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CIVIL RIGHTS FOR AFRICANS AND THE TOMLINSON REPORT

The Reports of Government Commissions appointed to inquire into and report upon various aspects of our national policy have played an important part in the evolution and development of Union Native policy both before and since Union. One has only to call to mind a few of the most important of these Reports to appreciate how much the Union Government owes to them in regard to its system of native administration.

The famous Cape Native Affairs Commission of 1883 gave us among other things the system of the recognition and application of native law in disputes between Africans and of the administration of the Transkeian Territories as a separate entity from the rest of the Cape.

The South African Native Affairs Commission of 1903-05 laid down the broad outlines of future Native policy in Southern Africa in various aspects of life such as political rights, land tenure, urban areas, etc.

After Union the Report of the Beaumont Commission of 1916 together with the reports of the various local Committees which arose out of it provided the basis for the implementation of the policy of territorial segregation adumbrated in the Native Land Act of 1913.

The Transvaal Local Government Commission of 1922 - the Stallard Commission - gave us the Natives Urban Areas Act together with the famous dictum which has played such havoc with African rights in the urban areas, namely,
"the native should only be allowed to enter urban areas, which are essentially the white man's creation, when he is willing to enter and minister to the needs of the white man, and should depart therefrom when he ceases so to minister".

The Cape Native Education Commission of 1919 gave us the policy of differentiation in the system of education for Africans and education for other sections of the population which later culminated in the Report of the Eiselen Commission of 1951 and the Bantu Education Act of 1953, with all that it implies.

The Native Economic Commission of 1930-32 first drew attention to the desert conditions which were developing in the Reserves and which would eventually create an appalling problem of poverty among rural Africans and gave birth to the more positive interest of the Native Affairs Department in agriculture in the so-called Native areas.

And so one could go on to refer to one Commission after another to find the source of measures which have later been embodied in specific legislation and which have affected adversely or otherwise the lives of millions of our fellowcountrymen.

The Commission method of introducing changes in policy has the great advantage from the Government's point of view of giving the impression that action has been preceded by expert investigation and scientific inquiry. This does not imply that Governments generally follow the recommendations of their expert commissions. On the contrary, Government generally pick and choose what they wish to implement as far as the Commission's recommendations are concerned, but they can always use the fact that the matter had
already been the subject of investigation to answer any allegation of hasty and ill-considered action on their part.

But precisely because Commission reports can be exploited in this way, it is imperative that they should be considered seriously by those who are likely to be affected by the implementation either in whole or in part of their recommendations. The implications of the appointment of the Commissions should be studied and their recommendations analysed with a view to the enlightenment of the people affected about the true meaning of their proposals, both overt and covert.

One is aware that modern governments tend to be insensitive to public opinion, so that when the Executive which controls the majority in the Legislature has made up its mind as to what it wishes to do about the Report of a Commission, protests against its proposals generally prove abortive. Nevertheless for the sake of the record it is necessary even for those whose voice is not likely to be heeded to make up their own minds as to what it is that is proposed and not merely to accept at face value Government pronouncements on their intentions.

I have been asked to say a word to this Conference about what the Tomlinson Commission has to say on the subject of civil rights for Africans. In actual fact there is not a great deal said in the Report about the rights of Africans because that is not what the Commission set out to do. The Report shows abundantly that what the Commissioners were concerned with was to show how European rights in
South Africa can be preserved against the claims of the Africans for similar rights. In other words, the question they set out to answer was what can be done in the Native areas to which the white man might be able to point in justification of his refusal to recognise or admit any rights or claims Africans may put forward to the rest of the country in which they intend to reserve rights for themselves exclusively.

Other speakers will deal with other aspects of the answer given by the Tomlinson Commission to this broad question. I shall confine myself to the question of civil rights. I shall assume that by 'civil rights' is meant the rights of nationals or citizens of a country. I am supported in this course by the Tomlinson Commission itself which states categorically that in terms of the Citizenship Act of 1949 Africans are nationals of South Africa and therefore citizens of the country. The subject I am concerned with is the question of what rights Africans possess or are likely to possess as citizens of the country of which they are nationals?

**Civil Rights for Africans - The Present Position**

In dealing with the present position as far as rights of Africans are concerned, the Commission divided them into the following categories:

**Political Rights**

1. (a) Their rights of political representation in the government of the country as a whole.

