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*Canadian-African Human Rights Engagements: A Literature Review and an Agenda for Future Research*

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# Evaluating Canadian and South African Collaborative Human Rights Initiatives: A Preliminary Analysis and Research Agenda

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# EVALUATING CANADIAN AND SOUTH AFRICAN COLLABORATIVE HUMAN RIGHTS INITIATIVES: A PRELIMINARY ANALYSIS AND RESEARCH AGENDA

MOSES RETSELISITSOE PHOOKO\*

## Abstract

South Africa's now defunct, autocratic apartheid government was based on minority rule, racially discriminatory laws, and disregard for the fundamental human rights of almost all black people. At that time, Parliament was supreme and could do anything that it wished, including enacting laws that denied the vast majority of the population from the right to vote. This regime lasted until the 1990s when parliamentary supremacy was replaced by constitutional supremacy. The adoption of the Interim Constitution of South Africa in 1993 eventually paved way for, among other things, respect for the fundamental human rights of all peoples without any distinctions as to race. Importantly, the 1993 Constitution contained an enforceable Bill of Rights and proclaimed the supremacy of the Constitution. These provisions found their way in the 1996 Constitution. This Constitution was "developed using the Canadian Charter of Human Rights and Freedoms as a template" inspiration from its provisions. This paper seeks to study the human rights engagements between the Canadian government and Canadian NGOs with both government and civil society in South Africa from the early 1990s to date.

**1. HUMAN RIGHTS ARE CLAIMS OR ENTITLEMENTS** that belong to every human being, in general and without any distinctions, such as race and gender.<sup>1</sup> They are not gifts from the government and they cannot be arbitrarily limited without legal justification.<sup>2</sup> The state has an

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<sup>1</sup> John Ernest Hobsbawm, "Labor and Human Rights" in EJ Hobsbawm ed, *Worlds of Labor: Further Studies in the History of Labor* (London: Weidenfeld and Nicolson, 1984) 297.

<sup>2</sup> See e.g. *Constitution of the Republic of South Africa, 1996*, s 36, online: South African Government <[www.gov.za/documents/constitution-republic-south-africa-1996](http://www.gov.za/documents/constitution-republic-south-africa-1996)>.

obligation to protect the rights of its people both immediately<sup>3</sup> and/or progressively according to the available means.<sup>4</sup>

The Canadian human rights movement has evolved over the years and the protection of human rights is now a prominent part of the policy and practice agendas of the state and society alike. Although Canadians started engaging with human rights issues way before the 1970s, it was specifically during this period that the struggle for human rights (in those terms) gained momentum, among other things, as a result of the replacement of the principle of parliamentary supremacy by human rights discourse.<sup>5</sup> It is important to mention that the principle of parliamentary supremacy was also a pillar of the apartheid regime in South Africa.<sup>6</sup> Despite its many important (and even critical) shortcomings, the rights of everyone in Canada, including Aboriginal peoples and visible minorities, are now better protected by the Canadian human rights system. It is also significant to mention that the current Canadian attitude towards the promotion and protection of human rights in South Africa is itself an even more recent phenomenon. Despite the fermentation of human rights within Canada in the 1970s and 80s, Canada did not play a positive role during that era in regards to the human rights struggle in South Africa. In 1962, Canada was reluctant to support international intervention in South Africa against the apartheid regime's brutal and gross human rights violations against the vast majority of the black

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<sup>3</sup> It is said that civil and political rights are realized immediately, as they do not require funds from the government. On the other hand, it is said that socio-economic rights are realized on a progressive basis, as they depend on the availability of funds.

<sup>4</sup> *Government of the Republic of South Africa and Others v Grootboom and Others*, 2001 (1) SA 46, 2000 (11) BCLR 1169 at para 21.

<sup>5</sup> Dominique Clément, Will Silver & Daniel Trottier, *The Evolution of Human Rights in Canada* (Ottawa: Canadian Human Rights Commission, 2012) at 4, online: <[www.chrc-ccdp.ca/sites/default/files/ehrc\\_edpc-eng.pdf](http://www.chrc-ccdp.ca/sites/default/files/ehrc_edpc-eng.pdf)>.

