

Concept Paper
Using a Human Rights Vision to Build the Guild and Social Movements

Introduction:

The NLG proudly states as its mission: “We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization that shall function as an effective political and social force in the service of the people, **to the end that human rights shall be regarded as more sacred than property interests.**

Rarely, however, do we define what we mean by human rights. Similarly we have not analyzed fully whether or how embracing a human rights vision can make us **in reality** an effective political and social force in service of the people. Nowhere are these facts more evident in the NLG’s lack of consistent program to promote fundamental economic rights which by their nature are fundamental human rights.

This paper is designed to stimulate discussion and action toward building social movements and the NLG by articulating a more coherent human rights vision and program which embraces economic rights as human rights.

We Need to Be Clear When We Invoke the Primacy of Human Rights That We Are Referring to Human Rights in the Broadest and Indivisible Sense

Although most NLG members are probably aware that human rights are broader than rights secured in the Bill of Rights, it is probable that most NLG members, like most lawyers and Americans, are simply unaware of the provisions of the Universal Declaration of Human Rights (UDHR) ,the International Covenant for Civil and Political Rights, (ICCPR) and the International Covenant for Economic Social and Cultural Rights (ICESCR). To the extent NLG members are aware of the UDHR, ICCPR or the ICESCR, they are generally unsure of the nature

of these instruments and whether one can make arguments, either in courts or to the general public which popularize these rights or the duties of government institutions to strive for their realization.

As noted above, nothing in the NLG's mission statement describes human rights as broadly as they are described in the UDHR, the ICCPR or ICESCR. For example, Article 25 of the UDHR states: "Everyone has the right to a standard of living adequate for health and well-being of himself and of his family including food, clothing, housing medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." Article 23 states: "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) 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. (4) Everyone has the right to form and to join trade unions for the protection of his interests."

The provisions of the ICESCR which flesh out these rights more specifically are contained in Part III of the Covenant and set forth in endnote 1.¹ The only provision of the ICCPR which touches on economic rights is the provision guaranteeing the right to form trade unions. It is set forth in endnote 2.² All these instruments recognize the right to be free to organize to secure the rights they establish and to be free from all forms of discrimination. Moreover, they impose duties on states to ensure their progressive realization.

Thus, when we say that the NLG views human rights as more sacred than property interests, we need to articulate the breadth of the of human rights we are referring to and to make clear we are not simply referring to civil and political rights, but to the fundamental rights economic social and cultural rights also necessary for all human beings to live in dignity and fulfillment.³

The Powerful Nature of A Human Rights Vision

A human rights vision is powerful and empowering. Using the principles in these instruments and others (such as the Convention on Elimination of All Forms of Racial Discrimination (CERD), Convention on the Rights of the Child (CRC) , the Convention on the Elimination of Discrimination against Women, (CEDAW), and Convention on the Rights of Persons with Disabilities (CRPD), we are able to argue that government has an affirmative duty to legislate, appropriate and adjudicate so as to realize these rights. For all suffering class, race or other oppression, it always has been a powerful revelation that a universal consensus has existed since 1948 on a set of principles which are aimed at promoting the fundamental basic freedoms, economic social and cultural rights they most need. The central kernel of all the rights established in these instruments is the recognition fo human dignity that is also reflected in all progressive social movements. While these instruments do not address the nature of any economic system through which to realize these rights, this kernel provides a measure for any economic or political system. The US Human Rights Network – along with many other organizations – has found the use of a Human Rights vision/framework to be effective. As noted on its website: “At this moment in history the notion of applying a universal human rights framework to the United States seems to be striking a chord with activists around the

country. Those working for social justice in the U.S. who have been exposed to this approach are finding that a human rights umbrella offers promising answers to the lingering doubts they have long held about the U.S. and the ability of domestic single-issue movements—often working in isolation—to create long-term change.”

Cathy Albisa, Director of the National Economic and Social Rights Initiative (NESRI) and Ajamu Baraka spoke at the NLG convention in Detroit and supported using a human rights vision in our political and legal work.

Do The Rights In These Instruments Have the Force of Law?

The NLG, and other progressive groups such as the USHRN and NESRI, and now the Bringing Human Rights Home (BHRH) network, have not only embraced a human rights vocabulary, but have posited many arguments that these Human Rights Instruments should have the force of law and used in courts or legislatures to affect rulings and policy.