   (b) their right to share in ordinary local government.

   (c) their right to share in constitutions specially created for them.
them both in the so-called non-Bantu urban areas and in the
so-called Bantu rural areas.

These may be said to be political rights in the broad sense of the
term.

2. **Constitutional Rights.** Here the reference is to Rights of
in terms
actually states that the Africans have Union citizenship and are
thus Union citizens, and goes on to say that "this fact naturally
implies equality of persons, property and rights".

3. **Legal Rights.** Under this heading the Report deals with what is
commonly known as "equality before the law" and states categorica-
ally that "all individuals of all groups are equal in the eyes of
the law and receive equal protection from the law" and continues
"this implies that
(a) nobody can be *illegally* deprived of his liberty or held in
slavery
(b) nobody is exposed to arbitrary arrest, detention or banishment
(c) any person may apply to the courts when he is threatened in
the possession of his goods or when his person, honour or
reputation is violated
(d) that the South African courts are accessible to all persons
on an equal basis".

**Economic Rights.** Here only one right is mentioned, namely that every
person has the right to work. No attempt is made to state so
confidently what this actually implies as in some of the cases
mentioned above.
Social Rights. Under this heading is mentioned in all solemnity the fact that "every person (except a lunatic) has the right to marry and procreate children, with the proviso that marriages and extra-martial sexual relationships between Europeans and Non-Europeans are prohibited.

Religious Freedom. Under this heading is stated one fact that there is complete religious freedom in South Africa.

Freedom of Association. Under this heading it is stated that the Bantu have the full right to form either among themselves or together with members of other groups represented in the population:
1) organisations of a political nature such as the African National Congress and, significantly enough, the Liberal Party etc.
2) companies of a commercial nature, subject to the provisions of general legislation affecting companies such as the Companies Act or special legislation such as the Group Areas Act.
3) in small letters, mention is made of (unregistered) trade unions and mutual aid societies which the Bantu may form.
4) All kinds of associations and societies on the social sphere.

Freedom of Travel. Under this heading is mentioned the fact that in "the issue of passports there is no discrimination on grounds of race or colour" which ordinarily seems to mean that the Bantu can get passports and leave the country as freely as any members of other section of the population.

The Report sums up the position as follows:
"In a general sense, therefore, it can be said that as regards these wider civil rights, there is no differentiation between the various ...."
various population groups, and that in this respect the Bantu are substantially in no worse position than the other population groups”.

The Future Position

With regard to the future the Report confines itself to:

(a) the future political structure in the Bantu areas
(b) the future economic position in the Bantu areas.

In regard to future political structure the Commission gives the following possible guiding lines:

(a) The assumption by the Bantu of responsibility for their own local administration, i.e. in municipalities, town councils, village boards will be the first step in political development.

(b) Thereafter this administrative responsibility can in time be increased to government on a regional basis. Thus they can eventually carry out the functions of government in accordance with a system similar to the present provincial system in each of the seven parts of the Bantu areas ........

(c) The populations in the respective regions will then be able to elect their own representatives to one or other form of provincial government.

(d) The Commission deliberately refrains from making suggestions in connection with future political development except to speculate about the possibility of “an eventual configuration in Southern Africa, under which certain parts of the continent would be reserved for Europeans and to which the Bantu would be allowed entry as temporary migrant workers, without being able to claim political rights there.” The Commission does not indicate what the ......
the political status of the Bantu areas would be in that distant future which lies beyond provincial status for these areas (para. 22-24 p. 210).

As regards the economic position in the picture, the Commission recognises the possibility that the implementation of its programme may not necessarily mean the "most economic utilization of the factors of production" available in South Africa, but is satisfied that if the objective of separate development is achieved, the results will be worthwhile.

CIVIL RIGHTS

In examining the Commission's statement of the rights Africans are supposed to possess, one is not infrequently in doubt as to the sense in which the word "right" is used. A mere description of a thing as a right does not make it into one, certainly not from the point of view of the person who is supposed to enjoy that right. A so-called right may be so hedged about with restrictions or so difficult of realisation or be capable of attainment by so few people that for all practical purposes it may be meaningless. Thus to say that every American has the right to become the President of the United States may sound alright as a piece of propaganda in favour of the United States Constitution and give some Americans a nice feeling inside but it is not of much practical consequence to over 99.9 of the 160 million inhabitants of the United States of America. Similarly it would be a mockery to say that the Negro child has .....
has the right to go to the same school as the white child unless the right of the Negro child to do so is adequately protected by legal authority. Indeed what is described as a 'right' may in fact be a disability because the giving of it may rob the individual of something which he prizes more highly than what he is in fact given. After all what is actually done in these matters is more important in the long run than what appears to be done.

