UNITED NATIONS

REPORT
OF THE
UNITED NATIONS COMMISSION
ON THE
RACIAL SITUATION IN THE UNION OF SOUTH AFRICA

GENERAL ASSEMBLY
OFFICIAL RECORDS: EIGHTH SESSION
SUPPLEMENT No. 16 (A/2505 & A/2505/Add.1)

NEW YORK, 1953

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NOTE

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COVERING LETTER

Geneva, 3 October 1953

Your Excellency,

We have the honour to send you herewith the report of the United Nations Commission on the Racial Situation in the Union of South Africa, prepared in conformity with the provisions of General Assembly resolution 616 A (VII) by which the Commission was set up.

We have the honour to be, etc.,

(*Signed*) H. SANTA CRUZ
Dantès BELLEGARDE
Henri LAUGIER

To H.E. Mrs. Vijaya Lakshmi Pandit,
President of the General Assembly,
United Nations,
New York

MEMBERS OF THE COMMISSION

CHAIRMAN-RAPPORTEUR

Mr. Hernán Santa Cruz

Former permanent representative of Chile to the United Nations;

Former President of the United Nations Economic and Social Council (1950 and 1951);

Former member of the Commission on Human Rights (1947-1953);

Member of the Sub-Commission on Prevention of Discrimination and the Protection of Minorities.

MEMBERS

Mr. Dantès Bellegarde

Former Minister of Education of Haiti;

Former representative of Haiti to the League of Nations;

Former Minister of Haiti in Paris and former Ambassador of Haiti to Washington;

Former permanent representative of Haiti to the United Nations.

Mr. Henri Laugier

Professor at the Sorbonne;

Former Assistant Secretary-General in charge of the United Nations Department of Social Affairs (1946-1951);

Honorary President of the International League for the Rights of Man (New York);

Member of the Executive Board of UNESCO.

PREFACE

1. This report, the object of which is to study the racial situation in the Union of South Africa, was prepared in pursuance of the instructions given to the Commission by the General Assembly. It deals with a most important political and human problem which overshadows the political, economic and social life of this young and promising nation, an original Member of the United Nations, and is a cause of grave concern to that nation's large population. Its repercussions have spread far beyond the frontiers of the Union and even beyond the Continent of Africa. Thirteen Member States, with a population of several hundred million human beings and territories covering a large portion of the earth's surface, requested the General Assembly to seek a solution to the problem.

2. The three members of the Commission were designated by the Assembly in their personal capacity. In appointing persons who were unfettered by the political views of the Governments in their countries, the Assembly undoubtedly meant to ensure that the Commission's work would be carried out in an objective and impartial spirit and that its members would not be influenced by the political interests of their respective Governments or by the position which those Governments had previously taken up on the question.

The members of the Commission never lost sight of these considerations. Nor did they ever forget that, by selecting them to assist it in the discharge of one of its principal functions, the highest political authority in the world honoured them greatly and laid upon them a heavy responsibility.

3. They wish to state that in the accomplishment of their task they were inspired by nothing else than their terms of reference and the letter and spirit of the United Nations Charter and its Purposes and Principles, of which they are wholehearted supporters. They consider that it is precisely the respect of those Principles which constitutes the strongest guarantee of peaceful and friendly relations among nations, of the well-being and progress of communities, and of the harmonious development of the human personality.

4. The members of the Commission feel, however, that their report is not as full or as finished as they would have wished and as the Assembly was entitled to expect. They had only five months in which to complete their work; this period proved too short for a thorough study of all the aspects of such a complex problem. The Commission nevertheless believed it to be its duty, in conformity with the Assembly's request, to submit its report and its conclusions to the Assembly's eighth session. If the Assembly sees fit it may decide to fill in the gaps and to obtain fuller documentation.

5. If this report is imperfect, one of the reasons is the lack of co-operation from the Government of the Union of South Africa. The Commission deeply regrets that the Union Government did not accept the invitation addressed to it by the Assembly and repeated by the Commission itself. In particular, the Commission is sorry that it could not visit the Union of South Africa to study the special conditions prevailing there. In that way it would have been able to form a more authoritative opinion than by the study of documents, books and the statements of witnesses, however faithfully they correspond to the facts. It would have been desirable above all for the Government of the Union of South Africa to agree to state its views and particularly the special conditions upon which its policy is based. In keeping with its desire for objectivity, the Commission could do no more than try to reconstitute, on the basis of statements and important speeches by members of both the Government and the Opposition, the doctrine underlying the policy of *apartheid* in the Union of South Africa.

6. This report is therefore essentially based on an analysis of the legislative and administrative provisions in force in the Union of South Africa, on the study of books, documents and statements by witnesses, and on information communicated by certain Member States. The analysis of the legislation and practices in force and the comparison between these and the provisions of the Charter and the Declaration of Human Rights, form the backbone of the report; however, the Commission thought it necessary to include a brief outline of the history, greography and demographic situation of the Union of South Africa.

7. Under its terms of reference the Commission was to carry out its study "in the light of the Purposes and Principles of the Charter, with due regard to the provisions of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1 b, Article 55 c, and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination". The Commission interpreted this part of its terms of reference as expressing the Assembly's wish that it should consider how far those Articles could determine, condition or limit the competence of the United Nations. The Commission studied this point with the utmost care. Its conclusion on the subject is quite definite.

8. The Commission was asked to study "the racial situation in the Union of South Africa". In the Commission's view, this expression covers all the Acts, regulations, customs and practices which are applied to the various sections of the population of the Union of South Africa and under which those sections are the object of differential treatment. Secondly, the expression covers the attitudes and behaviour of those sectors of the population, both towards each other and towards the public authorities. Lastly, it also covers the attitude and behaviour of the public authorities towards the various sections of the population. In its study the Commission naturally did not forget the origin of the question as brought before the seventh session of the General Assembly by thirteen Member States.

9. In this report the Commission uses the word "race". It does so because that was the term employed by the General Assembly in the resolution containing the Commission's terms of reference. It does so also because the use of the word has been established by

practice, despite the grave doubts cast by scientific criticism on the very notion of race, as explained in the UNESCO publication *The Race Concept,* with which the Commission is substantially in agreement.

10. The Assembly resolution requested the Commission to report its conclusions. The Commission considered itself at liberty to interpret that request in a broad sense. Accordingly it decided to add to the conclusions of fact, which it believes are brought to light by its study, a number of suggestions concerning possible future action.

11. The Commission thanks the Governments of Member States which provided it with information, and the representatives of non-governmental organizations and private persons who appeared before it in person to make statements or submitted written statements.

12. The Commission also wishes to thank the Secretary-General for the facilities provided by him and for his assistance in its work, in conformity with the request of the General Assembly. It is particularly grateful to Mr. Jean A. Romanos, principal secretary, to the Secretary of the Commission, to the staff detached for service with the Commission and to the officials of the various departments of the United Nations for their assistance in the technical work of the Commission. It also conveys its thanks to the consultants. The members of the Commission are deeply grateful to all of them.

13. The conclusions and suggestions submitted by the Commission, and also the entire text of the report, reflect the unanimous opinion of the members of the Commission, without any reservations on the part of any one of them.

PART I

Chapter I

HISTORY OF THE ESTABLISHMENT OF THE COMMISSION AND ORGANIZATION OF ITS WORK

I. History of the establishment of the Commission

(a) *Establishment and composition of the Commission*

14. The United Nations Commission on the Racial Situation in the Union of South Africa was established by resolution 616 A (VII) adopted by the General Assembly on 5 December 1952.[1]

15. That resolution established a Commission consisting of three members to study the racial situation in the Union of South Africa. It also stipulated that that study was to be carried out in the light of the Purposes and Principles of the Charter, with due regard to the provisions of several Articles of the Charter specifically mentioned, and the resolutions of the United Nations on racial persecution and discrimination. The resolution also provided that the Commission should report its conclusions to the General Assembly at its eighth session.

16. The General Assembly did not, however, proceed to appoint the three members of the Commission immediately. It was not until 30 March 1953 that the General Assembly, on the proposal of its President, appointed Mr. Dantès Bellegarde, Mr. Henri Laugier and Mr. Hernán Santa Cruz as members of the Commission.[2]

17. The Secretary-General of the United Nations appointed Mr. Jean A. Romanos to act as Principal Secretary of the Commission.

(b) *Origins of the Commission*

(i) Request for inclusion of the question in the agenda of the General Assembly

18. The problem which the Commission was called upon to study was submitted to the General Assembly in September 1952. However, references to the difficulties arising from the policy followed by the Government of the Union of South Africa had been made at previous sessions, when the General Assembly had considered the question of the treatment of people of Indian origin in the Union. It had already declared, *inter alia,* in its resolutions 395 (V) of 2 December 1950 and 511 (VI) of 12 January 1952, that a policy of "racial segregation" (*apartheid*) was necessarily based on doctrines of racial discrimination.[3]

19. The origin of the Commission's terms of reference can be traced to a letter[4] dated 12 September 1952 addressed to the Secretary-General by the permanent representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Syria and Yemen. In that letter the thirteen representatives had requested the inclusion in the provisional agenda of the General Assembly of "The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa".

That communication was accompanied by an explanatory memorandum in which it was stated that the race conflict in the Union of South Africa resulting from the policies of *apartheid* of the South African Government was creating a dangerous situation, which constituted both a threat to international peace and a flagrant violation of the principles of human rights and fundamental freedoms which were enshrined in the Charter of the United Nations.

(ii) Attitude of the Government of the Union of South Africa during the discussions

20. At the very beginning of the discussion in the General Assembly the representative of the Union of South Africa protested on behalf of his Government, affirming that the General Assembly was not competent to deal with the subject; he maintained that position on all subsequent occasions when the question came before the General Assembly. The point will be considered in detail in the next chapter.[5] At this point it need only be stated that when the question was included in the

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[1] See annex I.

[2] Mr. Ralph Bunche and Mr. Jaime Torres Bodet who, with Mr. Hernán Santa Cruz, had been appointed as members of the Commission by the General Assembly at its meeting of 21 December 1952, had been unable to accept the appointment.

[3] In resolution 395 (V), adopted on 2 December 1950, the General Assembly referred to its resolution 103 (I) of 19 November 1946 against racial persecution and discrimination, and to its resolution 217 (III) dated 10 December 1948 relating to the Universal Declaration of Human Rights. The General Assembly expressed the opinion that "a policy of 'racial segregation' (*apartheid*) is necessarily based on doctrines of racial discrimination". It called upon the governments concerned to "refrain from taking any steps which would prejudice the success of their negotiations, in particular, the implementation or enforcement of the provisions of 'The Group Areas Act', pending the conclusion of such negotiations".

Resolution 511 (VI), adopted by the General Assembly on 12 January 1952 and dealing with the treatment of people of Indian origin in the Union of South Africa, recalled the resolutions previously adopted on the subject and contained the following provisions:

"*Noting* that the promulgation on 30 March 1951 of five proclamations under the Group Areas Act renders operative thereby the provisions of that Act in direct contravention of paragraph 3 of resolution 395 (V),

"*Having in mind* its resolution 103 (I) of 19 November 1946 against racial persecution and discrimination, and its resolution 217 (III) of 10 December 1948 relating to the Universal Declaration of Human Rights,

"*Considering* that a policy of 'racial segregation' (*apartheid*) is necessarily based on doctrines of racial discrimination,

"……

"4. *Calls upon* the Government of the Union of South Africa to suspend the implementation or enforcement of the provisions of the Group Areas Act pending the conclusion of the negotiations".

[4] Reproduced in annex II.

[5] See chapter II, paragraph 127.

agenda, the representative of the Union of South Africa immediately protested, both at the meeting of the General Committee and in plenary meeting. He introduced a motion that, having regard to the provisions of Article 2, paragraph 7, of the Charter, the Assembly should declare itself incompetent to consider the item. The General Assembly decided, however, by 41 votes to 10, with 8 abstentions, that such a proposal could not be put before the item had been included in the agenda.[6] It decided by 45 votes to 6, with 8 abstentions,[7] to include the item in the agenda and then referred the question to the *Ad Hoc* Political Committee for consideration.

21. In that Committee the representative of the Union of South Africa again introduced a motion of incompetence. It was rejected by 45 votes to 6, with 8 abstentions,[8] when, after discussing the question, the Committee voted on the draft resolutions and amendments submitted.

22. When the report of the *Ad Hoc* Political Committee was presented to the General Assembly, the representative of the Government of the Union of South Africa introduced a motion that, having regard to the provisions of Article 2, paragraph 7, of the Charter, the General Assembly should find that it was unable to adopt the proposals contained in that report. The motion was rejected by 43 votes to 6, with 9 abstentions.[9]

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[6] The results of the vote were as follows:
In favour: Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Canada, France, Luxembourg, Netherlands, New Zealand.
Against: Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia, Afghanistan, Argentina, Bolivia, Burma, Byelorussian Soviet Socialist Republic, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Mexico, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Saudi Arabia, Sweden, Syria, Thailand, Ukrainian Soviet Socialist Republic.
Abstaining: Brazil, Cuba, Dominican Republic, Greece, Iceland, Israel, Nicaragua, Turkey.

[7] The results of this vote were as follows:
In favour: Iraq, Israel, Lebanon, Liberia, Mexico, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Saudi Arabia, Sweden, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Uruguay, Yemen, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Chile, China, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran.
Against: New Zealand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, Australia, Colombia, France.
Abstaining: Luxembourg, Netherlands, Nicaragua, Turkey, Argentina, Belgium, Canada, Dominican Republic.

[8] The results of this vote were as follows:
In favour: Union of South Africa, United Kingdom of Great Britain and Northern Ireland, Australia, Belgium, France, Luxembourg.
Against: Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Saudi Arabia, Sweden, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Uruguay, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico.
Abstaining: Netherlands, New Zealand, Peru, Turkey, Venezuela, Argentina, Dominican Republic, Greece.

[9] The results of this vote were as follows:
In favour: France, Luxembourg, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, Australia, Belgium.
Against: Chi[illegible]lombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecu[illegible]t, El Salvador, Eth[illegible]ia, Haiti, Honduras, Icela[illegible]dia, [illegible]donesia, Iran, Iraq, Israel, Lebanon, Liberia, Me[illegible], Nicara[illegible]ia, Norway, Pakistan, Panama, Paraguay, Philipp[illegible]and, Saudi Arabia, Sweden, Syria, Thailand, Ukrain[illegible]oviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Uruguay, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Chile.
Abstaining: Dominican Republic, Greece, Netherlands, New Zealand, Peru, Turkey, Venezuela, Argentina, Canada.

23. Lastly, at the close of the debate in plenary meeting and following the adoption of the resolution, the representative of the Union of South Africa made the following statement:

> "I have been instructed to state that my Government will continue to claim the protection inscribed in Article 2, paragraph 7, of the Charter, and that it must therefore regard any resolution emanating from a discussion on or the consideration of the present item as *ultra vires* and, therefore, as null and void."

(iii) Discussion in the *Ad Hoc* Political Committee

24. It will be appropriate to recall briefly at this point the discussion in the *Ad Hoc* Political Committee prior to the adoption of the draft resolution which it submitted to the Assembly. The main feature of that discussion, however, was consideration of the General Assembly's competence to deal with the matter.[10]

25. It fell chiefly to the Indian representative to deal with the substance of the problem, recalling that thirteen countries, representing some 600 million people, had joined in placing the item on the agenda. In Mrs. Pandit's opinion, the South African Government was deliberately attempting to establish racial discrimination by a policy of *apartheid,* which implied permanent superiority of the white inhabitants over the non-white who comprised 80 per cent of the total population, and which had created a dangerous tension in South Africa with serious consequences for harmony among nations and peace in the world. With her co-signatories of the letter of 13 September, Mrs. Pandit considered that the objectives of South Africa's policy were to force the non-European population into perpetual economic and social servitude by racial discrimination and segregation in violation of basic human rights and fundamental freedoms and of the Principles of the Charter, to which all States, including South Africa, had pledged adherence. She then reviewed the principal legislative acts adopted by the South African Government to implement its *apartheid* policy, and recalled the national campaign of passive resistance begun by the non-white population.

26. On 13 November, the thirteen representatives who had raised the question, together with the representatives of Bolivia, Guatemala, Haiti, Honduras and Liberia, submitted to the *Ad Hoc* Political Committee a draft resolution which was to form the basis of the text finally adopted by the Assembly.

27. This draft recalled in its preamble, *inter alia,* the purposes of the United Nations and General Assembly resolutions 103 (1), 395 (V) and 511 (VI)[11]

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[10] The results of the votes on this question were given in Notes 6, 7 and 8.

[11] See footnote 3 above.

and decided that a commission should be established to study and examine the international aspects and implications of the racial situation in the Union of South Africa; while the Government of the Union of South Africa was invited to extend its full co-operation to the Commission.

28. Various amendments to this draft were submitted during the discussion in the *Ad Hoc* Political Committee.

One, submitted by the representatives of Denmark, Iceland, Norway and Sweden, dealt with the question in a more general manner than did the eighteen-Power draft resolution. Recalling the original request by the thirteen representatives who had raised the question, this draft recommended that the General Assembly should declare that in a multiracial society harmony and respect for human rights and freedoms were best assured when patterns of legislation and practice were directed towards ensuring equality before the law of all persons; and should affirm that governmental policies of Member States which were not directed towards those goals, but which were designed to perpetuate or increase discrimination, were inconsistent with the pledges of the Members under Article 56 of the Charter.

This amendment was later withdrawn by its sponsors and submitted as a separate draft resolution. With some drafting changes it was adopted by the General Assembly at its meeting on 5 December 1952 and was registered as resolution 616 B (VII).[12]

29. Among the most important of the other amendments proposed in the *Ad Hoc* Political Committee, the following should be noted:

(*a*) That of the Brazilian representative, who proposed that it should be specified that in studying the racial situation in the Union of South Africa the Commission should do so with due regard to the provisions of Article 2, paragraph 7, of the Charter.

(*b*) That of the Ecuadorian representative, who proposed the deletion from the operative part of the draft resolution of the words "and examine the international aspects and implications of" the racial situation in the Union of South Africa.

(*c*) That of the Mexican representative, who proposed that the resolution should mention not only Article 2, paragraph 7,[13] but also Article 1, paragraph 3, Article 13, paragraph 1 b, Article 55 c and Article 56 of the Charter.

(*d*) Lastly, that of the representatives of the Union of Soviet Socialist Republics, who proposed that Article 1, paragraph 2, of the Charter should also be mentioned among the articles to be taken into account by the Commission in its studies.

These amendments were all adopted and were incorporated in the text of the draft resolution which the *Ad Hoc* Political Committee recommended to the General Assembly.

30. On 5 December 1952 the General Assembly in its turn adopted the draft resolution by 35 votes to 1, with 23 abstentions and established the Commission on the Racial Situation in the Union of South Africa.[14]

[12] See annex I.

[13] See (*a*) above.

[14] The results of this vote on the resolution as a whole were as follows:

In favour: El Salvador, Ethiopia, Guatemala, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Lebanon, Liberia, Mexico, Pakistan, Panama, Philippines, Poland, Saudi Arabia, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yugoslavia, Afghanistan, Bolivia, Brazil, Burma, Byelorussian Soviet Socialist Republic, Chile, Costa Rica, Cuba, Czechoslovakia, Ecuador, Egypt.

Against: Union of South Africa.

Abstaining: France, Greece, Iceland, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Peru, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Argentina, Australia, Belgium, Canada, China, Colombia, Denmark, Dominican Republic.

II. Organization of the work of the Commission

(i) Meeting of the Commission

31. The Commission, the three members of which had been appointed on 30 March 1953, was unable to hold its first meeting until 13 May, as some members had been unable to answer the General Assembly's call earlier. In accordance with an indication given by the General Assembly when the members were elected, they met at Geneva at the Palais des Nations.

32. At their first meeting they elected Mr. Hernán Santa Cruz Chairman and Rapporteur of the Commission.

The last meeting was held at Geneva on 3 October 1953.

33. In approximately five months of work, the Commission held 43 formal meetings.

34. The members of the Commission constantly bore in mind the general principle governing the organs of the United Nations, that meetings should be held in public so far as possible. In view of the nature of its work, however, the Commission considered it advisable to hold some of its meetings in private. It held in public a number of meetings at which it heard the witnesses who had asked permission to lay information before it. Some evidence was heard at closed meetings.

35. In addition to these oral statements, the Commission received communications from the governments of a number of Member States and written statements from representatives of non-governmental organizations and from private individuals who had asked permission to submit information concerning the problem it was to study.

36. The Commission noted that Mr. José Inglés, the representative of the Philippines to the Economic and Social Council, had been appointed as his Government's observer with the Commission.

(ii) Competence of the Commission with respect to the Territory of South West Africa

37. When the Commission, on beginning its work, studied its terms of reference as defined in paragraph 1 of the operative part of General Assembly resolution 616 A (VII)[15] it also considered whether it was competent to extend its study to the racial situation in the Territory of South West Africa.

It decided, however, that such was not the case, basing its decision on the following considerations: In the first place, by resolution 449 A (V), the General Assembly had accepted the advisory opinion of the International Court of Justice with respect to South West Africa which brought out the special character of the Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920. In the second place, resolution 570 (VI) had authorized the *Ad Hoc*

[15] See chapter II.

Committee on South West Africa, as far as possible in accordance with the procedure of the former Mandates System, to examine reports on the administration of the Territory of South West Africa as well as petitions and any other matters relating to the Territory that might be transmitted to the Secretary-General. Furthermore, resolution 651 (VII) of the General Assembly had requested the *Ad Hoc* Committee on South West Africa to continue its work and to report to the General Assembly at its eighth session.

(iii) Co-operation with the Government of the Union of South Africa

38. Paragraph 2 of General Assembly resolution 616 A (VII) "invites the Government of the Union of South Africa to extend its full co-operation to the Commission". The Commission's first concern, therefore, was to seek that co-operation, both in order to comply with the Assembly's suggestions and because it regarded such co-operation as essential for the better and more complete performance of its task.

39. The Commission sought to achieve this in various ways. First of all, before making any official approach to the Government of the Union of South Africa, it attempted to inquire informally of the permanent representative of the Union to the United Nations as to the possibility of obtaining his Government's co-operation. When communicating to him its suggestions as to the forms which such co-operation might take, the Commission informed him that it was undertaking its work in a spirit of complete impartiality and objectivity, and that its prime concern was to arrive at acceptable and adequate formulæ for possible United Nations assistance towards the solution of a serious problem with which a Member State was faced. In the meantime the Commission took every precaution to ensure that the General Assembly's wishes concerning the co-operation of the Government of the Union of South Africa were not frustrated. It refrained during this period from taking any steps to obtain information or statements from governments, non-governmental organizations or private individuals, and from doing anything which might lessen the chances of co-operation. The result of these measures was completely negative. The reply, transmitted through the informal channels to which the Commission had had recourse, conformed to the attitude adopted by the Union Government during the discussion in the General Assembly, that of not recognizing the Commission's existence on the ground that its establishment was unconstitutional.

40. After these measures had failed, the Commission decided to make its first official contact with the Union Government without referring to the question of a possible visit to that country.

41. On 28 May, the Chairman of the Commission sent the following letter to the Minister of External Affairs of the Union of South Africa:

"I have the honour to inform you that the United Nations Commission on the Racial Situation in the Union of South Africa has been in session at the Palais des Nations in Geneva since 13 May 1953.

"The Commission has taken note of the terms of reference assigned to it under resolution 616 A (VII) of the General Assembly. It is conscious of its heavy responsibility and of its duty to carry out its task in a spirit of complete impartiality.

"The Commission notes in particular that the General Assembly has invited the Government of the Union of South Africa to extend its full co-operation to the Commission. It will not fail to consult the Union Government in due course as to the form which such co-operation might take."

42. On 19 June, a further communication was sent to the Union Government. The telegram sent by the Chairman on behalf of the Commission stated:

"The United Nations Commission on the Racial Situation in the Union of South Africa, at present in session in Geneva, has asked me to communicate to you the following:

"(1) As indicated in my letter of 28 May 1953,[16] the text of which is enclosed herewith, it is the Commission's sincere hope that in carrying out its task, it will have the complete co-operation of the Government of the Union of South Africa earnestly requested by resolution 616 A (VII) of the General Assembly.

"(2) In the Commission's view, such co-operation might take various forms. The Commission is most anxious to be able to visit the Union of South Africa; this would perhaps be the most effective way in which it could obtain an objective knowledge of the human problems of your country. Your Government may wish to present written observations and substantial memoranda and to transmit documents to the Commission. It may wish to appoint a representative to state its views.

"(3) The Commission accepts and welcomes all these forms of co-operation. It is prepared to agree to any other machinery you may suggest, and considers that all methods may be used concurrently. It asks you to inform it of your views in this respect and is prepared to consider any proposals and suggestions you may wish to make.

"(4) In full consciousness of its responsibilities, and desirous of approaching them with complete intellectual honesty and absolute impartiality, the Commission appeals most strongly for your Government's co-operation. It has no doubt that this co-operation will be forthcoming in order to facilitate the solution in accordance with the United Nations principles of problems which have aroused world opinion."

43. Some days later, on 26 June, the Commission received the following reply from the Union Government:

"Reference your telegram 19th June to Minister of External Affairs. Secretary-General of the United Nations has already been advised through South African Permanent Representative to the United Nations of Union Government's attitude towards Commission set up under General Assembly resolution 616 (VII). In the communication to Secretary-General it is pointed out that since Union Government have consistently regarded question of Union's racial policy as domestic matter they regard resolution 616 (VII) as unconstitutional and cannot therefore recognize the Commission established thereunder. Secretary-General will presumably transmit to you copy of South African Permanent Representative's letter addressed to him.

Secretary for External Affairs."

44. On 9 July, the Secretary-General in his turn transmitted to the Commission a note received by him

[16] See previous paragraph.

from the acting representative of the Union of South Africa to the United Nations and drawn up in terms very similar to those of the telegram sent to the Commission.

45. The Commission made one further attempt to obtain the co-operation of the South African Government. The Chairman, then in Santiago following the closure of the first session, went in person to the Legation of the Union of South Africa in Chile to request a personal visa. He explained that he proposed to visit the country in order to gather direct impressions, but that he had no intention either of holding hearings or of making any official or public inquiry. On 10 July 1953, the Chargé d'Affaires at Santiago sent the Chairman a communication informing him that his Government refused to grant the requested visa. To justify this refusal the communication pointed out that the Union Government's view was, logically, "that [his] application [could not], in the nature of things, be divorced from [his] membership of a Commission whose terms of reference specifically [included] investigation into a matter which [was] of exclusively domestic concern to the Union of South Africa." The communication added that accession to his request would, it was felt, imply a tacit abrogation of Article 2, paragraph 7, of the Charter.

(iv) The Commission's methods of work

46. In the absence of the co-operation of the Government of the Union of South Africa the Commission was compelled to formulate methods of work which would enable it to study the problem referred to it by the General Assembly.

47. It decided that, in the circumstances in which it had to work, it would have to try to make up for the lack of direct contact with South African realities on the spot by examining the declarations of Union politicians,[17] by studying thoroughly the principal legislative texts governing the life of individuals and groups in South Africa,[18] and, lastly, by studying whatever memoranda were submitted to it or by hearing witnesses in a position to inform it on the problem under study.[19]

48. The Commission accordingly decided to hear representatives of non-governmental organizations or private individuals and to examine such written statements as they might submit. It was fully alive to the need to preserve a spirit of serious scientific criticism in dealing with information submitted by such witnesses, whose emotional reactions might induce them to present the facts in a light favourable to the point of view they individually sought to present.

49. The Commission, considering that it was in its interest to hear representatives of the governments of Member States and to receive such memoranda as those Governments might wish to transmit, decided to follow that course.

(v) Exchange of communications with Member States, written and oral statements

50. On 3 July, the Acting Chairman sent a letter[20] to the Ministers of Foreign Affairs of the Member States asking whether their respective Governments wished to communicate information orally or in writing.

51. No government appointed a representative to be heard by the Commission.

52. The Government of the Union of South Africa replied (A/AC.70/R.16) that its position remained as stated in the telegram sent to the Chairman of the Commission on 26 June.[21]

53. Other Governments likewise signified that they did not intend to submit information to the Commission in writing or to send a representative to be heard by it. Among them were the Governments of the Netherlands (A/AC.70/R.8), Honduras (A/AC.70/R.11), Luxembourg (A/AC.70/R.21), Haiti (A/AC.70/R.22), New Zealand (A/AC.70/R.23), Nicaragua (A/AC.70/R.29), Iraq (A/AC.70/R.31), Dominican Republic (A/AC.70/R.32), Canada (A/AC.70/R.33), Egypt (A/AC.70/R.34),

. . . . . .

54. A number of governments gave reasons for their replies informing the Commission that they did not intend to state their views before it.

55. The United States Government indicated in its reply (A/AC.70/R.13) that the facts of the South African situation and the pertinent legislation of the Union of South Africa were already a matter of public record.

56. The Governments of Belgium (A/AC.70/R.14) and Australia (A/AC.70/R.19) reminded the Commission of the position of principle adopted by their representatives during the discussion on the problem at the seventh session of the General Assembly, when they had invoked Article 2, paragraph 7, of the Charter.

57 The United Kingdom Government (A/AC.70/R.15) recalled that in explanation of the United Kingdom vote on resolution 616 A (VII), its representative had indicated that the first paragraph involved "so obvious an intervention in the domestic affairs of a Member State and so clear a violation of Article 2 (7) of the Charter" that the United Kingdom had to vote against it. In its communication the United Kingdom Government added that it must decline in advance to recognize the validity of the Commission's actions and of any events which took place before the Commission. It understood that the Commission envisaged entertaining representations from non-governmental organizations and private individuals, and declared that such action by the Commission would be in conflict with Article 2 (7) of the Charter inasmuch as the Commission would thereby be assuming the right to accept representations on subjects which are the domestic concern of a Member State. It was the opinion of the United Kingdom Government that such a procedure would be illegal and at variance with the understanding prevailing amongst the States Members of the United Nations at the time when Article 2 (7) was drafted and incorporated in the Charter. Indeed, except in the case of the Trust Territories, no right of representation to the United Nations whatever was accorded to private individuals by the Charter or by any convention or rule of procedure emanating from the Charter. The United Kingdom Government wished formally to place on record a reservation as to its position should the action of the Commission be adduced at any time as evidence of the existence of some principle of international law on the basis of which claims might be urged concerning the extent of the competence of the United Nations to intervene in matters aris-

[17] See chapter V.
[18] See chapter VI.
[19] See chapter VII.
[20] A/AC.70/R.5.
[21] See paragraph 43.

ing from the internal pol s of individual Member States.[22]

58. The Government of Czechoslovakia (A/AC.70/R.24) informed the Commission that it would state its attitude, already indicated at the seventh session of the General Assembly, in detail at the eighth session, in the agenda of which the question was to be included.

59. The Government of Chile (A/AC.70/R.25) reaffirmed that it would continue to respect the noble principles of human rights, and expressed the hope that countries in which for any reason racial or religious persecution still persisted would employ every means in their power to end such practices in order to achieve understanding among mankind and universal peace.

60. In a second letter (A/AC.70/R.28) the Government of Haiti pointed out that it had always protested, through its representatives to the United Nations, against the situation prevailing in South Africa. It expressed the hope that the Commission would affirm decisively the United Nations right to intervene whenever peace and justice were threatened by a violation within any State of the basic rights of the human person, without distinction as to race, colour or religion.

61. In addition, some Governments submitted memoranda in which they were kind enough to give the Commission their views on the racial situation in South Africa.

These were the Governments of Syria (A/AC.70/R.18), India (A/AC.70/R.20) and Pakistan (A/AC.70/R.30).

The memoranda submitted by these Governments are reproduced as an annex.[23]

62. Further, for the information of such non-governmental organizations and private individuals as might be able to give it information on the situation it was to study, the Commission issued on 29 June a press release announcing its decision to receive written statements until 1 August,[24] and to hear oral statements between 1 and 15 August.

63. Six witnesses were heard by the Commission, three of them representing non-governmental organizations and the remainder appearing in their private capacities.

The first three were Mr. H. S. L. Polak, representing the Theosophical Society of London; the Reverend Michael Scott, representing the International League for the Rights of Man, of New York; and Mrs. M. Crosfield, representing Christian Action of London.

The three private witnesses were Mr. E. S. Sachs, Mr. J. Hatch and Mr. T. Wardle.

The witnesses were heard by the Commission in open meeting from 3 to 8 August. The Commission decided to issue in a single document the texts of the summary records of these hearings.[25]

64. Besides hearing oral statements, the Commission also received statements in writing from the following organizations and private individuals:

Patrick Duncan, Riverside Farm, Orange Free State;
Council on African Affairs, New York;
The Moderator, the African Gospel Church, Durban;
H. S. Coaker, Talloires, Hte. Savoie;
Congress of Peoples Against Imperialism, London;
Anti-Slavery Society, London;
South African Indian Organization, Durban;
Pakistan Islamic Council for International Affairs, Karachi;
The African National Congress and the South African Indian Congress, Johannesburg;
The Congress of Democrats and the Springbok Legion of ex-Servicemen and Women, Johannesburg;
W.v.d. Vaart, Pietersburg;
Women's International League for Peace and Freedom.

65. On 14 September, shortly before the opening of the eighth session of the General Assembly, the Chairman of the Commission sent the President of the General Assembly a telegram[26] expressing the Commission's regret that it had been unable for lack of time to submit its report before the opening of the session. He added that the Commission hoped to conclude its report shortly and that it would submit it as soon as possible.