The Universal Declaration of Human Rights was adopted unanimously by the United Nations on December 10, 1948. The document was not written as a treaty, and although the rights contained in the Declaration have been described as aspirational norms, they are still norms. The treaties which were to codify those norms, the ICCPR and ICESCR, were produced in the Covenants of 1966. There are arguments that the rights contained in these instruments have attained that status of customary international law. Customary international law is law which is so universally accepted that compliance is a legal, not just a moral, duty. One way to determine whether certain rights have attained customary international law status is whether they are universally recognized in treaties. Both the ICCPR and the ICESCR have been either signed

or ratified by almost all countries in the world. This means that a strong argument can be made that even though the US signed and ratified the ICCPR with certain Reservations, Understandings, and Declarations (RUDS), and has only signed, but not ratified, the ICESCR that its provisions are binding regardless of ratification.⁴

Whether these rights have the force of law or not, they should provide a strong interpretive tool for us to argue in cases regarding the interpretation of law.

Human Rights Vision and the NLG's Economic Rights Program

Wilhelm Joseph and Peter Sabonis, told us at the NEC that the Maryland Legal Aid Bureau, after hearing its client base articulated needs for affordable housing and health care and living wage jobs, decided to use a human rights framework/vision in its legal work. They met with Cathy Albisa and started to train their lawyers to use human rights vocabulary in the articulation of their clients' rights.

The work in Maryland is instructive. We seek to unite our members to “**function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests.**” If we are to embrace the broad and indivisible definition of human rights to include economic rights, then we must look at how we can develop program to **actually function as an effective political and social force.** This is especially true now when as a result of the economic crisis, the downwardly mobile middle class, (which was the social base for the rise of fascism in the 30's) has begun to turn to right wing populism with its anti-immigrant and anti tax movements.⁵ Although these “populist movements” are fronted by corporate interests which do not want any reform agenda, as it will

cut into profits, they have mobilized the people who do not think the government should have a role to play in providing for any of the basic needs of the people.⁶

Right now, the NLG does not have a comprehensive economic rights program to address the broad needs of the people we serve and to whom we can articulate a broad human rights vision, i.e to affordable health care, housing, living wage jobs.

We have a Labor and Employment Committee. While this committee addresses the rights of people to form and join unions it does not address basic human economic needs. We have the Sugar Law Center for Economic and Social Justice which addresses wage flight, wage theft and has addressed issues of Corporate welfare. Although we have members who work at legal services they are not promoting an NLG program in support of economic rights as human rights. Thus, the NLG has people and committees working to address pieces of the impact of job loss and attacks on labor rights, we do not have a national coherent program on such issues as affordable health care, housing or promoting living wage jobs. We do not have a program to ensure legal resources are available to those who have lost jobs and homes in the economic crisis. We have not done an analysis of the causes of the economic crisis, or the impact the massive upward transfer of wealth has had on our ability to actually develop program to remedy the economic crisis for the people.

With the decision in *Citizens United* giving large corporations more power to elect persons to promote a corporate agenda, time is of the essence. That is, we have to remedy the fact that we have no comprehensive program which actually addresses the major economic rights stated in the UDHR and the ICESCR.⁷ While many NLG members are present in legal services programs the work of the Maryland Legal Services which is putting this vision into

practice is just beginning and, thus, has not been diffused throughout legal services networks. They have also done this in the absence of the NLG either suggesting or promoting this effort.

What We Need To Do To Build This Program and Be an Effective Social and Political Force to Promote Economic Human Rights?

Although the visioning committee is to address an overall strategic plan for a vision for the NLG, as a whole, articulating a human rights framework for an economic rights program should be a first priority.

We cannot start projecting a human rights framework or vision for anything we do unless we have a critical mass of lawyers, law students and legal workers who are familiar with all of the international instruments and can act as change agents. This means that we first have to educate members of the NLG about these instruments so we can use them most effectively in our work.

How can we do this? There are some historical examples. For example, in 1975-1976 the Senate was being pushed to pass a comprehensive Crime Bill (a precursor to the PATRIOT Act). The Bill was called S.1. In response to a call, primarily from NCARL (the National Committee Against Repressive Legislation), the NLG began a systematic education program where each chapter was asked to develop a program to be part of a coordinated national committee and effort to study the Bill, develop coalitions to oppose the Bill, and to try to kill it. John Quigley wrote an in depth analysis of the Bill and how it undermined basic constitutional rights which we used to recruit a broad opposition coalition, and used it effectively to defeat that Bill.