<sup>6</sup> Cheryl Saunders & Anna Dzedzic, "Parliamentary Sovereignty and Written Constitutions in Comparative Perspective" in Asanga Welikala, ed, *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives, 2012) online: <[republicat40.org/wp-content/uploads/2013/01/Parliamentary-Sovereignty-and-Written-Constitutions.pdf](http://republicat40.org/wp-content/uploads/2013/01/Parliamentary-Sovereignty-and-Written-Constitutions.pdf)>.

population.<sup>7</sup> The apartheid government suppressed the fundamental human rights of almost all black South Africans.<sup>8</sup> At the time, the Canadian government viewed this brutal suppression of human rights as an internal affair that required no external intervention. Canada went so far as to rely on the principle of state sovereignty in order to justify its non-interference in the domestic affairs of South Africa.<sup>9</sup> Further, and as correctly noted by Yves Engler:

... Pierre Trudeau's government (1968-1984) sympathized with the apartheid regime [and] not the black liberation movement or nascent Canadian solidarity groups. Throughout Trudeau's time in office, Canadian companies were heavily invested in South Africa, enjoying the benefits of cheap black labor....<sup>10</sup>

This observation cannot be taken lightly, as the vast majority of black South Africans were forcibly removed from rural areas to provide cheap labor in the solid mineral mining industry and other sectors in Johannesburg. Even during the late 1970s, as it became clear that apartheid was no longer sustainable and that signs of both liberation and civil war were imminent, Canada continued to sell weapons to the apartheid regime. In Engler's words,

[o]fficially, the Trudeau government supported the international arms embargo against South Africa. But his government mostly failed to enforce it. As late as 1978 Canadian-government financed weapons continued to make their way to South Africa. Canadair (at the time a Crown company) sold the apartheid regime amphibious water bombers, which according to the manufacturer, were useful particularly in internal troop-lift operations.<sup>11</sup>

It is important that this history not be forgotten. For as George Santayana once proclaimed, "those who cannot remember the past are condemned to repeat it."<sup>12</sup> All in all, Canadian foreign policy favored state sovereignty to the detriment of human rights in South Africa.<sup>13</sup>

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<sup>7</sup> See Clément, Silver & Trottier, *supra* note 7 at 14.

<sup>8</sup> AZAPO, *supra* note 1.

<sup>9</sup> Clément, Silver & Trottier, *supra* note 7 at 14.

<sup>10</sup> Yves Engler, "Canada's Role in the Apartheid Struggle" *Counterpunch* (10 December 2013), online: <[www.counterpunch.org/2013/12/10/canadas-role-in-the-apartheid-struggle/](http://www.counterpunch.org/2013/12/10/canadas-role-in-the-apartheid-struggle/)>.

<sup>11</sup> *Ibid.*

<sup>12</sup> George Santayana, *The Life of Reason: The Phases of Human Progress* (Auckland, New Zealand: The Floating Press, 2009) at 312.

<sup>13</sup> Paul Gecelovsky, and Tom Keating, "Liberal Internationalism for Conservatives: The Good Governance Initiative" in Nelson Michaud & Kim Nossal, eds, *Diplomatic Departures: The Conservative Era in Canadian Foreign Policy, 1984-93* (Vancouver: UBC Press, 2000) 194.

However, this is no longer the position. The Canadian government, both as a government and via other agents, has supported several human rights initiatives in South Africa since the collapse of the apartheid regime.<sup>14</sup> For example, the Canada Fund for Local Initiatives (CFLI) financially supports various human rights initiatives in many African countries, including South Africa. The aim of this article is to offer a preliminary analysis of Canadian and South African human rights engagements post-1994 and to call for further research in this area. A desk review method was adopted for this preliminary work and it suggests that there is a dearth of literature on this topic. Therefore, it will be necessary in the future to conduct much deeper and broader research on this topic, utilizing both qualitative and quantitative methods.

## **II. SOUTH AFRICA'S HUMAN RIGHTS CULTURE PRE- AND POST-1994: A BRIEF OVERVIEW**

Prior to 1994, South Africa's human rights culture was based on oppressive racial minority rule and harsh discriminatory laws.<sup>15</sup> The government did not respect the human rights of black people. In order to ensure that apartheid became a reality, the government established "homelands", such as Venda and Bophuthatswana along language lines.<sup>16</sup> This became known as a divide and rule system. The aim of the homelands was essentially to strip black South Africans of their citizenship

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<sup>14</sup> See Government of Canada, High Commission of Canada in Kenya, *Canada Fund for Local Initiatives*, online: <[www.canadainternational.gc.ca/kenya/development-developpement/cfli-fcil.aspx?lang=eng](http://www.canadainternational.gc.ca/kenya/development-developpement/cfli-fcil.aspx?lang=eng)>.

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<sup>15</sup> *Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others* 1996 (4) SA 672 at para 1, 1996 (8) BCLR 1015 [AZAPO].

<sup>16</sup> Jeffrey Butler, Robert I Rotberg & John Adams, *The Black Homelands of South Africa: The Political and Economic Development of Bophuthatswana and KwaZulu* (Berkeley: University of California Press, Oxford, 1978) at 1.