III. Conclusion of the Commission's work

66. The Commission concluded its work on 3 October 1953. At its last meeting the Commission unanimously approved the present report as a whole, which it submits to the General Assembly at its eighth session in accordance with the provisions of resolution 616 A (VII) by which it was set up.

67. At the time of the adoption of the report Mr. Dantès Bellegarde, while emphasizing that he unreservedly supported the report, read a statement which the Commission decided to reproduce in full in the record of the concluding meeting.[27]

Chapter II

THE COMMISSION'S TERMS OF REFERENCE IN THE LIGHT OF THE PROVISIONS OF THE CHARTER AND OF CERTAIN PREVIOUS RESOLUTIONS OF UNITED NATIONS ORGANS

I. Preliminary remarks

68. Under General Assembly resolution 616 A (VII), the Commission was established to "study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provisions of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1, Article 55 c and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination".

For the purpose of determining the scope and the significance of its terms of reference, the Commission

[22] The Commission, considering that the hearing of such statements was indispensable to the fulfilment of the terms of reference assigned to it by the Assembly and was therefore implied in those terms of reference, has explained in paragraph 76 the reasons for which it did not share the United Kingdom Government's views on this subject.

[23] See annex III.

[24] The closing date for the receipt of written statements was later postponed to 15 August.

[25] A/AC.70/1.

[26] A/AC.70/R.35.

[27] A/AC.70/SR.43.

felt it should first determine the scope and intention of the Assembly resolution, which quotes certain provisions of the Charter and certain United Nations decisions. It is the object of this chapter to interpret the terms of reference accordingly.

69. The Commission believes that it should begin by recalling under what circumstances the question referred to it was raised and to what debates it gave rise, for the intention and scope of its terms of reference cannot be properly assessed except in that context.

70. Thirteen States Members of the United Nations requested that the item "The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa" should be placed on the agenda of the Assembly, and called upon the Assembly to "give this question its urgent consideration in order to prevent an already dangerous situation from deteriorating further and to bring about a settlement in accordance with the Purposes and Principles of the United Nations Charter". In support of their request these thirteen States stated that the policy of the Government of the Union of South Africa was designed "to establish and to perpetuate every form of racial discrimination . . . ; . . . *apartheid* . . . implies a permanent white superiority over the non-whites". "Such policy challenges all that the United Nations stands for" as set forth in Article 1, paragraph 3 and Articles 55 c and 56 of the Charter. The delegations making the request claimed that the measures in question also conflicted with resolutions 103 (I), 217 (III), 395 (V) and 511 (VI) of the General Assembly.

71. The Government of the Union of South Africa, for its part, as mentioned earlier in this report,[28] denied that the Assembly was competent to deal with the subject and, relying on Article 2, paragraph 7, of the Charter, held that the matter was essentially within its own domestic jurisdiction.

72. The Assembly's resolution naturally refers to the passages from the Charter and from certain previous resolutions which were quoted on the one hand, by the thirteen Member States that brought the question before the General Assembly, and, on the other, by the Government of the Union of South Africa in support of its claim that the Assembly was not competent to deal with the matter.[29] Hence it was evidently the Assembly's intention that these provisions of the Charter, and the opinion which it had itself endorsed in certain earlier resolutions, should guide and inspire the Commission in its study and in its conclusions.

73. The Charter provisions mentioned in the resolution are those which more particularly regulate and define the powers of the United Nations and its organs in questions of this nature. It depends on the interpretation of the content and scope of these provisions whether the United Nations is held to be empowered to consider and study problems relating to fundamental human rights in general and to racial discrimination in particular, and to make recommendations on those problems. Some of these provisions form the legal basis for possible action by the United Nations while others limit or restrict such action.

74. In drawing attention to the Articles of the Charter which define its own competence in questions relating to human rights, the Assembly can hardly have meant that the Commission should consider the question of its (the Commission's) competence to discharge a function assigned to it by the Assembly itself. In any case, Article 22 of the Charter authorizes the Assembly to establish such subsidiary organs as it deems necessary for the performance of its functions. Furthermore, before the establishment of the Commission and the drafting of its terms of reference, the Union of South Africa had moved that the Assembly should declare itself incompetent to adopt the proposals for the Commission's establishment. After a lengthy debate, the Assembly rejected the motion of incompetence by 45 votes to 6, with 8 abstentions.

75. Although the Assembly had affirmed its competence and its right to establish the Commission and to entrust it with the task of studying the racial situation in the Union of South Africa, certain countries, particularly the country concerned and the United Kingdom, informed the Commission by letter that they did not recognize its competence and that they considered it unconstitutional. The British Government, arguing from the terms of Article 2, paragraph 7, of the Charter, went so far as to dispute the Commission's right to accept representations from non-governmental organizations and private persons. As mentioned before, the Commission, despite these objections, accepted such representations as it considered necessary for the proper discharge of its fuctions. It did not feel under any obligation to doubt its own competence, since that had been expressly affirmed by the Assembly itself.[30]

76. The Government of the United Kingdom, in objecting the acceptance of representations by the Commission, argued as follows:

> "Indeed, except in the case of the Trust Territories, no right of representation to the United Nations whatever is accorded to private individuals by the Charter or by any convention or rule of procedure emanating from the Charter."

In this connexion the Commission wishes to point out that it never had the intention of admitting petitions and still less of hearing complaints from private individuals. It merely heard witnesses in order to obtain information on the situation in the Union of South Africa. Furthermore, the hearing of witnesses by a United Nations organ is by no means a novelty, there being several precedents for the practice. The Commission refers in particular to the precedent set by the *Ad Hoc* Committee on Forced Labour, set up under Economic and Social Council resolution 350 (XII).

77. There appears to be no need to dwell further on this point. A study, on the lines contemplated in this chapter, of all the provisions mentioned in the Assembly resolution which determine the powers of the United Nations and its organs to deal with cases of violations of fundamental human rights, particularly racial discrimination, touches directly or indirectly on all the successive stages of possible action by the United Nations, ranging from preliminary examination to possible general or more precise recommendations, and including the intermediate stage of study and investigation of facts.

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[28] See paragraphs 20 *et seq.*

[29] With the exception of Article 1, paragraph 2. The reference to that provision was inserted as a result of an amendment proposed by the USSR and accepted by the sponsors of the draft resolution (see paragraph 29).

[30] See paragraph 57.

II. The Charter and human rights

(i) The text of the Charter as a whole in relation to racial discrimination and fundamental human rights

78. The various provisions of the Charter cannot be interpreted in isolation. The Charter is an international instrument based on the principle that peace, security and the essential conditions for them are indivisible. It is not designed to regulate the existence and activities of some organizations pursuing aims different in nature and in spirit. Its purposes are all directed to one supreme end—peace, security and harmony between all the peoples of the world.

79. From the foregoing, it is clear that it is neither possible nor logical to interpret the various provisions of the Charter as though each had an absolute value, independently of the document as a whole. Any interpretation of the Charter must take its full text and the spirit of the whole instrument into account. No part of it can be construed unless it is related to and reconciled with the other parts. However clear such provisions as Article 13, paragraph 1, Article 55 and Article 56 might be, their full weight cannot be appraised unless they are read in conjunction with other provisions, particularly the Preamble and Article 1 of Chapter I (which sets out the purposes of the United Nations) and of course also with Article 2, paragraph 7, which lays down the principal limitations to which United Nations action is subject. It would, incidentally, be equally illogical to try to interpret this latter clause divorced from the letter and spirit of the preceding provisions.

(ii) The spirit of the Charter

80. The Commission's analysis of the text of the Charter as a whole, and of certain of its provisions in particular, would be unrealistic if it did not take into account the intentions of those who drafted the Charter at San Francisco, the atmosphere in which it came into being and the historical events which inspired its drafting.

81. It is neither by chance, nor owing only to the efforts of a few delegates with conviction and determination that the Charter refers to fundamental human rights, and to the part to be played by the Organization in safeguarding them, with a persistant emphasis otherwise displayed only in its references to collective measures in the face of aggression. These rights are mentioned in the Preamble, in Article 1 of Chapter I, which enumerates the Purposes, and in Articles 13, 55, 62, 68 and 76. Nor is it an accident that the need for collective action to ensure respect for the dignity of the human person and for the fundamental freedoms found a place in all the major declarations made on important occasions from the outbreak of war until the promulgation of the San Francisco Charter: in the Atlantic Charter of 14 August 1941, in the Teheran Declaration of 1 December 1943, in which the United States, the United Kingdom and the Union of Soviet Socialist Republics declared that they would seek the co-operation and active participation of peoples in "the elimination of tyranny and slavery, oppression and intolerance"; and again in the Dumbarton Oaks proposals, upon which the debates at San Francisco were based. The truth is that the peoples of the world were inspired by a profound conviction that whatever machinery was devised to ensure collective security or international co-operation, its fundamental and ultimate goal had to be the dignity of man, if it was to maintain peace, function effectively and anwer the hopes of mankind. The great statesmen who were responsible for the conception and establishment of the United Nations became the faithful interpreters of this conviction.

82. At the time of the San Francisco Conference, the free peoples were emerging from a tragic nightmare, in which human dignity and freedom had been mortally imperilled by aggression on a scale, and of a power and immediate success unparalleled in the history of the world. The governments which had joined together in order to frame what was to be a "master plan" embodying their peoples' desire for peace, were subjected to the generously idealistic pressure of many non-governmental organizations; like their peoples, they still had poignant memories of the early symptoms of nazism, of the infringement of the most fundamental and sacred human rights, such as freedom of association and of speech, and of that race persecution which had been the forerunner of the crematoria and extermination camps of the war years. Accordingly, when confronted with the task of drafting a new Charter for the peoples of the world, an instrument which was to design the structure of a new world, they endowed it with the central purpose of ensuring an unwavering respect for the dignity of the human person, of all human persons, whether men or women, whatever their race, color, creed, opinions or beliefs. That was why they meant collective international action to fulfil a permanent function—that of developing and encouraging in all the countries of the world, whether dependent or independent, self-governing or non-self-governing, free or mandated, a genuine respect for the rights of the human person. They were firmly convinced that the deliberate, systematic and continued violation of human rights was not only contrary to justice and a threat to the internal peace or States, but bound, sooner or later, to endanger peace between nations. For this reason, they declared respect for human rights to be the foundation for the peaceful building of a better world, and gave high priority, as a matter of international concern, to efforts to ensure respect for these rights.

83. The lengthy process of drafting the Charter, the history of its drafting from the day on which the idea of it first took shape, prove that the intention of the peoples and governments met together at San Francisco was that the new organization should not only proclaim human rights, but should ensure the respect, protection and continued observance of these rights.

Whatever may have been the development of political ideas in the world and of the interests of Member States since those days, which are after all not very remote, the Commission believes that the Charter still embodies the clear and ardent wishes of the peoples. The Commission was loath to dismiss from its mind, and indeed could not have ignored, this intention on the part of the authors of the Charter; on the contrary, it considered it as the basis of its terms of reference.

(iii) Preamble to the Charter

84. The principle of the responsibility of the United Nations with regard to human rights is affirmed with unusual vigour in the opening passages of the Preamble to the Charter; after making it clear that it is "the Peoples of the United Nations" that are speaking, it continues in its second paragraph: "Determined to . . .

reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".

85. The drafting history of this important clause clearly reveals that Field Marshal Smuts, then head of the South African Government, was largely responsible for its inclusion. During the debates at San Francisco, he said: "I would suggest that the Charter should contain at its very outset and in its preamble, a declaration of human rights and of the common faith which has sustained the Allied peoples in their bitter and prolonged struggle for the vindication of those rights and that faith. This war . . . has been a war of ideologies, of conflicting philosophies of life and conflicting faiths . . . We have fought for justice and decency and for the fundamental freedoms and rights of man, which are basic to all human advancement and progress and peace".

These ideas were endorsed by the San Francisco Conference. The result was the paragraph of the Preamble reproduced above. Indeed, the Rapporteur of Committee I[31] pointed out that "the provisions of the Charter, being in this case indivisible as in any other legal instrument, are therefore equally valid and authoritative . . . There is no ground for supposing that the Preamble has less legal validity than the two succeeding chapters".

(iv) Purposes and Principles of the Charter

86. Chapter I, Article 1, which contains what are known as the "Purposes and Principles" states as emphatically as does the Preamble that one of the principal Purposes of the United Nations, in addition to the maintenance of peace and security and to acting as a centre for harmonizing the actions of nations is to "achieve international co-operation in . . . promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". This Article also includes among the Purposes that of developing "friendly relations between nations based on respect for the principle of equal rights and self-determination of peoples" and taking "other appropriate measures to strengthen universal peace".

87. Article 55 states the Purposes of the Organization as regards "international economic and social co-operation", which is the subject of Chapter IX, and it embodies the same principle in the following form: "The United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

88. Lastly, Article 76, which lays down the essential purposes of the trusteeship system, provides that "the basic objectives" of that system, "in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be : . . . c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

89. It is thus obvious that the Charter proclaims, with an insistence which recurs only in its affirmation of the duties of the Organization with regard to the maintenance of international peace and security, that one of the principal Purposes of the United Nations is to ensure universal respect for human rights and fundamental freedoms, without distinction on grounds of race, sex, language, or religion. Its terms of reference under the Charter are to promote and encourage respect for human rights throughout the world, including the Trust Territories.

(v) Respect for human rights as an essential condition of peace

90. The Charter's emphasis on this point is not attributable to merely humanitarian considerations. As mentioned before the authors of the Charter were convinced that respect for fundamental human rights and their observance throughout the world was a necessary, even an indispensable condition of peace. That conviction received formal expression in Article 55 of the Charter, under which the Organization's duty to promote higher standards of living, full employment and universal respect for, and observance of, human rights, and fundamental freedoms for all, without distinction, is to be discharged "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations".

91. Professor René Brunet, in his book *La garantie internationale des droits de l'homme, d'après la Charte de San-Francisco* confirms that interpretation: "The central idea of the United Nations Charter" he writes "as finally produced by the Conference on 26 June 1945, is that peace cannot be firmly established while the world suffers from widespread oppression, injustice or economic distress . . . Barriers, however strong, will be overthrown . . . if the peoples lack purchasing power . . . if the governments are left free to impose on the human beings under their jurisdiction régimes of tyranny, violence or persecution".[32] It was in view of those considerations that the signatories to the Charter in the end adopted a text which introduced into international law "the principle of the interdependence of international peace and security, on the one hand, and conditions of economic and social well-being and human freedoms on the other".

92. This idea that peace and respect for fundamental human rights are interdependent has been reaffirmed on several occasions by the General Assembly. Two of those occasions are singled out for special mention at this point for both took place under circumstances of particular importance for the life of the organization: the proclamation of the Universal Declaration of Human Rights and the adoption of General Assembly resolution 377 (V), entitled "Uniting for Peace". The Preamble to the Declaration, which was adopted unanimously, contains the following statement:

> "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

The "Uniting for Peace" resolution set up machinery to enable the General Assembly to take prompt and timely action in cases of threats to the peace or aggression, if the Security Council "fails to exercise its primary responsibility for the maintenance of international peace and security". Accordingly, section E of the resolution, which was approved unanimously, states:

> *"The General Assembly*
>
> *"Is fully conscious* that, in adopting the proposals set forth above, enduring peace will not be secured

[31] See *United Nations Conference on International Organization*, vol. 6, page 388 and vol. I, page 425.

[32] See section III of Professor Brunet's book.

solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly

"*Urges* Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas."

93. From the foregoing considerations it may be concluded, and that conclusion will be one of the fundamental premises in the study of the Commission's terms of reference, that both the Charter itself, expressly in Article 55 and by implication in the instrument as a whole, and the United Nations General Assembly, have recognized that respect for the human person, and for the rights and fundamental freedoms of that person, constitutes an essential condition of peace and friendship between peoples.

The defence of human rights and liberties is one of the "*raisons d'être* of the Organization", as it is said in the report of the Committee which drafted the clauses setting forth Purposes and Principles.

(vi) The pledge in Article 56 of the Charter

94. The Charter is a multilateral treaty. It is a convention freely accepted between governments. Its contractual nature is indicated by the fact that Article 2 recognizes the "principle of the sovereign equality" of States, and by the clause of Article 108 which provides that future amendments of the Charter will not enter into force till they have been ratified

"in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council".

95. This view is confirmed by the drafting history of the San Francisco Charter. The report of the Rapporteur of Committee IV/2,[33] in describing the discussion on the interpretation of the Charter, states that the the Committee arrived at the following conclusion (among others):

"If two Member States are at variance concerning the exact interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty".

The same report also contains the following statement, in the paragraph dealing with "Obligations inconsistent with the Charter":

"The Committee is fully aware that as a matter of international law it is not ordinarily possible to provide in any convention for rules binding upon third parties".[34]

96. The Charter, being a contractual instrument, binds the Member States to carry out its provisions and to see to it that their actions conform to its Purposes and Principles. Immediately after the Preamble, which sets forth the common intentions of the signatories, the Charter contains the following declaration: "Have resolved to combine our efforts to accomplish these aims", which constitutes a formal undertaking.

97. Furthermore, Article 55 of the Charter, which defines the Organization's Purposes in economic and social matters, uses categorical language: "The United Nations shall promote . . ."

98. However, with reference to these Purposes—respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion—the Charter also contains, in Article 56, a solemn pledge which creates an obligation of a special kind for Member States: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the Purposes set forth in Article 55".

99. It has been argued that this clause does not constitute an express undertaking. Professor H. Kelsen regards it as a rule of conduct, a general objective, legally "meaningless and redundant".[35] Other jurists and learned authors, however, take the opposite view. Professor H. Lauterpacht, a member of the United Nations International Law Commission, considers that "there is a distinct element of legal duty in the undertaking expressed in Article 56";[36] and Mr. Oscar Schachter, in an article in which he discusses the question in detail,[37] expresses a similar opinion. With the explicit purpose of refuting Professor Kelsen he explains that the binding force of the undertaking contained in Article 56 is to be inferred in the first place from the actual term used: "pledge" means an undertaking, a commitment; in a legal document it indicates the binding character of the promise. Mr. Schachter adds that the drafting history of the Charter confirms this view for the records of the proceedings reflect the importance which the Drafting Committee attached to the binding force of the pledge. During the Conference certain delegations insisted that this provision did not authorize the United Nations to intervene in the domestic affairs of States,[38] but (Mr. Schachter says) that in no way implies that the pledge is without legal force. It is after all a common occurrence that States enter into commitments which are not enforceable by international bodies; the Charter itself contains many clauses stipulating obligations of that kind, for examples Articles 2, 24, 25, 43, 48, 49, 73, 84, 88, 94 and 100. Mr. Schachter goes on to say that the drafts of Ar-

[33] *United Nations Conference on International Organization*, vol. 13, page 709.

[34] *Ibid.* Commission IV, page 708.

[35] See *The Law of the United Nations*, chapter 5, page 100.

[36] See *International Law and Human Rights*, chapter 9, page 148.

[37] See "The Charter and the Constitution: The Human Rights Provisions in American Law", *Vanderbilt Law Review*, vol. 4, No. 3, April 1951.

[38] The Report of Committee II/3 contains the following statement: "The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of Member States" (UNCIO, vol. 10, pp. 271-2).

ticles 55 c and 56 were submitted to the San Francisco Assembly by the Australian delegation which proposed that the United Nations should be given the task of promoting "universal respect for, and observance of, human rights". (The French term *effectif* conveys the idea contained in the expression "observance of" of the original English draft of Article 55 c.) During the discussion on the Australian draft, the representatives agreed that "observance of" implied giving effect to these rights. The Yugoslav representative, for example, said that "respect for human rights" laid down a principle, whereas the expression "observance of" constituted an undertaking to give effect to them. The Czechoslovak representative thought that the expression would make it the duty of the signatories to change their domestic legislation, if necessary, in order to honour the pledge given with respect to the rights mentioned in Article 55. The Chinese representative interpreted the expression in a similar manner.[39]

100. The Commission is in agreement with the views expressed above concerning the binding force of the undertakings in Article 56 of the Charter. Hence, for the reasons stated, it regards Article 56 as a commitment binding the signatories of the Charter expressly to take joint and separate action in co-operation with the United Nations, for the achievement of certain purposes, including "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". This particular pledge merely confirms and elaborates the general undertaking made in the Preamble and the declaration of the Purposes and Principles contained in Chapter I of the Charter.

III. Definition of human rights and fundamental freedoms

(i) The Declaration of Human Rights

101. The various United Nations bodies, each in its own field, took steps at the outset to define exactly the Principles of the Charter which relate to human rights and fundamental freedoms.

102. In accordance with its terms of reference under Article 68 of the Charter the Economic and Social Council, at its first session in January 1946, established a "Commission on Human Rights", with the request that it should submit to the Council proposals regarding "an international bill of rights". A few months later the General Assembly unreservedly approved the Council's action and expressed the hope that it would be able to discuss a draft bill of rights at its second session.

103. On 10 December 1948, after preparations that had taken over two years, the General Assembly adopted without opposition the text of the "Universal Declaration of Human Rights". According to the preamble the General Assembly proclaimed the Declaration as "a common standard of achievement for all peoples and all nations", because (among other reasons) "Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms", and "a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge".

[39] See *United Nations Conference on International Organization*, vol. 3, page 546 *et seq.*

104. The lengthy proceedings preparatory to the drafting of the Declaration were marked by animated, yet grave and dignified discussions, and the Declaration's adoption was an occasion of great solemnity. Apart from its moral value, it has an undoubted legal meaning. During the discussions immediately preceding its adoption Professor René Cassin, the representative of France, said that the Declaration had a legal meaning because it would "be contained in a resolution of the General Assembly which is empowered to make recommendations, and our declaration is only a further development of the provisions of the Charter which has included human rights under positive international law".[40] The Declaration offers a precise definition of the fundamental human rights referred to in the Charter. During the debate in the Third Committee of the General Assembly Professor Cassin said that the Declaration was also destined to guide governments in the determination of their policy and their national legislation; such a declaration would not have any coercive legal force but it would, none the less, have a very real value because it could be considered as an authoritative interpretation of the Charter of the United Nations and as the common standard towards which the legislations of all the Member States of the United Nations should aspire.[41]

One of the most important principles contained in the Declaration, a principle based on specific clauses of the Charter, is that of the equality of all human beings, emphasized by the prohibition of discrimination. Its article 1 states: "All human beings are born free and equal in dignity and rights"; while article 2 confirms that principle by adding:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

And article 7 reads:

> "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."

(ii) Prevention of discrimination

105. As early as its first session the General Assembly gave its attention to the question of discrimination in general and to racial discrimination in particular. On 19 November 1946 it adopted resolution 103 (I), which reads:

> "The General Assembly declares that it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination, and calls on the Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end."

References to this resolution occur in a number of later Assembly resolutions: resolutions 395 (V) of 2 December 1950, 511 (VI) of 12 January 1952, and 616 (A) and 616 (B) (VII), both of 5 December 1952.

[40] See *Official Records of the General Assembly, Third Session, Part I, Plenary Meetings*, 180th meeting.

[41] *Ibid. Third Committee*, 92nd meeting.

106. Early in its existence the Economic and Social Council in its turn, acting in the spirit of the Charter, also authorized the Commission on Human Rights to establish a Sub-Commission on the Prevention of Discrimination. Accordingly the Sub-Commission on Prevention of Discrimination and Protection of Minorities was established during that Commission's first session, its principal function being "to examine what provisions should be adopted . . . in the field of the prevention of discrimination on grounds of race, sex, language or religion . . . and to make recommendations to the Commission on urgent problems" in that field.

107. These successive resolutions of the General Assembly, the Economic and Social Council and other United Nations bodies are cited because they follow faithfully the line of thought begun when the Charter's provisions relating to fundamental human rights and non-discrimination were adopted. They show that this line of thought has constantly given rise to the formulation of precise principles—the definition of human rights—and inspired the Organization's policy. They also show that the faith of the majority of the peoples of the world, represented by the majority of the Members of the General Assembly and of the Economic and Social Council which adopted the resolutions, is unshakable and has not weakened since the San Francisco Conference.

IV. Implementation of the principles relating to human rights

108. Altogether five provisions in the Charter govern the action of the main organs of the United Nations to give effect to the Purposes and Principles of the Charter in so far as these relate to human rights and non-discrimination: Articles 10, 13 (1 (a)), 14, 60 and 62. The first three deal with the powers of the General Assembly. Article 60 deals with the powers of the General Assembly and the Economic and Social Council, and Article 62 with those of the Economic and Social Council.

109. Article 10 of the Charter enumerates the questions which the General Assembly may discuss:

> "*Article 10.* The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

110. A careful study of the San Francisco proceedings shows that the Conference attached great importance to this provision. It placed it at the head of the list of the General Assembly's functions, regarding it as the key to the task assigned to the United Nations. The General Assembly has been called "the world's open conscience", as Goodrich and Hambro very aptly observe in their book *Charter of the United Nations—Commentary and Documents*. During the Conference Dr. Evatt, head of the Australian delegation, expressed the view that the text of Article 10 established "the clear right of the Assembly to discuss any question or any matter within the scope of this Charter. That scope" (he proceeded) "will include every aspect of the Charter, everything contained in it and everything covered by it. It will include the Preamble of the Charter, the great purposes and principles embodied in it, the activities of all its organs; and the right of discussion will be free and untrammelled and will range over that tremendous area".[42]

111. The present Secretary of State of the United States, Mr. John Foster Dulles, draws special attention to the meaning of Article 10, as construed during the San Francisco discussions, in his book *War or Peace*:[43] "We saw that the only kind of power that could be counted on at this stage of world development was moral power and the power of world opinion. That is why we attached the utmost importance to provisions for insuring freedom of discussion in the General Assembly and at the Security Council. We wanted the United Nations to become, in Senator Vandenberg's words, the *'Town Meeting of the World'*. We knew that, as such, it could exert an influence for peace. That was the possibility which, above all, we sought to develop in San Francisco, and which we did develop."

112. Article 13, paragraph 1 (b), which is expressly mentioned in the resolution laying down the Commission's terms of reference, provides that:

> "The General Assembly shall initiate studies and make recommendations for the purpose of . . . (b) promoting international co-operation in the economic, social, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

113. Article 14 of the Charter further extends the General Assembly's power to make recommendations to Members of the Organization and to the other main organs.

> "*Article 14.* Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations."

114. It is interesting to examine the scope of this provision in the light of Articles 11 and 12, which are concerned with the General Assembly's power to discuss and make recommendations on "any questions relating to the maintenance of international peace and security". It is clear that by the inclusion of Article 14 the Charter was intended also to make provision for cases (regardless of origin) which, though not directly threatening peace and security, were likely to bring interests into conflict with one another, to impair friendly relations among nations, and to prejudice the "general welfare". The object was that the Assembly should have the power to discuss and to make recommendations concerning such situations. The Charter makes particular mention in this Article of the fact that the situations in question include those "resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations".

This last passage of Article 14 recognizes explicitly and clearly that any violation of the Purposes and Principles of the Charter, the Organization's *raison*

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[42] See *United Nations Conference on International Organization*, Commission II, 4th meeting.

[43] See *War or Peace*, by John Foster Dulles, page 38.

d'être, is prejudicial to the "general welfare" and might impair "friendly relations among nations".

115. According to Article 60 of the Charter, "Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council . . ." This article is contained in Chapter IX entitled "International Economic and Social Co-operation". This means that it is the function of the General Assembly and the Council to carry into effect the particular purposes and principles mentioned in Article 55, which speaks of human rights and fundamental freedoms, and to represent the Organization in the "co-operation" referred to in connexion with the solemn pledge given in Article 56; in other words they are the organs for co-operating with the States signatories of the Charter in the "joint and separate" action which they have pledged themselves to take "for the achievement of the purposes set forth in Article 55".

116. Lastly, under Article 62 the Economic and Social Council may:

"make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters" and

"make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."

V. Article 2, paragraph 7, of the Charter

117. At this stage of the report the Commission does not propose to analyse the force of the restrictive clause in Article 2, paragraph 7, of the Charter in relation to the powers of the General Assembly and the Economic and Social Council to implement the Purposes and Principles of the Charter. That general analysis will be carried out later. For the moment the Commission proposes to complete this analytical study of the Charter provisions referred to in resolution 616 A (VII) by a reference to Article 2, paragraph 7, in order to facilitate the general study which will be made in a later section of the chapter.

The paragraph in question reads as follows:

"7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

118. Among the Dumbarton Oaks proposals there was one provision which differed appreciably from the text adopted at San Francisco. Chapter VIII, section A, paragraph 7 of the proposals stated that the provisions of the six preceding paragraphs relating to the pacific settlement of disputes "should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned".

119. The Covenant of the League of Nations contained a similar provision, which read as follows:

"If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

120. The history of the drafting of Article 2, paragraph 7, at San Francisco shows that the text finally adopted was, apart from some slight alterations in its final part as a result of an Australian amendment, the joint work of the countries which drafted the Dumbarton Oaks proposals, namely, China, the Union of Soviet Socialist Republics, the United Kingdom and the United States. The United States representative explained, at the request of the Committee concerned,[44] the scope of the proposed amendments. According to the Summary Report, Mr. Dulles observed, *inter alia*, that:

". . . The scope of the Organization was now broadened to include functions which would enable the Organization to eradicate the underlying causes of war as well as to deal with crises leading to war. Under the Economic and Social Council the Organization will deal with economic and social problems. This broadening of the scope of the Organization constituted a great advance, but it also engendered special problems.

"For instance, the question had been raised as to what would be the basic relation of the Organization to member states: would the Organization deal with the governments of the member states, or would the Organization penetrate directly into the domestic life and social economy of the member states? As provided in the amendment of the sponsoring governments, Mr. Dulles pointed out that this principle would require the Organization to deal with the governments. Under the Economic and Social Council the Organization had a mandate to raise the standards of living and foster employment, etc., but no one in the 10-member Council would go behind the governments in order to impose its desires."[45]

121. It is also interesting to note that during the discussion on this Article an amendment[46] was submitted to the effect that it should be left to the International Court of Justice at the request of a party to decide whether or not a situation or dispute arose out of matters that under international law fell within the domestic jurisdiction of the State concerned. In that connexion, Mr. Dulles, in opposing the amendment, pointed out

". . . that international law was subject to constant change and therefore escaped definition. It would, in any case, be difficult to define whether or not a given situation came within the domestic jurisdiction of a state. In this era the whole internal life of a country was affected by foreign conditions. He did not consider that it would be practicable to provide that the World Court determine the limitations of domestic jurisdiction or that it should be called upon to give advisory opinions since some countries would probably not accept the compulsory jurisdiction clause.

". . . Moreover, this principle was subject to evolution. The United States had had long experience in dealing with a parallel problem, i.e., the relationship between the forty-eight states and the Federal Government. Today, the Federal Govern-

[44] Documents, vol. VI, page 507.

[45] Documents, vol. VI, pages 507-508.

[46] Documents, vol. VI, page 509.

ment of the United States exercised an authority undreamed of when the Constitution was formed, and the people of the United States were grateful for the simple conceptions contained in their Constitution. In like manner, Mr. Dulles foresaw that if the Charter contained simple and broad principles future generations would be thankful to the men at San Francisco who had drafted it."

122. Thus, the authors of the Charter expressly manifested the intention that organs of the United Nations should themselves be called upon to interpret the scope of that Article in every individual case and to determine in each case whether or not a given situation was within the domestic jurisdiction of a State. As will be shown later, the General Assembly has used this power whenever its competence under that Article has been questioned. Moreover, it has systematically rejected proposals to seek the opinion of the International Court of Justice on such competence.

123. Other controversial aspects of the interpretation of the terms of the Article, such as the words "essentially" and "intervene", will be examined subsequently in the general study in section VI of this chapter.[47]

VI. Competence of the United Nations

124. At this stage the various provisions of the Charter should be examined together, in order to determine the extent of the United Nations competence, in a specific case of this kind where fundamental human rights are violated as a result of racial discrimination.

125. Four principal arguments have been put forward regarding the competence of the United Nations organs (General Assembly and Economic and Social Council) to examine allegations made against any given State that it is not respecting, or is violating human rights, and subsequently to address its recommendations to that State.

These arguments may be summarized as follows:

(*a*) The first, and most restrictive argument is to maintain that the organs of the United Nations have no competence whatsoever in this sphere, and that consequently the Assembly cannot deal with any such allegations, either by examining them or, *a fortiori,* by addressing any recommendations;

(*b*) The second argument, while generally upholding the same point of view as the first, nevertheless allows of an exception in the case where the allegation concerns a violation of the principle of non-discrimination, particularly on ethnical grounds; in such an event, the General Assembly is regarded as fully competent;

(*c*) The third argument seeks to differentiate between the examination of the allegations, which it allows and the addressing of recommendations, which it rejects. A general statement of principles may be made on the subject, in the form of recommendations addressed to all the Member States after the examination;

(*d*) Finally, the fourth argument, based on the widest view of the matter, recognizes that in principle the organs of the United Nations are competent to deal with allegations against a State and to address direct recommendations. As will be seen, however, this argument may be developed in a number of ways.

[47] See paragraphs 126 *et seq.*

(a) *First argument concerning the competence of the United Nations*

126. The Commission considers that a detailed examination of the first of these arguments, that of complete lack of competence, necessarily involves also the second and the third. In this examination, the Commission will adopt as its basis the speech delivered by the South African representative, Mr. Jooste, at the eighth session of the Assembly when the discussion turned on the inscription on the agenda of the question submitted to the Commission.[48] The Commission regards the South African representative's statement of his thesis as complete and logical.

