

Exmo. Sr.

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Director, Faculdade de Direito.

Caro Dr. Geraldes,

1). MAGIC (Mozambique, Angola e Guinéa Bissau Information Centre) em Londres pediu-me que eu escrevesse um artigo para o jornal dele - People's Power (O Poder Popular). Isso é este artigo. Se ^{quisesse} aparecer no jornal, será sob a descrição do autor:

'Albie Sachs, Senior Lecturer in Law, University of Southampton, Visiting Professor at the Faculty of Law, University of Eduardo Mondlane.'

Está bom? Eu posso dar-lhe ~~a~~ ^{aquela} carta de MAGIC.

2). Eu recebi as cartas anexadas de Faculdade de Direito, Dar Es Salaam. Eu tenho um artigo ~~feito~~ escrito por mim acerca a Constituição da R.P.M. É necessário apenas ~~fezer~~ que eu fizer uma cópia boa. Depois eu queria mostrá-la. Se estiver satisfeito, eu poderei mandá-la à Faculdade em Dar Es Salaam.

Melhores votos para o novo ano!

- Albie Sachs,

LAW IN THE 'LIBERATED ZONES'

MOZAMBICAN EXPERIENCE.

For most of this century Mozambique was a colony of a dictatorship. Virtually all political activity for Portuguese as well as for Mozambicans was clandestine; the press was restricted and the legal system offered no opportunities for campaigning for political changes. From the outset FRELIMO was an ~~illegal~~ ^{underground} organisation. Formed in Dar Es Salaam in 1962 out of three exile groups, it committed itself to a programme of full national independence, with most of its initial leadership agreeing on the necessity for armed struggle. The very successes of the campaigns launched from 1964 onwards, however, precipitated severe conflict inside the organisation, since the bringing of large areas of the north under FRELIMO control posed a whole range of social and political problems that the mere formula of independence was unable to solve. The basic lines of new constitutional theory and practice were hammered out during fierce clashes which took place ~~was~~ in conferences in the bush, with enemy bombing a constant threat, rather than in elegant conference rooms in London, Paris or Lisbon. Problems of law and government were not seen as the province of experts and technical advisers, but rather as the concern of all those involved in the fighting. It is doubtful if a single trained jurist was present.

At first a number of specific issues provoked disagreement: should women be permitted to join the army, should

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FRELIMO be an organisation for ~~Africans~~ / only or for all those who supported its aims, should captured Portuguese soldiers be executed, should civilians be attacked? This was followed by differences over how to organise the economy, what the purpose of education should be, and the extent to which the army should be politicised and incorporated into the structure of FRELIMO. Eventually the issues crystallised into a general debate about the nature of the struggle and its objectives. All political documents in Mozambique today refer back to what is termed the struggle between two lines, that which is called the popular revolutionary line, and that which may be summarised as the populist nationalist line (referred to by FRELIMO as 'the reactionary line'). It was the triumph of the popular revolutionary line that was to give such a distinctive stamp to FRELIMO and the structures which it created. The basic orientation adopted was that the enemy was not a people but a system, that what had to be combated was exploitation in any form, and that the principal strategy was to develop a protracted popular struggle based on extending the liberated zones. Whereas other independence movements had simply defined the enemy juridically in terms of colonialism and sovereignty, FRELIMO took its stand against the twin enemies of 'colonial capitalism' and 'traditional feudalism', and declared that it must struggle as vigorously against the new would-be exploiters as it had against the old. These formulations were not mere postures holding interest only for political scientists: each

embodied a series of practical measures which directly affected the character of law and state. Law and the legal system were no longer evaluated against what were regarded as the formalistic models and criteria of lawyers, whether fascist or liberal, but like all other institutions they were judged in terms of how they aided 'the struggle on two fronts'. In other words, the primary objective was not to liberalise fascist institutions or to Africanise colonialist ones, it was to socialise the law and create entirely new institutions.

One ~~of these~~ immediate practical consequence was that instead of young Mozambicans being encouraged to train as jurists in Europe and North America so as to be able to compete on equal terms with the colonialist lawyers, those few students who had managed to get to foreign Universities were asked to return to Africa to join the struggle. In the liberated zones, the apparatus of government, administration and law abandoned by the Portuguese was not simply revived under new leadership, it was totally destroyed.

One of those involved in the creation of new institutions recently told law students in Maputo how these transformations took place. At the outset ~~what he regarded~~ he raised what he regarded as the crucial theoretical difficulty in analysing the period of law in the liberated zones, namely that what had existed there had been a form of law without a state. The first development, he pointed out, was the elimination in practice of Portuguese sovereignty, and with it the systems of forced labour and tax collection that had been the main visible signs of the colonial legal authority.