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in South Africa as a whole. In turn, this required them to carry passports in order to re-enter South Africa from their assigned homelands. This resulted in the untold suppression of their human rights.<sup>17</sup> Freedom of expression, assembly, and security did not exist in any significant way under this apartheid regime, and privileges were channeled towards the benefit of the small minority white community. The apartheid government was supreme and it could do anything that it deemed necessary to preserve its autocratic rule. This changed, however, with the onset of the new constitutional dispensation, a change that was firmly ushered through the adoption of the Constitution of the Republic of South Africa, 1996.

The Constitution contains a Bill of Rights and it “is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”<sup>18</sup> This was a major milestone, given South Africa’s history of injustice where the government of the time could do virtually anything it wished, including killing or torturing its own people at will. It is remarkable that this Constitution was developed using the Canadian Charter of Rights and Freedoms as a template.<sup>19</sup>

Given the transition from a repressive regime to a constitutional democracy, there became a need to introduce various human rights initiatives to ensure that rule of law, democracy, and human rights would prevail. It is in this regard that foreign countries such as Canada deemed it necessary to partake in human rights initiatives in South Africa and to support projects that advance human rights. The aforementioned initiatives are briefly discussed below.

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<sup>17</sup> Sandra Liebenberg, *Human Development and Human Rights South African Country Study* (Geneva: UNDP, 2000) online: <[hdr.undp.org/sites/default/files/sandra\\_liebenberg.pdf](http://hdr.undp.org/sites/default/files/sandra_liebenberg.pdf)>.

<sup>18</sup> *Constitution of the Republic of South Africa, 1996*, *supra* note 4, s 2.

<sup>19</sup> David J Hornsby, “Canada’s (Dis) Engagement with South Africa” in Rohinton Medhora & Yiagadeesen Samy, eds, *Canada-Africa Relations: Looking Back, Looking Ahead* (Waterloo: Centre for International Governance Innovation, 2013) 43.

### III. SOME SOUTH AFRICAN/CANADIAN HUMAN RIGHTS ENGAGEMENTS

The preliminary desk research conducted prior to authoring this short article identified four human rights initiatives that have been funded by the Canadian Government or its agents, via the Canadian Fund for Local Initiatives CFLI.<sup>20</sup> These initiatives include the following;

- **Promoting social cohesion through conflict resolution mechanisms and peace building initiatives**

This project, through the Consortium for Refugees and Migrants in South Africa, trained religious leaders in three provinces (Limpopo, Eastern Cape and Kwa-Zulu Natal) on, among other things, conflict resolution and peace building mechanisms, and engagement in advocacy to promote the welfare of non-nationals.

- **Developing a transparent and robust internal control system to enhance community participation and good economic governance**

This project assisted in the ability of fishers based in the Western Cape to actively participate in the marketing and selling of their catches. This improved “the sustainable use of local marine resources.”<sup>21</sup>

- **Rights and Responsibilities training for refugees and other stakeholders in the Eastern-Cape**

Through the Refugee Rights Centre, this project contributed to creating a just and rights-based environment for migrants, refugees, and asylum seekers in the Eastern Cape Province. This was done through training sessions on the rights and responsibilities of refugees and the obligations of government departments flowing from domestic and international refugee law.

- **Community building through strengthening Lesbian, Gay, Bi-sexual, Transgender and Intersex (LGBTI) rights in Kwa-Zulu Natal and Limpopo<sup>22</sup>**

The Gay and Lesbian Network was supported in order to increase the plight of LGBTI people given their vulnerability in most of South Africa. “Corrective rape” and brutal killing of lesbians and other such vulnerable groups remain major challenges in South Africa.

An NGO, known as the Waterberg Welfare Society, was funded to advance the rights of LGBTI through community engagement in the Province of Limpopo. In particular, the

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<sup>20</sup> See Government of Canada, High Commission of Kenya, *supra* note 16.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

program increased awareness about human rights discourse, with specific reference to LGBTI persons and the need to tolerate diversity.