The word 'right' is full of ambiguities which may lead to confusion of thought unless they are appreciated. Thus a right may mean an interest or a claim by an individual which is protected by law, including the remedies afforded by the law for the protection of that interest or claim. Thus A has a right to a sum of money which he is owed by B. A has a right to ask the law to assist him in recovering the debt owed him by B. On B falls the duty of paying the money he owes A. A is entitled to recover the money owed. On the other hand, a right may mean a liberty, a freedom to do something which does not necessarily imply a positive duty placed upon someone else. The distinguishing mark of a liberty has been said to be an absence of legal restraint e.g. the freedom under normal circumstances to whistle while walking on a public road.

Another meaning which is implied in the term 'right' is a "power" to do - "an ability conferred upon a person by the law to determine, by his own will directed to that end, the rights, duties, liabilities or other legal relations either of himself or other persons". Such a power might be vested in a public official e.g.
a power to grant a permit to seek work or in a private individual e.g. a power to make a will. This must be contrasted with a liberty which is what one may do without being prevented by the law. It differs from a right in that a right refers to what others ought to do for one, whereas a liberty refers to what one may do for oneself.

A right must also be distinguished from a privilege, which is a kind of liberty which the law tolerates but does not really support, by for example imposing a duty on anyone else in respect of such privilege. The right to obtain an exemption certificate is a privilege in that the law tolerates applications for such exemption but does not encourage them or make it obligatory on any one to grant such a certificate even if the applicant complies with all the conditions prescribed for such exemption. The so-called right to work is really a privilege in that no duty is placed on any one to provide one with such work as he may wish to perform or indeed with any work at all.

Another meaning of a right is an immunity which may be defined "as one's freedom from the legal power or control of another as regards some legal relation". Thus the Governor-General in his capacity as Supreme Chief over Africans enjoys an immunity from being challenged by the Court if he should arrest any African and put him in jail for three months without assigning any reason for his action.

Thus in considering the civil rights supposed to be enjoyed by Africans one must distinguish carefully between actual rights, liberties or freedoms, privileges, powers and immunities.

In dealing with the question of civil rights for Africans in the Union...
Union one is also at once confronted with difficulties in regard to the meaning or meanings which should be attached to the expression 'civil rights'. I take it that broadly speaking, the expression may be understood to mean the rights which one enjoys as a citizen of a particular country. That raises the question as to what is a citizen? The inhabitants of a country do not all fall into the category of citizens of that country. Some of the inhabitants may be aliens i.e. nationals of foreign countries who for one reason or another happen to be resident in a country other than that of which they may be citizens. Some may be nationals of the country concerned without being citizens of that country. Being a national of a country may mean no more than being a member of an independent political community i.e. a State. Every independent State reserves to itself the right to "determine for itself, and according to its own constitution what classes of persons shall be entitled to its citizenship". A State may recognise an individual or a group of individuals as nationals without according them all the rights of citizenship as understood in that State. Thus in Nazi Germany the Jews were recognised as nationals of the German Reich, but because of their race they were denied full German citizenship.

All the categories we have mentioned so far enjoy certain rights and have certain obligations towards the State of which they are inhabitants.

Thus an alien as a rule is subject to the same laws as the citizens of a State although he may be subjected to certain forms
of discrimination e.g. the denial of the right to vote, but the alien does enjoy certain rights e.g. he may not be compelled to serve in the armed forces of the country in which he resides.

A national, although not a full citizen within the meaning of citizenship law of the State, is generally entitled to certain rights such as (i) diplomatic protection while abroad, or (ii) the right to return to his homeland from abroad, but he owes certain duties to the State of which he is a national e.g. loyalty to the State during war or the duty to perform services for the State to which he owes allegiance. But a national may be denied certain rights which are enjoyed by full citizens of the country e.g. the right to participate in the governmental institutions of the State either as a member or as a voter. A citizen of a State on the other hand is a national who is capable of enjoying all the rights and is subject to all the duties known to the municipal law of the State concerned. Rights of citizenship are much wider than rights of mere nationality or than the rights of an alien.