127. South Africa's argument is that the General Assembly is not competent to deal with the question of the racial situation in that country for a number of reasons, some based on Article 2 (7) of the Charter and the relevant preparatory work at San Francisco, others on Articles 55 and 56.

128. The South African representative advanced three points based on the wording of Article 2, (7), of the Charter:

(i) "The word 'nothing' in the initial phrase of Article 2, (7), has an overriding effect and forbids any activity which takes the form of an intervention in the domestic affairs of any State, regardless of any other provision of the Charter, except enforcement measures, with which, in any case, the Assembly is not competent to deal.

(ii) "The word 'intervene' in the paragraph which we are examining has its ordinary dictionary meaning and includes interference. It cannot mean dictatorial interference, as has repeatedly been alleged, since only the Security Council can interfere dictatorially when it concerns a question of enforcement measures under Chapter VII of the Charter. Since the Assembly has no competence in this regard, the prohibition not to intervene in a country's domestic affairs would be tantamount to prohibiting the Assembly from doing something which in any case it has no competence to do, namely, interfering dictatorially.

(iii) "The word 'essentially' in the phrase 'essentially within the domestic jurisdiction of any State' was used in order to widen, and not to narrow, the scope of domestic jurisdiction. This much is abundantly clear from the records of San Francisco, from which I quoted in supfort of my contention during our last session."

129. (iv) Dealing next with the history of Article 2 (7), the South African representative referred to the view that this paragraph is not applicable when there is an alleged question of human rights, and made the following comment:

"I need merely mention that there was a very full discussion at San Francisco on the question of fundamental human rights in relation to Article 2, (7). The outcome of that discussion was the adoption by Commission II and subsequently by the plenary meeting of the Conference of the following statement:

" 'The Members of Committee 3 of Commission II are in full agreement that nothing in Chapter IX can be construed as giving full authority to the

[48] See *Official Records of the General Assembly, Eighth Session, Plenary Meetings,* 435th meeting.

Organization to interfere in the domestic affairs of Member States'."

130. Mr. Jooste then referred to the wording of Articles 55 and 56, and made the two following comments on the subject:

(v) "If the United Nations were to be permitted to intervene in regard to paragraph c of Article 55, which incidentally concerns the promotion of human rights, on the ground that the matters contained therein were not covered by the prohibition against intervention contained in Article 2 (7), then the Assembly would be equally permitted to intervene in regard to matters set out in paragraphs a and b of Article 55; that is, economic and social matters, higher standards of living, full employment, health legislation, etc. And I submit that no State on earth would tolerate this.

(vi) "In conclusion, on this point, I should draw attention to the fact that neither the Charter nor any other internationally binding instrument contains any definition of fundamental human rights. If they had, there would have been no need to set up the Commission to frame the proposed covenant on human rights."

131. The Commission will first examine the arguments concerning the wording of Article 2 (7), and the relevant preparatory work at San Francisco.

(i) The word "nothing"

132. It is clear, as South Africa maintains, that the use of the word "nothing" at the opening of Article 2 (7) leads to the conclusion that this provision extends to all other provisions of the Charter, but the Commission feels that the exact scope of the prohibition contained therein can be assessed only in the light of the proper interpretation of the two other words, "intervene" and "essentially" which follow. Therefore this first argument is not absolutely valid *per se*, but only in relation to the interpretation placed on the other two words.

(ii) The word "intervene"

133. The interpretation of the word "intervene" is, of course, one of the keys to the interpretation of the scope of the provisions of Article 2 (7). According to the Union of South Africa, this word has here its ordinary dictionary meaning, and includes "interference." It simply means to "meddle". The same interpretation has been upheld by other countries to support the argument that the United Nations is not competent.

134. The contrary view, defended by the majority of the Member States, maintains that the word "intervene" means "dictatorial interference". The discussion of a matter by the Assembly and the drafting of recommendations do not amount to "dictatorial interference", and hence they do not constitute "interference" within the meaning which according to the intentions of the San Francisco Conference should be attributed to that word.

135. It should be noted that this latter interpretation has the support of two distinguished jurists, Professor H. Lauterpacht, member of the International Law Commission of the United Nations, and Professor René Cassin, member of the Human Rights Commission, both of whom are experts not only on human rights but also on the interpretation of the Charter.

136. In his book *International Law and Human Rights* Professor Lauterpacht expresses the opinion that "intervention is a technical term on the whole, unequivocal connotation. It signifies dictatorial interference in the sense of action amounting to a denial of the independence of the State". This implies "a peremptory demand for positive conduct or abstention —a demand which, if not complied with, involves a threat of or recourse to compulsion, though not necessarily physical compulsion in some form". "In order to justify the use of the term intervention there must be an attempt to 'impose the will' of one or more States upon another State in an 'imperative form'." That interpretation supplies an answer to the question of the limits of the action of the United Nations in the field of human rights. The General Assembly, or any other competent organ is authorized to discuss human rights, address recommendations of a specific nature to the State directly concerned, and undertake or initiate a study of the problem. There is, however, no legal obligation to accept any such recommendation. The prohibition in Article 2 (7) refers therefore only to direct intervention in the domestic economy, social structure, or cultural arrangements of the State concerned but does not in any way preclude recommendations, or even inquiries conducted outside the territory of such State.

On the basis of these considerations, Professor Lauterpacht concludes that Article 2 (7) can in no event exclude the study of a problem brought before the United Nations, the submission of the relevant reports, and the formulation of recommendations, since none of these acts constitutes intervention in the strictly technical sense. Any interpretation withholding human rights from the United Nations' field of action by reason of Article 2 (7) would render altogether nugatory the relevant provisions of the Charter concerning human rights and fundamental freedoms.

137. Professor Cassin, considers that in the field of human rights Article 2 (7) only forbids "intervention", that is to say interference in the technical sense, the imperative nature of such action taking the onward form of injunctions or orders.[49]

138. Professors Norman Bentwich and Andrew Martin, in their book *Commentary of the Charter of the United Nations*, gave a similar interpretation of the word "intervene". They consider that it must be interpreted according to its strictly technical meaning, that is to say "dictatorial interference by a State in the affairs of another State", and consequently that the study of a problem, or an inquiry into it, or even a formal recommendation, cannot be regarded as "intervention".

139. As we have seen, South Africa relies, in support of its thesis, on the argument that since the Assembly is in any event not competent to take enforcement action, the prohibition contained in Article 2 (7) is meaningless in the Assembly's case if the word "intervention" is taken as meaning "dictatorial interference".

140. In this connexion, the Commission points out that the Assembly is not precluded from "dictatorial interference", since it may use measures of coercion or enforcement by way of recommendations to the Member States, when a matter is not essentially within the

[49] See "La Déclaration universelle et la mise en œuvre des droits de l'homme", Académie de droit international. Extract from *Recueil des cours 1951*, pages 1 and 2.

domestic jurisdiction of any State, as is witnessed by General Assembly resolution 39 (I), concerning the relations of Members of the United Nations with Spain. In any event, the doctrine set forth above was firmly established by the Assembly through the adoption of resolution 377 (V), "Uniting for peace".

141. The effect of Article 2 (7) seems, therefore, to prohibit "dictatorial interference" by the United Nations in matters which are essentially within the domestic jurisdiction of any State.

(iii) The phrase "essentially within the domestic jurisdiction of any State"

142. The interpretation of the words "essentially within the jurisdiction of any State" is at least of equal importance to that of the word "intervene". That was the most keenly disputed point during the discussions in the Assembly, when most Member States again expressed views in opposition to those advanced by the Union of South Africa.

The opinion of certain jurists and experts may be worth quoting.

143. Professor Cassin, in the book already mentioned, states that the word "essentially" cannot be taken to mean "principally, or even preponderatingly". According to him, the Charter is to be interpreted as having brought within the international field all human rights and fundamental freedoms, only those for which the United Nations does not call for the co-operation of its Members under Articles 55 and 56 of the Charter being excepted and classified as reserved.[50] The author claims that this interpretation is confirmed by the San Francisco records. In rejecting an amendment to vest in the International Court of Justice power to decide whether a situation or dispute arises out of matters solely within domestic jurisdiction, the United Nations took, in his opinion, the view that the competent organ of the United Nations, including, when appropriate, the Court, should be left with authority to decide, with regard to the actual circumstances in each disputed case, whether the subject matter falls essentially within a State's national jurisdiction or not.[51]

144. Professor Cassin had previously supported the same thesis, in his capacity as French representative to the General Assembly. During the discussions in the Assembly's Third Committee (first part of the third session) on the draft Universal Declaration of Human Rights, he expressed the following opinion reported in the summary records:[52]

> "In his country's opinion, the competence of the United Nations on the question of human rights was positive, and the provisions of Article 2, paragraph 7, of the Charter, relating to domestic jurisdiction of Member States, could not be invoked against such competence when, by adoption of the Declaration, the question of human rights was a matter no longer of domestic but of international concern."

145. In considering the meaning of the phrase "matters which are essentially within the domestic jurisdiction of any State", Professor Lauterpacht, in the book already cited,[53] contends that this is a question of fact. Each specific problem that arises has to be studied in the light of the "Purposes and Principles" of the Charter as a whole. In no event may such a study lead to the extinction of any legally binding obligation imposed by that document.

146. Professor Lauterpacht says that there is no technical or immutable sense attaching to the term "essentially". He does not consider that the change of phraseology in the Charter, as compared with the corresponding Articles of the Covenant of the League of Nations which used the word "exclusively" *(sic)*, implies a restriction of the United Nations' competence more drastic than that which Article 15 (8) of the Covenant imposed on the League; he is, on the contrary, of opinion that the United Nations has greater freedom than that enjoyed by the League to discuss matters normally within domestic jurisdiction, particularly where human rights are concerned, in view of the prominence given to such rights in the Charter. Conversely, he thinks that there is little cogency in the argument that "essentially" means that any matter, even though governed by international treaty, is within the domestic jurisdiction of a State provided only that it is, by its nature, essentially of domestic concern. According to him, it could be said with equal justification that a matter is essentially within the domestic jurisdiction of a State only if it is not regulated by international law, or if it is not capable of being so regulated.

The power to decide whether Article 2 (7) is applicable, belongs in principle, according to Professor Lauterpacht, to the organ responsible for the implementation of the relevant chapter of the Charter in each particular case.

147. The study summarized above leads Professor Lauterpacht to the following conclusions:

(*a*) "Matters essentially within the domestic jurisdiction of a State" do not comprise questions which could become the subject of international obligations, by custom or treaty, or which have become of international concern by virtue of constituting an actual or a potential threat to international peace and security;

(*b*) How rights are no longer a reserved question.

148. Professor R. Brunet's treatise on *La garantie internationale des droits de l'homme d'après la Charte de San-Francisco* contains an exhaustive study of this point. His opinion agrees with those mentioned above. Thus, for instance, in one passage he suggests that Article 62 (2) of the Charter, which authorizes the Economic and Social Council to make recommendations "for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all", must, unless it is quite meaningless, imply that: "respect for and observance of human rights and fundamental freedoms are an international question, and have ceased to be a matter of domestic jurisdiction". According to Professor Brunet, Article 62 (2) confirms that "all matters connected with the protection of human rights have been removed by the Charter from the reserved class of national questions, and placed under the direct gaurantee of the United Nations".

149. How can this interpretation be reconciled with the provisions of Article 2 (7)? Professor Brunet considers that the States which drafted the San Francisco Charter intended to effect "only one breach" in the fortifications protecting the reserved class, the breach made in favour of the respect for human rights. They had either to acquiesce in the protection of human rights

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[50] *Ibid.* page 18.

[51] *Ibid.* pages 18 and 19.

[52] See *Official Records of the General Assembly, Third Session, Part I, Third Committee,* 92nd meeting.

[53] *International Law and Human Rights.*

and to relinquish a fraction of their sovereignty to that end or to forego the inclusion of that principle in the Charter. They chose the first alternative because the pressure of public opinion at the time was stronger than their will to resist.

150. Professor Georges Scelle, in his book *Droit international public*,[54] briefly surveys the problem raised by Article 2 (7). He considers that the substitution in the Charter of the word "essentially" for the term "exclusively" used in Article 15 (8) of the League Covenant, was a retrograde step, all the more serious in that "the notion of exclusive jurisdiction, instead of remaining a simple demurrer, now becomes a fundamental principle of the law of nations".

151. This defect is, however, offset by the fact that "essentially domestic jurisdiction" can only be pleaded before the organ dealing with the matter, which has sole authority to decide whether the demurrer is well founded. Thus, the meaning of the phrase "matters essentially within the domestic jurisdiction of any State" will be little by little determined by the jurisprudence in the discussions in its competent organs.

152. In an article published in 1949, Mr. Lawrence Preuss, Professor of Political Science in the University of Michigan, examines the problem of Article 2 (7).[55] The author concludes from the preparatory work in the San Francisco Conference, that the governments represented at the Conference had intended to restrict so far as possible the Organization's power to intervene in the internal affairs of any State. But, notwithstanding this trend towards strict limitation, the Organization was even then invested with competence to determine in each individual case whether Article 2 (7) applied. And the writer finds that in interpreting that clause the United Nations accepted the view that "intervention" means an act implying a refusal to recognize the independence of a State and a threat of coercion. Article 2 (7) would not therefore in any way preclude "discussion, study, investigation and recommendation".

153. He ends up with the statement that the provisions of Article 2 (7) have not proved to be a substantial obstacle to the expansion of the activities of the United Nations in fields which have hitherto been inviolable and sacrosanct. He goes on to say: "The framers of the Charter undoubtedly intended, through the novel formulation which they gave to the domestic jurisdiction clause, to place narrow limits upon the powers of the United Nations, but the very elasticity of the terminology which they employed has permitted a degree of interference by the United Nations in internal matters which would not have been possible under such a provision as Article 15 (8) of the Covenant. The concept of 'international concern', applied by the political organs of the United Nations in the exercise of a virtually unlimited discretion, has removed from the domestic sphere any situation which presents a potential threat to the peace, or even a threat to the good understanding among nations".

154. Professor H. Kelsen[56] is in almost entire agreement with Professor Preuss. He too considers that the intention of the legislators at San Francisco was generally to place limitations on the Organization's actions, and that Article 2 (7) applies to the subject matter of Chapters IX and X of the Charter, as is evident from a study of the preparatory work at San Francisco. But he further maintains that a State is not thereby precluded from submitting to the competent organs of the United Nations any matter which another State claims to fall within its domestic jurisdiction. In this connexion, Professor Kelsen thinks that the replacement of the word "solely" which appeared in Article 15 (8) by "essentially" is not an improvement. In his view there are no matters "essentially" within domestic jurisdiction. A matter which is not expressly regulated in one way or another by international custom or treaty belongs "solely" within the internal jurisdiction of a State, but never "essentially"; and the question whether a matter falls within the reserved class of questions can only be answered by reference to international law. Therefore, the new wording of the clause relating to the reserved class does not represent an advance from the position in the past. In the first place, it might be supposed that a matter falls "essentially" within domestic jurisdiction if it is "essential" to the sovereignty of the State concerned. Such State could therefore refuse to submit any matter of this nature to international settlement, if it considered such submission incompatible with its sovereignty. The fact that Members are not bound to submit matters within their domestic jurisdiction to international settlement in terms of the Charter, could likewise relieve them of their obligations under Article 37, or even of the duty of settling their disputes by peaceful means, since under Article 2 (3) Members need only seek peaceful means in the case of an "international dispute", which would seem to exclude disputes arising from matters other than those having an international character, that is to say those within domestic jurisdiction. In any event, the importance to be attributed to Article 2 (7) largely depends on "the answer to the question as to who is competent to decide whether a matter is essentially within the jurisdiction of a State". On the wording of Article 2 (7), it is arguable that the State concerned is free to indicate that authority; but the State which demurs to the contention that the matter falls within the domestic jurisdiction of the government against which the complaint is brought, is obliged to bring the dispute before the competent organ of the United Nations. Thus it will be that organ which will in every instance finally decide whether the matter falls within the reserved class. In his conclusion, Professor Kelsen affirms that the wording of Article 2 (7) probably goes farther than was intended by those who framed it. It is very likely that the authors of the Charter did not intend to release by Article 2 (7) any Member from the obligation to refrain from the threat or use of force in the settlement of a conflict arising out of a matter which, in the opinion of that Member, is essentially within its domestic jurisdiction.

155. Professor Ross of the University of Copenhagen,[57] considers that it is sufficient if a matter is by its nature (essentially) within the domestic jurisdiction of a State, for the provision to be applicable in principle; but far from specifying when and in what circumstances such a situation may arise, the Article leaves that question completely unanswered.

In any event, it must be the competent organ itself which finally decides whether or not any matter sub-

[54] See Section III: "Théorie de la compétence exclusive".

[55] See "Article 2, paragraph 7, of the Charter and matters of domestic jurisdiction", by Lawrence Preuss, Professor of Political Science, University of Michigan. *Recueil des cours 1949*, 1, Académie de droit international.

[56] *The Law of the United Nations.*

[57] *Constitution of the United Nations.*

mitted to the United Nations is within its competence. That, in Professor Ross's view, will increasingly tend to restrict the reserved class of question, and favour an ever more pronounced interference by the Organization in matters which normally fall within domestic jurisdiction.

From the economic and social point of view, Article 2 (7), literally interpreted, seems to paralyse the Organization, but that could not have been the object of the authors of that provision. Professor Ross feels, therefore, that in these spheres the Article refers only to recommendations addressed to a specified country, without prohibiting recommendations of a general character.

156. Summing up his views, he stresses the vagueness of Article 2 (7). He is unable to accept that there exist certain matters that by their nature are outside the competence of international law. As drafted, the provision is hostile to progress and can only lead to the perpetuation of the chaotic condition of international law. The introduction of the essentiality qualification and the omission of a reference to international law as a basis of judgment, tend to replace legal judgment by political judgment. The practical scope of the provision is, however, greatly limited by the power of the Organization itself to decide whether or not the plea of domestic jurisdiction is justified.

157. Professors N. Bentwich and A. Martin, in their book on the Charter of the United Nations,[58] after listing a certain number of matters such as nationality, customs tariffs, immigration laws and so forth, which traditionally come within domestic jurisdiction, submit the view that even such problems may, in certain circumstances, assume an international character. The way in which racial minorities are treated in one State may have serious repercussions in another; the immigration laws of one country may create difficult problems for others which are forced by the lack of national resources to encourage their surplus population to emigrate; the customs and tariff policy of an importing State is of the utmost concern to States with large exports to sell. As a result, the border-line between domestic jurisdiction and international regulation has become fluid. And while the existence of a border-line is recognized by the Charter in Article 2 (7), no attempt is or could be made to define the two fields it separates. The authors believe that the present wording of Article 2 (7) makes it a question of fact and not of law whether any particular matter justifies intervention by the Organization, since the omission of all reference to international law has removed the only reliable theoretical standard. But, from the legal point of view, the Article must not be allowed to bar the way to action by the United Nations if the latter has come to the conclusion that an issue, though domestic in appearance, calls for international action.

158. It will be seen from the foregoing that jurists are not in full agreement upon the interpretation of the phrase "matters essentially within the domestic jurisdiction of a State". Authorities with an exceptional knowledge and experience of the United Nations, such as Professors Cassin and Lauterpacht, maintain categorically that, as a result of the adoption of the Charter, fundamental human rights have become part of international law and no longer fall essentially within domestic jurisdiction. Others like Professor Kelsen consider that the provisions of the Charter do not suffice for assessing which matters fall essentially within and which outside domestic jurisdiction, since the Charter is silent on the exact criterion to be applied. But the important point to note is that the supporters of the latter argument agree with the other school of thought that the Charter, both in the letter and the spirit, empowers the principal United Nations organs, within the sphere of their respective jurisdictions, to decide in every specific instance referred to them whether or not the matter falls within the domestic jurisdiction of a State. On this point, therefore, there is no disagreement between the authorities. In brief, all the jurists agree that such organs are the sole judges in deciding their own competence for the purposes of Article 2 (7) of the Charter.

159. It would obviously be wrong to suppose that the organs concerned may abuse this discretionary power, through addiction to some arbitrary criterion. In each case they will weigh the question whether the international aspect of the matter has sufficient validity or gravity to warrant the consideration of it. The General Assembly and the Economic and Social Council will naturally act cautiously and with a clear sense of the responsibility conferred on them by the Charter. Thus, for example, if an isolated instance of violation of fundamental human rights should arise in a country where the citizens enjoy legal facilities for seeking and obtaining redress, there would be no case for making it an international question. The United Nations organs would be failing to perform their duties under the Charter in a responsible and cautious manner were they to interfere in a domestic situation which, though incompatible with the principles of the Charter, is due to certain well-defined historical conditions and circumstances which cannot be changed overnight but which the State concerned is endeavouring gradually to eliminate. On the other hand, to go to the opposite extreme, the United Nations is unquestionably justified in deciding that a matter is outside the essentially domestic jurisdiction of a State when it involves systematic violation of the Charter's principles concerning human rights, and more especially that of non-discrimination, above all when such actions affect millions of human beings, and have provoked grave international alarm, and when the State concerned clearly displays an intention to aggravate the position.

160. The Commission finds no justification for the excessive apprehension of certain States regarding what they term a flagrant attack on their sovereignty, for it is agreed that the Assembly has authority to decide whether or not it is competent to deal with any matter affecting human rights in a given State solely for the purposes of discussion, investigation, and, according to circumstances, the formulation of recommendations to the State concerned. A point to be noted is that the two-thirds majority rule has hitherto always been imposed by a majority of the Members present and voting in contentious matters concerning human rights. That rule protects those countries which fear excessive interference in matters which they regard as falling within their domestic jurisdiction. It will be recalled that during the discussions on the question of "the treatment of persons of Indian origin in the Union of South Africa", during the fourth session of the

[58] *A Commentary on the Charter of the United Nations* by Norman Bentwich, LL.D., Barrister at Law, and Andrew Martin, Ph.D., Barrister-at-Law.

Assembly[59] it was decided that the question of competence should be settled by a two-thirds majority. It is almost impossible to imagine two-thirds of the Member States failing to display a proper sense of responsibility or acting frivolously or at the dictate of prejudice against another Member State.

We need only remember that, in accordance with the provisions of the Charter and with the resolutions which the Assembly has itself adopted, that body is very properly called upon to show an exceptionally serious mind in deciding upon matters affecting Member States.

161. For instance, Article 11 (2) of the Charter authorizes the General Assembly to:

"Discuss any questions concerning the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such question to the State or States concerned or to the Security Council or to both."

On the basis of this Article, the Assembly adopted, in 1950, resolution 377 (V), "Uniting for peace", prescribing a whole series of collective measures which the Assembly is to recommend to the Member States in cases where:

"The Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression."

These collective measures may, according to the resolution, include:

"In the case of a breach of the peace or act of aggression, the use of armed force when necessary, to maintain or restore international peace and security."

162. Now the Charter has not defined the meaning of "threat to the peace", "breach of the peace" or "act of aggression". It is for the Assembly to determine whether any such situation has arisen. The Assembly possesses a Peace Observation Commission, responsible for assisting it in this matter. But the Assembly may, even without the advice of that Commission, declare that there exists a "threat of aggression", a "breach of the peace" or an "act of aggression", and consequently recommend to its Members any of the collective measures prescribed by the Charter and developed in resolution 377 (V), including economic sanctions and the use of armed force. *A fortiori,* therefore, it is logical to suppose that the Assembly may, by the same two-thirds majority, judge whether a violation of fundamental human rights in a particular country falls essentially within its domestic jurisdiction or not, since the only point then at issue is that of affording the Assembly an opportunity to discuss, investigate, and report, and, if necessary, address a recommendation to Member States inviting them to liquidate the position in question.

(iv) Drafting of Article 2, paragraph 7, of the Charter

163. In support of its contention the Union of South Africa also refers to the argument based on the drafting of Article 2, paragraph 7 and, in particular, to the extract reproduced above[60] from the report of the Rapporteur of Committee II/3 of the San Francisco Conference.

The Commission comments that this argument adds nothing to that based on the presence of the word "intervene" in the paragraph in question since the same term recurs in the report; consequently, everything depends on the construction placed on this term. The Committee itself stated its view on that point earlier in this document.[61]

(v) Article 55 a and b of the Charter

164. With regard to the Union's argument concerning the powers of the Organization to "intervene" in the case of the questions mentioned in Article 55 a and b,[62] the Commission, in the light of its interpretation of the term "intervene"[63] and for the reasons stated earlier, considers that the exercise by the United Nations of the functions referred to in these provisions cannot in any way constitute an "intervention".

165. Furthermore, Article 55 b provides that the Organization shall promote "solutions of international economic, social health, and related problems; and international cultural and educational co-operation". Hence the Union's argument leads to a conclusion which is diametrically opposed to what it is trying to prove, since the Charter itself recognizes the international nature of certain economic and social problems which are to be solved by means of "international co-operation".

166. Since by virtue of Article 55 a the United Nations is under a duty to promote "higher standards of living, full employment and conditions of economic and social progress", it is contended that its main competent organs are authorized to discuss the situation existing in each of the Member and non-member States and to address either collective or individual recommendations to these States.

167. This has, in fact, been a constant practice on the part of the Assembly and Economic and Social Council from their earliest days. The Organization has been continuously studying the economic situation, food conditions, employment, unemployment, social and health conditions, etc., in all the Member States; it has discussed these situations and conditions at length and in detail and made recommendations which were not perhaps addressed to a single State in particular, but to a relatively small group of the Members of the Organization, which for the purposes of the present study comes to the same thing.

(vi) The definition of human rights

168. Because neither the Charter nor any other binding international instrument defines the term "fundamental human rights", therefore the Union of South Africa argues that Article 56 does not create a legal obligation for States. The Commission points out, firstly, that other terms, which certainly do involve obligations on the part of Member States, are also not defined in the Charter; this is true of such terms as "international peace and security", "threats to the peace",

[59] See *Official Records of the General Assembly, Second Part of the First Session, Plenary Meetings,* 52nd meeting.

[60] See paragraph 129.

[61] See paragraph 141.

[62] See paragraph 130.

[63] See paragraph 141.

"breaches of the peace", and "acts of aggression", as mentioned before.

169. Secondly, the idea of "human rights and fundamental freedoms" does not date from the Charter but goes back at least to the Declaration of the Rights of Man and the Citizen of 1789 and to the American Declaration of Independence. Since that time nearly two centuries ago, this idea has become an integral part of the public law of most civilized States in Europe, America and elsewhere. Nothing proves better that the authors of the Charter meant to refer to this time-hallowed idea than the passage in the Preamble of the Charter: "the peoples of the United Nations determined . . . . to reaffirm faith in the fundamental human rights".

The notion was therefore sufficiently familiar in 1945 that it could become the subject of an express legal obligation. What the Charter did was to introduce this principle of municipal law into international relations. The principle was later affirmed afresh, in more precise terms, in the Universal Declaration of Human Rights which the General Assembly adopted on 10 December 1948.

In this connexion, particularly as regards the weight of the Universal Declaration as an instrument defining the human rights mentioned in the Charter, the Commission refers to the comments made in sections II and III of this chapter, and, in particular, to the authoritative views quoted there.[64]

170. The Commission would also like to quote from the remarks of Mr. Charles Malik (Lebanon), one of the drafters of the Declaration and the Chairman of the Third Committee of the Assembly at which the final discussions of the draft Declaration took place:[65]

> "Finally, Mr. Malik felt that the Universal Declaration of Human Rights was essentially different from any other resolution adopted by the General Assembly. The other resolutions were consistent with the Charter only from a formal point of view, whereas the very substance of the Declaration of Human Rights was contained in the Charter and was governed by specific provisions. The Declarations continued and, in a way supplemented the Charter, and could not therefore be considered a mere resolution."

171. Furthermore, in a case of racial discrimination, one need not rely on a definition or legal clause contained in some instrument other than the Charter for the purpose of proving that there is a binding pledge.

As stated earlier, the principle of non-discrimination is laid down in the Charter itself, which in its Preamble, in its Purposes and Principles, in Article 13 and in Article 55, condemns implicitly and explicitly, "distinction as to race, sex, language or religion." The principle of non-discrimination is a fundamental principle of the Charter, introduced as a reaction against misconceived racial theories, as pointed out elsewhere in this report.[66]

(b) *Second and third arguments concerning the competence of the United Nations*

172. The second argument is identical with the first, except in that it concedes that the rule of the non-competence of the Assembly is subject to an exception in cases where the allegation involves the Purposes of the Charter as defined in Article 1, paragraphs 2 and 3 and, in particular, the principle of non-discrimination. The Commission takes the view that the situation which it was asked to study by the Assembly involves precisely this principle: hence, even according to the supporters of this argument, the United Nations is competent in the matter.

173. The third argument admits the Assembly's competence to discuss a matter concerning human rights in a particular State but denies it the right to address recommendations to that State.

Actually, the Articles of the Charter cited to prove the Assembly's competence in this matter (Articles 10 and 13) speak simultaneously of the competence to discuss (or initiate studies) and to make recommendations. The only Article (Article 14) which mentions only one of these twin terms does not mention the competence to discuss but does speak of the competence to recommend. Hence it is difficult to see on what the above argument can be based, unless it be the inferences drawn from Article 2, paragraph 7, of which the Commission has already disposed.

(c) *Fourth argument concerning the competence of the United Nations*

174. These three arguments having been disposed of, the conclusion reached is that the fourth argument[67] is correct. This does not, of course, in any way invalidate the earlier affirmation that the organs of the United Nations take the final decision on competence, on whether, from a political standpoint, the question before them is or is not within the domestic jurisdiction of the State and whether it is sufficiently serious and important to arouse international concern and justify a discussion, inquiry or even a recommendation by the organ concerned.

The racial situation in the Union of South Africa is clearly one which the Assembly wished to discuss. As mentioned before, it rejected, by a heavy majority, a motion of non-competence submitted to the *Ad Hoc* Political Committee, and again at a plenary session of the Assembly. Moreover, simultaneously with setting up this Commission, the Assembly adopted resolution 616 B (VII) which states:

> "In a multiracial society, harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on the basis of equality";

and affirms that:

> "Governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter."

There is no doubt that in this resolution the Assembly reaffirmed its competence.

The next section of this report deals with the case-law built up by the United Nations in considering questions similar to those studied by the Commission

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[64] See paras. 101-104, and 144.

[65] See *Official Records of the General Assembly, Third Session, Part II, General Committee,* 59th meeting.

[66] See paragraphs 81 and 82.

[67] See paragraph 125 (*d*).

and shows that this is a consistent practice of the United Nations.

VII. Precedents concerning the competence of the United Nations

175. An earlier section of this chapter[68] describes the view taken by the San Francisco Conference concerning the authority responsible for determining what circumstances have to be present or absent in order to allow or rule out discussion of a matter by a United Nations body, in conformity with Article 2, paragraph 7. As mentioned there, after the rejection of the Greek amendment, which would have made a ruling on this point by the International Court of Justice mandatory, the Conference affirmed the absolute right of each of the main organs to settle the point itself. This decision by the Conference is consistent with the principles followed in the interpretation of all the provisions of the Charter.

176. In addition, it is interesting to note that the organs of the United Nations have also been reluctant to apply to the voluntary jurisdiction of the Court and refused to ask for its advisory opinion concerning its competence to deal with certain specific cases of violation of human rights in which the country concerned, relying on the provisions of Article 2, paragraph 7, claimed that the United Nations was not competent. On each of these occasions, the General Assembly rejected proposals that the International Court should be asked for an advisory opinion and affirmed its sovereign power to decide the question of competence itself. It did so either implicitly, by discussing the substance of the questions or by making recommendations, or, explicitly, by rejecting the argument of non-competence.

177. It is, indeed, noteworthy that on all the occasions mentioned, the Assembly categorically declared itself competent to deal with the particular questions. The Economic and Social Council took exactly the same line. This consistency and this firm and resolute attitude are most impressive, for the different questions discussed affected countries which are geographically and politically far removed from one another. This is of capital importance. When Article 2, paragraph 7, was discussed at San Francisco it was said that the clause should be elastic enough to allow its interpretation to evolve *pari passu* with the evolution of human thought and of the notion of national sovereignty. The inevitable conclusion must be that this evolution has meant that questions formerly regarded as purely domestic have now come to be regarded as international.

178. Another noteworthy fact concerns the thesis of the competence of United Nations organs to discuss, or make recommendations relating to, cases of violation of fundamental human rights in particular countries. This thesis has been accepted at least once by each of the Member States of the United Nations with the exception of the Union of South Africa. In some of these cases, of course, a number of countries adopted a negative attitude; but it thus becomes clear that the position of learned authors as regards competence is often determined by the political circumstances of each individual case.

179. The Commission felt it should review the precedents of the United Nations concerning competence. In each case, it will discuss the resolution adopted from the point of view of competence, point to certain features of the discussion, and quote the views of representatives that may be of special interest, as set forth in the verbatim or in the summary records, either because their opinions add something new to their arguments or because they reflect the attitude of the particular country towards the question studied by the Commission.

180. The following questions will be discussed:

(*a*) General Assembly:[69]

- (i) Treatment of people of Indian origin in the Union of South Africa;
- (ii) Violation by the Union of Soviet Socialist Republics of fundamental human rights, traditional diplomatic practices and other principles of the Charter;
- (iii) Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms.

(*b*) Economic and Social Council:

- (iv) Survey of forced labour;
- (v) Infringements of trade union rights.

