

**WOMEN & HUMAN RIGHTS
DOCUMENTATION CENTRE****NEWSLETTER**

QUARTERLY PUBLICATION OF WOMEN & HUMAN RIGHTS PROJECT, CLC, UWC

DEC 1998 / JAN 1999

VOL.2 NO. 4

A NEW DIVORCE COURT FOR CAPE TOWN

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Cape Town recently saw the initiation of a Divorce Court Pilot Project, aimed at the eventual development of a Family Court Centre.

Previously, the jurisdiction to grant a divorce was held by both the High Court and the Black Divorce Court. Whereas everyone could approach the High court for an order of divorce, the same did not apply to the Black Divorce Courts: its jurisdiction was determined according to race. As a result of the introduction of the Constitution, all persons started using these courts. A need was identified for divorce proceedings which would be less formal and less costly than High Court proceedings, and would at the same time be able to address most (if not all) of the complex issues affecting the divorcing parties and their children.

The Cape Town Divorce Court Pilot Project was introduced as the first step towards addressing this need. It is envisaged that the court will eventually, as a Family Court Centre, deal with all matters involving the family, including issues arising under the Domestic Violence Act, the Maintenance Act, and the Child Care Act.

The pilot project incorporates a number of innovative features. Persons approaching the court for information will be met by volunteers at the information desk, who will be in a position to refer persons seeking a divorce to the appropriate venue for Legal Aid assistance,

mediation or the relevant Family Violence office. Parties will also receive assistance in the drawing up of a summons commencing divorce proceedings, should they wish not to avail themselves of any process attempting mediation.

The volunteers at the information desk have been selected from a group of paralegals, court assessors and other community workers. Training will be provided, which will, for example, include information on the potential benefits of mediation, and the volunteers will therefore be able to assess whether or not mediation should be recommended to the parties.

It is recognised that the volunteers will play an important role, as they will represent the first point of contact with the court. The effectiveness of the information desk and whether or not it should become a permanent feature will be evaluated dur-

ing the pilot period.

In addition, it is important to note that interim orders for custody and maintenance can be obtained in terms of Rule 32 of the 'new' divorce court. This procedure is similar to Rule 43 proceedings in the High Court, which allows for the granting of a provisional order pending the finalisation of a divorce.

Due to the appointment of a experienced registrar (who served at the High Court for a number of years), it will be possible to issue summons speedily and effectively.

The official opening of the court by the Minister of Justice is planned for 29 January 1999. However, the court is already fully operational.

■ The Cape Town Divorce Court is situated in the Iustitia Building, Parade Street (opposite the Cape Town Magistrate's Court).

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EMERGENCY FIRST AID OR LONG TERM CURE?

A closer look at the new domestic violence legislation

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In 1995, author Saras Jagwanth posed the question whether the Prevention of Family Violence Act (1993) might be the legal equivalent of sticking a plaster on a broken leg - an inappropriate and temporary remedy for a serious ailment.* Experience has shown that this legislation was in fact in many ways flawed, and in November 1998 Parliament passed the Domestic Violence Act 116 of 1998, which, according to the accompanying memorandum, is aimed at addressing a number of the shortcomings in the existing legislation.

Who will be protected by the new Act?

The ambit of the legislation is broadened significantly by an extended definition of a 'domestic relationship' which includes, for example, parents and children, same-sex partners, siblings, or persons in an engagement or dating relationship. This places a protection order (referred to as an 'interdict' under the 1993 Act) within reach of partners to a wider range of domestic relationships.

What does 'domestic violence' mean?

The new legislation for the first time gives legal contents to the term 'domestic violence'. Any controlling or abusive act which harms (or threatens to harm) the health, safety or well-being of the victim should be regarded as domestic violence. Specific instances of domestic violence include sexual abuse, emotional or psychological abuse, physical abuse, harassment, intimi-

ation and stalking. Significantly, these concepts are defined in some detail, and it is hoped that this will eliminate the present lack of clarity on the extent of violence required for the court to issue a protection order.