▪ **HIV/AIDS**

Canada has supported projects that have been aimed at reducing new HIV/AIDS infections. Further, initiatives that enhance access to HIV/AIDS prevention methods by both men and women are also supported. The support is offered to both government agencies and civil society organizations in South Africa.<sup>23</sup>

▪ **Young researchers' leadership program to promote human rights and youth participation in democratic processes and environmental sustainability**

The South African Institute of International Affairs was funded by the Canadian government to engage youth on issues involving environmental sustainability research and policy making.<sup>24</sup>

▪ **Improving the response to rape and gender-based violence through response systems and training**

The Viva Foundation of South Africa received funds for the development and distribution of a community-based system to prevent sexual violence. This included training on gender equality. The project further educated women and girls in the Alasko community in Mamelodi to learn and understand their rights. Additionally, it assisted them in preventing sexual and gender-based violence.<sup>25</sup> The Masisukumeni Women's Crisis Centre was also funded to educate women about how to "prevent sexual violence and early marriage through public awareness education and advocacy."<sup>26</sup>

These projects are funded on a rotational basis. This means that the CFLI targets community-based projects in various provinces and provides support to them.

Such support from Canada for human rights-related initiatives in South Africa has, among other things, assisted in ensuring that care is provided to "more than 100, 000 patients," including children and youth, through support for local South African HIV/AIDS initiatives.<sup>27</sup> This has contributed significantly to the lived enjoyment of human rights in South Africa. Additionally,

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<sup>23</sup> See Government of Canada, Global Affairs Canada, *South Africa*, online: <[www.international.gc.ca/development-developpement/countries-pays/southafrica-afriquesud.aspx?lang=eng](http://www.international.gc.ca/development-developpement/countries-pays/southafrica-afriquesud.aspx?lang=eng)>.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> See Government of Canada, Global Affairs Canada, *supra* note 23.



several community organizations in rural areas have been financially supported by Canada and this has resulted in HIV/AIDS care programs providing help to more than 1.9 million people. Support was also channeled through the Teddy Bear Clinic<sup>28</sup> (an NGO) for the development of a “manual for mental health professionals” based in rural areas.

These initiatives are a testament that Canada’s approach to human rights struggles in South Africa has changed and moved away from its earlier tacit support for the brutal apartheid regime in South Africa. It is also important to indicate that the human rights engagements between Canada and South Africa appear to be one-sided, in that it seems to only flow from Canada toward South Africa, and hardly (if at all) in the other direction. South Africa is thus on the receiving end of these engagements. Although Canada is one of the world’s most developed countries and is therefore in a position to assist developing countries such as South Africa, countries such as South Africa should approach such types of support with. The support provided by foreign governments to countries like South Africa should be genuine and should not be used as a means of acquiring something in return, such as mineral mining rights. Unfortunately, it has been alleged that some Canadian companies that operate in South Africa have been in the habit of engaging in human rights violations in South African.<sup>29</sup>

What is more, the literature has revealed that Canada mainly provides *financial* support to these human rights initiatives and projects with which it has been involved in South Africa. It is submitted, however, that Canada’s support should not be focused exclusively on the provision of funding to these organizations. Canada can also cooperate with these groups in other ways, such

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<sup>28</sup> Teddy Bear Clinic has been instrumental in advancing the rights of the abused. See *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another*, 2013 (12) BCLR 1429 (CC), 2014 (2) SA 168 (CC).

<sup>29</sup> See Business and Human Rights Resource Centre, *Anvil Mining Lawsuit (re Dem. Rep. of Congo)*, online: <[business-humanrights.org/en/anvil-mining-lawsuit-re-dem-rep-of-congo](http://business-humanrights.org/en/anvil-mining-lawsuit-re-dem-rep-of-congo)>.

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as through the development of exchange programs to empower personnel of NGO organizations through training on topics such as monitoring compliance with human rights obligations. Additionally, Canada may also assist by ensuring that Canadian companies doing business in South Africa protect human rights through a joint monitoring mechanism that is established and agreed to by the two countries. In any case, these organizations should also seek to learn to become independent and to devise means to obtain funds locally and sustain themselves. The South African government should also play a role in ensuring that these civil society organizations continue to receive some local financial support. It would be a futile exercise if all these organizations were to become dependent on donor funding, only to collapse once the donors pull out.

### **IV. PRELIMINARY CONCLUSION**

This preliminary desk study has revealed that despite Canada's reluctance to intervene in South Africa to help oust its then ruling apartheid regime which massively violated the fundamental human rights and freedoms of almost all black people in South Africa, Canada's position has moved in a more positive discretion since the collapse of apartheid in 1994. This is evident from various human rights initiatives that are funded by the CFLI in South Africa to, among other things, advance the rights of women, LGBTI persons, and refugees.

The preliminary desk study has also revealed that whilst the two countries at issue have worked together since the early 1990s toward the advancement of human rights in South Africa, these engagements have been under-documented and under-studied. They have also lacked sufficient visibility. It is therefore imperative to conduct further studies aimed at documenting and analyzing engagements and evaluating their actual impact on the ground.