(a) *General Assembly*

(i) Treatment of people of Indian origin in the Union of South Africa

181. This question was considered during the second part of the first session, the second session, the second part of the third session and the fifth, sixth and seventh sessions of the General Assembly. The question of the Assembly's competence in this matter was discussed at each of these sessions.

182. During the second part of the first session of the General Assembly, the Indian delegation proposed, for inclusion in the provisional agenda of the Assembly, an item entitled "Treatment of Indians in the Union of South Africa". The contention that the Assembly was not competent to discuss this item was argued in the plenary. Some delegations proposed that the International Court of Justice should be asked to decide whether this case came within the domestic jurisdiction of the Union of South Africa. Their proposals were not adopted and although several motions were submitted to the effect that the Assembly should settle the question of its competence by a vote, it took no action on these proposals. Resolution 44 (I) was adopted by the General Assembly at that session. It simply stated that owing to this "treatment", "friendly relations between the two Member States have been impaired and might be further impaired in the future. . .", and therefore requested the two governments to report at the second session of the Assembly what action they had taken to deal with the situation.

183. The question was discussed again during the second session, but no decision was taken by the Assembly, the relevant draft resolution adopted by the First Committee lacking the approval of the necessary two-thirds majority (A/PV.120).

[68] See paragraphs 117 *et seq.*

[69] The question of "Relations of Members of the United Nations with Spain" is not included in this list since, although the evidence produced in support of resolution 39 (I) of 12 December 1946 clearly points to flagrant violations of fundamental human rights, the question was not submitted as one involving these rights. Nor were the Articles of the Charter which relate to human rights cited at the time, because the item was submitted as a strictly political issue.

184. During the second part of the third session, the representative of the Union of South Africa submitted to the First Committee a draft resolution recommending that the General Assembly should decide that the question came essentially within the domestic jurisdiction of the Union and was not within the competence of the General Assembly.[70] This draft resolution was rejected by the First Commission. During this session the General Assembly adopted resolution 265 (III).

This resolution invited the "Governments of India, Pakistan and the Union of South Africa to enter into discussion at a round-table conference, taking into consideration the Purposes and Principles of the Charter of the United Nations and the Declaration of Human Rights".

185. During the fifth session, the General Assembly continued the examination of the question and its competence was again disputed. In the *Ad Hoc* Political Committee's debate the issue was whether the Committee was generally competent to discuss the question and also whether it was competent to adopt the specific proposals before it. The Committee decided that it was competent to consider and put to the vote the proposals submitted to it.[71] The Committee recommended its proposals for adoption by the General Assembly; these proposals constitute the substance of Assembly resolution 395 (V).

186. At the sixth session, the General Assembly adopted resolution 511 (VI) bearing on the same question.

187. Similarly, at the seventh session, the General Assembly adopted resolution 615 (VII).

188. Resolution 395 (V) quotes the terms of resolution 103 (I) on "racial persecution and discrimination", refers to the Universal Declaration of Human Rights, and then proceeds to state that "a policy of racial segregation *(apartheid)* is necessarily based on doctrines of racial discrimination"; it recommends once again a round-table discussion on the lines described in resolution 265 (III) and provides that if the Governments should fail to hold a round-table conference within a reasonable time a commission of three members should be established to assist the parties. Finally, this resolution "calls upon the Governments concerned to refrain from taking any steps which would prejudice the success of their negotiations, in particular the implementation or enforcement of the provisions of the Group Areas Act pending the conclusion of such negotiations".

The above resolution was approved by 47 votes to 1, with 10 abstentions.

189. It should be noted that the question of the "treatment of people of Indian origin", involves not only the violation of human rights but also a treaty between India and the Union of South Africa. The French delegation, for example, stated during the discussion that it acknowledged the competence of the United Nations on account of the obligations contracted by the Union of South Africa under its treaties with India, which were of an international nature. At all events, most of the delegations which agreed that the Assembly was competent did so on the basis of a broad interpretation of the powers of the Assembly to discuss and make recommendations concerning matters of human rights.

190. Resolution 511 (VI) contains recommendations similar to those made in resolution 395 (V); the preamble says, *inter alia:*

> "*Noting* that the promulgation on 30 March 1951 of five proclamations under the Group Areas Act renders operative thereby the provisions of that act in direct contravention of paragraph 3 of resolution 395 (V);
>
> "*Having in mind* its resolution 103 (I) of 19 November 1946 against racial persecution and discrimination and its resolution 217 (III) of 10 December 1948 relating to the Universal Declaration of Human Rights."

Finally, in operative paragraph 4 of this resolution, the Assembly again calls upon the Government of the Union of South Africa to suspend the implementation of the Group Areas Act.

191. Resolution 615 (VII) of 5 December 1952 emphasizes the same considerations and recommendations and also establishes a Good Offices Commission to facilitate the negotiations between the governments concerned.

Views expressed by various countries during the discussion

192. *Australia:* Australia disputed the General Assembly's competence to deal with the matter. It argued that the text of Article 2, paragraph 7, and the preparatory work at San Francisco made that point quite clear, and that it was not sufficient to cite certain Articles of the Charter for the purpose of justifying the consideration of questions which, even if of international interest, were nevertheless a domestic concern. According to the Australian delegation, Article 2, paragraph 7, by reason of its position in the Charter, governs the application of all the other Articles of the Charter.[72]

193. *France:* "From the judicial point of view, a strict adherence to Article 2 of the Charter made it difficult to justify intervention. The sovereignty of the State was a basic provision of the Charter. The Capetown Agreement of 1927 was an implied pledge to dispose of the problem in an agreed manner and was an international judicial act. India was justified under the Charter in bringing up this question.[73]

" . . .

(Mr. Garreau) ". . . recalled that when the Indian complaint had first been submitted to the General Assembly in 1946, his delegation had been in serious doubt as to the Assembly's competence to take any action in the matter. This doubt was, however, dispelled by the fact that the problem presented two aspects: in the first case, there was the question of the relationship between different racial groups in South Africa which clearly fell within the domestic jurisdiction of the Union; on the other hand, there was the question involving the latter's obligations under its existing agreements with India which presented an international character.

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[70] See *Official Records of the General Assembly, Third Session, Part II, First Committee,* 268th meeting.

[71] *Ibid., Fifth Session, Ad Hoc Political Committee,* 45th meeting.

[72] *Ibid,* 42nd meeting, paragraphs 37-52 (statement by Mr. Moodie); and *ibid., Seventh Session, Ad Hoc Political Committee,* 10th meeting, paragraphs 15-20 (statement by Mr. Casey).

[73] *Ibid., Second Part of the First Session, Joint First and Sixth Committee,* 6th meeting, page 16 (statement by M. Dejean).

"For those reasons, the French and Mexican delegations had joined in 1946 in submitting a draft resolution, which the Assembly had later adopted, aimed at promoting a settlement by mutual agreement between the two disputants. The matter had again been discussed at the second regular session in 1947 but, since the Assembly had been unable to obtain the necessary majority to take any further action, the resolution of 1946 remained in force. The present position of the French delegation was that the Assembly could not take any further action in the matter without violating Article 2, paragraph 7 of the Charter. The words 'to intervene' really meant 'to deal with'."[74]

194. *United Kingdom:* The United Kingdom delegation construed Article 2, paragraph 7, as meaning simply that the United Nations is not to interfere in matters of a purely domestic character. It argued that the essential legal question was what rights a State should grant to its citizens; such a question was undoubtedly solely within the domestic jurisdiction of the State concerned.[75]

195. *Union of South Africa:* It is unnecessary at this point to include a statement of the position of the Union of South Africa; in brief, its delegation took the view, for the reasons discussed in detail in paragraphs 126 *et seq.* above, that the Assembly had no competence whatsoever.

196. *Belgium:* The Belgian delegation considered that the rights accorded by a State to its nationals were essentially a question of domestic jurisdiction and that a recommendation addressed by the General Assembly to a state would constitute an intervention within the meaning of Article 2, paragraph 7. The delegation said that its interpretation was in line with the intentions of most of the authors of the Charter, though it conceded that the Assembly was competent to discuss the matter since, according to rule 110 of the Rules of Procedure, the vote on competence must take place immediately before the vote on the substance.[76]

197. *United States of America:* (Mr. Austin) " . . . declared that the General Assembly was the sole competent authority to decide whether a question referred to it did or did not come within the national jurisdiction of a State.

"The delegation of the United States therefore held that item 31 should be maintained on the agenda for two reasons: firstly, in view of the interest felt by the States in question of minorities; secondly, in view of the gravity of the legal point raised by the delegation of the Union of South Africa.[77]

". . .

"The main issue related to the competence of the General Assembly. It would seem that the many references in the Charter to the observance of human rights and fundamental freedoms brought the question fully within the competence of the General Assembly. True, Article 2, paragraph 7, provided that the United Nations should not intervene in matters within the domestic jurisdiction of any State but it was doubtful whether that paragraph was intended to prevent any consideration of such matters by the General Assembly and any expression of opinion in the form of a recommendation designed to assist the parties in reaching a settlement. Indeed, the juridical interpretation of that paragraph was still undecided. It was not easy to state what sort of human rights became a matter of international concern. It would be extremely difficult to attempt to draw a hard and fast line between those questions which were of international concern and those which were 'essentially within the domestic jurisdiction'."[78]

198. *Panama:* "The Charter of the United Nations, in seven different passages which have been many times quoted and recited, recognizes and proclaims human rights and provides that the different organs of the United Nations promote respect for and observance of human rights and freedoms.

"In harmony with these provisions, the General Assembly is clearly empowered to make recommendations to the effect that certain fundamental human rights as, for instance, the right to equality, the right to non-discrimination on account of sex, race, language or religion [should] be duly respected and protected.[79]

"I submit that by the San Francisco Charter, human rights have been taken out of the province of domestic jurisdiction, and have been placed within the realm of international law. I submit that the United Nations have undertaken collectively to proclaim, to promote and to protect human rights, and by so doing, the members of the community of States, by the greatest of all covenants of history, the San Francisco Charter, have given birth to a new principle of the law of nations, the principle that the individual as well as the State, is subject to international law.

"That principle has ceased to be the mere speculation of jurists and writers, or of pure theorists of academies and institutes. It is now constitutional law, conventional law, positive law, written law, the supreme law of humanity. Human rights and freedoms, of course, must necessarily be protected and can only be violated within the frontiers of the State. If the State steps out of its own territory to violate human rights within the territory of another State, then that is an act of war, that is aggression, and that is a fact that comes within the purview of other provisions of the Charter.

"Therefore, we must not confuse intraterritorial action with domestic jurisdiction, and we are bound to conclude that although human rights must be exercised and can be violated within the frontiers of the State, the promotion and protection of human rights and freedoms is a matter essentially within the jurisdiction of international law, essentially within the sphere of action of the United Nations."[80]

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[74] *Ibid., Third Session, Part II, First Committee,* 266th meeting, pages 290-291, (statement by M. Garreau).

[75] *Ibid., Second Part of the First Session, Joint First and Sixth Committee,* 6th meeting, pages 14-15 (statement by Sir Hartley Shawcross); *ibid., Second Session, First Committee,* 110th meeting, page 454 (statement by Mr. McNeil); and *ibid., Seventh Session, Ad Hoc Political Committee,* 11th meeting, paragraphs 19-21 (statement by Lord Llewellin).

[76] *Ibid., Third Session, Part II, First Committee,* 266th meeting, pages 287 to 289 (statement by Mr. Ryckmans), and *ibid., Seventh Session, Ad Hoc Political Committee,* 11th meeting, paragraphs 5 to 7 and 9 (statement by Count d'Aspremont Lynden); see also *ibid., Third Session, Part II, First Committee,* 268th meeting, page 320 (statement by Mr. Ryckmans), and *ibid., Fifth Session, Ad Hoc Political Committee,* 43rd meeting, paragraph 5 (statement by Mr. Nisot).

[77] *Ibid., Second Part of the Firsi Session, General Committee,* 19th meeting, pages 71 and 72 (statement by Mr. Austin).

[78] *Ibid., Third Session, Part II, First Committee,* 266th meeting, pages 294-295 (statement by Mr. Cohen).

[79] *Ibid., Second Part of the First Session, Plenary Meetings,* 51st meeting, page 1026-1027 (statement by Mr. Alfaro).

[80] *Ibid., Fifth Session, Ad Hoc Political Committee,* 43rd meeting.

199. *Philippines:* At all stages in the discussion of this matter, the Philippines unequivocally argued in favour of the Assembly's competence. More particularly during the drafting stage of resolution 395 (V), the Philippine delegation thoroughly examined all the aspects of competence, analysing in detail the scope of Article 2, paragraph 7, of the Charter. Its arguments are not reproduced in this context because they would take up too much space and because they are in perfect agreement with the Commission's own contention as set forth in this chapter.[80]

200. *Union of Soviet Socialist Republics:* More than once the Soviet delegation has argued against the competence of the United Nations in questions of the violation of human rights in particular countries. However, in the case of the treatment of Indians in the Union of South Africa, it took a firm stand in favour of competence. The views on which this attitude was based were set forth on several occasions. The Soviet representative's statement made in the First (Political) Committee at the second part of the third session of the General Assembly, during the discussion of resolution 395 (V), is relevant (text from the summary record):

"After hearing the representative of the Union of South Africa give a long statement of his opinion, according to which the matter was not within the competence of the General Assembly, a large number of delegations, including that of the Soviet Union, were still of the opinion that the matter before the Commission had nevertheless become an international problem. That was obvious from the fact that the General Assembly had considered the matter at two sessions and was currently occupied with it once more. Furthermore, in signing the Charter of the United Nations, the Union of South Africa had assumed obligations to respect and observe human rights and fundamental freedoms, in accordance with Article 55 of the Charter. Finally, the Government of the Union of South Africa had undertaken, in agreements signed at Cape Town between it and the Government of India, not to proceed to such discrimination."[81]

201. What emerges from the above analysis of the series of resolutions dealing with the treatment of people of Indian origin in the Union of South Africa and of the relevant discussions can be summed up under the following heads:

(*a*) The Assembly consistently rejected the argument that it lacks competence;

(*b*) The majority of the Member States continued to hold the view that the Assembly is competent in cases involving the violation of the Purposes and Principles of the Charter, in so far as such cases were not excluded by the terms of Article 2, paragraph 7;

(*c*) The Assembly claimed the absolute right to give rulings concerning its own competence;

(*d*) The Assembly not only made general recommendations but regarded itself as authorized to make the specific recommendation, on three successive occasions, to the Government of the Union of South Africa that a national law (Group Areas Act) should be suspended; and

(*e*) All the resolutions quote the Universal Declaration of Human Rights, and in that way recognize its force as an instrument defining the fundamental human rights referred to in the Charter.

(ii) Violation by the Union of Soviet Socialist Republics of fundamental human rights, traditional diplomatic practices and other principles of the Charter

202. This item was placed on the provisional agenda of the third session of the General Assembly at the proposal of the Chilean Government. Chile alleged that the Soviet Government had prevented a considerable number of Soviet women married to aliens from leaving the country with their husbands; the daughter-in-law of the former Chilean ambassador to Moscow was one of these. Chile alleged that these acts constituted a violation of fundamental human rights, of the principles of the Charter and of traditional diplomatic practices.

203. From the outset the Soviet delegation arguing from Article 2, paragraph 7, of the Charter, disputed the General Assembly's competence. It contended that the question was essentially within the domestic competence of the USSR and that the world Organization could not discuss it without seriously violating the Charter. Overruling these objections, the General Committee of the Assembly, by 8 votes to 2, with 4 abstentions, recommended that the item should be admitted to the agenda and the Assembly accepted the recommendation by 30 votes to 7, with 17 abstentions.

204. After a long debate in the Sixth (Legal) Committee, the General Assembly adopted resolution 285 (III). The paragraphs of that resolution which have a bearing on the Assembly's competence are quoted below:

"[*The General Assembly*]

". . .

"*Considering* that in the Preamble to the Charter of the United Nations all the signatory countries resolved 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . .',

"*Considering* that Article 1 (3) of the Charter binds all Members to encourage 'respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion', and that in Article 55 c of the Charter the Members undertook to promote 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion',

"*Considering*, lastly, that the Economic and Social Council, in pursuance of the powers conferred upon it by Article 62 (2) of the Charter, in its resolution 154 (VII) D dated 23 August 1948, deplored the 'legislative or administrative provisions which deny to a woman the right to leave her country of origin and reside with her husband in any other' and that the Universal Declaration of Human Rights formulated by the United Nations General Assembly, in its articles 13 and 16, provides that everyone has the right to leave any country including his own and that men and women of full age have the right to marry without any limitation due to race, nationality or religion,

"*Declares* that the measures which prevent or coerce the wives of citizens of other nationalities from leaving their country of origin with their husbands

[81] *Ibid., Third Session, Part II, First Committee,* 265th meeting (statement by Mr. Panyushkin).

or in order to join them abroad, are not in conformity with the Charter; and that when those measures refer to the wives of persons belonging to foreign diplomatic missions, or of members of their families or retinue, they are contrary to courtesy, to diplomatic practices and to the principle of reciprocity, and are likely to impair friendly relations between nations;

"*Recommends* the Government of the Union of Soviet Socialist Republics to withdraw the measures of such a nature which have been adopted."

The resolution was adopted by 39 votes to 6, with 11 abstentions.[82]

205. During the discussion the Australian delegation submitted a proposal that the International Court should be asked for an advisory opinion on the competence of the General Assembly to deal with the matter.[83] The Sixth Committee rejected the proposal by 13 votes to 9, with 12 abstentions. The vote was taken after the adoption of the principal resolution.

Some views expressed during the discussion

206. *Poland:* "Passing to the legal aspect of the question, the representative of Poland pointed out that rights must exist before they could be violated. The Chilean delegation, however, had not proved that the Soviet women who had married foreigners had the right to leave the USSR with their husbands, or to join them abroad.

"The question of the determination of nationality was generally admitted to be solely within the domestic jurisdiction of each State; that had been confirmed by the Permanent Court of International Justice. Furthermore, international law provided that it was for each State to grant or refuse to its citizens the right to leave their native country in order to emigrate. It was only in exceptional instances that emigration could be governed by international agreements, as for instance in cases of transfers of populations between countries. As those principles were not contested, it could be concluded that the measures taken by the USSR Government in regard to its nationals fell exclusively within its domestic jurisdiction and were subject neither to the provisions of international law nor to the control of an organization such as the United Nations."[84]

207. *Czechoslovakia:* (Mr. Augenthaler) ". . . felt that the Chilean draft resolution (A/C.6/296) was contrary to the provisions of Article 2, paragraph 7, of the Charter, according to which the United Nations must not intervene in matters which were essentially within the domestic jurisdiction of any State.

"At the time of the drafting of the Charter, it had been decided unanimously to insert the exception of domestic jurisdiction in Chapter I. That chapter, which set forth the principles to which the Organization must conform, established limits to the sphere of action of the United Nations.

"The provision that the United Nations must not intervene in the internal affairs of any State meant that it must take no decision nor make any recommendation in that sphere, and that it could not propose a solution to a question of the kind which was being considered by the Sixth Committee.

"The Chilean draft resolution referred to Articles 55 and 62 of the Charter. In that connexion, the representative of Czechoslovakia drew attention to a passage on page 28 of the 1946-1947 United Nations Yearbook, which recorded the interpretation that no provision of Article 55 must be understood to give the United Nations authority to intervene in the internal affairs of Member States.[85]

208. *Union of Soviet Socialist Republics:* ". . . The Soviet Union had passed laws against the marriage of its citizens with aliens in order to protect its women from the hostility which they unfortunately encountered when they followed their alien husbands to other countries. The domestic laws of the USSR were no concern of the United Nations and the Chilean proposal was a manifest violation of Article 2, paragraph 7 of the Charter."[86]

209. *Chile:* "The purposes of the United Nations, as stated in Article 1 of the Charter, were in part to achieve international co-operation in solving international problems and in promoting and encouraging respect for human rights and for fundamental freedoms for all mankind. By Article 55 c the Members of the United Nations pledged themselves to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all'. Consequently, anything relating to human rights could not legally be treated as a matter exclusively within the domestic jurisdiction of the States signatory to the Charter. The Charter also stated that recommendations might be made on those matters and hence, they might be considered and discussed.

"Article 62 said that the Economic and Social Council could make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. If matters relating to those rights and freedoms had been considered as essentially within the domestic jurisdiction of States, the specific provision of that Article would not have been drawn up . . ."

Mr. Cruz Ocampo, summing up, added:

"First, the complaint made by Chile concerning the USSR Government's repeated violations of fundamental human rights and freedoms by preventing the Soviet wives of foreign nationals from leaving their country in order to live with their husbands, was definitely a matter within the province of human rights;

"Secondly, human rights were not a matter reserved exclusively to domestic jurisdiction. They clearly came under international jurisdiction, as was shown by the provisions of the Charter which he had quoted, and by the practical application of the fundamental princi-

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[82] The result of the vote was as follows:
In favour: Sweden, Thailand, United Kingdom, United States of America, Uruguay, Venezuela, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Haiti, Honduras, Iceland, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines.
Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland.
Abstaining: Saudi Arabia, Syria, Union of South Africa, Yemen, Afghanistan, Burma, China, India, Iran, Iraq, Pakistan.

[83] A/C.6/SR.316.

[84] See *Official Records of the General Assembly, Third Session, Part II, Sixth Committee,* 137th meeting, pages 754 to 755 (statement by Mr. Katz-Suchy).

[85] *Ibid., Sixth Committee,* 137th meeting, page 748, (statement by Mr. Augenthaler).

[86] *Ibid., General Committee,* 43rd meeting, page 11 (statement by Mr. Vyshinsky).

ples of the United Nations in the circumstances in question;

"Thirdly, as the result of international conventions and agreements, the State did not possess exclusive jurisdiction in the matter of human rights. Hence, adoption of the Chilean proposal in no way involved a violation of Article 2, paragraph 7, of the Charter, as the Soviet Union delegation had claimed;

"A study of the provisions of the Charter referring to the Assembly's powers would be found to support the conclusions the Chilean representative had indicated."[87]

210. *United Kingdom:* The representative of the United Kingdom spoke at a plenary meeting in support of the resolution which was later adopted.[88]

In the Sixth (Legal) Committee which discussed the question in detail, the United Kingdom representative said that he "did not propose to argue the legal merits of the action taken by the USSR Government. The latter would no doubt refer to Article 2, paragraph 7, of the Charter to claim that such action was solely within the province of domestic jurisdiction. The United Kingdom representative would confine himself, for the time being, to saying that those actions were incompatible with the Declaration of Human Rights, which recognized the freedom of persons to leave their country and to marry foreigners. Since the delegation of the Soviet Union had voted in favour of those two freedoms in the Third Committee, it would be difficult for its Government to maintain in the future that its attitude in regard to those matters was a matter of purely domestic concern and that other States had no right to question it. The USSR Government was of course entitled to prove that it was under no legal obligation to allow its nationals to leave their country, and that it could enact legal measures to prevent them from so doing. But the important point was to determine the extent of that right and the manner in which it was exercised".[89]

211. This statement by the United Kingdom representative is particularly noteworthy because he argued unequivocally that, since the measures objected to were contrary to the rights set forth in the Universal Declaration of Human Rights, they were not simply of concern to the countries in which they had been taken; it also contains the interesting remark that "the important point was to determine the extent of that right and the manner in which it was exercised".

212. *United States of America:* "The United States delegation also felt that the provisions of Article 2, paragraph 7, of the Charter did not prevent the Committee from considering the case of Soviet wives prohibited from leaving their country. Under the provisions of Article 10, the General Assembly had the right to discuss that matter, which concerned a violation of human rights."[90]

213. A study of this question shows that:

(*a*) The Assembly once again rejected the idea that the International Court of Justice should give an opinion on the competence of the General Assembly to deal with the matter;

(*b*) Overruling the objection that it was a question essentially within national sovereignty, the Assembly discussed the question, declared that certain domestic measures adopted by a Member State were not in conformity with the Charter, and recommended that State to report on the measures taken by it;

(*c*) Countries such as Australia, Belgium, France and the United Kingdom which in the question of the racial situation in the Union of South Africa have disputed the Assembly's competence, nevertheless supported a resolution which clearly implied a recognition of the Assembly's competence to consider a particular case involving the violation of human rights and to make specific recommendations to a particular State;

(*d*) The resolution cites articles 13 and 16 of the Universal Declaration of Human Rights, which define the two rights held to have been violated; in this way the resolution reaffirms the legal force of the Declaration.

(iii) Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms

214. During the second part of the third session of the General Assembly, Bolivia and Australia respectively proposed that the following items should be placed on the agenda:

"Study of the legal proceeding against Cardinal Mindszenty of Hungary in relation to Article 1, paragraph 3 and Article 55, paragraph c of the Charter."

"Observance of fundamental freedoms and human rights in Bulgaria and Hungary, including the question of religious and civil liberty, in special relation to recent trials of Church leaders."

215. These delegations made it clear that in their opinion the Assembly ought to take up the trial of the Hungarian cardinal, Monsignor Mindszenty, in conditions which were a violation of fundamental human rights.

216. The United States delegation requested that the item on the agenda should be extended to the violation of the peace treaties signed with Bulgaria and Hungary, on the grounds that the clauses imposing respect for human rights had not been observed.

217. The delegation of the Soviet Union, supported by the Polish delegation, vigorously opposed the inclusion of that item on the agenda, on the grounds that it was a question which came within the domestic jurisdiction of States and that its discussion by the Assembly would violate Article 2, paragraph 7, of the Charter.

218. At the recommendation of the General Committee, the General Assembly decided to unite the two questions in a single item, worded as follows:

"Having regard to the provisions of the Charter and of the peace treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of Church leaders."

219. After a lengthy debate in the Political Committee, during which the question of competence was again discussed, and upon the recommendation of the Committee, the Assembly adopted resolution 272 (III), entitled "Observance in Bulgaria and Hungary of human rights and fundamental freedoms". This reso-

[87] *Ibid., Sixth Committee,* 134th meeting, pages 723 to 725 (statement by Mr. Cruz Ocampo).

[88] *Ibid., Third Session, Part II, Plenary Meetings,* 193rd meeting (statement by Mr. McNeil).

[89] *Ibid., Third Session, Part I, Sixth Committee,* 135th meeting (statement by Mr. Fitzmaurice).

[90] *Ibid.,* page 738 (statement by Mr. Gross).

lution "expresses its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in those countries; . . . most urgently draws the attention of the Governments of Bulgaria and Hungary to their obligations under the Peace Treaties, including the obligation to co-operate in the settlement of all these questions". The resolution is also based on the following consideranda:

"*Considering* that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language of religion,

"*Considering* that the Governments of Bulgaria and Hungary have been accused, before the General Assembly, of acts contrary to the purposes of the United Nations and to their obligations under the Peace Treaties to ensure to all persons within their respective jurisdictions the enjoyment of human rights and fundamental freedoms."

220. At the fourth session of the General Assembly, the Australian delegation proposed that an additional item should be placed on the agenda, entitled: "The observance of fundamental freedoms and human rights in Romania, including the question of religious and civil liberty". This item was placed on the agenda under the title of "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms" (A/BUR.65 and A/PV.224); the General Assembly adopted resolution 294 (IV) on this question.

221. In the preamble, this resolution draws attention to the obligation deriving from Article 55 of the Charter to promote fundamental human rights. The text of its operative part, however, is of no great interest for the purposes of this analysis, since it requests the advisory opinion of the International Court of Justice regarding the scope of certain clauses of the Treaties of Peace.

222. The same item was placed on the agenda of the fifth session of the Assembly. The General Assembly adopted resolution 385 (V), the operative part of which refers exclusively to the aspect of the violation of the Treaties of Peace; in the first paragraph of the preamble, however, it recalls once more that "one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

Various opinions advanced during the discussion

223. Although, as has just been made clear, the final resolutions on this question refer only to the Treaties of Peace and are not based on a violation of obligations under the Charter (the countries affected are not members of the United Nations), the discussions gave rise to the expression of opinions which are of interest to the matter being analysed by the Commission. Among the statements noted below, the Commission draws particular attention to that of Mr. Evatt, the President of the Assembly, who felt obliged to intervene in the discussion of the interpretation of Article 2, paragraph 7, of the Charter. It will be recalled that he had taken part in the discussion of that provision at San Francisco.[91]

[91] See paragraphs 120 and 227.

224. *Argentina:* (Mr. Muñoz) "stressed a specific aspect of the General Assembly's competence. It was a complex question which should not be influenced by political considerations. Paragraphs 6 and 7 of Article 2 of the United Nations Charter embodied one of its essential provisions. Paragraph 7 was a solemn undertaking. Moreover, it had been a *sine qua non* for the adherence of various States to the multilateral treaty that the United Nations Charter constituted. It was of course permissible to hope that the field of national competence would be gradually reduced, but the hope could not influence the interpretation of such a legal text as paragraph 7 of Article 2, supported as it was by the constitutional tradition of all countries. Moreover, the abolition of sovereignty would have to be accompanied by a whole system of international agreements, which did not yet exist. As regards non-member States, it was clear from paragraph 6 of Article 2 that the Charter could not be binding upon third parties except "so far as may be necessary for the maintenance of international peace and security", which was tantamount to establishing the right of legitimate defence. The Argentine delegation's position on that subject had not altered in the course of the discussion."[92]

225. *France:* ". . . The General Assembly had the right to express its concern at any violations, wherever they might occur, of such vital principles. Mr. Ordonneau would not again discuss the text of Article 55 or of the Preamble to the Charter which, he thought, gave the General Assembly at least the right to feel concern.

"Passing to the legal aspect of the problem, Mr. Ordonneau pointed out that the question was whether the United Nations could go further. If the provisions of the Charter were taken as the sole basis, such a possibility was, to say the least, doubtful. The national competence of every State should be respected, and that principle, which applied to the Members of the United Nations, applied even more to the non-member States. The fact that the powers of the United Nations were limited by the Charter was regrettable. But it would be still more regrettable if the Organization were induced to transgress the Charter and conferred upon itself rights which it did not possess. Injustice could not be countered with arbitrary action. Mr. Ordonneau regretted that such an omission had been made in the institutions of the United Nations. Human rights should be internationally guaranteed and the Universal Declaration of Human Rights should be completed by conventions, the application of which should be supervised by jurisdictional organs. The French delegation hoped that that would come about, and would do everything in its power to turn that wish into a reality. In that connexion, Mr. Ordonneau recalled the step recently taken by the Council of Europe at Strasbourg in setting up, in principle, a court of human rights for Western Europe."[93]

226. *USSR:* "Article 2, paragraph 7, of the Charter, which stated in unequivocal terms that the United Nations was not entitled to intervene in the domestic

[92] See *Official Records of the General Assembly, Third Session, Part II, Ad Hoc Political Committee,* 41st meeting, pages 164-165 (statement by Mr. Muñoz); see also *ibid., Fourth Session, Ad Hoc Political Committee,* 14th meeting, paragraph 21.

[93] *Ibid.,* paragraphs 12-14 and 16 (statement by Mr. Ordonneau); see also *ibid., Fifth Session, Ad Hoc Political Committee,* 6th meeting, paragraph 13.

affairs of States, was by no means inconsistent with Article 55. On the contrary, the two Articles fitted perfectly well together. In connexion with Article 55, Mr. Vyshinsky cited extracts from the records of Committee 3 of Commission II of the San Francisco Conference to the effect that the Committee agreed that nothing contained in Chapter IX of the Charter could be interpreted as authorizing the Organization to intervene in the domestic affairs of Member States. On the proposal of the Australian delegation, it had been unanimously decided to include that text, originally formulated by the United States and supported by the Australian, French and United Kingdom delegations in the Committee's report. The records of Committee 3 of Commission II also revealed that the Committee as a whole had rejected as incorrect the view of certain Members that the provisions of Article 55 could be interpreted as authorizing interference in domestic affairs of States.

"Those conclusions, it was true, had been reached in the early days of the United Nations. It might be claimed that matters were very different at the present time. Indeed, conditions had changed; other purposes were sought now, different from those which were being sought when the United Nations Organization was being set up. But facts remained facts, and the legal aspect of the issue remained unchanged. In proposing to intervene in the domestic affairs of Bulgaria, Hungary and Romania, the delegations of the United States, Australia, the United Kingdom and others were violating the Charter. The USSR delegation could not accept such a situation because a violation of the Charter requirement not to intervene in the domestic affairs of any country was clearly existent."[94]

227. *Australia:* The President of the Assembly, Mr. Evatt,[95] stated:

"If the duty of the United Nations were such as was laid down in Article 55, then the General Assembly was fully competent, under Article 10, to consider whether, in a specific case, human rights had been respected or observed either by a Member or by a non-member State, since Article 10 was essentially universal in scope.

". . . The right of discussion provided for in Article 10 of the Charter was one of its most important provisions. There was no question or problem which came within the scope of the Charter and which concerned its aims, its principles or any one of its provisions, which could not be discussed by the General Assembly. If any question could be covered by an Article of the Charter, that question could no longer be held to be a matter essentially within the domestic jurisdiction of a State. Whether a State in which human rights had been violated was or was not a Member of the United Nations was entirely irrelevant."

The President added that the provisions of a treaty between different countries did not affect the jurisdiction of the United Nations if such jurisdiction already existed. It was important to refer to treaties, but States could not, by agreement between themselves, rule out the jurisdiction of the United Nations. That was the meaning of Article 103, the most important of all the Articles of the Charter. If, for example, ten countries were to declare in a treaty that the United Nations should have no jurisdiction in respect of the provisions on human rights contained in such a treaty, those provisions would be contrary to the Charter itself, and the Charter would prevail. Hence the fact that neither Australia nor Bolivia had formally called for the application of the procedure provided for under the peace treaty with Hungary had nothing to do with the legal question of the competence of the United Nations".