Duties of state officials

The new Act sets out a number of the duties resting on state officials who encounter victims of domestic violence. Police officials, for example, are required (either on the scene of an incident of domestic violence or when an incident of domestic violence is reported) to assist victims of domestic violence. Clerks of the court should similarly provide applicants for protection orders with assistance and information.

Increased powers of arrest

Section 3 increases existing police powers of arrest. At present, police officials are not entitled to arrest perpetrators of domestic violence for the offence of assault without a warrant of arrest. This often leads to increased danger to the victim, since the police are not empowered to remove the perpetrator from the scene of violence (even temporarily) by means of arrest. While the new Act authorises arrest without a warrant for assault, it by no means mandates arrest in all cases and thus leaves a considerable level of discretion. Given the well-documented reluctance on the part of the SAPS to intervene in incidents of domestic violence, the question is whether this new provision will ultimately be of much assistance to victims.

Detailed process

The existing uncertainty regarding the procedure to be followed in granting an application for an interdict has been addressed through the formulation of a process which, in brief, authorises the granting of a 'temporary' protection order where the court is satisfied that the actions of the respondent pose 'imminent harm' to the victim of domestic violence. This order is issued with a return date, on which the respondent has to appear to show cause why the order should not be made final.

In the absence of a finding of imminent harm, the respondent will be issued with a notice to appear in court to contest the granting of a protection order. A point of concern is that the Act does not define 'imminent harm' in this context. A narrow judicial interpretation may deprive women of the protection offered by a temporary order.

If the respondent fails to appear on the set date, a temporary order may be made final, provided that the court is satisfied that the respondent has committed or is committing an act of domestic violence and that proper service was effected. If the respondent is present, and chooses to contest the granting of the order, the court will consider both sides and reach a decision. If satisfied that the respondent has committed, or is committing, an act of domestic violence, the court must grant a protection order.

What are the terms of a protection order?

The court may include any terms necessary to protect the health, safety and well-being of the appli-

cant. This may, for example, include an order for the respondent -

- not to commit an act of domestic violence against the applicant;
- not to go near the home or place of work of the applicant;
- to be evicted from the shared home (this order will only be made if the court is satisfied that this is in the best interests of the applicant);
- to continue making bond or rent payments for the shared home (even if the respondent is evicted);
- to pay the applicant emergency monetary relief;
- not to have any contact with minor children.

In addition, the court may order the police to seize an arm or dangerous weapon in the respondent's possession (subject to certain requirements) or to accompany the applicant to the shared home to collect her personal property.

How is the respondent informed of the order?

The protection order only comes into effect once it has been served on the respondent, which means that the applicant has no protection in terms of the order until service has been effected. According to the new legislation, either the clerk of the court, a member of the SAPS or the sheriff will be able to serve a protection order. However, the Act unfortunately does not make it sufficiently clear where the ultimate responsibility for service lies.

What happens if the respondent disobeys the protection order?

Together with the protection order, a suspended warrant of arrest must be issued. If the re-

spondent violates the terms of the order, the applicant must approach the police and make a statement under oath setting out that the order has been breached.

If the police official has a reasonable suspicion that the respondent has violated the order, and that there is a prospect of imminent harm to the victim, the respondent must be arrested and brought before court. However, if the police official does not believe that harm is imminent (but that the order has been breached), the respondent will be issued with a notice to appear in court in a specified date.

On the court date, the respondent (now the accused) will be tried for the criminal offence of violating the terms of a protection order, and if convicted, may be sentenced to a fine or five years' imprisonment. In terms of the Criminal Procedure Act, the court may also consider a suspended sentence or other sentencing options.

The criminal prosecution of the respondent is a significant departure from the present position. Currently, violations of domestic violence interdicts are dealt with by means of an enquiry by the presiding officer, and although this enquiry may result in a criminal conviction, the process can not be termed a criminal trial (for example, the public prosecutor is not involved at any stage).

Significantly, the new Act directs the National Director of Public Prosecutions to compile policy directives for the prosecution of domestic violence with six months after its commencement.

Conclusion: will the new Act work?

As with any legislation, the success of the new Act will hinge on its implementation. The concept of 'implementation' has many facets, ranging from education of the public and training of state officials (most notably police officials and public prosecutors) to judicial interpretation of terms such as 'undue hardship' and 'imminent harm'. Many of these aspects are dependent on question of resource allocation, and this is ultimately to a large extent where the legislation will stand or fall.