When we come to consider the meaning of the term 'rights' we find it equally capable of diverse interpretations as we have already indicated. Before we look again into the meanings attached to the term 'right', a word must be said about the source or origin of rights. In the view of some a right is something that is granted to one by the State or something in the enjoyment of which one is protected by the State. This means that if a right is something granted or protected by the State it is also something which may be taken away by ....
by the State. On the other hand it may be held that some rights
do not derive from the State: they cannot be given nor taken away
by the State: they are inalienable rights which belong to the
individual simply because he is a human being. Such rights may be
recognised or protected by the State or the State may refuse to accord
them recognition, but that does not alter the fact that they exist or
are claimed by the individual. Thus it may be said that every human
being (born alive) has the right to life, and no one, not even the
State has the right to deprive the human being concerned of his life
without due process of law. This is a fundamental human right.

These two conceptions of the origin and the source of rights
can be reconciled in that most civilised states to a greater or lesser
extent recognise the existence of fundamental human rights and are
prepared to protect them by means of legislation in the same way as
they protect rights derived from the State.

Difficulties may arise, however, in States with a heterogeneous
population. The population of a country may be divided into groups
e.g. Christians & Jews, Moslems & Hindus, Catholics & Protestants,
black and white, majority and minority, capitalists and workers, and
the ruling power may be vested in one or other of the groups into
which the country is divided. In such a case the dominant group may
give a rather restricted meaning to the term 'rights'. Thus the
dominant group may, without reference to or consultation with the
dominated group, decide upon which State-given or fundamental human
rights shall be given to the dominated group, if at all. In fact the
dominant group may reserve to itself the right of defining what is a 'right' as far as the dominated group is concerned, so that even what amounts to a disability or a privilege may be described as a right. This will be so particularly in a situation where the power to make laws is vested either wholly or largely in one group. Any right held by the dominated group can, by legislation, be converted into a disability or a privilege and still continue to be described as a 'right'. Thus an individual may be deprived of his right to freehold title in one place and be given a right to own his home in another place, and the fundamental differences between the two may be described as non-existent. A disability such as a "pass" may by a legislature in which the persons affected are not represented be described as a "reference book", and although this may be a distinction without a difference, the dominated group may be called upon to believe that a previous disability has been removed. A 'right' in this sense becomes what the law says it is, whatever the actual facts of the situation may be.

An individual may be deprived of his property rights without compensation as is contemplated under the Group Areas Act, provided this is done in terms of the law and the individual concerned may be given the poor consolation that he lives in a country in which he cannot be "illegally deprived" of his rights.

In the light of the foregoing let us examine some of the 'rights' which are vouchsafed to Africans under South African law, according to the Tomlinson Report.
Take first political rights

My submission is that Africans have no political rights in South Africa. They have political disabilities, not political rights. The Native Representation Act of 1936 was designed not to give Africans political rights but to deprive them of such rights. The position is that prior to 1936 Africans in the Cape enjoyed political rights on the same basis as other sections of the population in the Cape. Admittedly the right was hedged about with qualifications which the African found it more difficult to acquire, and to that extent the right even then was more theoretical than real. But what the Act of 1936 did was to maximise the theoretical character of the right and to minimise the reality of the right especially as this followed the abolition of qualifications for Europeans in 1930 and 1931. Thus to say that Africans have the right to be represented in Parliament by three white representatives is an empty right which in no way approximates to the standard set forth in the Universal Declaration of Human Rights, article 21 of which provides that

(i) "Everyone has the right to take part in the government of his country directly or through freely chosen representatives (ii) the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

The 1936 Act was designed to render African representation as innocuous as possible vis a vis European representation, and for that reason...
reason it seems to me to be a misnomer to describe it as a right. It is more fittingly described as the opposite of a right, namely as a disability.