228. During the debates in the *Ad Hoc* Political Committee, the Australian representative "pointed out that the provisions of Article 55 of the Charter were by no means restricted to Members of the United Nations; there could therefore be no suggestion that the General Assembly had no jurisdiction in the matter because Bulgaria, Hungary and Romania were not Member States. Similarly, the argument that the matter raised was outside the Assembly's competence because it was essentially within the domestic jurisdiction of the States concerned had been refuted at the third session. Furthermore, it could not be denied that the violations which, as it appeared, had occurred in Bulgaria, Hungary and Romania fell within the scope of Article 55 of the Charter. That being so, the Australian delegation maintained that, having been presented with a *prima facie* case of violation of human rights, the Assembly was bound to proceed through its own agencies to investigate and determine the facts."[96]

229. *Belgium:* "The fact was that Article 2, paragraph 7 of the Charter set a rule to which all the provisions of the Charter, with the single exception of the coercive measures in Chapter VII, were subject; the provisions relating to human rights were consequently also subject to it. The paragraph absolutely forbade the United Nations to intervene in matters which were essentially within the domestic jurisdiction of any State, whether or not it was a Member of the United Nations. That prohibition therefore applied to the Assembly, which could not have greater powers than the United Nations itself.

". . .

"The fact that the matter fell essentially within the domestic jurisdiction of States did not mean that the Assembly was necessarily powerless, but its action must not go as far as intervention, which was forbidden by the Charter".[97]

230. *United States:* "Under Articles 55 and 56 of the Charter the field of human rights had been brought expressly within the scope of the Charter, and the General Assembly could exercise authority in this field under Articles 10 and 14. Article 2, paragraph 7, of the Charter regarding non-intervention in matters of domestic jurisdiction was not intended to preclude, in appropriate cases, discussion in the Assembly on the promotion of human rights and fundamental freedoms. Nor was the Assembly barred, under appropriate circumstances, from expressing an opinion or making a recommendation when there was a persistent and wilful disregard for human rights in any particular country. Moreover, in determining the applicability

[94] *Ibid., Fourth Session, Ad Hoc Political Committee,* 12th meeting, paragraphs 19-20 (statement by Mr. Vyshinsky).

[95] *Ibid., Third Session, Part II, General Committee,* 58th meeting.

[96] *Ibid., Fourth Session, Ad Hoc Political Committee,* 7th meeting (statement by Mr. Makin).

[97] *Ibid., Third Session, Part II, Ad Hoc Political Committee,* 35th meeting, pages 96, 97 (statement by Mr. Nisot).

of Article 2, paragraph 7, account had to be taken of the important fact that in the case under discussion, Bulgaria and Hungary had assumed in the peace treaties special obligations under international law to secure human rights and fundamental freedoms to all persons under their jurisdiction.

"Generally speaking, however, no organ of the United Nations could impose corrective action in such matters if there had been no breach of the peace or threat to international peace, and if there was no treaty providing for such action."[98]

231. *Peru:* "It is not true that at San Francisco an attempt was made to establish the primacy of domestic jurisdiction to such an extent as to preclude entirely the General Assembly or the Organization as a whole from dealing with human rights. Certainly, this would not have been possible.

"In the first place, domestic jurisdiction occurred primarily in relation to the pacific settlement of disputes. It was given greater importance, and was embodied in Article 2, that is to say, in the first and most fundamental part of the Charter. This transference of the principle of domestic jurisdiction did not, however, deprive this principle of its basic nature . . . Domestic jurisdiction is that jurisdiction which international law confers upon a State. Therefore, the conception of the majority of delegations . . . was specifically to reconcile the principle of domestic jurisdiction, a principle which is always eminently respectable and is intimately connected with national sovereignty, with another principle which also had to play a role in our international life, namely, the principle of the protection of human rights.

As many delegations have already stated here, the protection and safeguard of human rights appears not only in the Articles of the Charter, but in the Preamble to the Charter itself as one of the basic and fundamental characteristics which must typify our international institutions. We, therefore, discard the claim that an endeavour was made at the outset to draw a cleavage between domestic jurisdiction and international jurisdiction. I certainly would be the first to respect the right of domestic jurisdiction. But I believe that it must, after all, be limited by the protection of human rights, because otherwise . . . it would be inconceivable for the Charter to make more than eight references to human rights. Moreover a declaration bearing upon human rights was adopted in Paris."[99]

232. From a study of the jurisprudence on the item entitled "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms" it can be said that the majority of the General Assembly reaffirmed its broad interpretation of the provisions of Article 2, paragraph 7, of the Charter. Although the Assembly did not explicitly formulate this interpretation in the resolutions urging respect for the Treaties of Peace with the allied Powers, it is clearly implied in the statements of the majority of representatives. It is also implied in their decision to discuss the question from the angle of the violation of human rights, as is indicated by the title given to this item of the agenda at the second part of the third session of the Assembly and the discussion of the choice of that title.

[98] *Ibid.*, 35th meeting (statement by Mr. Cohen).

[99] *Ibid., Plenary Meetings,* 19[illegible] th meeting (statement by Mr. Belaúnde).

(b) *Economic and Social Council*

(iv) Survey of forced labour

233. The survey of forced labour and measures for its abolition was included in the agenda of the sixth session of the Economic and Social Council at the request of the American Federation of Labour, made in a letter of 24 November 1947. The American Federation of Labour suggested that the Council should request the International Labour Organisation to undertake a comprehensive survey on the extent of forced labour in all member nations of the United Nations and to suggest positive measures with the goal of eliminating forced labour.

234. Although the item had been submitted without special reference to any specific country, during the discussion of it at the eighth session of the Council the representative of the above-mentioned Non-Governmental Organization and the United States and United Kingdom delegations argued in favour of the survey of forced labour on the basis of alleged conditions in the USSR, Czechoslovakia and other East European countries. The two delegations in question made long and detailed statements about the events which they claimed were taking place in those countries. The USSR and Polish delegations on their side replied by denying the events in question and, in turn, accused the United States and other Western countries of continuing to employ practices which amounted to forced labour.[100]

235. The question was again discussed at the ninth and tenth sessions of the Council.[101] During these sessions, the labour conditions in certain specific countries were again examined in detail. The United Kingdom delegation in particular gave the Council a very circumstantial analysis of the situation in the USSR, including a detailed survey of its legislation.[102]

236. At its twelfth session the Economic and Social Council had before it a report by the Secretary-General concerning the replies received from Governments to the questions concerning their co-operation in an impartial inquiry—a question which had been asked at the Council's recommendation—and the extent, if any, to which forced labour existed in their countries.[103] The Council adopted resolution 350 (XII) of 19 March 1951. In that resolution, the Council,

"*Considering* the rules and principles laid down in International Labour Convention 29,[104]

"*Recalling* the principles of the Charter relating to respect for human rights and fundamental freedoms, and the principles of the Universal Declaration of Human Rights,

[100] See *Official Records of the Economic and Social Council, Eighth Session,* 236th, 237th, 238th, 243rd, 254th, 262nd and 263rd meetings (statements by Mrs. Sender and Mr. Thorp, Mr. Mayhew, Mr. Tsarapkin and Mr. Katz-Suchy).

[101] *Ibid., Ninth Session,* 319th, 320th, 321st, 322nd and 324th meetings, *ibid., Tenth Session,* 365th and 366th meetings, and *ibid., Eleventh Session,* 413th and 416th meetings.

[102] *Ibid., Ninth Session,* 319th meeting (statement [illegible] Corley Smith. In the course of his statement Mr. Corley Smith said: "The object of the debate was to discover the degree of truth in the charges that there was forced labour in the Soviet Union").

[103] See *Official Records of the Economic and Social Council, Eighth Session, Resolutions,* No. 195 (VIII).

[104] It should be noted that neither the Union of Soviet Socialist Republics nor the eastern European countries, with the exception of Bulgaria, have adhered to this convention.

"*Deeply moved* by the documents and evidence brought to its knowledge and revealing in law and in fact the existence in the world of systems of forced labour under which a large proportion of the population of certain States are subjected to a penitentiary régime",

established, in co-operation with the International Labour Organisation, an *Ad Hoc* Committee on Forced Labour "to study the nature and extent of the problem raised by the existence in the world of systems of forced or 'corrective' labour which are employed as a means of political coercion or punishment for holding or expressing political views, and which are on such a scale as to constitute an important element in the economy of a given country, by examining the texts of laws and regulations and their application in the light of the principles referred to above, and, if the Committees thinks fit, by taking additional evidence into consideration".

The resolution was adopted by 15 votes to 3.

Some opinions expressed during the discussion

237. The question of the Council's competence was only touched on incidentally; it was not formally raised and no decision was taken. Nevertheless some references to the question were made which it may be useful to recall:

238. *Belgium:* ". . . If the proposed commission did not have the right to conduct inquiries on the spot, it had better not be set up at all . . . He was convinced that such inquiries were in keeping with the progressive ideas of large numbers of people, and certainly with those of the working classes. In the last thirty years, every advance made had been achieved in the face of the pernicious doctrine of State sovereignty. Now they were confronted with an attempt to use that sovereignty as a barrier between the international organizations and Member States. The acceptance of an inquiry on the spot would be an encouragement to progressive-minded people . . ."[105]

239. *United Kingdom:* "His Majesty's Government was of the opinion that the question of the abolition of forced labour was completely within the competence of the United Nations . . . The representative of the United Kingdom thought that the free world could not remain indifferent to that constantly growing evil. Communist forced labour camps, communist discipline, wage levels fixed by the Communists threatened the workers's right and workers' standards of living in the non-communist world. The United Kingdom delegation felt that the problem should receive all the attention it deserved."[106]

The report on the survey on forced labour

240. After two years' work, the Committee set up under Economic and Social Council resolution 350 (XII) submitted its report (E/2341) in June 1953. This report shows that the Committee studied successively the allegations made and the documentation transmitted with regard to various countries, examined legislation and practices, addressed questionnaires to the countries concerned, invited and received evidence from Non-Governmental Organizations and private individuals and, lastly, arrived in each case at affirmative or negative conclusions on the existence of forced labour in the countries concerned and formulated certain considerations to the effect that such practices were irreconcilable with the principles and provisions of the Charter and the Universal Declaration of Human Rights.

241. The report was not discussed by the Economic and Social Council at its sixteenth session, but the item was included in the agenda of the eighth session of the General Assembly at the request of the United States.[107]

242. From the above analysis of the question it may be deduced:

(*a*) That, in agreeing to consider the request of the American Federation of Labor for a survey on forced labour throughout the world, the Economic and Social Council discussed detailed allegations concerning legislation and practices that were considered as violations of fundamental human rights in certain countries, whether those countries were or were not Members of the United Nations, including certain countries which were not parties to International Labour Convention 29;

(*b*) That the Council ordered a survey to be made on the existence of forced labour and that although that survey was of a universal nature it required detailed investigation in respect of each of the countries regarding which allegations had been made;

(*c*) That the terms of reference handed down by the Council included the examination of laws and regulations and their application in the light of the principles of the Charter relating to respect for human rights and fundamental freedoms and the principles of the Universal Declaration of Human Rights; they also empowered the Committee to take additional evidence into consideration;

(*d*) That the Committee completed this survey, country by country, along the lines suggested by the Council and formulated conclusions on each country;

(*e*) That the General Assembly felt that the Committee's survey was of sufficient interest to justify its consideration.

(v) *Infringements of trade union rights*

243. At its eighth session, the Economic and Social Council considered an item on its agenda entitled: "Infringements of Trade Union Rights" which had been placed on the Council's provisional agenda at the request of the World Federation of Trade Unions, a non-governmental organization with consultative status in category A, which had alleged that in a certain number of countries trade union rights were being infringed and had suggested that the Council should adopt recommendations urging governments effectively to guarantee the recognized principles of trade union rights.

244. The Council heard detailed allegations against the countries referred to. During the discussion several of these countries contested the Council's competence and based their contention on Article 2, paragraph 7, of the Charter. The USSR delegation on the other hand submitted a draft resolution[108] in which the Council was asked to state that legislative and administrative measures taken in each of the countries named "violate the Charter of the United Nations" and to recommend "those States . . . to take effective measures at the

[105] See *Official Records of the Economic and Social Council, Ninth Session,* 321st meeting (statement by Mr. Dehousse).

[106] *Ibid., Eighth Session,* 238th meeting (statement by Mr. Mayhew).

[107] See *Official Records of the General Assembly, Eighth Session, General Committee,* 57th meeting.

[108] E/478.

earliest possible date to implement the principles governing trade union rights proclaimed by the . . . United Nations".

245. The Council rejected the draft resolution by 13 votes to 3, with 2 abstentions and adopted resolution 194 (VIII) in which it drew the attention of all Member States to the importance of ensuring within their respective territories the full exercise of trade union rights.

246. Further allegations were discussed by the Council at later sessions and, more particularly, at the twelfth session. The Council not only discussed some of those allegations in detail, but in resolution 277 (X) it also laid down a special system for the consideration of allegations of infringements of trade union rights by inviting the International Labour Organisation to act "on behalf of the United Nations" in so far as Member States of the ILO were concerned and reserving to the Council the consideration of allegations against countries which were not members of the ILO.

Position taken by various Governments on the question of competence during the debates

247. *Argentina:* The Argentina representative "reminded the Council that under Article 2, paragraph 7 of the Charter, the United Nations was not competent to intervene in matters which were essentially within the domestic jurisdiction of any State. As that right was denied to the United Nations it should be so *a fortiori* to Non-Governmental Organizations, whatever their status in relation to the Economic and Social Council. Furthermore, in the economic and social field the organs concerned, i.e., the General Assembly and the Economic and Social Council, were empowered by the Charter only to recommend that Member States should adopt certain measures. Such recommendations were not mandatory and the Council should not overstep its allotted task.

"Although he believed that the facts mentioned by the WFTU were outside the jurisdiction of the United Nations, and of the Economic and Social Council in particular, he recognized that abstract criticism of the legislation of Member States could sometimes justify a recommendation by the Council or the General Assembly. In such a case, the Governments concerned would obviously give very careful consideration to any recommendation aimed at improving their domestic legislation. Hence the Argentine delegation was glad that the question had been placed on the Council's agenda".[109]

248. *Egypt:* Egypt "did not, however, accept the right of any organization to interfere in its internal affairs. That the United Nations had no right to do so was clearly stated in Article 2, paragraph 7, of the Charter; moreover, Article 62, which authorized the Economic and Social Council to 'make or initiate studies . .' did not give that body the right to make investigations".[110]

249. *United States of America:* ". . . It would have been a dangerous precedent had the Economic and Social Council decided to examine and pass judgment on grievances which were, of necessity, directed against specific countries."[111]

250. *India:* "The so-called draft resolution submitted by the WFTU invited the Council to find 'that the legislative, administrative and other measures in force' in certain countries 'violate the Charter of the United Nations'. The Council was not a judicial tribunal and could not come to such findings.

"The Council was not a judicial tribunal to hear charges and pass judgments. The Council's function in such a matter was one of co-ordination of policy and action, as required by the Charter. Should there be any question in the future of infringement of the rights guaranteed by any convention, the proper authority to examine the question would be the special international machinery now under consideration. That was naturally subject to the over-riding principle that it was no part of the work of the Council or any organ of the United Nations to investigate or question measures taken by a Member State for the preservation of law and order in its territory."[112]

251. *United Kingdom:* ". . . The Council was not competent to decide on the accusations brought before it."[113]

252. *Poland:* "Mr. Katz-Suchy pointed out to those representatives who had claimed that all discussion on the item would be sterile, since the Council was powerless to enforce its decisions, that it would be of great value to draw attention to any violation of those decisions; that would at least show that the Council did not ignore infringement of trade union rights, although it had only the power of making recommendations and not that of applying sanctions.

"The infringement of trade union rights had appeared on the agenda of the Economic and Social Council a number of times. Both the Council and the General Assembly of the United Nations had on a number of occasions taken cognizance of the right of labour to freedom of association. Machinery had been set in motion to ensure that the inalienable right to form trade unions was enforced.

"The representative of Belgium had claimed that the Council was not competent to deal with the matter. Mr. Katz-Suchy was surprised that he had waited so long before bringing up that point. He had not raised the plea of no competence during the discussion of forced labour, but had chosen the moment he deemed most opportune. The Council had often dealt with particular cases affecting certain countries, for example the questions of traffic on the river Danube, of the Yugoslav gold, and the recommendation of equal pay for equal work for men and women workers."[114]

253. The Commission felt that, in this case, the Economic and Social Council again reaffirmed—implicitly at least—its competence to consider specific cases of the infringement of fundamental human rights. The discussion of allegations and investigation of their validity can be based only on the powers deriving from Articles 1, 13, 55, 56 and 62 of the Charter.

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[109] See *Official Records of the Economic and Social Council, Eighth Session,* 264th meeting, pages 471, 472 (statement by Mr. Arce).

[110] *Ibid.,* 256th meeting, page 375 (statement by Mahmoud Fawzi Bey).

[111] *Ibid., Seventh Session,* 177th meeting, page 25 (statement by Mr. Thorp).

[112] *Ibid., Eighth Session,* 256th meeting, page 364 (statement by Mr. Sen) and *ibid.,* 256th meeting, page 365.

[113] *Ibid.,* 266th meeting, page 499 (statement by Mr. Maylew).

[114] *Ibid., Seventh Session,* 177th meeting, page 24 (statement by Mr. Katz-Suchy); *ibid., Eighth Session,* 265th meeting, page 486, 266th meeting, page 501.

VIII. Conclusions on the Commission's terms of reference in the light of the provisions of the Charter and the General Assembly resolutions

254. The Commission reached the following conclusions on the terms of reference with which it had been endowed by the General Assembly.

1. By establishing the Commission and giving it its terms of reference, the Assembly reached an affirmative decision on the principle of its own competence to consider "the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa" and the Commission's competence "to study the racial situation in the Union of South Africa" and "to report its conclusions" to the General Assembly.

2. A general study of the provisions relating to the Purposes and Principles of the Charter and the powers and limitations of principal organs of the United Nations in carrying them out leaves no room for doubt that, under the Charter, the Assembly is empowered to undertake any investigations and make any recommendations to Member States that it deems desirable concerning the application and enforcement of the Purposes and Principles of the Charter, among which the respect of human rights and fundamental freedoms is outstanding. The exercise of the powers and functions devolving on the Assembly in such matters does not constitute an intervention within the meaning of Article 2, paragraph 7, of the Charter. Hence, since the Commission is a subsidiary body of the Assembly it too is not restricted by these provisions in its activities, which are to carry out a study for the Assembly and report its conclusions to that body.

3. That conclusion is particularly important when the activities of the General Assembly and its Commission relate to violations of the principle of non-discrimination, which is explicitly included in the Charter in several places, and more particularly when the discrimination is systematic and is based on a doctrine of racial inequality. It is precisely such situations that the authors of the Charter wished to prohibit when they included in the Charter the principle of non-discrimination on grounds of race, thereby giving expression to mankind's deepest aspirations.

4. The above conclusions are fully borne out by the jurisprudence established by the principal organs of the United Nations in cases relating to violations of human rights and fundamental freedoms.

PART II

A. GENERAL INFORMATION ON THE UNION OF SOUTH AFRICA

Chapter III

GEOGRAPHICAL DATA AND HISTORICAL SKETCH

I. Geographical data

(i) General description

255. The Union of South Africa has an area of 1,222,215 square kilometres, which is twice the area of France, three times that of California, and five times that of Great Britain and Northern Ireland. But these relatively small dimensions are somewhat misleading since four adjacent territories, South West Africa (835,000 square kilometres) and the British Protectorates of Bechuanaland (700,000 square kilometres), Basutoland (30,000 square kilometres) and Swaziland (17,000 square kilometres) are particularly closely linked, economically and otherwise, with the Union. Thus the area unavoidably affected by the racial problems of the Union proper is more like 2,800,000 square kilometres, which is appreciably more than twice the above-mentioned figure.

256. The most northerly part of the Union, northern Transvaal, reaches to the Tropic of Capricorn, while its southern coast, stretching to as far south of the Equator as Tangier is to the north, has all the features of a Mediterranean climate.

The country's chief characteristic is its high average altitude. This has the effect of moderating temperatures, even in districts close to the tropics, and of making the country particularly suitable for European immigrants. Most of the Union is over 1,000 metres above sea level. Only the coastal strip, usually shown in green on maps, and the Limpopo valley, the middle reaches of which form the frontier between the Union and Southern Rhodesia, are below 500 metres.

257. Most of the country, namely, the whole of the central and northern section of Cape Province, the Orange Free State and most of the Transvaal, consists of a high plateau (the high veldt—*hoogeveld*) which reaches 1,800 metres and above in the Rand, and extends northwards in the form of low bush (bush veldt—*bosveld*). Towards the southwest it becomes gradually lower and gives place to the stony High Karroo or Upper Karroo, with an average height of 1,300 metres. The ground drops down to the sea in three enormous steps of varying size. They are in descending order of height:

The Great Karroo or Central Karroo (*Groot Karoo*) which is about 400 kilometres long by 120 kilometres wide and has an average height of 750 metres. It is the main area for Merino sheep, with Graaf Reinet as its commercial capital;

The Little or South Karroo, also suitable for raising Merino sheep; and

The coastal shelf, the breadth of which is from 5 to 50 kilometres.

Generally speaking, all these lands, which belong to very ancient geological formations, have a poor lime content, so that fertile soils are rare. Mineral resources, however, (gold, uranium, diamonds, coal, iron, copper, asbestos, etc.) are very abundant.

This whole system of terraces is bordered for a length of 2,000 kilometres at a varying distance from the Indian Ocean by an enormous escarpment or folded mountain system, the central range of which, the Drakensberg group (*Drakensberg Reeks*), has peaks exceeding 3,000 metres, some of them almost reaching 4,000 (Cathkin Peak). It coincides in part with the Basutoland enclave, and supplies water to the northern part of Cape Province, the whole of the Orange Free State and part of the Transvaal, as the Orange River and various tributaries of the Vaal, to which the Rand owes its prodigious industrial and economic development have their source there.

(ii) Rainfall

258. The above-mentioned folded mountain system catches the rain clouds driving in from the Indian Ocean. Generally speaking, the Natal coast is well watered, the southeast and south coasts of Cape Province are sufficiently, if less regularly, watered, while the immediate surroundings of Cape Town have an abundant rainfall, the maximum being at a point in the Paarl region, about 60 kilometres from Cape Town, which has 4 metres a year—an exceptionally large amount for the Union.

While a small part of Cape Province has rain all the year round, though the supply is scanty, it is strictly seasonal in most parts of the Union. The Rand has torrential summer rainfall accompanied by storms, while the Boland, or western part of Cape Province, has winter rainfall. In general, the volume of rain decreases steadily from the east coast towards the interior and from there to the sandy, torrid and desert coast of the Atlantic Ocean.

259. A characteristic of South Africa is the fact that in a few hours or even minutes a drought which has reduced the earth to the consistency of brick or dust may be succeeded by a deluge of water, sometimes ten centimetres in one hour, which may complete the devastation. Even more characteristic is the irregularity and unpredictableness of the rain. It is easy to imagine the effect such conditions may have on agriculture and the raising of cattle. It often happens that at the very moment when whole flocks or herds have died of hunger or thirst, because the farmer has not been able either to bring up essential water and fodder or to move his animals to a less severely affected district, the rains come to submerge and carry away

the carcasses which strew the earth. In bad years, cattle die or have to be slaughtered by hundreds of thousands. Urban populations have increased so rapidly since the beginning of the century not only because of the attractions of the town, but because the need to find a livelihood has forced ruined farmers and their labourers to go to Kimberley or Johannesburg, Port Elizabeth or Cape Town.

260. One of the main tasks of the Union of South Africa is to retain as much of the water accumulated during the rainy season as possible for irrigation and for animal and human consumption during the dry season. Another such task is to limit the damage caused by these alternations of drought and torrential downpours by using modern soil conservation methods. Such damage may take the following forms: scooping out of the earth into deep gullies called *dongas*, tremendous erosion, and rapid silting up of artificial lakes or reservoirs. The latter are still few in number and lose a considerable amount of their water through the rapid rate of evaporation.

(iii) The problem of subsistence

261. According to the experts studying the conditions for the future economic development of South Africa,[115] the ceiling for water resources should be reached quite soon in almost the whole of the Transvaal and the Orange Free State, including the western part of the latter, where the discovery during 1946 of high-content gold ore, with uranium as a by-product, is causing a considerable industrial boom.

262. According to these experts, the industrial future of the Union lies more in a southeasterly direction from the Transvaal, in Natal and the coastal zone of the eastern part of Cape Province; that is chiefly in a zone where nearly three million Bantus are living in a compact group. They live there because the only large potential water resources of the Union, needed in such large quantities by industry and agriculture, are to be found there. There is no important river in this area, but a large-scale map will show the large number of streams which flow down from the surrounding mountains. At first they are known by European names such as Palmiet, Sundays, Great Fish, but change to Umzimvubu, Umzimkulu, Tugela, Umfolosi, etc., in the area of very dense Bantu settlement. The prospects of building dams and reservoirs are not good, owing to the deep gorges and narrows, above which natural basins suitable for the creation of artificial lakes are not always to be found.[116] However, the present Government hopes that modern technical skill should be able to overcome such obstacles. As will be seen later on, its long-term plan, aiming at settling the greatest possible number of indigenous inhabitants in the reservations (where agricultural production is and will probably remain insufficient), consists mainly in setting up consumer goods industries either in the indigenous reserves themselves, or on the edge of those reserves.

263. The obstacles will be considerable. Capital for the building of factories and urban dwellings for the Bantu population will have to be found. But the planners consider they have no choice, for as has already been stated, most of the land in the Union of South Africa is barren, the rehabilitation of eroded soil has only just begun and it is mainly to its mineral wealth and its conversion and manufacturing industries that the Union will have to look for the resources required to buy indispensable supplementary supplies of cereals and other foodstuffs from abroad.

[115] In particular see reports of the South African Commission of Natural Resources.

[116] See, e.g., Report of Native Affairs Commission for the period 1 April 1946 to 31 December 1947, Cape Town, 1949, pages 15 and 16: "Irrigation and Industrial Possibilities: Transkei".

II. Historical sketch

(i) The Dutch period (1652-1795)

264. The cradle of the present Union of South Africa is the narrow strip of land between Table Bay and Table Mountain, the site of *Kaapstad* or Cape Town, where Jan van Riebeeck, a servant of the Dutch East India Company, landed on 6 April 1652. He had been instructed to set up a supply base where the Company's vessels could obtain fresh fruit, vegetables and meat and so protect themselves against the ravages of scurvy.

Before long van Riebeeck and his staff came into contact with the small but very primitive tribes of nomad Bushmen and Hottentots who kept cattle. Disagreements over pasture and thefts of cattle soon led to acts of violence, and even to two short wars as a result of which the Hottentots recognized the Dutch occupation *de facto*. The latter tended to stretch into the interior, for the white population grew as employees of the Company left the service to take up farming on the outskirts of the town, and as van Riebeeck appealed for more Protestant immigrants from the Netherlands.

265. Meanwhile the Hottentots were gradually becoming accustomed to working for the Dutch colonists as farm or domestic labourers, but they were insufficient in number and did not give very much satisfaction. The Company then set itself out to bring in slaves originating chiefly from the east coast of Africa (Mozambique, Zanzibar, etc.) and from Madagascar. These three elements (whites, Hottentots, and African slaves or former slaves) mixed the more freely for the fact that the number of Dutch women was small. The result was the population known as "Cape Coloureds", which at present numbers more than a million.

Two events of importance mark the beginning of this colonization.

266. First of all, during the years following 1685, the date of the revocation of the Edict of Nantes, some 200 French Huguenots, who had originally fled to the Netherlands and had been offered asylum and land in South Africa, settled mainly in the fertile district which received the name of Fransch Hoek (French corner), where there is still a village called Huguenot. These people, the ancestors of the innumerable Malherbes, de Villiers, Jouberts, Leroux, etc., to be met with all over South Africa, were for the most part educated people and exerted from the beginning an influence which was strong enough to cause uneasiness to the Dutch authorities and to make them adopt energetic measures of assimilation. These went so far as to forbid, in 1709, the use of the French language for all official purposes. These Huguenots, who were joined by some small groups of German Protestants, merged completely with the Dutch population in the course of the next two or three generations, but they served to increase the hold of the Bible, of Calvinism in its most militant form, and of a simplified doctrine

of predestination on their Dutch co-religionists, who were already profound believers.

267. The other important event was the landing at the Cape, towards the end of the seventeenth century, of a certain number of Moslem Malays from Java. Some of them were chiefs who had resisted the Dutch authorities and had been deported to South Africa. From them sprang the Malay community of the Cape, some 60,000 strong, who wear the fez and still have their distinct mode of life, though for statistical purposes they are most often included among the "Coloureds".

268. The eighteenth century was a century of expansion of pastoral colonization to the north-west and the north, but mainly to the east of Cape Town. More and more farmers crossed the Hottentots-Holland hills with their cattle which could feed and multiply on practically virgin pastures. The Company did not sell the lands at its disposal, but leased them; when the cattle had exhausted a pasture, the farmer, known as a *trekboer* (moving or pioneer farmer) moved further on.

At first these pioneers practically only met with Bushmen who were very primitive and fairly few in number, but whose poisoned arrows were justly feared. They were wiped out fairly quickly. Those who escaped fled northwestwards towards the Kalahari Desert, where their descendants are still to be found.

269. Shortly after the middle of the eighteenth century, those colonists who had advanced furthest eastwards along the coast and had reached the Grootvis (Great Fish) River came into contact with the numerous, vigorous and restless African tribes of Ngunis, who were endowed with remarkable political and social cohesion. Coming from the far north, they had without knowing it arrived face to face with the whites. They were mainly Xhosas, but the Boers referred to them all without distinction as Kaffirs *(Kaffers)* borrowing the Arabs' contemptuous description of them (Arabic *Kafir*=miscreant, infidel). These tribes also had cattle to feed. From then on cattle thefts, skirmishes and reprisal raids between whites and blacks became countless; when the Xhosas' expeditions were made on an exceptionally large scale, they were given the name of Kaffir wars. Between 1779 and 1877 there were nine of them. Even when the opposing enemies succeeded more or less in agreeing on a frontier line, it was not long before it was violated. In short, the Boers had to be armed all the time. They had to depend entirely on themselves, for the Cape authorities were a long way off and of little help. For them, the black man was the enemy. Such a situation could not fail to leave its mark on the future attitude and behaviour of this population of rough farmers in a constant state of alertness.

(ii) First contacts with the British element

270. Meanwhile a further danger began to threaten the integrity of this Dutch community which, though scattered of its own free will, realized the advantages of standing together when the occasion arose, showed extraordinary vigour as a population and, having only itself to turn to, remained fiercely attached to its traditions.

In 1795 the French revolutionary armies occupied the Netherlands. Fearing that the French might also seize the Dutch Colony at the Cape, in its favourable situation on the route to India, the British Government decided, in agreement with the Prince of Orange who had fled to England, to carry out a preventive occupation of the Cape. This first occupation was to last only until the Treaty of Amiens of 1802, which ended hostilities between France and Great Britain. Soon afterwards, however, war broke out again between the two European Powers. Since the Netherlands were a dependency of France, prudence demanded that the British Government should once again take possession of this valuable place of call on the route to India. This second occupation (1806) continued until 1815. However, Great Britain had realized the importance of this colony and after the victory at Waterloo it had no difficulty in obtaining its cession under the Treaty of Vienna. Needless to say, neither the *burghers* of the Cape or Stellenbosch, nor the *trekboers* of the veldt had been consulted (there were then 26,000 of them), a first and long-lasting complaint.

271. Of necessity, the Dutch administration's rule had not been very exacting or rigidly enforced. In the *platteland* (countryside) or the veldt, the only representative of the central authority was the *Landrost* or magistrate, whose residence or *drosty*, often a waggon, tent or shack, also acted as his office. He was at once an administrator and a judge. The new British authorities from London made no change in this arrangement, which in its essentials still exists today. From the first, however, they showed themselves to be more exacting, more strict or even domineering in the measures which they thought it necessary to put into effect. Some of these measures were badly received, especially those affecting relations between Europeans and their indigenous neighbours or servants.

272. In addition, they approached these administrative tasks in an entirely different spirit. With their completely sedentary habits, won over as they were to what the colonists regarded as somewhat fanciful liberal and humanitarian ideas and even to egalitarian notions in sympathy with the generous movement which claimed that slavery should be abolished everywhere at the stroke of a pen, influenced by missionaries from London who arrived in large numbers and who were only too willing to take responsibility for determining the native policy of the country, these authorities faced the bold tasks they were assuming in a spirit diametrically opposed to the *trekgees* (pioneer spirit) of the farmers at grips with hard daily realities, and constantly fighting savage tribes.

273. To crown all, from 1820 onwards, British colonists with Government help began to land either at Cape Town or, in greater numbers, in the eastern part of the Colony. They were naturally looked upon as intruders. The feelings of the Boers, who were so attached to their language or "*taal*" (a form of Dutch progressively modified by circumstances) can be imagined when in 1828 English was declared to be the official language of the Colony.