It is vitally important for the South African government to acknowledge its obligations, both in terms of the 1996 Constitution and international human rights law, to provide women with protection against violence by facilitating the implementation of this legislation. Failing this, the Domestic Violence Act, on its face far-reaching and progressive, will remain an inadequate remedy.

* See Saras Jegwarth 'The Prevention of Family Violence Act: a feminist critique' SA *Journal of Criminal Justice* (1995) 1-11.

It is anticipated that the Domestic Violence Act will come into effect later in 1999 (upon completion of the regulations on which the operation of the Act rests.) In order to initiate a process of debate and planning, the Women and Human Rights Project hosted a workshop on 2 December 1998 on the contents and implementation of the legislation as part of the 'Sixteen Days of Activism Campaign'.

Copies of the workshop report may be obtained by contacting Farahnaaz Safodien at (021) 959 3602.

Reproductive health care and the man and reproductive

Karrisha Pillay

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Section 27(1) of the Constitution provides: "Everyone has the right to have access to health care services, including reproductive health care." Section 27(2) of the Constitution obliges the state to take reasonable legislative and other measures within its available resources to achieve the progressive realization of this right. The constitutional right of access to reproductive health care services is still relatively undeveloped - as with most other

Women are biologically more susceptible to contracting STDs and RTIs.

economic and social rights. In particular, the core content of the right, the obligations it places on the state as well as the extent to which resource constraints may be used to limit the right require further attention.

This article briefly examines the definition of reproductive health care, the nature of the services that should be provided in relation to sexually transmitted diseases (STDs) and reproductive tract infections (RTIs) as well as some of the particular barriers that women face in gaining access to the right.

Defining Reproductive Health Care

The UN Conference on Population, Sustainable Development and Sustained Economic Growth (ICPD) that was held in Cairo in 1994 accorded much attention to reproductive health. Although the resultant Programme of Action is not legally

binding, it provides some useful guidance on the definition and content of the right. In particular, its comprehensive definition of reproductive health has been considered a much welcomed departure from the traditional limited focus on *maternal health*. It defines reproductive health as follows:

"Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so."

(Principle 8, Paragraph 7.2. of ICPD Programme)

The ICPD further defines reproductive health care as "the constellation of methods, techniques and services that contribute to reproductive health and well being by preventing and solving reproductive health problems. It also includes sexual health. ..."

(Principle 8, Paragraph 7.2. of ICPD Programme)

In contributing to the content of reproductive health care, the ICPD makes provision for the types of health care services that 'should' be provided. These services include: "treatment of reproductive tract infections, sexually transmitted diseases and other reproductive health conditions; and information, education and counseling as appropriate, on human sexuality, reproductive

health and responsible parenthood."

(Principle 8, Paragraph 7.6. of ICPD Programme)

Barriers in Preventing and Treating RTIs and STDs

In spite of the recognition of the prevention, management and treatment of RTIs and STDs as critical aspects of reproductive health care, many women still face significant barriers in accessing these services. In an attempt to provide women with comprehensive and quality reproductive health care services on the basis of equality, it is vital that these barriers are identified and addressed.

It should firstly be recognised that women are biologically far more susceptible to contracting STDs and RTIs, and once contracted, they have a far greater impact on women than on men. In addition, certain social realities further increase the susceptibility of women to STDs and RTIs:

■ Due to the unequal power dynamics between men and women in society, women are often unable to negotiate the terms of a sexual relationship and are thus often subjected to sexual violence.

■ Economic forces may expose women to greater risks, for example, by necessitating an increase in commercial sex work or other forms of exchange of sex for money or support.

■ A restrictive cultural and political environment may lead to an ethos of shame and secrecy surrounding RTIs and STDs, and may also lead to prevention and treatment being given a low priority in terms of resource allocation.

COMPLAINT':

Management of sexually transmitted diseases and reproductive tract infections

Measures being undertaken to prevent the spread of STDs and RTIs are inadequate, and routine screening is often unavailable to women. Furthermore, diagnosis is not always easy, and treatment can be expensive.