While it is not 1975, and the NLG is not as large or resourced as we may have been in the 70's the approach should be the same. We must develop a broad comprehensive education campaign to ensure that all NLG members have a working knowledge of the provisions of the UDHR, the ICCPR the ICESCR as well as other human rights instruments, CERD, CEDAW, CRC etc. This is essential because we cannot develop a human rights vision for any of the work we do without a working knowledge of what is in these instruments. Whether we use information already developed by Micklejohn, USHRN, NESRI and others, or we ask our law professors to be the instructors, a first step to organizing this is to use our network of students RVPs and committees to ensure as many NLG members as possible conversant with these principles. The second step, which will actually occur in tandem with the educational process, is to recruit people from each chapter, from legal services organizations and law schools and throughout the NLG to form a national committee to promote this work. We should make a major push to recruit legal services lawyers and legal workers into the NLG and to this effort. Showcasing the approach taken by Maryland Legal Aid, and perhaps recruiting Wilhelm Joseph and Peter Sabonis to help spearhead this effort, is also a necessary component. This approach may ensure that legal services attorneys who have felt the NLG has not spoken to these issues will rejoin the NLG. Further in tandem with the education and recruiting we should be surveying the communities we serve on the economic issues most important to them as was done by Maryland Legal Aid. We should also consider a major role for the Sugar Law Center in this effort as well as seeing if Steve Bingham who previously chaired the NLG's Economic Rights Task Force is willing to become active again. We should engage the existing coalitions demanding increases in legal services spending and removing restrictions from legal services as

to the types of cases they can handle. A program rooted in securing economic rights could be a good fundraising tool, perhaps starting with a direct mail campaign.

Secondly, we need to engage in building a united front of allies to push a set of economic demands, consistent with a human rights vision to try to develop the kind of progressive frame which will win over the center and isolate the right.⁸ The need for left/progressive groups to articulate a progressive vision and to coordinate this as much as possible is critical in order to go on the offensive. There are some historical precedents for trying to do this. For example, in the early 1980's when the UAW, alarmed at the Reagan Administration's anti labor policies called for the creation of a "Progressive Alliance." Unfortunately the union had not thought through any particular vision for how this alliance would operate after its founding meeting in Detroit, in which hundreds of progressive groups participated, including the NLG. Therefore, the Alliance folded into the Leadership Conference for Civil Rights which included most of the groups which came together for the Alliance meeting.

The NLG is in a unique position to help bring a progressive alliance together and to help think through a popular program. This is because we are national, we are activists, we are pluralistic, we have legal skills, and we have many leaders with experience in coalition building and work.⁹ The committee should consider the elements of a bold program which should include bold economic demands, such as the creation of a large number of Federally funded jobs. Other demands include the right to an effective remedy as required by the UDHR by establishing the right to counsel in civil cases. Demands for affordable housing and healthcare can be part of the mix as well.

Conclusion

The ideas contained in this concept paper are designed to start a discussion on an approach to organizing a major program on economic rights for the NLG. It contains an **“education-organizing, united front for specific demands”** model in which a human rights vision is the frame through we to articulate the issues. This model is useful to any program the NLG seeks to engage in and which can be used to promote other aspects of our work, such as organizing against the effects of *Citizens United*, opposing war, and any activity in which it is necessary to **ensure that we are able to make our desire that human rights shall be regarded as more sacred than property interests a reality.**

ENDNOTES

1. Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

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(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal

pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present

Covenant;

(b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his

employment to an appropriate higher level, subject to no considerations other than those of seniority

and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as

remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to

the rules of the organization concerned, for the promotion and protection of his economic and social

interests. No restrictions may be placed on the exercise of this right other than those prescribed by law

and which are necessary in a democratic society in the interests of national security or public order or

for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the

latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by

law and which are necessary in a democratic society in the interests of national security or public order

or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by

members of the armed forces or of the police or of the administration of the State. 3. Nothing in this

article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures,

including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and,

when applicable, legal guardians to choose for their children schools, other than those established by

the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary

education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the

plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific,

literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

2. Article 22

1. 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

3. In the international arena it is common to say that civil and political rights, and economic social and cultural rights are indivisible. The reason there are two Covenants written to implement the UDHR was because the US refused to endorse a UN proposal to create one document as it viewed any reference to economic rights as something the socialist world was pushing for which was inconsistent with its Cold War policies.