In short, there were immediate clashes between the foreign administrators and their subjects. Incompatibilities of temperament became apparent (not to speak of the language barrier, preventing mutual understanding), and resentment began to pile up; there grew up a distrust of London and its new ideas from across the ocean, which were opposed to the ideas and interests of the Boers, a distrust that is not yet extinct.

(iii) The Voortrekkers

274. Twenty years after the inauspicious start of this first attempt of Britons and Boers to live together, the

boldest, most intractable and most venturesome element of the rural population of Dutch stock came to the firm decision to make a mass trek to the apparently unpopulated regions of the North and thus to escape both from British authority and from the dangerous pressure of the turbulent Xhosa tribes from beyond the Groot Vis and Kei rivers. Consequently, in 1836, under the leadership of men of such inexhaustible energy as A. W. J. Pretorius and A. H. Potgieter, several thousand ox-wagons *(ossewaens)*, symbols of the spirit of freedom and independence, began their journey.

275. This is not the place to relate the epic of these Voortrekkers (pioneers), which even today moves old and young Afrikaners (as the Boers' descendants are called now). It may, however, be appropriate to note here that the deepest roots of present nationalist policy are to be found in the national characteristics and the empirical solutions which the vicissitudes of this great adventure to some extent imposed on the Voortrekkers. Fleeing from British officialdom, endeavouring to escape from the marauding activities and ambushes of one black tribe only to be exposed to the arrows of another, the Boer had nothing to rely on but his gun and divine assistance. He had taken with him, as his only book and his sole link with the culture of western Europe, his large Dutch Bible in which he sought the signs of the will of God.

276. Although today, certainly neither the responsible leaders of the Union nor the leaders of the Dutch Reformed Church base their attitude to the racial problem on a strict interpretation of the precepts of the Bible[117] it seems to be generally agreed that in the last century the Boers' ideas were based on these narrow precepts.

277. Among the passages which they re-read and pondered over most often we may first of all mention Genesis, chapter IX, which contains the curse uttered by Noah against Canaan, the son of Shem, who was one of Noah's three sons and had been lacking in respect for him, and against all Canaan's supposed descendants, the black races of Africa. Verses 25 to 27 are as follows: "And he said: Cursed be Canaan; a servant of servants shall he be unto his brethren. And he said: Blessed be the Lord God of Shem; and Canaan shall be his servant. God shall enlarge Japheth and he shall dwell in the tents of Shem; and Canaan shall be his servant."

It must, however, be observed that the Dutch Bible of that time has for *"dernier des esclaves"* and "servant of servants", in the French and English versions respectively, the translation *"knecht der knechten"*, that is, the lowliest of the farm or domestic servants. This difference is not unimportant since the text played a part in the accusations of slavery made by British missionaries against the Boers after the official abolition of slavery in South Africa in 1834.

We may also mention Genesis, chapter X, in which the lists of the races stemming from the sons of Noah ends as follows:

> "By these were the isles of the Gentiles divided in their lands; every one after their language, their families, in their nations."

These texts are essential to an understanding of the doctrine and nationalist aspirations of the Union of South Africa today, as they have emerged from the pure Boer tradition. The germ of the following ideas is to be found there; the inequality imposed by God on the races of the world; the subordination, ordained by Providence, of the black race to the white race; the glorification of a nation in itself, as distinct from other nations; a passionate love of national independence, of the national tongue and culture and of everything which singles the nation out from other nations.

278. It is fitting to add, however, that, faithful to the patriarchal tradition of the Bible, the Boers set great store by correcting any cruel and barbarous elements in Noah's curse. They were certainly the undisputed masters *(baas)* and the blacks were their servants; but the idea of justice was deeply rooted in them and they considered that the privileges of the master imposed in turn a duty of justice towards his dependants. It is only a step from the notion of paternalism to the notion of trusteeship and, in particular, of "Christian" trusteeship.[118] It will be seen that this notion still plays a very important part in the conduct of the affairs of the country today.

(iv) The consequences of the Great Trek

279. The historical consequences of the Great Trek —a challenge hurled at the British Government—are so well known that we need only repeat the essential details. About the middle of the 19th century, the Boers succeeded by grim determination in overcoming all obstacles and setting up two independent republics with their people's assemblies *(Volksraad)*. The Transvaal Republic or South African Republic (1852) was one, and the Orange Free State (1854) the other. However, the expansionist pressure of Great Britain and the capitalist system of which that country was the incarnation, soon overtook and encircled the stubborn former subjects. As early as 1843, Natal became a British colony. Everywhere, the Boers were confronted with their former foes. Thus, Basutoland, Bechuanaland and Swaziland continued to be enclaves in South African territory and to this day are British protectorates.

280. The discovery of diamonds at Kimberley in 1870, and of gold on the Rand in 1886, caused railways to be built to open up the country and helped to give the Boers the feeling that they were beleaguered. The first Anglo-Boer war in 1880-1881 was followed in 1899-1902 by a second war, much longer and more bitter, which brought the independence of the two republics to a tragic end and aggravated the hatreds of the past. Among other unfortunate consequences, it caused the problem of relations between whites, whether of Dutch or British descent, and Bantus, to be shelved for many years in spite of its capital importance.

(v) The Bantus

281. The Ngunis, who, as was stated above, came into conflict with the Boers at the end of the 18th century, belong to a vast group of African tribes with surprisingly varied physical characteristics, who are more and more commonly known as Bantus.

This term originally had more of a linguistic than an ethnic significance. The word *"Ba-ntu"* (plural of *Mu-ntu*) is the oldest and commonest term for "men"

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[117] See *Visit to the South African Churches* by Dr. W. A. Visser, T. Hooft, 1952.

[118] Among the historical studies on which this brief outline of some of the origins of the native policy of the South African Government is based we may quote *The Native Policy of the Voortrekkers*, Cape Town, 1928, by J. A. I. Agar-Hamilton (Senior Lecturer, Transvaal University College, Pretoria).

or "people" in the languages of Central and South Africa.

The linguistic relationship of the many tribes is paralleled by a similarity of geographical origin. All the legends and traditions of these races without exception refer to a northern "cradle" and to a time, which still exists in racial memory, when they still felt like strangers on the tracts of land which have become theirs.

282. Ethnographers have established that during the last few centuries there have been four Bantu migrations from the north, the last being that of the Zulus. During the eighteenth century, and the beginning of the 19th, the Zulus advanced to the edge of the subtropical forests of South-east Africa in that part of Natal which has since been called Zululand.

283. However instructive may be the history of the confused and surprisingly bloody wars, which were sometimes even wars of extermination between conquering and conquered tribes immediately before the Great Trek, there is no place for it here. Yet at least one episode in the wars which raged on the other front and which brought the Voortrekkers and the Zulus into conflict, must be recalled, since it has remained only too present and alive in popular memory. On 6 June 1838 a Boer leader, Pieter Retief, and more than sixty of his companions fell into an ambush and were slaughtered in the kraal of the Zulu chief Dingaan. Revenge was quickly taken. Before the end of the same year (16 December 1838), under the leadership of their chief Andries Pretorius, the Voortrekkers fought the Zulu *impis* (regiments) near the Umslatos River, which has since been known as Blood River, killed 3,000 warriors and broke the power of Dingaan, who was driven out of Natal two years later and killed by rival tribes.

Since that time the event has been celebrated in the two Boer republics, and later in the Union of South Africa, as a holiday and a day of pardon, under the name of Dingaan's Day. It is only recently that, in order to spare understandable susceptibilities, it was decided to retain this holiday but to give it the less provocative name of Day of the Covenant (in Afrikaans, *Geloftedag*).

284. After the War of 1879, when British troops broke the resistance of the Zulu king Cetewayo, there were no more hostilities between whites and Bantus except for two small risings in 1888 and 1906. The rifle had triumphed over the arrow and the assegai. After more than a century of bloody struggle, the European conquerors from the Southern seas had overcome the other and black conquerors who had come down from the North. Since then, the whites have continued their more or less systematic efforts to arrive at a permanent *modus vivendi* with the Bantu shepherds and farmers still under tribal authority in the lands left to them—though without sacrificing the African labour which they need in the fields, mines, factories and city households.

(vi) The Indians

285. Since 1860 an extraneous element has complicated the ethnic map of South Africa. On 16 November 1860 the first 150 Indian indentured workers hired by British sugar planters in Natal landed at Port Natal. Zulu labour had proved inadequate because the Zulu men were primarily warriors who despised work in the fields and traditionally left it to the women.

It had taken several years to persuade the Natal Government of the desirability of recruiting labour in Asia and it had had to obtain the agreement of the London Government and of the British administration in India.

There was no difficulty in finding volunteers among the low-caste Indians. Men signed on to work for a certain number of years. At the end of that time they had a choice of having their contracts renewed, of remaining freely in the country or of being repatriated free. The large majority preferred to remain in the country. Many of them took up market gardening on the small plots which they were able to rent or buy.

286. At the same time a few Moslem Indians, who were less poverty-stricken and more cultured, set themselves up in the country as traders. They soon prospered. All in all, there were 5,000 Indians in Natal by 1869.

287. It was not until 1911 that, at the request of the Indian Government, this free flow of contract workers to South Africa was stopped. Two years later, in 1913, all immigration from India was stopped because the Immigrants Regulation Act which came into force then conferred on the Government the necessary powers to forbid the immigration of all persons regarded as undesirable.

288. However, the birthrate of the Indian population was so high that in spite of a considerable deathrate it continued to increase, and now numbers 365,000. In Natal, there are as many Indians as whites (over a quarter of a million for each of the two groups), whilst there are over 60,000 Indians in the Transvaal and Cape Province.

289. In the meantime, under pressure from Europeans who were perturbed by increasing competition, the Governments of the Transvaal and of Natal subjected the Indians to restrictions either in the exercise of their political rights or in the purchase of property and even in their freedom of movement from one province to another. Hence attempts at passive resistance, which first became an organized campaign in 1906. Its organizer was none other than Mahatma Gandhi, who was then living in South Africa. Thus, he established and stamped with his personality an Indian tradition of resistance to any discriminatory policy.[119] He also helped to increase the social consciousness and particularism of his compatriots in South Africa.

III. Parliamentary and administrative institutions

(i) South Africa Act, 1909

290. The creation on 31 May 1910 of a Union of South Africa, born of the two former republics of Orange and Transvaal and of the two former British colonies of the Cape and Natal, concealed rather than ended the former oppositions and rivalries. Differences in traditions and tendencies were obvious, particularly between the former Cape Colony on the one hand and the two formerly independent republics on the other.

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[119] See the letter of the President of the South African Indian Congress to the Union Prime Minister of 20 February 1952: "The Indians fo South Africa are proud to preserve in their spiritual heritage the precepts and the example of Mahatma Ghandi: devotion to the cause of justice and truth, courage and determination in the conduct of pacific struggles against injustice and oppression". See annex VI.

In Cape Province, the theory (if not always the practice) of government was based on an instinctive unwillingness to admit that colour and race should qualify or disqualify any citizen in the exercise of his political rights. The franchise was held by all men who fulfilled certain conditions and in theory any elector could hold any public office. In the Transvaal and the Orange Free State, on the other hand, anyone who was not "European" was barred by law from holding the franchise or any public office. The tendency in Natal was towards the juridical situation and the political practices and trends prevailing in the two republics but, on the other hand, there was a fervent attachment to the British Crown.

In spite of these differences, together with many others which made the task of unification difficult and slow, a perfectly viable State emerged, but one in which, naturally enough, the racial and other attitudes of the Dutch majority gradually prevailed.

(ii) The Central Government

291. Unlike other States in the British Commonwealth, such as Canada and Australia, the Union of South Africa is a centralized State in which the councils—not parliaments—of the four provinces have no sovereign power. A Governor-General representing the British Crown, who was originally a high British official but who will henceforward be an eminent South African citizen, is the main link binding the Union to the Commonwealth. The real sovereignty is exercised by Parliament, which consists of two chambers, a House of Assembly of 159 members who must be Europeans, and a Senate of forty-eight members, also European. The descendants of the Dutch and British colonists agreed not to grant non-Europeans (better described by the Afrikaans name of *Nie Blankes,* that is "non-whites") the right of being represented by their own people, even though they make up more than three-quarters of the population.

292. Of the 159 members of the House of Assembly, 150 are elected by the electors in the four provinces ("European" women have had the franchise since 1930). Since 1949, six have been elected by the "European" electors of the Territory of South West Africa and three are elected by "African" electors in Cape Province.

293. The franchise is held: (1) in the four provinces, by all "European" citizens aged 21 and over; (2) in Cape Province and Natal, by all literate coloured men who earn at least £50 a year or who occupy property worth not less than £75; (3) in Cape Province, by "African" men who can read and write and who either earn £50 or more a year or who occupy property worth not less than £75. But their names are entered on a separate electoral register.

294. Of the forty-eight Senators, thirty-two, or eight per province, are elected by the members of Parliament and the members of the provincial councils; two are elected by the members of Parliament and the members of the Legislative Assembly of South West Africa; ten are nominated by the Government; and four are elected for five years by the "Africans" in the Union on a rather complicated system of second-ballot elections.

295. It should, moreover, be noted that under the terms of the South African Act, four of the Senators nominated by the Government must be appointed principally on the basis of their deep knowledge, gained by official or other experience, of the needs and reasonable aspirations of the coloured races in South Africa.

296. The Senators serve for ten years, whereas the House of Assembly is elected for five years.

297. The two official languages of the Union were originally Dutch and English (section 137 of the South Africa Act, 1909). But it was soon found that the difference between pure Dutch and the language actually spoken in South Africa had become far too great. In fact, Afrikaans had to be regarded as a separate language and Act 8 of 1925 provided that the word "Dutch" in section 137 of the South Africa Act, 1909, wherever it occurred in that text, should be regarded as including Afrikaans. In fact, the "inclusion" was more in the nature of a substitution, such was the independence and vigour shown by the Afrikaans language.

298. The working of the South African Parliament is reminiscent of that of the Parliament of Westminster. The same is true of the executive except that one of the most important if not the most important, Ministries (Departments) is naturally the Department of Native Affairs. It must be remembered that the Union of South Africa closely resembles a colonial Power, but one whose colonies, or, if the term is preferred, protectorates, are scattered over the territory of the metropolitan country itself. This almost inextricable tangle creates a unique situation.

(iii) The Provincial Governments

299. Each of the four provinces of the Union of South Africa is governed by an Administrator, assisted by an Executive Council of four members over which he presides, and by a Provincial Council. The Administrator is appointed by the Government. Owing to the centralization of power at Pretoria (or at Cape Town during parliamentary sessions, which must by statute be held in that town) the decrees promulgated by the Provincial Councils are limited to such matters as primary and secondary education (which is in fact their most important function), hospitals, provincial roads, etc. The Council's right to raise taxes or impose fees is strictly limited by the Central Government, which prefers to keep a tight hold on finance and which has established the custom of allocating to the provinces according to its judgment of their needs, part of the funds voted by Parliament.

(iv) The local authorities

300. Local government organization is extremely flexible and varies with provinces and even inside each province. Thus, in Cape Province, several small local administrative bodies may constitute a higher legislative body, the Divisional Council, which even has the right to raise some small taxes. But the most important administrative unit below provincial level is the "magisterial district", an area under the authority of a magistrate. In the big towns, the municipal council administers generally and the magistrate confines himself strictly to administering justice. Usually, however, the magistrate discharges a large number of administrative duties. In country districts he is far more an administrator than a judge. This apparently rather outdated combination of administrative and judiciary functions is economical and appears in practice to give good results.

301. All towns of any size have an elected municipal council. In the Orange Free State and the Transvaal "non-Europeans" are excluded; in Natal, only coloured people, besides Europeans, have the vote; in Cape Province, municipal office is in theory open to all races. Thus, in Cape Town and Port Elizabeth several coloured persons have sat on the municipal council. For example, at the present time a coloured lady, Mrs. Z. Gool, is a member of the municipal council of Cape Town and since 1949 has been the chairman of its Committee of Public Health and Housing.

302. There is not a town, village or farm in the Union where the Bantu, Indian, half-caste, or even several of these elements, are not to be found in large numbers. On the farms, the Africans or half-castes are lodged in compounds built some distance away from the master's house. In the towns, apart from the many domestic servants who live in separate rooms or apartments with their masters, the "Africans" are normally compelled to reside in "locations" *(lokasie)*, which are governed by a separate administration.

303. It would be impossible here to go into the details of this complicated organization, which is based on a long tradition, but it must at least be mentioned that, wherever there is an African "location", it is put under the care of the municipal committee for Native affairs. This committee seeks the opinion of a Native consultative council, usually composed of six "Africans", three elected by the African inhabitants of the "location" and three appointed by the European manager, who is the chairman of the council. The council's opinions may or may not be heeded, but any proposal by the municipal council affecting the "location" must be approved by the Administrator of the province or by the Minister of Native Affairs before it can become a municipal decree.

(v) The Native reserves

304. About one-third of the Bantu population of South Africa, or some three million persons, live on reserves, many of which are small enclaves whilst others, particularly in Eastern Cape Province, in the territory lying beyond the River Kei, or Transkei, in Zululand (Natal) and in the Northern Transvaal, are areas of considerable size. However, the Native reserves at present cover only 9.7 per cent of the area of the Union. If additional purchases of land were made to bring the area up to the 58,000 square miles provided for by the law, the figure would be 13 per cent.

305. The way these reserves are administered varies according to their size, to the vigour of the tribal institutions and also to a certain extent with provincial traditions. They are all, however, under the direct authority of a Ministry of Native Affairs, which tends to centralize matters and has been responsible for recent legislation designed to achieve a measure of uniformity (Bantu Authorities Act, 1951).

This Ministry, the duties of which are constantly increasing, is responsible for order and the administration of justice in the Native territories. It also has the all-important duty of buying and developing lands belonging to the South African Native Trust set up by the Native Trust and Land Act, 1936.

306. For all administrative purposes, the country is divided into six areas, each administered by a Chief Native Commissioner. The Minister is assisted and advised by a Native Affairs Commission, nominated by the Government, composed of not less than three and not more than five members, and serving for five years.

307. The Minister's decisions are in the form of "proclamations" bearing the Governor-General's signature. In other words, the Minister for Native Affairs, who, it is true, receives his instructions from Parliament and is supervised by that body, is in a sense both legislator and administrator. Thus, the Honourable M. J. Jansen, Minister of Native Affairs, before taking up his new duties as Governor-General, correctly stated in the Assembly on 20 April 1950, that the Ministry was in fact a government, with its various undersecretariats, each one concerned with a particular aspect of Native life.

(vi) Transkei

308. Since the largest single tract of land inhabited only by Bantus is Transkei, in Eastern Cape Province, that territory may very well serve as an example of the method of administration.

It is under the direct authority of one of the six Chief Native Commissioners who share the responsibility for the territory of the Union. Since 1894 Transkei has had an original system of Native representation. It includes local and district councils, the latter 26 in number, being each composed of six members, four of whom are elected by Native and two appointed by the "European" authorities. They are presided over by the "magistrate", who is a European. Each district council delegates three African representatives (one nominated and two elected) to the general council of Transkei territories or Bunga (the Native name), which sits at Umtata. The latter is under the chairmanship of the chief magistrate of Transkei and the twenty-six district magistrates are *ex officio* members.

309. Furthermore—a rather unexpected provision—the Native chiefs of Western and Eastern Pondoland, as well as Tembuland, are also *ex officio* members. This anomaly symbolizes the vacillation of the central authority in the past between two possible but opposing policies: to undermine or destroy the despotic powers of the tribal chiefs and set up a local government based on "democratic" elections, or to maintain and even strengthen the powers of the chiefs on the understanding that they will readily submit to the directives of the Minister of Native Affairs.

The first policy was in line with the democratic tradition of Cape Province. The second is more in accordance with nationalist conceptions and it was this policy which prevailed in the Bantu Authorities Act of 1951.

Chapter IV

DEMOGRAPHIC SITUATION OF ETHNIC GROUPS[120]

310. Examination of the demographic situation in the Union of South Africa is rendered difficult by the complexity of the ethnic problem, by the inadequacy of statistical information, and by the scarcity of thorough studies. This survey is accordingly merely a rough sketch of the demographic conditions and trends of each of the four ethnic groups distinguished in the Union of South Africa.[121]

311. For convenience of treatment this chapter has been divided into five sections:

I. Introduction;

II. Characteristics and composition of ethnic groups;

III. Structure of the population;

IV. Population changes;

V. Prospects for one generation hence.

I. Introduction

312. A first glance at the available information shows that 12,646,000 people live in the territory of the Union of South Africa, and that since 1904 their numbers have increased as follows:

Date	*Population*	*Date*	*Population*
1904	5,175,000	1936	9,589,000
1911	5,973,000	1946	11,418,000
1921	6,929,000	1951	12,646,000

313. As soon, however, as an attempt is made to interpret these figures and to determine the conditions affecting the increase of population, a major difficulty arises: reliable statistics are available only for a fraction of the population. For the rest of the population information is often sketchy and unreliable, so that even the direction of the change remains doubtful for certain groups.

II. Characteristics and composition of ethnic groups

314. The population of the Union of South Africa is officially divided by the Union authorities into four ethnic groups:

(1) Europeans;

(2) Natives;

(3) Asiatics; and

(4) Coloured.

These terms are defined as follows:

(1) The term "Europeans" is used to denote "persons of pure European descent".

(2) "Natives" denotes "pure-blooded individuals of the Bantu race". Such persons are sometimes referred to as "Africans" or "Bantus", the two terms being syonymous.

(3) "Asiatics" means "natives of Asia and their descendants, mainly Indians".

(4) The group "Mixed and other coloured consists chiefly of Cape Coloured but includes also Cape Malays, Bushmen, Hottentots, and all person of mixed race".

The last three groups are sometimes referred to collectively as "Non-Europeans".[122]

315. The Commission has been obliged to make use of this classification although fully aware of its imperfections and of the difficulties to which it gives rise. One cannot fail to notice that the "Whites" are considered as "Europeans" whatever their continent of origin, in which connexion the Afrikaans terms *Blankes* and *Nie-Blankes* are significant. The term "Coloureds" is used in a much more restrictive sense than in Anglo-Saxon countries and in practice usually denotes Mixed, excluding Negroes and Asiatics. At several points in its report the Commission has called attention to examples of the difficulties created by this lack of precision, in particular, in the preliminary observations in chapter VI which analyses South African legislation involving variations in treatment for different groups.[123]

316. Some information about the various ethnic groups has already been given in this section; they will be examined in order of numerical size and not in the official order as set out above. More detailed information will be given later.

(i) The Native population (Bantus)

317. The Bantus form the most important ethnic group. Their numbers were estimated at 7,831,000 at the 1946 census. They do not form a uniform ethnic group.

318. *Languages.* The predominant Bantu languages are: Xhosa spoken by 30 per cent of the Bantu population; Zulu, spoken by 26 per cent; South-Sotho, by 11.1 per cent; Sepedi, by 9.8 per cent; Sechuana, by 7.4 per cent; Shangaan, by 4.7 per cent.

These groups are distributed regionally as follows:

Cape Province: 85 per cent of the Bantus are Xhosas;

Natal: 93 per cent of the Bantus are Zulus;

Orange Free State: 64 per cent of the Bantus are South-Sothos.

Most of the Bantu races are represented in the Transvaal, where 3,122,000 Bantus were enumerated at the 1946 census. The following races, however, are essentially confined to the Transvaal, in the proportions shown:

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[120] In preparing this chapter the Commission took into account a report submitted at its request by Mr. Alfred Sauvy, Director of the Institut national d'études démographiques, Paris, and Mr. Fréderic Tabah.

[121] The information given in this chapter is taken from official documents (censuses, reports, etc.) of the Government of the Union of South Africa and from other statistical sources. Various works have also been consulted including:

(1) Lord Hailey, *An African Survey. A Study of Problems arising in Africa South of the Sahara.* Issued by the Committee of the African Research Survey under the auspices of the Royal Institute of International Affairs. Oxford University Press, 1945;

(2) C. W. de Kiewiet, *A History of South Africa, Social and Economic.* Oxford University Press, 1946;

(3) L. T. Badenhorst, "The Future Growth of the Population of South Africa and its Probable Age Distribution", pages 3-46 of *Population Studies*, vol. IV, No. 1, June 1950; and "Territorial Differentials in Fertility in the Union of South Africa, 1911-1936", pages 135-162 of *Population Studies*, vol. VI, No. 2, November 1952, Cambridge University Press.

[122] *Official Yearbook of the Union of South Africa*, 1949, page 1095.

[123] See paragraphs 445 *et seq.*

	Per cent		Per cent
Sepedi	99	Shangaan	97
Venda	99	Swazi	95
Ndebele	98	Sechuana	63[124]

319. Knowledge of the two official languages, English and Afrikaans, is somewhat more widespread among males than among females. Of the total Bantu population: 7 per cent spoke English; 13 per cent spoke Afrikaans; 6 per cent spoke both languages; 74 per cent spoke neither.

320. *Religions.* According to the 1936 census, religions were distributed among the Bantus as follows:

	Per cent		Per cent
Heathen	50.4	Lutheran	4.7
Native Separatist[125]	16.5	Roman Catholic..	3.5
Methodist	12.1	Dutch Reformed..	2.3
Anglican	6.2	Various	4.3

Over one-half of the Bantu population of the Cape, Natal and the Transvaal but only one-quarter of that of the Orange Free State were classified as Heathen. Among Christian denominations, Native Separatists had the largest following in each of the provinces except the Cape, where Methodists were most numerous. Only 1,440 Bantus were Moslems.

321. *Literacy.* Here is a breakdown percentage of Bantus aged ten years and over by ability to read or write their own language: 27.0 could read and write; 1.9 could only read; 69.0 were illiterate; 2.1 failed to state their literacy.

The percentage of literacy among males is slightly higher than among females (27.3 as against 26.1 per cent). Literacy in urban areas (43.8 per cent) is relatively more than twice as high as in rural areas (21.4 per cent). Although the literacy of males in rural areas is only slightly higher than that of females (21.6 as against 21.1 per cent), the literacy of females in urban areas (50.9 per cent) significantly exceeds that of males (40.5 per cent). The reason for this is to be ascribed to the high proportion of illiteracy among males in the Witwatersrand area, in particular the mine native.

322. Of Bantus of ten years of age and over, 10.5 per cent are able to read and write English, and 4.6 per cent Afrikaans. Literacy with respect to both English and Afrikaans is higher in urban than rural areas and, in urban areas, nearly twice as high for females as for males.[126]

323. Of the Bantu population enumerated in 1946, 93.2 per cent were Union-born, 6.5 per cent were born outside the Union, and the birthplace of 0.3 per cent was unspecified. Of the Bantus not born in the Union: 199,327 were born in Basutoland; 141,417 were born in Portuguese East Africa; 61,000 were born in Nyasaland; 45,549 were born in Southern and Northern Rhodesia; 38,559 were born in Bechuanaland; 33,738 were born in Swaziland; 6,716 were born in Angola; 4,990 were born in South West Africa; 2,937 were born in Tanganyika. The more detailed data available for 1936 indicate that among Bantus born outside the Union there was a great predominance of adult males, though a considerable number of females born in Basutoland were found in the Orange Free State. Most Bantus born outside the Union were found in the Transvaal, chiefly as recruited mine labour.

324. The resulting distortion of sex ratios in the population is partly reflected in the numbers of Bantu males and females in each province, with the Transvaal attracting most of the migratory labour. Ratios of males per 100 females were as follows:

Distribution of natives (Bantu) by sex and by province in 1936

Province	Males	Females	Males per 100 females
Cape (excluding Transkeian territories)	429,447	462,148	93
(Transkeian territories) ..	488,898	665,077	74
Natal (excluding Zululand)	584,473	616,719	95
(Zululand)	158,127	194,310	81
Transvaal	1,381,014	1,063,366	130
Orange Free State	270,692	282,418	96
TOTAL	3,312,651	3,284,038	101

The low ratios in the Transkeian territories and Zululand, and the high ratio in the Transvaal, give some indication of the extent to which adult males are separated from adult females as a result of labour migrations. Ratios for the remaining parts of Cape and Natal Provinces and for the Orange Free State conceal the disparities which exist between particular areas within these Provinces. It should also be borne in mind that the numbers of males and females include considerable numbers of children, and that the disparities in the distribution of the sexes are therefore much more marked among the adults. More detail will be given in section III of this chapter.

(ii) EUROPEANS

325. The European population has two different origins:

(*a*) Those speaking Afrikaans; these are the descendants of the early Dutch colonists, who have been in the country now for over three centuries. Though the number of Dutch settlers arriving in South Africa has never been large, their high rates of natural increase led to a rapid multiplication of their numbers and impelled them to occupy larger and larger areas of land. The Afrikaners mainly form a rural and agricultural population but, particularly in recent years, the rise of industries has brought about a change in this situation

(*b*) The English-speaking population in South Africa is a more recent arrival. Considerable numbers of English-speaking immigrants began to appear only in the last century and at a time when England was already highly urbanized, a fact which accounts for the difference in the cultural background of this element of the population. During the last century, the English-speaking population was largely concentrated in towns and cities of the Cape and Natal Province. The development of mining and industries has resulted more recently in a large movement of English-speaking people into urban areas of the Transvaal. Immigration during the present century has mainly added to the English-speaking population, whereas the rates of natural increase have been much higher among the Afrikaners.[127]

[124] Union of South Africa, 1946 census. *Special Report No. 189. Official and Home Languages and Literacy of Natives,* July, 1951, page xiii.

[125] Comprising the 800 or so churches set up by Bantu Christians independently of European influence or control.

[126] *Special Report No. 189,* pages xiii-xiv.

[127] To complete the picture of European immigration it should be remembered that some French (Huguenot) and German (Hanoverian) elements have joined the population of Dutch origin. Some immigration by Jewish elements from Central and Eastern Europe early in the twentieth century should also be noted.

326. In the period from 1925 to 1939 the inward migratory balance amounted to 44,000 persons only. After 1940 the migratory balance was outward. During the three years 1947-1949 there was again an inward balance of 55,000 persons. During 1950 and 1951 emigrants were more numerous than immigrants. Most of the immigrants came from the United Kingdom; most of the emigrants went to Southern Rhodesia. The immigration of 1947-1949 may be regarded as rather exceptional, and large movements of Europeans into or out of the Union are probably not to be expected in the near future.

327. In view of the slowing down of immigration, the "European" population is today a population "of European origin".

In 1946, 89.4 per cent of the Europeans were born in the Union of South Africa, 5.6 per cent in the United Kingdom and Ireland, and the remainder in other foreign countries.

328. *Language* is the chief criterion in distinguishing between the two populations.

Still on the basis of the 1946 census, the breakdown of the European population by language is as follows:

Home language	*Total population*	*Urban areas*	*Rural areas*
Afrikaans	57.3	47.8	82.4
English	39.4	48.5	15.3
Both languages	1.3	3.7	2.3
Neither language	2.0		
	100.0	100.0	100.0

329. Afrikaans is the majority language in three Provinces: Orange Free State: 86.7 per cent; Cape: 58.7 per cent; Transvaal: 58.4 per cent. In Natal, English predominates with 74.1 per cent of the Europeans speaking English.

330. The nearly equal size of the English-speaking and the Afrikaans-speaking urban population is a very recent phenomenon. As recently as 1936, 52.6 per cent of the European urban population was English-speaking and only 41.0 per cent Afrikaans-speaking. On the other hand, in 1936 84.0 per cent of the rural population consisted of Afrikaners, a percentage which has declined. The increase of Afrikaners in urban areas and their relative decrease in rural areas must be attributed to a much more rapid rural-urban migration among Afrikaners than among the English-speaking population. With continuing growth of the cities, it is probable that city populations will become more predominantly Afrikaner. In the large cities, however, English apparently continues to be the predominant language. Thus in 1946, per 100 Europeans speaking English, only forty spoke Afrikaans in Cape Town and only sixteen in Durban. In Pretoria (the Union capital) and Bloemfontein (capital of the Orange Free State), however, Afrikaans-speaking Europeans greatly outnumbered the English-speaking.

331. Ability to speak both English and Afrikaans is, however, becoming more widespread. In 1946, 69.0 per cent of all Europeans could use both languages, while 17.0 per cent were able to use English only, and 13.8 per cent Afrikaans only. Bilingualism is almost universal among the younger population.

332. After language, religion is the chief distinguishing characteristic. According to the 1936 census more than half the European population adhered to the Dutch Reformed Church. Here follows a breakdown of the European population by denomination:

	Per cent
Dutch Reformed Church	54.3
Anglican Church	17.2
Methodists	7.1
Roman Catholic Church	4.6
Hebrews	4.5

The remainder of the population consists chiefly of adherents of various other Protestant denominations.

333. The differences in cultural background between the two main branches of Europeans are also reflected in their occupational distribution. This difference is likely to become less as the Afrikaans-speaking percentage increases in the cities. The following data are taken from the census of 1936. At that time, of Europeans engaged in agriculture, forestry and fishing, only 11.3 per cent were English-speaking, while 86.4 per cent spoke Afrikaans. In public administration and transportation Afrikaners were also slightly in the majority. In all other branches of economic activity the English-speaking Europeans were more numerous than the Afrikaans-speaking.

The English-speaking population was found in the different occupational groups in the following proportions:

	Per cent
Mining	59.5
Engineering and metallurgy	65.9
Commerce and finance	69.1
Professions	69.2
Sports and entertainment	80.4

(iii) Coloured

334. This population, the great majority of which is in Cape Province, must be distinguished from "Natives", i.e., Bantus, on the one hand and Asiastics on the other, chiefly because it has developed differently and has enjoyed a different legal and social status.