What has been said about Parliamentary representation applies mutatis mutandis to provincial council representation in the Cape and municipal and divisional council representation in the Cape. Then there are bodies like the Advisory Boards and the Local Councils now to be replaced by Bantu Authorities which, in the view of the Commission, confer some sort of benefit on the African people. Here again we are dealing with bodies which are intended to be substitutes for real representation. Anyone of these bodies which presumed to think that it had any real power and attempted to exercise it would soon find out who was really boss even in the small insignificant matters with which they are concerned. Both the local Council system in the rural areas and the Advisory Board system in the urban areas have fallen on evil days. The African people have lost interest in them because they have discovered that they gave the people concerned no effective share in the management of their own local affairs to say nothing of general affairs. The Government is hoping to infuse some life into these bodies by calling them by a different name and by substituting appointed or nominated members for elected members. But what is required is not a change in name but a genuine change in the functions and powers of these bodies, making them real instruments for the expression of the will of the people and not mere echoes of the voice of the Government.
CONSTITUTIONAL RIGHTS

As far as constitutional rights are concerned the Tomlinson Commission states that in terms of the S.A. Citizenship Act the Bantu population, like members of other population groups, have Union citizenship and are thus Union citizens. The conclusion is drawn from this statement that in terms of constitutional law "no distinction is made and this fact naturally implies equality of persons, property and rights".

It is difficult to see how the Commission arrived at this conclusion. The South African constitution is laid down in the South African Act as amended, and even if this Act is read together with the S.A. Citizenship Act there can be no doubt whatever that it draws distinctions between the rights of the Bantu population and that of other sections of the population. A greater value is certainly placed upon 'persons of European descent' than upon persons of Bantu descent. The land rights and the whole administration of the Bantu are vested differentially in the Governor-General of Union opening the door to discriminatory legislation affecting the property rights of the Bantu. But even if in theory it had been intended in 1910 that there should be "equality of persons, property and rights" legislation since Union has made very serious inroads upon the so-called constitutional rights of the Bantu. The limited political rights which were vouchsafed to them in the Constitution have been whittled down and indeed the emasculated rights which they still retain stand in imminent danger of being swept away altogether, thus leaving the S.A. Act as a white
citizenship Act. This has been done through the Natives Representation Act read together with the Bantu Authorities Act, The Senate Act and the Separate Representation of Voters Act. A succession of Acts starting from the Native Land Act of 1913 through the Natives Urban Areas Consolidation Act, The Native Land & Trust Act of 1936, the Native Resettlement Act, have divested the Bantu of property rights in different parts of the country. As for "equality of rights" my submission is that this is a completely meaningless expression in the context of the South African situation. There is hardly any sphere in which there can be said to be equality of rights between the Bantu and the Europeans. Where any rights enjoyed by the Bantu appear to be equal to those enjoyed by the European the situation is frowned upon, and as soon as the opportunity presents itself, steps are taken by legislation or administratively to make it clear that equality between black and white is not part of the policy of this country. It would have been more realistic to admit that this is so than to pretend that the situation is otherwise.

LEGAL RIGHTS

Under this heading the Report states categorically that "all individuals of all groups are equal in the eyes of the law and receive equal protection from the law". The Report goes on to clarify the significance of this statement by saying that it implies that:

a) nobody can be illegally deprived of his liberty or held in slavery
b) nobody is exposed to arbitrary arrest, detention or banishment.
c) any person can apply to the courts when he is threatened in the
possession of his goods or when his person, honour or reputation is violated.

d) that the South African courts are accessible to all persons on an equal basis.

Here again we are confronted with the abstract theoretical approach so characteristic of the Tomlinson Commission. One would think that the learned gentlemen came from another planet or went about South Africa with their eyes and ears closed. It seems to me to be the merest sophistry to say that nobody can/illegalied deprived of his liberty. Of course when the Bantu are deprived of their liberty this is done legally i.e. by the passing of a law by a legislature on which they have no influence whatsoever. The pass laws deprive them of their freedom of movement and, as far as the Bantu are concerned, it makes no practical difference whether this has been done legally rather than illegally. As far as he is concerned the whole legislative process in so far as it is supposed to guarantee his rights is a travesty of justice.

It is interesting to compare this conception of equality before the law with that contained in Article 7 of the Universal Declaration of Human Rights which reads as follows:

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".
It is even more interesting to recall that when this Article was under discussion in the General Assembly of the United Nations, the South African delegate advocated the deletion of the words "against any discrimination in violation of this Declaration and against any incitement to such discrimination". My submission is that that delegate had a greater respect for the facts of the South African situation than the Tomlinson Commission appears to show.