4. While signed and ratified treaties are substantive law pursuant to Article VI section 2 of the US Constitution, the doctrine of *pacta sunt servanda*, which was articulated in the Vienna Convention on Treaties of 1969, requires a signer of a treaty to comply with its provisions of agreements it signs even before ratification. That is, until the US Senate actually repudiates the treaties we have signed by affirmatively voting it down (as opposed to not acting) the US is bound to follow its provisions.

5. Bill Fletcher in his most Recent Speech to the DSA, called “It’s Time for the Left to Get Serious” described right wing populism as follows:

Let me lay out the basic right-wing populist narrative: We once lived in a society of rugged individuals. If you - generally speaking, a white person - worked hard, you would succeed. If you put in a good day's work, you would be rewarded. But, you see, we - white people - were betrayed. "Our" lives are falling apart. It was one thing for blacks to fall deeper into poverty, or Latinos to be on the margins, but it was not supposed to happen to us. And so, we must find out and identify who betrayed us. Jews are one group; racial minorities are another. And so the story goes.

The virulent racism inherent in right-wing populism is evident today in the anti-Obama madness that has been unfolding. Now there is much to be critical of when it comes to the Obama administration, but the nature of the right-wing assault speaks to the irrationalism of right-wing

populism. Whether it is the so-called Birthers, or the healthcare debate, we see it again and again. No concern regarding the truth or facts, but instead playing to fears.

The election of Obama completely unsettled large segments of white America. While their lives were collapsing, how was it possible that a black American would be elected president of the USA? It was not supposed to happen that way.

Right-wing populism plays on fears but it also plays on real concerns. Obama's main focus has been on securing capitalism. The bailouts of Wall Street, begun under Bush, continued. Yet with these bailouts there were precious few controls on the greed and avarice of Wall Street. The sickening efforts by Wall Street to continue its huge salaries and bonuses flaunted the bailouts and made many people, quite justifiably, furious. On top of that, of course, the wars continue, with resources that should be used to rebuild the U.S.(and save the planet) being devoted to aggression.

But there is something else that has been happening that particularly unsettles right-wing populists. While Obama is concerned about changing the image of the U.S. empire, he altered U.S. foreign policy in some ways that drives the political Right crazy. Take, for instance, his speech to the Muslim world and the apology he offered regarding the 1953 coup in Iran. The president openly acknowledged the U.S. role in that coup, i.e., in the overthrow of a democratic, sovereign government. The problem, however, is that Obama broke the cardinal rule: the U.S. does not apologize for anything, irrespective of whether it is wrong.

6. This paper is not the place to expound on the issue of the different view of the role of government espoused by left/liberal members of US society and the right wing conservative sectors of US society. Suffice it to say, historically those who claimed they opposed “big government” were not opposed to a big military or rules that controlled women’s reproductive lives. They were in fact opposed to being taxed for social spending which was historically viewed as programs for people of color. Thus, opposition to “big government” has always had some racism at its base.

7. To the extent there is a push for ratification of the ICESCR, this push has come from a working group in the International Committee which in conjunction with Micklejohn Civil Liberties Institute and Ann Ginger, developed a tool kit for getting local governments to pass resolutions to urge the Senate to ratify the ICESCR. This tool kit is on the Seattle Convention CD.

8. The strategy of the Obama Administration which demobilized its mass organization after the election, is to ignore the Left because they have no where else to go, to try to consolidate the center and conciliate the Right. The effect of this was to embolden the Right, and by allowing them through their news outlet FOX news, to build a mass movement against the progressive aspects of Obama’s programs. In the health care debate this strategy kept the single payer movement away from the table from the outset with the result that the legislation is a gift to large insurance companies.

9. We have in the past engaged in this kind of coalition-united front work. For example, during the late 1970's the NLG was active in supporting affirmative action and worked on efforts to overturn the *Bakke* decision. The NLG developed a working alliance with all minority bar associations and organized committees in most states to plan a major demonstration. Out of this work the NLG, the NCBL and CCR formed the Affirmative Action Coordinating Center which lasted for several years in the 1980s. As another example, in the mid 1990's when the NAACP was under the leadership of Ben Chavis, the NLG and NCBL approached him about convening a coalition to build a Civil Rights Human /Rights Agenda for the US. Several meetings of key allies occurred a paper was drafted, but Chavis was deposed from NAACP leadership for unrelated reasons, and Haywood Burns who was a leader of the effort died in South Africa. The effort to promote this united front languished thereafter.