> "This population group is made up of the descendants of the mixed slave population of the early Cape and the remnants of the Hottentot people, together with a certain amount of European and Bushman blood . . . In 1936 the group termed "Cape Coloured" constituted three-quarters of the total Coloured population, and only three other ethnic elements formed more than 1 per cent, namely Hottentot (11.25 per cent), Cape Malay (4.43 per cent) and Griqua (4.11 per cent). This classification must be taken as very approximate, however, since the Coloured population is very mixed and few of the Hottentots, Bushmen and Griquas, for example, are pure. The largest group, the "Cape Coloured", although largely of Malay and Hottentot blood with an admixture of European blood, has, more recently, also received some Bantu and other ethnic strains."[128]

335. The following figures indicate the high degree of assimilation of the Coloured population into the European culture. In 1946, 89.1 per cent were found to have Afrikaans as their home language, while most of the remainder spoke English, the use of English being somewhat more prevalent among the urban population, whereas the great majority of the rural Coloured speak Afrikaans. Only 0.5 per cent of the Coloured population speak Hottentot or Bushman.

336. Similarly, the Coloured population is often found to have adopted a European religion. According to the 1936 census, 92.1 per cent of the Coloured were Christians, 4.6 per cent Moslems[129] and 2.3 per cent

[128] L. T. Badenhorst, "The Future Growth . . . .", *op. cit.*, pages 7-8.

Heathens. However, the distribution of Christian denominations among the Coloured differs from that of the Europeans, as the following figures show:

	Per cent
Dutch Reformed Church	29.2
Anglican Church	21.2
Congregational Church	11.3
Methodist Church	10.6
Lutheran Church	7.7
Roman Catholic Church	4.7
Other Christian denominations	7.4

337. In great contrast with the Bantu population, and somewhat in contrast also with the Asiatics, the sex ratios of Coloured are stable in urban and rural communities alike, resembling rather the sex ratios of Europeans. Even in areas like Natal and the Orange Free State, where Coloured communities are only small, sex ratios depart only slightly from the "normal".

(iv) Asiatics

338. The Asiatic population, which is of recent origin, has been imported as a labour force. It comprises 365,000 Indians and 4,000 Chinese.

339. Considerable numbers of Indians were imported towards the close of the nineteenth century as indentured labourers.[130] Their ability to establish culturally-distinct and yet highly-integrated and stable communities clearly sets them apart from the Bantu populations, whose tribal social structure has been "corroded" by contact with the European money economy. "Both the English and the Dutch colonists, faced inevitably with a difficult native problem, regarded the Indian immigrant as a further and embarrassing complication. The Indian possessed a distinct and vigorous civilization of his own and represented the danger of a limitless influx of Asiastics." . . . . . "In addition to identured immigration there was a constant flow of unassisted immigration from India"[131] settling in South Africa at that time. The immigration of indentured Indian labourers ceased in 1911. The Immigration Act of 1913 terminated the entry of Indians into South Africa in any appreciable numbers.

340. In the years 1904 to 1906 acute labour shortages in the Transvaal mines also led to the importation of Chinese labourers, who by 1907 numbered 54,000.[132] It was then feared that severe problems might result from the presence of yet another ethnic group, and most of the Chinese were repatriated in 1910. In 1946 only 3,986 persons speaking Chinese were enumerated, most of them in the Transvaal.

Prevailing attitudes practically exclude the possibility of any further immigration of Asiastics.

341. The relatively small but rapidly increasing Asiatic population in the Union of South Africa has shown, however, considerable cultural resistance and an extraordinary capacity for adjustment. In other words, while the "settlement" has been successful, no "assimilation" into another population group has been observed. This labour immigration has gradually become a demographic immigration. Among the original immigrants young adult males constituted a majority. As a result of natural increase, however, the composition of the Asiatic population has changed radically. The number of males per 100 females has changed as follows: 1904, 207; 1936, 119; 1946, 109.

342. Abnormal sex ratios were still found in 1936 at ages 45 and over, this group representing the survivors of the earlier immigrants. At the present time these persons must have attained at least 60 years of age, while nearly all persons aged under 60 have been born in the Union. The census of 1946 found that only 11.3 per cent of all Asiatics were not native born, 9.7 per cent having been born in India. This foreign-born part of the Asiatic population is now disappearing.

Most of the Asiatics enumerated in 1946 were in Natal Province, where there were 106.4 males per 100 females (107.6 in the urban and 104.3 in the rural population), the sex ratio having become almost "normal". Some of the Asiatic communities, however, have not yet or have only recently attained such stability. In the Transvaal there were in 1946 121.7 males per 100 females, and in Cape Province this ratio was 129.3. In the Orange Free State eleven Asiatics were enumerated altogether. In the 1936 census the masculinity ratios of Asiatics in the Transvaal and the Cape were still very much higher (152 and 174 respectively).

343. According to the 1946 census the home languages of the Asiatic population were distributed as follows:

	Per cent
Tamil	33.3
Hindi	23.9
Gujarati	10.3
Telegu	8.5
Urdu	5.5
Other Indian languages	9.5
TOTAL	91.0
Chinese	1.4
English	4.0
Other and unspecified languages	4.6

The continued prevalence of Indian languages, despite the stoppage of immigration since 1913, proves the cultural resistance of the Asiatic group. The widespread knowledge of the official languages (41 per cent being conversant with English and 9.8 per cent with English and Afrikaans) is an indication of their high adaptability to the environment. Gujarati predominates among Asiatics in the Transvaal. In Cape Province, however, Asiatics mostly use English or Afrikaans as their home language.

344. By religion, according to the 1936 census, 72.7 per cent of the Asiatics were Hindus, 19.4 per cent were Moslems and 4.9 per cent were Christians.

III. Structure of the population

345. The most recent population census was that of 1951. Detailed results, however, are available now only from censuses taken in 1946 and 1936. Censuses were also taken in 1904, 1911 and 1921. In addition to these, censuses of Europeans were taken in 1918, 1926, 1931 and 1941.

(i) Criteria for classification

346. In classifying the inhabitants in the different ethnic groups the 1951 census followed the rule that a white person is a person who in appearance obviously is, or who is generally accepted as a white person. The appearance and social association of a person, and not, as in the past, his descent, are the most important considerations in establishing the racial classification of a person.[133] The same rule is applied to

[129] The most important group of Moslems being the Cape Malays.

[130] See chapter III, paragraph 285 *et seq.*

[131] Lord Hailey, *op cit.*, pages 319-320.

[132] de Kiewiet, *op cit.*, page 165.

[133] Union of South Africa. *Population Census, 1951* (preliminary), page xix.

Natives, Asiatics and even Cape Malays (who were classified separately in the 1951 census). Any person not belonging to one of the foregoing groups is classified as "Coloured".

(ii) Growth of the various ethnic groups

347. All the ethnic groups have been growing very rapidly, and their proportions in the total seem not to have changed very materially in the past half-century, as the following table shows:

Date	Population (in thousands)	Of which (per cent) Bantu	Europeans	Coloured	Asiatics	Total
1904	5,176	67.4	21.6	8.6	2.4	100
1911	5,973	67.3	21.4	8.8	2.5	100
1921	6,929	68.0	21.9	7.9	2.2	100
1936	9,590	68.8	20.9	8.0	2.3	100
1946	11,418	68.6	20.8	8.1	2.5	100
1951[a]	12,646	67.5	20.9	8.7	2.9	100

[a] Preliminary results.

348. Before commenting on these figures, a warning must be given to accept them with great caution. Only the most recent are of any value. The absolute figures for 1946 and 1951 (in thousands) are as follows:

Date	Bantus	European	Coloured	Asiatics	Total
1946	7,831	2,373	929	285	11,418
1951	8,535	2,643	1,102	365	12,646

The main reasons for caution with regard to these figures are as follows. The strictness of recording varies with the ethnic group; it is satisfactory for the Europeans but faulty for the others. Until recently, different methods of registration were followed in the different provinces. The censuses have considerably improved in the last few years, and it is accordingly difficult to compare the results of earlier censuses with those for 1946 and 1951.

349. During this period of almost fifty years the rapid growth of population has been almost entirely the result of natural increase. Immigration of Europeans in the present century has been relatively slight. Asiatic immigration practically ceased in 1913 and was even followed by some emigration. The Coloured population has all been born in the Union of South Africa. Immigration of Bantus from adjoining territories has been appreciable but slight.

350. The foregoing table shows that the Asiatic population has increased the most rapidly. The European population has at most times increased somewhat less rapidly than the remainder except in the period preceding 1921 when the influenza epidemic of 1918 considerably retarded the growth of the Coloured and Asiatic populations while leaving Europeans relatively unaffected. However, because of the considerable improvement in the census technique the increase of the native population may have been over-estimated.

(iii) Geographical distribution

351. The ethnic composition of the population of each province is shown in thousands in the following table (1946):

Province	Bantus	Europeans	Coloured	Asiatics	Total
Cape	2,338	871	830	15	4,054
(Transkeian territories)	(1,251)	(17)	(12)	(0)	(1,280)
Natal	1,708	237	25	232	2,202
(Zululand)	(387)	(7)	(1)	(3)	(398)
Transvaal	3,122	1,603	60	38	4,283
Orange Free State .	663	202	14	0	879
Total	7,832	2,373	928	285	11,418

Europeans constitute almost the same proportion of the total population (between 22 and 25 per cent) in each province except Natal, where most of the Asiatic population is concentrated (81 per cent). The Asiatics represent, however, only 10.5 per cent of the population of the province, a little less than the Europeans (10.7 per cent). Most of the Coloured population is concentrated in the southwestern portion of Cape Province. The presence of Asiatics in provinces other than Natal and of Coloured in provinces other than the Cape, is a result of relatively recent migrations. The Transkeian territories of Cape Province, and Zululand of Natal Province, are overwhelmingly Bantu, but there are few other areas in the Union of South Africa where Bantus do not live in close proximity with other ethnic groups, especially Europeans.

352. This close proximity of Europeans to the native population throughout nearly all of the Union of South Africa can best be illustrated by counting the number of magisterial districts[134] according to the percentage of Europeans found therein. Since the average population of a magisterial district is rather small (about 45,000 in 1946), and since Europeans form about one-fifth of the total population of the Union, it is rather striking to find that in 1946 there were hardly any districts where Europeans formed a majority, and only a few districts, mostly confined to special areas, where Europeans did not form at least 10 per cent of the total population.

Province	European percentage in districts in 1946: Over 50	10-50	Under 10	Total
Cape	3	97	32	132
(Transkeian territories)	(0)	(1)	(26)	(27)
Natal	0	8	37	45
(Zululand)	(0)	(0)	(11)	(11)
Transvaal	0	37	8	45
Orange Free State	0	34	1	35
Total	3	176	78	257
Total, excluding Natal and Transkeian territories	3	167	15	185

353. There have been some changes in the distribution of ethnic groups among the four provinces. The population of the Transvaal has grown most rapidly, from 1.3 million in 1904 to 4.8 million in 1951, but has maintained an almost constant ratio of non-Europeans to Europeans (there were slightly more than three non-Europeans per European in 1904 and in 1951). The population of each of the remaining provinces has more than doubled between 1904 and 1951. In Cape Province the ratio of non-Europeans to Europeans has been gradually rising, from slightly over three in 1904 to almost four in 1951. In Natal the ratio has been constantly falling, from 10.5 in 1904 to less than eight in 1951, probably largely as a result of a particularly high mortality among the Bantus.[135] The most remarkable change has occurred in the Orange Free State: in 1904 there were only 1.7 non-Europeans per European, whereas in 1951 there were as many as 3.5 as a result of a very slow increase in the number of Europeans and a very rapid increase, coupled with a large immigration from neighbouring Basutoland, in the Bantu population.

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[134] The magisterial district is the administrative unit immediately below the provincial level. See also chapter III, paragraph 300.

[135] See L. T. Badenhorst, "Territorial Differentials . . .", *op cit.*, page 151.

(iv) Density

354. The over-all density figure, 9.4 persons per square kilometre according to the 1946 census data, is of little significance. In the first place, the climatic conditions in large areas of the Union do not permi dense settlement, while in some areas of relatively abundant rainfall they are favourable to far higher population densities. This can be illustrated by data of the 1936 census, showing the distribution of the population according to the major climatic regions of the Union. Thus, in the south-western and south-eastern coastal regions, where water is relatively abundant, 31 per cent of the population of the Union lived on only 10 per cent of Union territory; in the High Veld, Cape Thornveld and Transvaal Bushveld, where precipitation is moderate, 63 per cent of the population lived on 49 per cent of Union territory; while in the Karroo and the central and north-western Cape, all of which are rather arid, only 6 per cent of the Union population lived on 41 per cent of the territory.

355. There are other reasons why population density is not a good index of the pressure of population on resources of the land. The peculiar distribution of lands, some of which form native reserves while others are European-owned, results in greatly unequal population densities among adjacent areas which have similar climatic conditions.

Finally, the effect of the different agricultural techniques, which will be mentioned later, may be noted.

(v) Breakdown by age

356. Here are some indications of the breakdown by age in 1936:

Age group	*Bantus*	*Europeans*	*Coloured*	*Asiatics*
Under 15	40.5	31.2	42.2	45.4
15-64	56.0	63.8	54.1	52.5
65 and over	3.5	5.0	3.7	2.1
Total	100.0	100.0	100.0	100.0

The proportion of children is largest among the Asiatics, second largest among the Coloured, and third largest among the Bantu. Among Europeans the proportion of children is very much smaller (though considerably larger than among European populations in most other countries). The population of working age (15-64), on the other hand, is higher in the European than in the other populations. This observation does not provide an estimate of the actual working population, since the age of entry into economic activity (school-leaving age) is higher for the European population.

357. The European population is rather young by comparison with European populations in other countries, but has recently begun to show some signs of aging. In fact, the breakdown of the population of European origin by wide age-groups in 1921 and 1946 gives the following figures:

	Percentage	
	1921	*1946*
Under 15	37	30.5
15-64	59.8	63.3
65 and over	3.2	6.2

The proportion of old people is roughly equal to that in southern European countries.

This age composition is favourable in so far as a large proportion of the total population is at age 15-64, generally regarded as the most productive ages. Though the percentage of persons aged 65 and over has begun to rise, the aging process is not yet far advanced. Thus in 1951 the percentage aged 65 and over had reached 10.8 in England and Wales, and in 1950, 11.6 in France, 8.2 in the United States and 7.8 per cent in Holland.

(vi) Urban and rural populations

358. Urbanization is a rather recent process in South Africa but has been very rapid in recent years. Before the rise of diamond-mining at Kimberley (in the 1870's) and gold-mining on the Rand (in the 1880's) there were hardly any towns of appreciable size in the interior parts of the territory. In 1865 there were less than a score of towns with a population of more than 1,000. The rapid rise of the mining industries towards the end of the century resulted in an abrupt growth of cities. Urban population has grown very rapidly in the last thirty years.[136]

359. *General situation.* In 1946 the population was distributed roughly as follows (in thousands):

Population	*Bantus*	*Europeans*	*Coloured*	*Asiatics*	*Total*
Urban	1,685	1,730	535	200	4,150
Rural	6,145	645	395	85	7,270
Total	7,830	2,375	930	285	11,420

It is clear that most of the population consists of rural Bantus (6,145,000). Next, after a considerable interval, come two almost equal groups: the urban Bantus and the urban Europeans.

360. *Growth* since 1904 has been as follows:

	Population (all ethnic groups) (in thousands)			*Percentage of urban population in the total*
Date	*Urban*	*Rural*	*Total*	
1904	1,200	3,976	5,176	23.4
1911	1,478	4,496	5,973	24.8
1921	1,736	5,193	6,929	25.0
1936	3,010	6,580	9,590	31.5
1946	4,149	7,270	11,418	36.4
1951	5,360	7,287	12,646	42.4

Here follows the amount of urbanization in the different groups; the number of urban residents per 100 persons in each ethnic group.

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*
1921	12	56	46	31
1936	17	65	54	66
1946	22	73	58	70
1951		78		

The Europeans are still the most highly urbanized group, but the degree of urbanization among Asiatics is almost as great, and is approached by that of the Coloured population.

As a result of these various trends the ethnic composition of the urban population has also changed, as is shown in the following table:

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*	*Total*
1921	36	49	12	3	100
1936	38	43	14	5	100
1946	41	41	13	5	100

Thus, despite the very high urbanization of Europeans, that of the other ethnic groups has outstripped them. The Europeans, who formed half the urban population at the turn of the century, formed only 39 per cent of it in 1951.

[136] For the measure taken to prevent the concentration of Natives in urban areas, see chapter VI, section III, paragraphs 484 *et seq.*

As already pointed out, there has been in recent years a very rapid urban movement of the traditionally rural Afrikaners. With the European rural population already declining (from 708,000 in 1931 to 571,000 in 1951), the further increase of European urban population will of necessity slow down, having to depend almost entirely on its own natural increase.

361. The change in the ethnic composition of the rural population has been even more striking:

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*	*Total*
1921	80	13	5	2	100
1936	83	11	5	1	100
1946	85	9	5	1	100

Detailed ethnic breakdowns have not been found available either for 1951 or for years earlier than 1921. The available figures show, however, that, whereas for every rural European in 1911 there were 6.3 non-Europeans, in 1951 there were for every rural European as many as 11.8 non-Europeans, most of them Bantus. This trend towards a gradual disappearance of Europeans from the countryside will almost certainly continue.

362. To sum up, the considerable urbanization which has taken place since the turn of the century has affected, in varying degrees, all ethnic groups.

In particular there has been a change in the ethnic composition of urban regions where Bantus and Europeans are equal in numbers. Migration towards the towns, however, leaves the Bantus in an overwhelming majority in the country, where they represent 85 per cent of the population.

(vii) Breakdown by sex

363. Not all urban populations are equally stable if the sex ratio is to be taken as evidence.

The number of males per 100 females among the Bantus and Asiatics is as follows:

	Bantus	*Asiatics*
1921	299	181
1936	220	121
1946	186	111

364. The disproportion varies in each case: in that of the Asiatics it is temporary and is being slowed down by natural changes in the birth and death rate. In the case of the Bantus the lack of stability is lasting, being maintained by a permanent labour migration, which will be discussed further on in connexion with labour.

365. In the European urban population, which had grown very rapidly only towards the turn of the last century, there were in 1904 still 144 males per 100 females. Stability, however, was soon attained: urban females slightly outnumbered the males already in 1918, and have done so ever since.

366. Among the Coloured urban population females somewhat outnumbered the males as early as 1921—and had possibly already done so for a considerable time—whereas males always outnumbered the females among the Coloured rural population, this being in striking contrast with the Bantus.

(viii) Composition of the labour force

367. According to preliminary data of the 1946 census,[137] the labour force probably consists of:

Bantus	3,844,000
Europeans	888,000
Coloured	349,000
Asiatics	79,000
Total	5,160,000

The figures for the Bantus are not, however, comparable to those in the other groups, because in the first group they include economically-active persons above the age of 10, while for the remaining ethnic groups they include persons above the age of 15 only.

368. Of greater interest are the industrial distribution within the several ethnic groups of the labour force, and the ethnic distribution of the workers in each branch of activity.

Percentage distribution of the labour force of each ethnic group by branch of activity[138]

	Bantus	*Europeans*	*Coloured*	*Asiatics*
Agriculture, forestry and fishing	58.0	19.8	32.0	20.4
Mining and quarrying	12.0	6.3	0.9	0.9
Manufacturing	4.4	15.5	16.0	24.7
Construction	2.1	5.9	8.1	2.5
Electricity, gas and water	0.2	0.6	0.3	0.1
Commerce	1.9	16.5	6.1	28.5
Transport and communications	1.9	14.5	4.5	3.2
Personal services	16.5	3.4	25.3	12.4
Other services	3.0	17.5	6.8	7.3
Total	100.0	100.0	100.0	100.0

The following are the main facts shown by the above table:

Nearly 60 per cent of the Bantu population were engaged in agriculture. Moreover, a large proportion were engaged in personal services (16.5 per cent) and mining (12 per cent). All these occupations are "primary" within the social meaning of the term. The majority of the Bantu population has not yet been truly integrated into economic life and remains closer to nature than to mankind.

Three-quarters of the Europeans, however, are in the secondary and tertiary groups, or, more accurately, in occupations other than agriculture and mining. The position held in the occupation (head of undertaking, executive staff, etc.) would, however, also have to be taken into account.

Of the Coloured population one-quarter are in personal service and one-third in agriculture.

Commerce is the major field of activity of Asiatics, followed by manufacturing, personal services and agriculture.

369. The following table shows the composition of the labour force in each branch of activity in 1946 by ethnic group (reading horizontally):

	Bantus	*Europeans*	*Coloured*	*Asiatics*	*Total*
Agriculture, forestry and fishing	87.6	7.8	4.0	0.6	100.0
Mining and quarrying	88.7	10.7	0.5	0.1	100.0
Manufacturing	45.4	36.5	13.5	4.6	100.0
Construction	50.0	32.8	16.1	1.1	100.0
Electricity, gas and water	51.3	42.2	6.1	0.4	100.0
Commerce	28.8	56.1	7.4	7.7	100.0
Transport and communication	24.6	67.6	6.7	1.1	100.0
Services	59.7	17.6	9.7	13.0	100.0
Total	74.5	17.2	6.8	1.5	100.0

[137] Union of South Africa, *The Industrial Classification of the Economically Active Population* (Preliminary Summary of the 1946 Census).

[138] For measures and practices debarring natives from certain trades and professions, see chapter VI, section V, paragraph 591 *et seq.* and chapter VII, section IV, paragraphs 775 and 776.

The above figures, which though rough are enlightening, are further evidence of the importance of Bantu labour, which forms three-quarters of the labour force.

Even in manufacturing, construction, urban supply services and the like half the labour force is Bantu.

European activity only predominates in transport and commerce, but is also large in public utilities, manufacturing and construction.

Coloured persons contribute considerably in construction, manufacturing and services.

Being few in number, the Asiatics make a substantial contribution only to the labour force engaged in commerce and services. Their contribution in manufacturing is, however, appreciable.

370. We can note for the period from 1936 to 1946 a considerable shift of European, Asiatic and Coloured workers away from agriculture into manufacturing. This shift was most remarkable in the case of Asiatics and least so in the case of Coloured. Comparative data for Bantus are unfortunately lacking, but increase in Bantu labour in industry and chiefly in mining, is indicated by the growing number of urban Bantus.

371. Finally, attention should be drawn to the recruitment of Bantu labour outside the Union. In 1936, Native mine labour included:[139] 183,851 employees born within the Union; 49,582 employees from Basutoland; 7,521 employees from Bechuanaland; 7,316 employees from Swaziland; 89,104 employees from Portuguese territories; 3,833 employees from other territories.

There was a predominance of adult males among the labour born outside the Union.

(ix) Distribution of the Bantu population by type of residential area

372. A breakdown of the Bantu population by age and place of birth was published as a result of the 1936 census. Although somewhat outdated, these data are still of great interest, as they describe the extent to which the stability of the population is affected by labour migrations. The table below shows the distribution of adult Bantus (age 20 years and over) in each province (thousands):

	Persons born in province		*Persons present in province*		*Excess or deficiency*	
Province	*Males*	*Females*	*Males*	*Females*	*Males*	*Females*
Cape	566	598	377	568	—189	—30
Natal	357	412	333	400	— 24	—12
Transvaal	369	435	803	521	+434	+86
Orange Free State	109	120	120	135	+ 11	+15
Outside Union .	233	59	–	–	–	–
Total	1,634	1,624	1,633	1,624	+232	+59

The greatest deficit is found in the Cape and the greatest excess in the Transvaal. The numbers of female migrants are very much smaller than those of males. A special situation exists in the Orange Free State, which has had some permanent immigration from Basutoland. In Natal the migrations are largely within the province and their effects do not appear in the above table.

373. More accurate information is available concerning the numbers of adult male Bantus residing in urban and rural areas. The following are the figures for adult Bantus (aged 21 and over) (thousands):

	Adults in urban areas		*Adults in rural areas*	
Province	*Males*	*Females*	*Males*	*Females*
Cape	60	59	298	463
Natal	61	20	254	356
Transvaal	422	83	439	405
Orange Free State	23	29	92	98
Total	566	191	984	1,333

374. For the Union as a whole there are about three times as many adult males in urban areas as there are adult females; in rural areas, however, there are less than 75 males per 100 females. Since not all labour migration is from rural to urban areas, and since many Bantus find work in the country, even these figures do not measure the full extent to which adult males are separated from adult females as a result of labour migration. Moreover, the Bantu urban population has approximately doubled since 1936, when these figures were obtained.

This partial separation of the sexes often involves the temporary separation of husbands and wives. Thus in 1936 in the urban areas of the Union there were 352,000 married Bantu men but only 125,000 married Bantu women; in the Witwatersrand alone the number of married men was 236,000 while that of married women was only 46,000, i.e., less than one-fifth.

A more detailed breakdown by type of residential area exists both for the 1936 and the 1946 census, but does not give the ages or marital status of the population.

Distribution by sex and by type of residential area of the Bantu population in 1936 and in 1946 is appended.[140]

IV. Population changes

375. Before discussing this subject it should be made clear that registration of births and deaths did not become compulsory until 1923 for all ethnic groups in urban districts, while it remained optional for non-Europeans in rural districts. However, even in the towns health statistics concerning non-Europeans are unreliable and difficult to interpret, owing to the high proportion of temporary residents and the high predominance of males in certain groups. The number of births in the towns is therefore of slight importance if the population as a whole is considered. The infant mortality and general mortality rates are likewise compromised.[141]

(i) Fertility

376. *Bantus.* Failing reliable vital statistics, Badenhorst's estimates, which provide the only evidence available, have to be used.

In 1936 the "effective fertility rates" (i.e., the number of children under five years of age per 1,000 women aged between 14 and 44) were 697 for rural and 404 for urban areas (as contrasted with 688 and 455 respectively for 1911).

A decrease of this nature would fit in with the findings most generally obtained elsewhere in the world. Nevertheless, more thorough research is necessary.

[139] Lord Hailey, *op cit.*, page 700. At the present time numbers are probably much larger: about twice as many foreign-born Natives were enumerated in 1946 as in 1936.

[140] See annex IV.

[141] *Official Yearbook of South Africa, 1934-1935,* page 957.

Badenhorst estimates the Bantu birthrate as between 38 and 42 per thousand, which is definitely high, and higher than that of many other Negro populations. It must be added that the rate might be reduced, both by the not unimportant influence of the urban environment, and by the labour migrations of the males (causing a fall in the marriage rate, and in the birth rate when husbands and wives are separated). That being the case, it is difficult indeed to predict the future of Bantu fertility. It will depend mainly on the Bantu's degree of stability and adaptation to urban life.

377. *Europeans.* As compared with the birth rates of peoples of European stock in other parts of the world, the birth rate of the Europeans of South Africa has been, and still is, rather high. After being 32.5 per thousand as late as in 1910, it steadily sagged to 23.3 in 1934. Since then it rose to 27.7 in 1947 but declined again to 25.9 in 1952.

As in other countries, the decline in the birth rate is connected with various phenomena of development, among which urbanization, schooling and the decline in infantile mortality hold an important place.

The recovery of the birth rate since 1934 has left it, in spite of the decline observed since 1947, on a higher level than before the war. The same phenomenon has been recorded among the other European Malthusian populations. But the Union of South Africa, like the populations of the other members of the Commonwealth and of the United States, has not followed the same trends as the population in Europe, a separation which is explained to some extent by geography.

The only countries in Europe with recent birth rates as high as that of Europeans in South Africa are Greece (26.1 in 1949), Iceland (27.5 in 1951), Netherlands (22.3 in 1951), Poland (30.5 in 1950), Portugal (24.2 in 1951) and Yugoslavia (27.0 in 1950). The South African birth rate is also comparable with the 1951 rates of Canada (27.2), the United States (24.5), Australia (22.9) and New Zealand (24.4). However, in all these countries the expectation is for the birth rate to decline appreciably in the future.

Within the European population a difference in fertility, which cannot be accurately gauged, has been noted between the Afrikaners and the British.[142] The greater fertility of the Afrikaners may be ascribed to a reflection of the corresponding European populations (in Britain and the Netherlands) and to the more rural and agricultural nature of the Afrikaner population.

A decline in the marriage rate from 11.9 in 1946 to 10.2 in 1951 should be noted, but should not be interpreted as marking a trend.

378. *Coloured population.* For the Coloured population accurate vital statistics have only become available in recent years. Birth rates recorded during the years 1935 to 1950 fluctuated between 42 and 47 per 1,000. In 1950, the rate was 46.9. Badenhorst's study gives evidence that Coloured fertility, though in the rural environment as high as that of Asiatics, is more greatly affected by the urban environment. The "effective fertility rates" of the Coloured population for 1936 amounted to 925 in rural and 623 in urban areas. The increasing urbanization of this ethnic group accordingly raises the prospect of a decline in the birth rate in the near future.

142 L. T. Badenhorst, *Territorial Differentials . . . op. cit.*, page 139.

379. *Asiatics.* An accurate recording of Asiatic birth rates exists for recent years only. Fertility is very high. Since 1937, the birth rate has hovered around 40 per 1,000; it was 38.1 in 1950. There appears to be little difference between urban and rural areas. Badenhorst's study shows that "effective fertility rates", i.e., the numbers of children aged under 5 per 1,000 women aged 15-44, were 932 for rural Asiatics and 842 for urban Asiatics in 1936 (in 1921 they were 907 and 826 respectively).[143] By contrast, "effective fertility rates" for Europeans in 1936 were 612 in rural and 370 in urban areas (having declined from 787 and 544 respectively in 1911).[144] The urban environment has evidently had little effect so far in lowering the very high fertility of Asiatics; consequently high Asiatic birth rates must be expected for a considerable time to come despite high urbanization of the Asiatic population.

380. Thus it is clear that on the whole there is a fairly sharp division between the European and the other populations—a division which, on the basis of observations made in other countries, is normal. This sizable gap does not enable the vitality of the different populations to be assessed, since the effect of mortality has still to be studied.

(ii) Mortality

381. *Bantus.* There are no records to indicate the incidence of mortality among the Bantu population.[145] Badenhorst has carried out some computations which have led him to the conclusion that mortality rates and the expectation of life at birth of Bantus must resemble closely those of the Coloured,[146] which are given below. Bantus were apparently not very heavily afflicted by the great influenza epidemic of 1918. In the relatively healthy environment of the rural areas where the majority of Bantus live they may escape some of the effects of contagious diseases. The congestion in some of the reserves and the highly unsettled conditions in some areas of wage employment, on the other hand, are factors contributing to high mortality. Progress has been made in some cases, particularly in the mines, thanks to various measures taken for the prevention of accidents and the control of health.

382. A high standard of physical fitness is secured by means of an examination of all mine recruits before engagement; further examinations are held at six-monthly intervals, and miners in whom the disease (i.e., silicosis) is found are required to cease work underground. Africans are also subject to examination on termination of their contracts; the task is of considerable magnitude, as in 1934-1935, for example, there were 255,816 African employees, of whom 198,193 were in underground service, and about 90 per cent of the labourers are replaced annually. In 1934-1935 the prevalence rate per 1,000 of simple silicosis among native labourers in the Union was 1.22; of tuberculosis with silicosis 0.75, and of tuberculosis alone 2.48; it compares favourably with the rates of 1925-1926, which were respectively 1.13, 2.45 and 3.16. As many of the African miners . . . come from other territories and return home after the expiry of their contract,

143 *Ibid., op cit.*, page 157.

144 *Ibid.*, page 141.

145 The National Economic Commission of South Africa estimates in its 1932 report that infant mortality among the Natives varies between 237 and 500 per 1,000.

146 Badenhorst, *The Future Growth . . . , op. cit.*, pages 13 and 16.

there is a serious risk that infected persons may spread tuberculosis in their home villages.[147]

383. *Europeans.* The European death rate has been very low at times in the present century. During the 1920's it hovered around 10 per 1,000. In 1947, and again in 1952, it attained a minimum of 8.6 per 1,000. In view of the aging of the population, the crude death rate is not a good index of general mortality conditions; despite probable further improvement of general mortality it is unlikely to fall any further, and it may even rise somewhat in the future as larger proportions of the population enter the more advanced ages. A better indication of European mortality conditions is the expectation of life at birth, which according to available life tables was 56 years for males and 59 years for females in 1920-1922 and has risen to 64 for males and 68 for females in 1945-1947. This is comparable with, though it slightly exceeds, expectations of life in countries of relatively low mortality such as the Scandinavian countries, the Netherlands, Australia and New Zealand. Infant mortality is also low: 33.5 per 1,000 infants born in 1951 died in their first year of life. Mortality conditions will probably improve further but in the present state of medical science, not rapidly, since the rates already rank among the lowest so far attained in other countries.

384. *Coloured population.* The mortality rate for this population amounted to: 23.4 in 1935-1939; 23.9 in 1940-1944; 21.3 in 1945-1949; and 20.3 in 1950.

385. There has been a marked decline in the infant mortality rate, from 178.8 per 1,000 in 1935 to 134.3 in 1950. The life table for Coloured for 1945-1947 indicated an expectation of life at birth of 42 years for males and 44 years for females (a slight improvement over the 1935-1937 life table, when the corresponding expectations were 40 and 41 years). It is probable that Coloured mortality is declining, though not very rapidly. The influenza epidemic of 1918 must have exacted a heavy toll of lives among the Coloured, but no such catastrophe has occurred again, probably in part as a result of improved control of health conditions among the Coloured.