In addition, many women are in practice unable to make use of reproductive care that should theoretically be accessible to them. This may be caused by a lack of access to education on the importance of such care, a lack of freedom of choice to receive reproductive health care and traditional beliefs and practices that do not favour reproductive health care. Even when women do manage to gain access to reproductive health care, they often experience discriminatory attitudes amongst health care workers, a lack of privacy and confidentiality, or difficulties relating to barriers of language.

STDs and RTIs and Reproductive Health Care Services

In order to make the right of access to reproductive health care services a reality, the South African state has to fulfill a number of constitutional obligations. In addition to the obligation to take reasonable legislative and other measures, section 7(2) of the Constitution obliges the state to respect, protect, promote and fulfill the rights in the Bill of Rights (which would include reproductive health care).

Although the state's duty to achieve progressive realisation of the right of access to reproductive health care services is subject to the availability of resources, the state is obliged to fulfill certain minimum

The current debate on the reluctance of the national Department of Health to provide HIV-positive pregnant women with preventive prenatal AZT treatment once again drew the question of access to reproductive health care into sharp focus. In this edition, Karrisha Pillay examines one of the crucial aspects of reproductive health care, viz the management of sexually transmitted diseases and reproductive tract infections. In addition, Loretta Feris reports on a recent conference on health and human rights.

Women are in practice unable to make use of reproductive care that should theoretically be accessible.

core obligations in relation to the right. In this regard, the UN Committee on Economic, Social and Cultural Rights has interpreted the International Covenant of Economic and Social Rights to impose a *minimum core obligation* on states parties to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights (General Comment No. 3, Para 10).

The World Health Organization (WHO) has specifically sought to identify a minimum level of reproductive health care services. It recognizes that a reproductive health package must include, as a minimum, components of family planning, STD prevention and management and safe motherhood. In view of the prevalence of RTIs and STDs in South Africa, the dire implications they hold for the reproductive health of women in particular, as well as the particular barriers that women face in gaining access to services, it is suggested that their prevention

and management form a vital component of the reproductive health care package in South Africa.

Conclusion

In making the constitutional right of access to reproductive health services a reality, it is vital that the term is not merely equated with maternal health. The term "reproductive health care" clearly refers to the entire reproductive system, of which maternal health is but a single component.

Services aimed at managing and preventing reproductive tract infections and sexually transmitted diseases are therefore a fundamental component of reproductive health care services, and should be recognised as a core component of the state's compliance with constitutional standards.

The World Health Organisation website provides access to information on reproductive health, health policies and statistical information at: <http://www.who.int/home/>.

For South African information on women's health, see: <http://www.womensnet.org.za/health/health.htm>.

HEALTH AND HUMAN RIGHTS IN INTERNATIONAL PERSPECTIVE

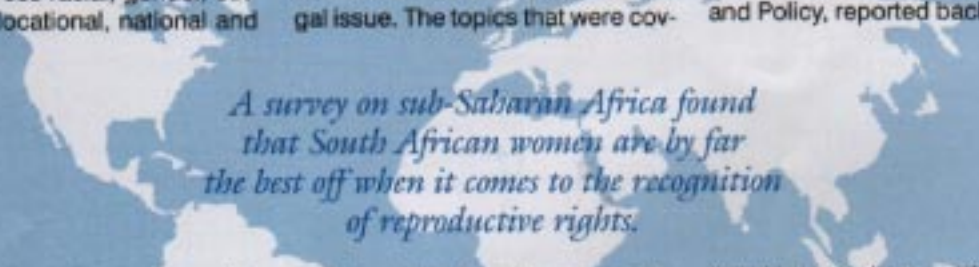
Loretta Feris

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In July 1992 the first international conference on 'Women in Africa and the African Diaspora (WAAD): Building Bridges Across Activism and the Academy' was held in Nsukka, Nigeria. The aim of this conference was firstly to build bridges across racial, gender, ethnic, class, locational, national and

members of NGO's, community organisations, governments and international and local agencies. One of the strong points of the conference was its interdisciplinary focus. Presenters at the conference discussed health not only as a physical and medical question, but also in a broader sense as a social and legal issue. The topics that were cov-

who pointed out in her presentation that Nigerian women are still fighting to decriminalise the termination of pregnancy, and that one of the biggest obstacles in their battle seems to be the lack of recognition of reproductive rights as human rights. Another panellist, a member of the Centre for Reproductive Law and Policy, reported back on a sur-



