the Constitution incorporates international law is that it specifically directs the South African courts to consider international law in their deliberations. In addition, it

provides for the direct incorporation of international law into the South African legal system. South Africa is party to several international human rights instruments that include the elimination of racial discrimination, SLAVERY, and genocide; the suppression of human trafficking; and the rights of women, children, and refugees.

The Constitution, and particularly its Bill of Rights, has been universally heralded for the range of protections it affords and the purposive manner in which it affords such protections. In addition, it also incorporates the right of access to information, to due process, to a fair trial, and access to the courts.

Under South African law, in addition to the Constitutional Court and other courts, several bodies are mandated to pursue the human rights embodied in the Constitution. These include the Public Protector, the Human Rights Commission, the Commission for Gender Equality, the Electoral Commission, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities.

South Africa's System of Courts

The transition from the colonial and apartheid systems of parliamentary supremacy to a constitutional democracy in 1994 placed the Constitution as the supreme legal authority in the country and provided for a system of separation of powers. The Constitution binds all state organs, including both the executive and the legislature, which is a significant shift from the days of executive prerogative that typified apartheid. Specifically, it provides for independent courts, "subject only to the Constitution and the law." The system of courts outlined in the Constitution encompasses the Constitutional Court (the highest court in the country), the Supreme Court of Appeals (the highest appeals court except in constitutional matters), the High Courts (provincial supreme courts), and the Magistrates' Courts (lower courts).

Several other specialized courts are in operation as well, including the Labor and the Labor Appeal Courts, Land Claim Courts, Small Claims Courts, Special Income Tax Courts, Divorce Courts, Sexual Offenses Courts, Community Courts, the Water Tribunal, and the Chiefs' Courts.

The Constitution creates a Constitutional Court that sits at the apex of the court structure, and which is the final court of appeal on all matters constitutional. It authorizes a restructuring of the entire legal system to render the system representative, accountable, and accessible, and one that will provide justice to all South Africans irrespective of race, gender, and ethnicity. These values impact all aspects of the legal system but especially the structure and operation of the courts as well as the appointment of judges.

The Constitution provides that "any appropriately qualified woman or man who is a fit and proper person" is eligible for appointment as a judge, and that the racial and gender composition of judges should broadly reflect South Africa's racial and gender composition. The consideration of racial and gender diversity (and, to a lesser extent, disability and sexual orientation diversity) has propelled this country's judicial transformation as it rejects the apartheid legal order that appointed only white, and overwhelmingly male, judges.

Under the apartheid system, which lacked transparency and required no public input, the process of appointing judges was at the president's discretion based on the minister of justice's recommendation. The Constitution makes provision for the establishment of a Judicial Services Commission made up of the chief justice, one judge president, the minister of justice, members of the legal profession and the legal academy, politicians, and lay persons. The commission's process of appointing judges is required to be transparent and open to public scrutiny.

Constitution and Indigenous Law

With the advent of democracy in South Africa, a challenge was to incorporate the remnants of indigenous laws, institutions, and policies within the new legal framework. During several centuries of colonialism and four decades of apartheid, indigenous law was marginalized, trivialized, denigrated, and increasingly existed to bolster both colonial and apartheid rule. Indeed, African laws and customs, when accorded authority through the BANTUSTAN political structure and surrogate administrators such as traditional chiefs, actually served a useful purpose in administering

apartheid. This was so despite a significant proportion of the African population having certain aspects of their lives, particularly their private lives, still governed by indigenous law. Interaction and engagement between South African law, on the one hand, and indigenous law, on the other, were almost nonexistent.

The Constitution provides for the recognition of the traditional leaders' roles and mandates the courts to apply customary law when applicable. It also provides that "everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights." Similarly, the Bill of Rights makes provision for legislation that recognizes marriages concluded under indigenous law, provided that such marriages do not contradict the principle of equality.

Constitutional Jurisprudence

The legacy of apartheid has meant that the Constitutional Court has, since its inception in 1995, almost overwhelmingly adjudicated human rights issues. By incorporating international human rights law in its interpretation of the Bill of Rights, as mandated by the Constitution, the court has spawned an international human rights jurisprudence that continues to be cited in many jurisdictions.

The use of the death penalty, particularly against political opponents of apartheid and disproportionately against black males, was one of the first legacies of apartheid to be confronted by the court. Invoking the right to life and the right to dignity found in the Bill of Rights and international human rights law, the court struck down the death penalty as unconstitutional.