How can the Commission say "nobody is exposed to arbitrary arrest, detention or banishment?" This is presumably based upon Article 9 of the Universal Declaration of Human Rights which reads: "No one shall be subjected to arbitrary arrest, detention or exile". At the time when the Commission wrote, it was part of the law of this country that the Governor-General in his capacity as Supreme Chief of the Natives in Natal, the Transvaal and the Orange Free State could order the arrest of any Native and his detention in gaol for three months without assigning any reason, and such native had no right of recourse to the courts until the three months had elapsed. Since then this has been made applicable to the Cape Province as well. (Section 1 of the Native Administration Act 38 of 1927 read together with the Natal Code of Native Law). It's all done in the name of the law - it is nothing illegal and so conforms to the standpoint of the Commission. "Nobody is exposed to banishment!" Shades of Gwentshe & Lengisi, Champion, to mention only a few of the Bantu who have had practical experience of this aspect of "equality before the law". Every local authority possesses the right to ban
without prior trial.
e) Any person can apply to the courts when his rights are threatened.

This compares with Article 8 of the Universal Declaration which reads:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

One of the most effective remedies against a threat to one's rights is the interdict, and until recently it was possible for this right to be used by the Bantu in defence of their rights. But now the Prohibition of Interdicts Act has rendered this right largely nugatory, because access to the courts is permitted only after the very mischief against which the interdict was supposed to be effective has already taken place.

The last legal right mentioned is that the South African courts are accessible to every person on an equal basis. In any country in which litigation is as expensive as it is in South Africa and in which economic inequalities between different groups are as great as they are, it is not much consolation to a poor litigant to be informed that he has access to the courts on an equal basis with his more affluent countrymen. Thousands of persons who feel they have been done an injustice, especially in our inferior courts, take the matter no further for the simple reason that they cannot afford the fees of counsel and of legal process in the Superior Courts in which they have more confidence. But not only is the right of access to the

-Courts....-
Courts vitiated by economic inequalities but by the increasing tendency on the part of the Executive to limit the powers of the courts on the pretext that the courts may interfere with the sovereignty of Parliament. Executive powers over individuals and groups are vested in administrative officials, both central and local, in such terms as to make it difficult for the Courts to protect their rights. Every time the courts in the interests of that justice of which they are the primary custodians intervene in a situation to prevent arbitrary interference with the rights of persons, the Executive if assured of a majority in Parliament can bring in legislation to deprive the courts of their powers in that regard. In such a situation it seems the merest sophistry to say that people have access to the courts on an equal basis, especially when such laws are directed more particularly against one section of the population.

ECONOMIC RIGHTS

In the sphere of economic rights mention is made of the fact that every person has the right to work, and that Africans have the right to form (unregistered) trade unions. It is interesting to compare this formulation of the right to work with that of Article 21 of the Universal Declaration of Human Rights which reads as follows:

"(a) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(b) Everyone, without any discrimination, has the right to equal pay for equal work."
c) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.

d) Everyone has the right to form and join trade unions for the protection of his interests".

When we examine the labour laws of South Africa we find that they are shot through and through with discriminations against the Bantu worker. As has been well pointed out:

"White workers have perhaps as many rights as workers in most countries. They have freedom to organise, form trade unions and have them legally recognised, engage in collective bargaining, and sell their labour where they will" . . .

"African workers are in a completely different position. Not only are African trade unions denied legal recognition, but every possible obstacle is placed in their way to prevent their growth. The Government looks upon such organisations as a menace to white civilization ... African workers are not permitted to engage in collective bargaining through the industrial council system ... All strikes are prohibited under heavy penalties. Other laws and regulations applicable only to Africans are woven into the fabric of labour code for African workers. One example is the Native Urban Areas Act which restricts the free movement of African labour. Another is the Labour Bureaux system established under the Native Labour Regulation Act" (see Hepple: "Labour and Labour laws in South Africa" "Africa South", Vol.1, No.1, p.25).
These differences in the working conditions of Bantu workers can hardly be regarded as adding up to "rights".

**SOCIAL RIGHTS**

On the subject of social rights the Commission confines itself to dealing with the question of marriage and observes that "every person (except a lunatic) has the right to marry and procreate children, except that marriages and extra-marital sexual relationships between Europeans and Non-Europeans are prohibited. Contrast this with Article 16 of the Universal Declaration of Human Rights which reads:

"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

Further comment on this aspect of civil rights for Africans is needless.