A survey on sub-Saharan Africa found that South African women are by far the best off when it comes to the recognition of reproductive rights.

disciplinary boundaries. Secondly, the conference served as an opportunity for women from Africa and the African Diaspora to come together and discuss issues of concern to African women wherever they may find themselves. The second international WAAD conference was only held six years later in Indianapolis, USA in October 1998. In accordance with the original objective (and to coincide with the 50th anniversary of the Universal Declaration of Human Rights), the second conference focused on human rights and in particular health as a human right.

A wide range of groupings from across the world attended the conference. The audience included academics, activists, practitioners, policy makers, health care providers, human rights advocates and

ered included the role women play in bringing about change in health; gendered perspectives on HIV/AIDS; the effects of armed conflicts on women's health; health and environmental issues; widowhood practices; gender and problems of immigration; female genital mutilation; the role of education and culture and the way it affects women's health; the effect of ailing economies on women's health; violence against women and reproductive rights.

The Women and Human Rights Project was represented by Loretta Feris who presented a paper on reproductive rights as socio-economic rights and the dilemmas South Africa is facing in realizing socio-economic rights. She shared the panel with a lawyer from Nigeria

vey that was done on the state of reproductive rights in sub-Saharan Africa. Interestingly, this survey found that South African women are by far the best off when it comes to the recognition and protection of reproductive rights.

It has been decided that the next WAAD Conference will be entitled 'Facing the New Millennium: Gender in Africa and the African Diaspora - Retrospection and Prospects'. A date has been set for October 2000 in Madagascar. Mark your calendars to attend!

Loretta Feris has been nominated as one of the South African contact persons for the 2000 Conference. She can be contacted at laferis@akad.sun.ac.za.

■ More than a million women and children have died from complications of reproductive tract infections every year during the 1990's; by comparison, the estimated annual number of deaths among men from syphilis, chlamydia and gonorrhoea is approximately 20 000.

■ In 1997 almost 6 000 women a day became infected with HIV. A significant proportion were monogamous and married.

■ Worldwide 50 000 to 100 000 women die annually from the complications of unsafe abortion.

■ 28 May 1999 will be celebrated as International Day for Women's Health.

Source: *Women's Health: Using Human Rights to Gain Reproductive Rights* (December 1998) Panos Briefings Series (See page 8 for further details.)

Forthcoming

■ During January 1999, the Women and Human Rights Project (in its capacity as a member of the Western Cape Network on Violence Against Women), will present a submission to the Amnesty Committee of the Truth and Reconciliation Commission in opposition of an application for amnesty by a former member of the Security Police who was jailed in 1995 for murdering his wife. The submission, prepared in association with the Justice for Women Alliance, will focus on whether or not the murder was committed with a political objective (as alleged by the applicant.)

■ Parliament recently passed the Refugees Act 130 of 1998, which is aimed at dealing with the position of refugees in South Africa. In the next edition, this legislation will be analysed from a gender perspective.

■ The issue of decriminalisation of commercial sex work (either through a process of legislative reform or through a challenge of the constitutionality of the existing legislation) remains a source of heated debate. We will look at the relevant provisions of the Sexual Offences Act of 1957, examine the distinctions which exist between decriminalisation and legalisation and discuss the implications of moving away from the current position.

Report Back

■ The Maintenance Act 99 of 1998 and the Recognition of Customary Marriages Act 120 of 1998 (which were discussed in the October edition of the newsletter) were assented to and signed by the President during November 1998. These Acts have not yet come into operation. The text of the final versions can be accessed at: <http://www.polity.org.za/govdocs/legislation/1998/index.html>.

■ The Amendment of Customary Law of Succession Bill, also dealt with in the previous edition, was referred back to the Justice Committee for further consideration.