Then followed the challenge by ^{4.} FRELIMO to what it called the feudal power of the chiefs, exercised in terms of a customary ~~law~~ political law as venerable perhaps as the British constitution. This attack was not conducted 'on principle,' but as part of a struggle against a group within FRELIMO who were placing themselves at the head of traditional power structures. New administrative and economic structures based on entirely new principles were established. A new system of property law based on cooperatively worked fields and collectively organised marketing was introduced, and with it a new revenue system, in terms of which a portion of all produce was specially reserved for social and political purposes, such as schooling, hospitals and the army. The chiefs were deprived of all their political and religious power, and the whole system of traditional family law was challenged, in particular polygyny, child marriages, lobolo and unequal concepts of adultery.

The new de facto authority became FRELIMO itself, acting through mass meetings and a tiered system of political structures. Decisions of FRELIMO conferences and resolutions adopted by the Organisation of Mozambican Women (OMM) established new ~~enforceable~~ norms and so in practice emerged as new sources of ~~law~~ de facto law. Disciplinary committees of the Forças Populares created new rules of conduct which began to be absorbed by the whole population. The notion of imprisonment, which could hardly have been implemented in these zones under constant attack, was replaced by that of re-education designed to effect the 'transformation of man through political work and manual labour.' Thus offenders would remain in the community, but be given special tasks such as the

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clearing of fields which then belonged to the whole community. Capital punishment was used occasionally against war criminals and captured agents of the PIDE, but not against the chiefs and their allies inside FRELIMO, not even against those persons who assisted in the assassination of Eduardo Mondlane, founder and first president of FRELIMO. There was no formal court structure, but the tendency was for social and juridical problems to be referred to representatives either of the political structures or of the army. From time to time mass meetings were held, attended by thousands of people, to resolve particularly acute problems. Neither in theory nor in practice did the concept of separation of powers exist. Power was seen as belonging to a class rather than to institutions.

This analysis indicated that for a number of years, practice was clearly ahead of theory, since within the broad framework of class justice and popular participation, new mechanisms of social organisation were being developed without explicit juridical formulation. Law was important, but lawyers were not. Eventually in early 1974 the experiences of the liberated zones were generalised into an extensive statement on the question of law and state in Mozambique.

In a lengthy educational document published early in 1974, Samora Machel, president of FRELIMO in succession to his fallen comrade Eduardo Mondlane, stressed that the objective of the struggle was not to take over the colonialist state but to destroy and replace it. There were nationalists, he wrote, who out of ~~the~~ naivety or because of their own involvement in exploitation, thought

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that the aim of the struggle should be to appoint or elect Africans to the various political, economic and administrative posts held by the whites. 'In short, for the nationalists who are not wholly satisfied with colonial power simply because it is foreign, the ultimate aim of the struggle would in fact be to 'Africanise' exploitation. For those people our struggle should be a struggle between black power and white power, whereas for us the struggle is between the power of the exploiters and the power of the people.'

In an exploitative state, he continued, the entire apparatus of state power - the laws, administration, courts, police force and army - had as its sole objective the maintenance of exploitation. The state was not simply a neutral instrument that could be used equally well by the enemy as by themselves. 'We cannot serve the masses by governing with state powers designed to oppress the masses. To 'Africanise' colonialist and capitalist power would be to negate the meaning of our struggle. What would be the point of our ~~struggle~~ fight if we were to continue to be subject to forced labour, the companies and the mines, even if there were African managers and overseers everywhere? What would be the point of our sacrifices if we were still forced to sell rattle and cotton in markets that benefit only the traders, even if they were Africans? What would be the purpose of so much bloodshed if we were still subject to a state which even though governed by Mozambicans served only the rich and the powerful? How can we maintain a police force which arrests and tortures workers and keep

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an army which fires on ~~the~~ people, even if all its generals were black?

'A State composed of the rich and powerful in which a minority takes decisions and imposes its will... would be the continuation in a new form of the situation against which we are now fighting.'

In the liberated zones, he added, the colonial bourgeois state had already been destroyed and feudal (traditional) structures had disappeared. A new democratic form of power was emerging 'power which belongs to the exploited majority and imposes its will on the whole nation: such is our Power.'

Elsewhere the document warned its readers to prepare for a long struggle. However, within weeks of its appearance, a crisis in the Portuguese army, produced in large measure by the success of the liberation forces in the colonies, led to the overthrow of the dictatorship in Portugal, the opening of the way to negotiated independence in Mozambique, and the implementation on a nation-wide scale of the new FRELIMO principles of law and state.

Bibliography:

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