**RELIGIOUS FREEDOM**

Here the statement of the Commission that there is complete religious freedom in South Africa is in theory correct. It is true people in South Africa are broadly speaking free to adhere to religious beliefs of their own choice, and we have probably represented in the country most of the main religious systems of the world, both primitive and modern. Christianity, Judaism, Islam, Hinduism, Confucianism, the ancestor-cult - all these and more probably have their adherents in the country. But of course cutting across all these ...
these is the colour bar, which prevents fellow-believers, if they happen to be of different colours, from worshipping together in the same church, as Mr. Drum found in his visits to various European christian churches. Certainly it is doubtful whether any Christian Church which proclaimed itself to be open to all believers of all races on terms of complete equality would be permitted to have that religious freedom for very long.

**FREEDOM OF ASSOCIATION**

The Commission affirms that the Bantu have freedom either by themselves or together with members of other groups to form all kinds of association. Freedom of association is a very important right which is treasured very highly in all democratic and civilised countries. But in a country like South Africa it is doubtful whether this right can be said to exist when there are so many laws or regulations which are calculated to interfere with the exercise of this right. At the present time meetings of Africans, except for religious or domestic purposes, are frowned upon in both rural and urban areas. Permits have to be obtained in order to have meetings and officials seem to have complete discretion to refuse or grant such permits. Where a permit is obtained the gatherings concerned are attended by members of the Special Branch who take notes of all speeches. The Commission make mention of the African National Congress but this organisation has been virtually declared an illegal organisation. Both at branch, provincial or national level, the A.N.C. is hampered in its activities by government interference. The same
applies to other organisations such as Teachers' organisations. Unless an organisation proclaims itself to be pro-government or neutral in its policy, it is treated with suspicion and its members are liable to be victimised for their views, and that without any charges being preferred against them. It is obviously a mockery to speak of freedom of association if by that is meant that the association must always be in agreement with government policy. The primary object of freedom of association is to make possible the free exchange of ideas, to make possible free inquiry into the validity of all ideas and to make possible free criticism, both constructive and destructive. Only in that way can the truth be advanced and progress made in any aspect of life.

The Commission asserts, as previously indicated, that the Bantu possess all the rights mentioned above and concludes with the statement that "as regards these wider civil rights there is no differentiation between the various population groups and that in this respect the Bantu are substantially in no worse position than the other population groups". This in a country in which we have on the Statute book a law - the Separate Amenities Act - justifying any differentiation which may be decided upon with regard to the various population groups. Differentiation is part of the law of the country, but the Tomlinson Commission asserts that it does not really exist and that where it exists in regard to other than wider civil rights, it does not place the Bantu in a substantially worse position than the other population groups. When, one may ask, is a worse position not substantially worse? The implication seems to be
on mere ipse dixit of the white man!'.

What has been said so far refers to the present position of the Bantu in the country as a whole. As regards the future it seems to be intended that as the Bantu national homes are developed the bulk of the Bantu should be transferred to them and should there enjoy a measure of local autonomy, with ultimately something approaching provincial status for the Bantu regions. Presumably within these areas the Bantu would enjoy all the civil rights which they are denied in the non-Bantu areas, but even on this point there is no explicit assurance. The Bantu areas are expected to be firmly under the control of the white government, and just as the rights of the Bantu in the present day are of somewhat doubtful significance, so it would seem that the Bantu national home will be areas set aside for Bantu occupation, but in which the Bannskap of the white man will be no whit less than in the so-called European areas. As for the 6 million Bantu who will still be within the white areas by the year 2000, it would appear that the only right they will be guaranteed is the right to work for the white man. Any demand for anything more than that will be met with the reply that such rights must be sought in the so-called Bantu national homes.

It seems to me that whatever way one looks at it, one cannot help coming to the conclusion that the notion of civil rights of the Bantu attainment of full citizenship status, and not a second or third class citizenship status, the struggle may be long, but what of that? Others have been longer but they have been won in the end.
They need make no apology for doing so. We are not opposed to the white man or anyone else claiming for themselves in the land which they have made their home all the fundamental rights to which as human beings they are entitled. What we cannot concede is that this is a claim of which the white man has a monopoly.