■ The judgment dealing with the challenge to the Choice on Termination of Pregnancy Act has now been reported as *Christian Lawyers Association of South Africa and Others v Minister of Health and Others* 1998 11 BCLR 1434 (T). (Please refer to the June edition of the newsletter.)

Stop Press

■ Early in January 1999, women's organisations expressed their indignation at the early release on parole of Giuseppe diBlasi, who was in 1995 sentenced to 15 years' imprisonment for the murder of his partner. He was deported to his native Italy shortly after his release in December (after having served less than half of his sentence).

When DiBlasi was first sentenced, it was generally felt that the sentence imposed by the (then) Cape Supreme Court was inadequate. The prosecution appealed against the sentence, and was vindicated when the Appellate Division overturned the original sentence and imposed 15 years' imprisonment.

The judgment of the Appellate Division (which provides an interesting analysis of the approach followed regarding the defence of non-pathological criminal incapacity), is reported as *S v DiBlasi* 1996 1 SACR 1 (A).

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The following items are some of the latest acquisitions in the Women and Human Rights Documentation Centre which are of particular interest. They represent only selected publications out of many more new acquisitions in the Centre. A comprehensive list of new acquisitions is now available from the Centre.

Movement Against Flesh Trade

Edited by Mominul Islam and Sameena Bary Alam

Dhaka : Bangladesh National Women Lawyers Association, 1996

This booklet attempts to raise awareness of the high incidence of trafficking in women in Bangladesh. The laws relating to trafficking in Bangladesh are briefly outlined, and this is followed by lists of cases that are being investigated. It looks at some information around trafficking of women and prostitution, and a number of case studies are given. An Awareness Campaign against trafficking, of which this pamphlet is a part, is being promoted by the Bangladesh National Women Lawyers Association.

Global Sex Workers : Rights, Resistance and Redefinition

Edited by Kamela Kempadoo and Jo Doezema

New York : Routledge, 1998

ISBN 0415918294

This is a collection of articles and essays reflecting the experiences of sex workers from around the globe - Asia, Australia, the Americas, the Caribbean, West and South Africa and Western Europe. The sex workers' struggle for rights is portrayed as just another arena where workers' rights should be attained, although political, economic and cultural contexts might be different. It should also have an impact on the women's movement and feminism and it is hoped that from the coalitions and organised resistance, sexual labour will be transformed into work that is associated with dignity, respect and decent working conditions.

Women's Health: Using Human Rights to Gain Reproductive Rights

Edited by John Hilary

London: Panos Institute (December 1998)

This document is one of a series of briefings designed to foster informed debate on issues of environment and development. It contains a general section which examines the nature of human rights and questions whether women are protected by human rights. It also looks at the controversies surrounding the Convention on the

Elimination of All Forms of Discrimination Against Women. In a second section, more specifically focused on reproductive health, it looks at a definition of reproductive health, and discusses issues of concern in the context of reproductive rights. This briefing is an informative publication which succinctly sets out the background to current debates and provides useful information on references, key contact organisations and events of interest in 1999.

Women's Human Rights Step by Step : A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights

Women, Law & Development International and Human Rights Watch Women's Rights Project

Washington DC : Women, Law & Development International, 1997

ISBN 1890832006

This manual takes a practical approach to women's human rights, describing human rights law and its application to women in a simple and straightforward way. Although recently there has been considerable enthusiasm for the promotion and protection of the rights of women, children, and other socially and economically disadvantaged groups, many people working with women have had little experience and guidance in defending women's rights in a human rights context. The aim of this book is therefore to fill this gap and provide some guidance to organisations and individuals. Some of the aspects it covers are international and United Nations systems, human rights advocacy, and documenting human rights violations.

Women's Situation in Afghanistan

Montreal, Canada : Women Living under Muslim Laws, August 1998

Women have been the main victims of the tribal, ethnic and religious military conflicts in Afghanistan. Recently, with the takeover by the military forces of Taliban in September 1996, women have been deprived of every basic right, including freedom of movement, education and employment. This compilation of articles covers general background information on the situation in Afghanistan, and then looks at cases of violence against women, external involvement and reactions and lastly, resistance and solidarity movements. It is a collection of articles, letters and statements in French and English.