The Constitutional Court has also examined in some detail the issue of equality—the paramount principle in the Bill of Rights. The court has formulated a substantive vision of equality by exploring a range of factual situations, including those involving the rights of HIV-positive persons not to be discriminated against in their employment; the right of prisoners to vote; the rights of unmarried fathers in relation to adoption of their children; the rights of permanent residents not to be treated unfairly in the workplace compared to citizens; the rights of homosexuals to engage in consensual sexual conduct; and the rights of African girls and women not to be discriminated against under indigenous customary law.

Addressing the issue of violence, the court held the state accountable for failure to protect citizens. Regarding violence against women in both the public and the private spheres, the court has rendered judgments that reflect its constitutional commitment to eradicating violence against women.

Between the competing rights of privacy and state regulation, the South African Constitutional Court has struck a balance and has also deliberated on the sometimes competing claims of religious rights and equality. It has attempted to balance the rights of criminals in a violent society such as South Africa and the rights of individuals to personal security.

Of significance has been the court's incremental adoption of a socioeconomic rights jurisprudence that strives to grapple with the dire economic conditions in which a large number of South Africans still find themselves. Mindful of the doctrine of separation of powers and reticent to usurp the PARLIAMENT's prerogative, in addition to its concerns about institutional capacity, the court has nonetheless attempted to ensure that the government pays attention to the needs of the poor. For example, in a landmark judgment in 2000, the court outlined in great detail the government's obligations to provide housing for those most in need of shelter. It has also mandated that the government, in compliance with the right to health as delineated in the Bill of Rights, provide antiretroviral drugs to HIV-positive pregnant women at public hospitals throughout South Africa.

The effectiveness of the court in this human rights venture has been somewhat compromised by some of the lower courts' inabilities to fully effectuate the constitutional rights. Many of the lower courts, particularly those in the rural areas, are underresourced and lack properly trained and experienced personnel. In addition, the Constitutional Court is dependent upon the willingness of government officials and members of civil society to catalyze and enforce its judgments.

For the most part, the court's judgments have been respected by both the government and society at large, although many South African citizens are still skeptical of the new rights environment, particularly as it pertains to criminals. The government has sometimes been lacking in acting on or implementing the court's socioeconomic judgments. Such omissions are often a result of incompetence, hostility, or indifference. The success of the human rights legal enterprise in South Africa is dependent upon a productive collaboration between the legislature, bureaucracy, and the courts, especially the Constitutional Court. This is especially crucial in the area of socioeconomic rights, where failure to act on or implement courts' judgments may discredit the entire constitutional endeavor.

See also BILL OF RIGHTS; CONSTITUTION; CUSTOMARY LAW

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—*Penelope Andrews*

Lembede, Anton Muziwakhe (1914–1947)

Founding president of the AFRICAN NATIONAL CONGRESS YOUTH LEAGUE in 1944, as well as teacher, lawyer, intellectual, political philosopher, and strategist, Anton Muziwakhe Lembede played a crucial role in defining and articulating the philosophy of the Black Nationalist Movement during the 1940s. He was born in 1914 into a ZULU peasant family in the rural district of Georgedale in NATAL. Lembede's father was a farmworker, and his mother taught him at home. From the age of thirteen, he attended school and excelled, securing a bursary to study at ADAMS COLLEGE under ALBERT LUTHULI and others.

After matriculating in 1937 with a distinction in Latin, Lembede taught in Natal and the Orange Free State. During this period, he was exposed to AFRIKANER nationalism, learned seSOTHO and Afrikaans, and studied both philosophy and law through University of South Africa correspondence courses. He received bachelor of arts and bachelor of law degrees and clerked for Dr. Pixley ka Isaka Seme, a founder and member of the AFRICAN NATIONAL CONGRESS (ANC), in JOHANNESBURG before becoming a legal partner. It was there that friends Jordan Ngubane and A. P. Mda introduced him to the ANC; the three would play an integral role in reshaping the ANC's direction.

In 1944, Lembede helped found the ANC Youth League and helped pen its manifesto, reflecting a younger, more radical emerging leadership. As president, he urged Africans to unite and fight against their oppression by asserting their right to self-determination. With WALTER SISULU and OLIVER TAMBO, he advocated the expulsion of Communists from the Transvaal Congress in 1945. Rejecting "foreign ideologies," Lembede believed that a greater militancy was needed among Africans, "the only legitimate owners" of the land. He climbed the ranks of the ANC and in 1946 served on the ANC National Executive Committee and its National Working Committee under the leadership of Dr. Alfred Bitini Xuma. He was regarded as the primary architect of the ANC Youth League's 1949 Program of Action and was reportedly proficient in seven or more languages.

In July 1947, after only four years of political activism, Lembede died suddenly at the age of thirty-three. On October 27, 2002, Lembede's