386. Nevertheless, a death rate of the order of 20 per 1,000 is not extraordinarily high and is capable of fairly rapid reduction. Before the First World War death rates exceeding 20 per 1,000 were still common in European countries such as Hungary, Italy, Portugal and Spain. In recent years, death rates of this order have been reduced very considerably in many parts of the world. Some characteristic rapid declines in death rates can be noted in countries such as the following (death rates recorded in 1940 and 1950 respectively are given in parenthesis): Mauritius (24-14); Costa Rica (18-12); Mexico (23-16); Puerto Rico (18-10); Chile (22-16); British Guiana (19-15); Formosa (20-12); Malaya (20-16); Singapore (21-12); Ceylon (21-13). In view of modern attitudes with regard to public health problems it must be expected that the Coloured death rate in South Africa will also decline substantially in the near future.

387. *Asiatics.* Vital statistics for Asiatics show a significant decline in the death rate in the past fifteen years: average, 1935-1939, 14.8; average, 1940-1944, 15.5; average, 1945-1949, 12.9; and average, 1950, 11.5.

According to a life table for Asiatics for the years 1945-1947, expectation of life at birth was 51 years for males and 50 years for females, which may be compared with expectations in many European countries or the United States some forty years ago. These figures, however, appear optimistic and evidently do not allow for the whole infantile mortality. The 1950 figure of 68.5 per 1,000 also seems to be an underestimate.

(iii) Migration

388. As already pointed out, international migration is a negligible factor in population change among the four ethnic groups.

389. There has been some in-movement of Bantus from other territories, but most of them are contract labourers who return home at the end of their work contracts; considerable numbers of Bantus, males and females, seem to have moved into the Orange Free State from overcrowded Basutoland; however, as compared with the total size of the Bantu population, whatever permanent immigration has taken place is of relatively small importance.

390. European immigration has been unimportant in the present century and, despite the relatively large numbers of immigrants during 1947-1949, is not likely to play an important role at any time in the near future. Asiatic immigration terminated in 1913; during 1927-1935, some 15,000 Indians were repatriated; no important movements have taken place since and none are to be expected in the future. There is no Coloured migration to speak of, the Coloured population being almost entirely Native to the Union of South Africa.

V. Prospects for one generation hence

(i) Basis of prediction

391. In the absence of any important migratory movement, the expected future population of each ethnic group is chiefly a matter of the numbers of births and deaths that may be expected in the future. Badenhorst derived plausible assumptions of expected future changes in birth and death rates and on that basis made projections, by age-and-sex groups, of the populations of each ethnic group up to the year 1980.[148] He performed this task before the census of 1951; confronted by the results of that census his conclusions required only minor modifications. We may therefore accept Badenhorst's future estimates as the best that can be made.

(ii) General results

392. The following table gives Badenhorst's estimates of the size of population of each ethnic group in 1950 and 1980 (in thousands):

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*	*Total*
1950	8,304	2,546	1,014	320	12,184
1980	14,552	3,777	2,006	820	21,155

The total population will thus probably increase by 75 per cent in 30 years, or a little over one generation.

(iii) Inequalities between ethnic groups

393. Moreover, it appears that the percentage increase will vary from one ethnic group to another:

[147] Lord Hailey, *op cit.*, pages 1149-1150; and *ibid.*, pages 672-674.

[148] L. T. Badenhorst, "The Future Growth . . .", *op. cit.*

Bantus, 75; Europeans, 50; Coloured, 100; and Asiatics, 150.

394. As a result, the ethnic composition of the population will be materially changed, the percentages in the different groups varying as follows:

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*
1950	68.2	20.9	8.3	2.6
1980	68.8	17.9	9.5	3.9

The expected considerable decline in the proportion of Europeans, despite a fairly rapid increase in their numbers, will be balanced by a more rapid increase in the two minority groups, the Asiatics and the Coloured. Whereas in 1950 there were some 3.4, in 1980 there will be some 4.6 non-Europeans for every European.

Similarly, while in 1950 there were about 8.0 Europeans to every Asiatic, there will be only about 4.6 Europeans to every Asiatic in 1980.

(iv) Criticism of the predictions

395. The over-all increase appears probable and may in favourable conditions even be exceeded.

The lower rate of increase of Europeans, based partly on a more marked rate of aging (favouring the mortality rate and not the birth rate) and partly on a difference in conditions of development, is equally likely.

While the birth rate of Europeans may decline further under the influence of development and urbanization, that of the other, less advanced, groups is likely to remain high. On the other hand, the mortality rate among Europeans will be unlikely to alter while that among non-Europeans, which to a great extent arises from social causes, may fall considerably.

The general direction of the predictions can thus be accepted as definite, while some doubt remains as to the actual figures.

(v) Urban and rural populations

396. To these differences between ethnic groups may be added differences between areas.

If the rapid urbanization of Europeans persists, their minority position in the rural areas will be accentuated. Their proportion even of the urban population will not necessarily be maintained.

It is perhaps impossible to predict future trends in urbanization.[149] Nevertheless, we may attempt at least some rough idea of the possible ethnic composition of future urban and rural populations. Let us assume that the urban percentage of each ethnic group will rise by 1980 by twice the amount of its rise in the 1936-1946 period. This assumption gives the following results:

Number of urban dwellers per 100 males in each group

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*
1936	17	65	54	66
1946	22	73	58	70
1980	32	89	66	78

On this admittedly arbitrary hypothesis the distribution of population in 1980 will be:

	Urban		*Rural*	
	1946	*1980*	*1946*	*1980*
Bantus	41.0	48.0	85.0	87.7
Europeans	41.0	33.0	9.0	4.6
Coloured	13.0	13.0	5.0	6.1
Asiatics	5.0	6.0	1.0	1.6
Total	100.0	100.0	100.0	100.0
Total in millions	4.1	9.9	7.3	11.3

Thus, even in urban areas the percentage of Europeans is likely to decrease while that of the Bantus increases, unless vigorous measures are applied to restrain the movement of the Bantus towards the towns.

(vi) Breakdown by age

397. The expected changes in the age structure of the non-European population are no less important than the probable future changes in numbers. Badenhorst's projections furnish some interesting data on this subject.

Here are the changes which follow from the previous assumptions:

	Bantus		*Europeans*		*Coloured*		*Asiatics*	
	1950	*1980*	*1950*	*1980*	*1950*	*1980*	*1950*	*1980*
Under 15...	38.1	36.4	31.5	27.4	42.1	37.9	45.3	43.0
15-65	58.5	59.0	62.1	64.0	54.3	58.4	52.2	54.0
65 and over.	3.4	4.6	6.4	8.6	3.6	3.7	2.5	3.0
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The greatest change occurs in the European population, in which aging continues. However, the seesaw movement around the average ages will again be shown in a slight increase in the population of working age.

But the number of persons aged 20-39 (the younger working ages) will increase from 772,000 to 1,076,000, an increase of 39 per cent; while the number of persons aged 40-64 will increase from 598,000 to 921,000, an increase of 54 per cent. Aging will thus occur also within the working population.

A similar but less marked trend can be observed in the other groups; the unreliability of fertility and mortality data makes it impossible to attach real importance to these percentages.

(vii) School age population

398. The implications of the growth in the number of children of school age (5-14) as indicated by Badenhorst[150] are, however, especially noteworthy.

Here are the expected results (in thousands):

Date	*Bantus*	*Europeans*	*Coloured*	*Asiatics*	*Total*
1950	1,960	495	260	91	2,806
1980	3,332	670	485	217	4,704

Thus the Coloured population, although in a decided minority, will show a greater absolute increase in the number of children of school age than the European population. Though numerically minute, very nearly the same applies to the Asiatic population.

A great increase in schools can thus be foreseen over and above what is necessary to ensure equality of education between the different ethnic groups.[151]

School attendance for Bantu children is not compulsory but has grown rapidly during the last 50 years. The number of Bantu children attending school increased from 73,815 in 1905 to 453,648 in 1939, which means a more than sixfold multiplication in about a

[149] As stated above (paragraph 345) the statistics used in this chapter are chiefly derived from the censuses of 1936 and 1946. Thence these predictions take no account of the Group Areas Act promulgated in 1950 (see paragraph 555).

[150] Badenhorst, "The Future Growth . . .", *op cit.*, page 37.

[151] On this point see chapter VII, paragraphs 693 *et seq.*

generation. The total expenditure on Bantu education increased more than eighteen times between 1905 and 1939, and since then has been increasing at a rapid pace . . .

The assumptions of fertility and mortality laid down for the Bantus result in a population of school age (5-14 years) of: 1,959,500 by 1950; 2,567,100 by 1965; and 3,332,400 by 1980.

B. RACIAL SITUATION IN THE UNION OF SOUTH AFRICA

Chapter V

APARTHEID

I. Definition of the word *apartheid*

399. The word *apartheid*, an Afrikaans expression meaning "separation, separate development" (of races) is of recent coinage. It does not appear even in the 1946 edition of the widely-used Afrikaans-English Dictionary of Bosman and v.d. Merwe.[152]

The National Party deliberately substituted it for the previously current term "segregation" (*segregasie*) after Field-Marshal Smuts had stated in a memorable speech early in 1944 that the policy had failed completely. The object was to avoid any misunderstanding and by means of a new word to breathe new life into an old concept that had been pronounced obsolete by political opponents.[153]

The word quickly achieved such popularity as to become a symbol, a doctrine and a whole programme. Moreover, the doctrine and the programme for its application are so closely interlinked that it is difficult to treat them separately.

400. To begin with, *apartheid* is defined as follows in the first volume of the big dictionary of the Afrikaans language compiled under official auspices by a group of eminent philologists.[154]

Apartheid:

1. The condition of being separated or isolated: the *apartheid* of two buildings.

2. The condition of being different from the rest: At the art exhibition Basutoland handicrafts excited great interest because of their *apartheid.*

3. Something forming a separate unit by itself: Historians consider the nations as *apartheids.*

4. A political tendency or trend in South Africa based on the general principles (*a*) of a *differentiation* corresponding to differences of race and/or colour and/or level of civilization; as opposed to *assimilation*; (*b*) of the maintence and perpetuation of the individuality (identity) of the different colour groups of which the population is composed, and of the separate development of these groups in accordance with their individual nature, traditions and capabilities; as opposed to *integration.* In its practical application this policy involves arrangements and endeavours including, *inter alia,* measures to effect a degree of purely local or spatial separation, e.g., with respect to residential zones, public utilities, transport, entertainments, etc.; measures concerning political rights, e.g., separate electoral lists, separate representation in Parliament and in the Provincial Councils; also a territorial segregation, e.g., the fact of reserving fairly extensive territories for the exclusive use of one population group, e.g., the Native territories. Partial *apartheid: apartheid* limited to certain spheres, e.g., to the political, social and ecclesiastical spheres; total *apartheid:* completely separate development in all the different spheres, e.g., of the various Bantu groups: the Government is adopting a policy of *apartheid* with regard to the Whites, the Cape Coloured, the Asiatics and the Natives. The overwhelming majority of the Whites desire *apartheid* (Eiselen). *Apartheid* means simply that each man should have his own proper place (H. F. Verwoerd).

II. The doctrine and programme of *apartheid*

401. In the following pages the Commission has confined itself to condensing, as faithfully as possible and in logical order, the main points of selected official statements which seemed to best express the conception and plans of the Nationalist Government. The following are the statements concerned:

(i) Extracts from the pamphlet published by the National Party[155] on 29 March 1948, that is, two months before the legislative elections of 26 May, entitled: "The National Party's Colour Policy".

(ii) Extracts from the speech delivered in House of Assembly by the Prime Minister, Dr. D. F. Malan, on 12 April 1950.

(iii) Extracts from the Message to the Nation broadcast by the Prime Minister, Dr. D. F. Malan, on 31 December 1952.

(iv) Extracts from the speech delivered by the Prime Minister, Dr. D. F. Malan, at Stellenbosch on 5 March 1953.

(v) Extracts from the speech delivered by the Prime Minister, Dr. D. F. Malan, on the eve of the legislative elections of 15 April 1953.

(vi) Extracts from the speech delivered in the House of Assembly on 31 January 1949 by Mr. Strydom, Minister of Lands and Irrigation.

(vii) Extracts from the speech delivered on 18 January 1950 by Dr. E. G. Jensen, Minister of Native Affairs, at the annual meeting of the Council of the South African Institute of Race Relations (Cape Town).

(viii) Extracts from the speech delivered in the House of Assembly by Dr. E. G. Jansen, Minister of Native Affairs, on 20 April 1950.

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[152] *Tweetalige Woordeboek, Afrikaans-Engels, derde, verbeterde Uitgawe,* Cape Town, 1946.

[153] In this connexion, see Dr. Malan's speech at Stellenbosch 5 March 1953, annex V, (iv).

[154] *Woordeboek van die Afrikaans Taal, Redaksie Pieter Cornelis Schoonees* (*e.a.*) Pretoria, 1950.

[155] Sometimes called "Nationalist Party".

(ix) Extracts from the speech delivered by Dr. H. F. Verwoerd, Minister of Native Affairs, at the opening of the second session of the Native Representative Council (Pretoria, 5 December 1950).

(x) Extracts from the speech delivered in the Senate on 1 May 1951 by Dr. H. F. Verwoerd, Minister of Native Affairs.[156]

402. Apart from their religious basis, [157] the doctrine and the programme of *apartheid* as they emerge from these statements may perhaps be summed up as follows:

One of the most striking phenomena of the world in which we live is the diversity of human races. They were created separate. This separation must be maintained even when economic or other circumstances have brought about a certain mingling of racial groups. With this aim in view, the sense of colour must be fostered and developed amongst the whites in such a way that the purity of the race is maintained.

403. As the heir to Western Christian civilization, the white race in South Africa has a twofold mission to fulfil: one with respect to the other members of the community of nations of Western Christian civilization, the other with respect to the coloured races with which events have brought it in contact and which are at a primitive or very backward stage of civilization.

Towards the former it owes a duty to maintain fully and to perpetuate its "character as a partner in the Western Christian civilization". It is the mission of the white race living in South Africa to protect that civilization "against attacks from outside and subversion from within". In other words, though representing a numerical minority, it must at any cost safeguard its position of domination over the coloured races. Naturally therefore it looks askance at any dogma of civic equality. This is why it cannot grant to the Natives, any more than to the Cape Coloured or the Indians, the same political rights which it itself enjoys. If the latter exercise the franchise as they do, for example, in Cape Province, they must vote on separate electoral lists and their representatives in Parliament and in the Provincial Councils must continue to be Europeans.

This position of domination imposes as a corollary a strict duty of justice and Christian "trusteeship" towards the non-White. This trusteeship must continue until the latter have reached a stage of maturity and responsibility that will justify an eventual process of emancipation.

404. On either side of the deep, wide gulf which, because of the difference in cultural levels, separates the White from the non-White, each race stands separated by characteristics which are permanent because they are hereditary. A race can only "fulfil itself" if it remains faithful to its inner law. This is especially true of the Bantu who have languages and their own distinct customs, rites and institutions. Mix them with the descendants of Europeans and they will be only pitiful imitators. They will lose the original qualities proper to their race without acquiring those of the superior group.

The best service, therefore, that the Whites can render to the non-Whites is to separate them from the white population, to consider them as distinct social and economic groups, and to see that, as far as possible, they live in territories, zones, or "locations" assigned to them as their own. In this way in their own communities they will enjoy all the rights of citizens for chief among those rights is the opportunity to develop to the maximum the distinct aptitudes of each member of the community.

405. Although aimed primarily at safeguarding the purity and the tutelary mission of the white race, *apartheid* is not in any way a negative policy of oppression or exploitation of the non-White by the White. On the contrary, it is a constructive policy, a policy of benevolence, protection and co-operation. In fact, according to this policy, "the supremacy (*baaskap*) of the European in his sphere" has a counterpart in the supremacy of the Bantu, the Cape Coloured or the Indian each in his own sphere.

406. The ideal situation for the *apartheid* policy would clearly have been that "the course of history had been different", that "there had arisen in South Africa a state in which only Bantu lived and worked, and another in which only Europeans lived and worked. This is not the situation today, however". As the result either of negligence or of a deliberate policy of *laissez-faire*, previous Governments have tolerated a sort of racial chaos in the country in which points and areas of contact and entanglement between different races have multiplied. The more numerous those points and areas of contact, however, the more chances are there of incidents, conflicts and outbursts. And unless energetic and concerted steps are taken to reverse the present trend towards a mixed development of races in the large urban centres, we may expect fearful clashes of interests and great suffering and bloodshed affecting all sections of the population.

Taking into account the realities and contingencies of today, as well as the reasonable possibilities of tomorrow, the following measures should be taken in order to avoid these calamities:

In the reserves

407. "A little over one third of the Bantu population resides, or still has its roots", in the reserves or Native territories. At the present time these lands cannot provide the necessary means of existence and development for their inhabitants, still less for their posterity. Because of the primitive methods of farming and the ignorance of European methods of crop rotation, of soil reclamation and conservation, and because, too, of over-population and excessive grazing, a large number of Natives are compelled to seek their livelihood elsewhere, in factories or mines of the Europeans and under their protection.

408. If these territories are to attain a certain level of prosperity and offer a normal future to Bantu farmers, agricultural demonstrators, school teachers, pastors and priests, craftsmen, employees of all kinds, tradesmen and civil servants, three things are necessary.

409. First, steps must be taken rapidly to restore the fertility of the soil and to expand agricultural production considerably; in brief, to bring about "the systematic establishment of Bantu farming on an economic basis".

410. Secondly, the programme started in 1936 for the purchase of lands for the benefit of the South African Native Trust must as far as possible be continued.

411. Finally, even if these two operations are fully carried out they "will not be sufficient to ensure a proper food supply for all the Bantu population of the reserves". Side by side with the agricultural develop-

[156] For the text of these statements see annex V.

[157] This aspect has been briefly discussed in the historical sketch, chapter III, paragraphs 276 *et seq.*

ment, there must therefore be some degree of urbanization based on the establishment of selected industries. It is in this connexion that the European must make a full contribution of his technical experience and financial assistance. This will impose heavy sacrifices on the white population but it must be ready to make them.

412. None the less, "in view of the late date at which the Europeans are settling down to the task of warding off future dangers, it is possible that this rational industrialization programme in the reserves may not be enough to provide employment for all those who urgently need it". The Government will, therefore, have to encourage European industrialists to establish other manufacturing centres in the European area but within easy distance of such Bantu centres of population. The native workers would be brought to the factory in the morning by public transport and taken home again in the evening, in the same way as the thousands of Belgian workers who live in Belgium and work in French textile mills near the frontier. These Bantu workers "would live in their own country, bring up their children in their own schools and manage their own affairs".

413. In this way the reserves, many of which include potentially fertile areas with sufficient rainfall, could offer satisfactory living conditions for a much larger population than at present.

In the rural areas

414. "A little over a third of the Bantu population lives in European country areas or works on the farms of Europeans. There the problem of relations between Whites and Bantus is less acute than in the towns. In fact, on the farms there can be no question of equality. The traditional relations between master and servant are maintained there, and, for the immediate future at any rate, there is no reason to fear that these living conditions will present the same dangers of racial equality as exist in the towns". The requisite number of Natives will continue to live with their families in the *kraals* or compounds set up near the farms. At times of the year when additional labour is required as, for example, during the harvest or fruit-picking season, the Native reserves will provide the necessary additional workers. On the expiry of their contract, the latter will return to their tribes as is the case at present.

In the towns

415. The problem of racial intermixing is much more serious in the towns. Attracted by the relatively high wages paid in secondary industries,[158] almost a third of the Bantu population has become urbanized and the numerical disproportion between the races is therefore becoming most marked and most dangerous in the towns. As a result of this unrestrained and chaotic urbanization, the housing services have been overwhelmed, and, despite their efforts, slums and shanty towns (*pondokkies*) have increased, bringing with them tuberculosis, high infant mortality, vice, delinquency and crime.

416. Under the *apartheid* policy, four series of measures are contemplated to avoid further deterioration of the present dangerous situation:

417. (i) Stricter controls must be used to limit to the absolute minimum the immigration to the towns of "new Natives who might become mere parasites". It is particularly urgent to deal with the problem of the *tsotsis*, the 20,000 more or less Europeanized young Bantus without regular means of support who are, for example, a social evil in Johannesburg. Special legislation will have to be enacted to permit their re-education in rural institutions in the reserves.

418. (ii) The uncontrolled industrialization which has taken place in recent years on the outskirts of the towns will have to be checked. This will be achieved in particular by granting tariff protection only to industries which are shown to be well-organized and economically viable and which prove that they can meet international competition on equal terms. The demand for new workers will thus be reduced, the more so because factory owners will in future be legally obliged to assume a large share of the financial burden of providing housing for their workers.[159]

419. (iii) The industrial suburbs of the towns and even some of the central districts, where there are a number of "black spots" in the mainly European residential areas, must be zoned on a more rational basis. Conversely many "white spots" in the Bantu areas of which Umtata in the Transkei is perhaps the most striking example will have to be removed.

This programme which would have to be carried out over a period of years, would have the effect of reducing the present disquieting disproportion between the total number of Natives in South Africa outside the reserves (nearly six million) and of Europeans (2,600,000).

420. (iv) The policy of *apartheid* should be applied with greater strictness in social, economic and industrial relations, i.e., in schools, universities, railways, public parks, factories, places of entertainments, sporting events, etc., in order to avoid physical clashes and tension between the races and the risk of miscegenation.

421. In the case of the other non-European groups settled in South Africa, the half-castes or Coloured (one million) and the Indians (over 300,000), a *modus vivendi* of essentially the same type should be envisaged; the Indian *élite* and the Coloured *élite* should, as far as possible, serve those of their own race instead of trying to integrate themselves in a mixed society.

422. With regard to the Indians, however, it would have to be borne in mind by the legislature that they are either immigrants or descendants of immigrants of relatively recent date, that they have all retained many of the characteristics of the immigrant, that they are particularly difficult to assimilate because they maintain ties with their countries of origin—India or Pakistan—and that the process of economic integration is however more advanced in their case than in that of other non-Whites. In other words, previous attempts at voluntary "repatriation" to their country of origin, with payment of a bonus, would therefore probably have to be continued.

423. The logical rigour, coherence and theoretical consistency of this programme will be noticed. This does not however rule out flexibility and gradualism in its application. All the Ministers who have explained or defined *apartheid* or who have defended their racial policy against the attacks of the parliamentary opposi-

[158] The term is used to denote industries other than traditional industries. The half-million non-Europeans employed in secondary industry earn almost as much as the million-and-a-half working in the mines and in agriculture.

[159] As indicated, in particular, by the repeated statements on this subject by the present Minister of Economic Affairs, Mr. Eric Louw.

tion have invariably stressed the need to take present-day actualities into account, to embark only on practicable policies, to proceed cautiously, step by step, not to seek at present the unrealistic objective of complete territorial segregation or to demand the impossible of either race.

III. Reaction to *apartheid*

424. The recent elections to the eleventh Parliament of the Union (15 April 1953) returned the National Party to power with a bigger majority in the House of Assembly[160] than at the preceding elections (26 May 1948).

425. Owing, however, to the structure of the constituencies—as a result of which a smaller number of rural electors elect a proportionately greater number of members than a considerably greater number of urban electors—the National Party gained this majority with 630,000 votes (about 45 per cent of the electorate) while the opposition received the votes of some 760,000 electors, or almost 55 per cent of the electorate.

426. One initial comment is, however, necessary. The opposition of a majority of the South African electorate seems largely to be a matter of tactics rather than of principle. It is evident from the debates in the Cape Town Parliament and the speeches of the most influential members of the United Party that the principles adopted or tacitly respected by that party as such differ from those of the National Party described above only in degree, and one might almost say tact in their application. The majority of members of the United Party are politicians who seem to have the same traditional attitude to colour as the National members of the legislature. This traditional attitude has recently been strengthened by the European's growing fear that they may be submerged by the non-whites even in the towns. Thus, during his recent electoral campaign Mr. J. G. N. Strauss, the leader of the United Party, implicitly accepted the underlying conceptions of such recent legislation as the Group Areas Act and the Prohibition of Mixed Marriages Act. He stated only that if his party won the election, it would amend a number of points in the Acts in question.[161]

427. Perhaps the main difference between the attitude of the National Party and that of the United Party is that the members of the latter recognize the *de facto* demographic situation created by the recent internal migrations of the Bantus in South Africa as irreversible and unavoidable. In other words, they regard the Bantus who have invaded the towns as permanent residents who must be able to live there with their families on a normal basis and not as temporary workers maintaining more or less fictitious family ties in the *Kraal* of their tribe of origin.

428. A fairly influential wing of the Party consists of industrialists who are very much alive to the danger to the country's economic future which they see in an intensified *apartheid* policy, the principal practical effect of which is to keep down the purchasing power and level of consumption of 10 million men and women; obviously a factory is seriously hampered from the point of view of efficiency, and its profitable operation may even be prevented if provision has to be made for two classes of canteens, clinics, sanitary facilities, etc., if, for reasons of colour, the best qualified worker cannot be employed in the type of work for which he is suited and if, owing to the fact that he cannot look forward to any increase in wages, the non-white worker loses interest in his job and performs it unsatisfactorily.

429. It is significant that the Labour Party's fundamental opposition to the industrial "colour-bar" is based on fairly similar economic considerations. It regards the colour-bar as being basically only a "cheap labour bar" imposed with a view to providing short-sighted European exploiters with low-wage labour[162] to the detriment of the future of the country as a whole.

430. It is much more difficult, not to say impossible, to give an adequate summary of the trade unions' attitude to the *apartheid policy*.

431. In the first place, the trade unions are not associated in a strongly organized national federation with a policy of its own. The central body approximating most closely to a "general confederation of labour" of the continental European type is the South African Trades and Labour Council; the Council, like most of the trade unions affiliated to it, is not, however, affiliated to the South African Labour Party and is still a mere co-ordinating body. The most that can be said is that there is no colour-bar in its Constitution and that it accepts the affiliation of any trade union organized in accordance with the accepted rules.

432. The most important factor in the attitude of the individual trade unions towards *apartheid* (and their views, range from one extreme to the other) is the origin and the racial feeling of the majority of the white trade unionists in a particular industry, or even in a small group of factories in that industry.

When, as is the case in many industries in the Transvaal, the majority is made up of recently urbanized Afrikaners of rural origin, they are in most cases supporters of strict industrial and social *apartheid*. This is the case, for example, in the powerful South African Engine-Drivers' and Firemen's Association. There are, however, such striking exceptions as the Transvaal Garment Workers' Union of Transvaal, which practices broad racial tolerance and most of whose members are Afrikaans-speaking women.

Where, however, the majority of members are South Africans of British origin, or South Africans who have been influenced by British trade unionism, as is frequently the case in the Cape Province, the attitude approximates more closely to the theoretical position of the Labour Party, and opposition to *apartheid* is sometimes fairly strong. Examples of this attitude are provided by a few trade unions in the textiles and chemical industries and by the Cape Food and Canning

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[160] The majority is 30 instead of 13. The seats are distributed as follows: National Party, 94; United Party, 57; Labour Party, 5; Natives' representatives, 3.

[161] In his speech at Queenstown on 9 September 1952, Mr. Strauss defined the foundations of the non-European policy of his Party under four heads:

(1) Social separation of the races, with separate facilities for all.

(2) No miscegenation.

(3) Separate residential areas.

(4) Use of the work and energy of the non-Europeans for the benefit of the South African community as a whole "in our farms, kitchens, factories and mines".

It will be observed how little this programme differs from that of the National Party.

[162] This is point (3) of the statement of November 1946, in which the South African Labour Party defined its policy towards non-European labour.

Workers' Union, the members of which belong to all races.[163]

433. There is a further and perhaps the most important factor in determining the highly complex and often inconsistent attitude of trade unionists: the protection of local trade union interests. As soon as there is a danger of competition between a category of European workers and non-European labour, the colour bar tends to be imposed or to be strengthened.

To sum up, there is little opposition to *apartheid* among the trade unions. What opposition there might be is diminished by the fact that even the trade union leaders, who are convinced opponents of *apartheid,* are forced to take into account the more or less deep-rooted colour prejudice of the mass of trade union members in order to avoid losing their support.

434. Two other opposition parties were formed immediately after the elections of 15 April 1953.

When it was founded, the Union Federal Party, which has strong links with Natal, issued a policy statement which included, among other points sharply differing from traditional Boer native policy, the following: "The South African-born non-European should be accorded a right of expression in the organs of Government, commensurate with his degree of civilization." The first of the Party's four provincial conventions to be held before its national convention—the Natal provincial convention—was held at Durban on 22 August 1953, and explicitly confirmed as an ultimate objective, the granting of full voting rights to suitably qualified non-Europeans.[164]

The Liberal Party was formed at about the same time by a group of intellectuals including Mrs. Margaret Ballinger and Mr. Alan Paton. Completely free of all racial prejudice, this group is broadly sympathetic to the ideas underlying recent international developments in inter-racial relations as may be seen from point 4 of its policy statement which declares "that no person should be debarred from participating in the Government and other democratic processes of the country by reason only of race, colour or creed; and that political rights, based on the common franchise roll shall be extended to all suitably qualified persons".

These two parties still have little influence in political affairs. The Union Federal Party is represented by two Senators, and the Liberal Party by one Member of the House of Assembly and one Senator who have resigned from the United Party.

435. *Apartheid* is also opposed, although on a plane other than the political plane, by most of the Christian churches except the three Dutch Reformed Churches, in particular by the Anglican and Roman Catholic Churches.

436. In addition, although the South African Communist Party[165] was dissolved before the Suppression of Communism Act (1951) came into force, it seems likely that many of its former members have retained their communist convictions and that these convictions are shared by some young people. One of these convictions is fanatical hostility to all racial discrimination.

437. Finally, this brief list of the parliamentary and extra-parliamentary centres of political or theoretical opposition to the institution of intensified *apartheid* would be incomplete without some reference to the fact that, both individually and in their organized groups, almost all educated non-Europeans are violently opposed, not so much to the policy of *apartheid,* as to any form of racial discrimination, whether originating in the National Party, the United Party, white trade unions or persons of Dutch or British stock. The most recent expression of their opposition is the vigorous campaign of "resistance to unjust laws",[166] which was instituted on the day of the Festival celebrating the tricentenary of the landing of Jan Van Riebeeck at Table Bay (6 April 1952). This aspiration to complete equality of rights, however, existed long before the National Party took office. It is already to be found, for example, in the list of demands put forward in 1947 by Dr. Xuma, at that time President General of the African National Congress, to the then Prime Minister, Field-Marshal Smuts.[167]

438. It was stated earlier that "almost all educated non-Europeans" were opposed to *apartheid.* But what was not stated, and must be stated, was that this opposition is intense. It took in 1952 the form of a vigorous campaign of "resistance to unjust laws" to which the Commission will revert later. It is difficult to be certain in matters of opinion, but the only educated non-Europeans who form an exception to this statement and who accept or more or less openly approve the *apartheid* policy in its present form seem to be the following:

In the first place, the beneficiaries, still few in number, of measures recently adopted by the Nationalists, such as the appointment, on an increasingly large scale, of non-Europeans as postmasters in districts of which the population is entirely non-European, the increased employment of Coloured people in certain public services, etc.

Further, a large number of so-called "separatist" churches (i.e., Christian churches whose pastors or priests and congregations are Bantu, and which are self-administered) are in favour of *apartheid.* Thus, in August 1951, a conference of eleven Native churches held at East London gave its full support to the Government's policy as just expressed with perfect clarity in the Group Areas Act.

Lastly, a large number of Native chiefs and the *Indunas* or notables in their entourage also appear to support *apartheid.* It is, however, difficult to say to

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[163] Like the garment industry, these industries employ many women. Unlike native men, native women are not deprived of the right to belong to trade unions. See chapter VI, paragraph 601.

[164] *The Times,* London 24 August 1953.

[165] It published, in particular, a bi-monthly paper, *Inkululeko* (i.e., "Freedom"), in English, Xhosa, Zulu, Tswana and Sotho.

[166] See chapter VII, paragraph 831 *et seq.*

[167] See *Handbook on Race Relations in South Africa,* page 516:

(i) Removal of the political colour bar in South Africa and direct representation of Africans in all legislative bodies—national, provincial and municipal;

(ii) Abolition of the pass laws;

(iii) Removal of restrictions relating to the acquisition, possession and occupation of land by Africans in urban and rural areas;

(iv) Recognition of African trade unions under the Industrial Conciliation Act and adequate wages for all African workers, including mine workers;

(v) Adequate housing for Africans and adequate mass training facilities at building and other trades, with outlets for employment as skilled workers;

(vi) Extension of free compulsory education to all African children of school age;

(vii) Re-establishment of the status of African chiefs in national affairs.

what extent this attitude may be due to the fact that, since it took office, the new Government has been making systematic attempts to revive the authority of the tribal chiefs. Among such chiefs, mention may be made of Charles Hlengwa, a Zulu chief of the Vumandabas tribe, Umkomaas, Natal. In July 1952, expressing his views before the Commission on the Socio-Economic Development of the Native Areas, he envisaged the possibility, within the framework of Government policy, of establishing a Zulu State including the Xhosa, the Pondos and the Swazi, and said: "We Zulus wish to preserve our racial purity because we were made Zulus by God. The natural course of a river cannot be changed."

Chapter VI

PRINCIPAL ACTS AND ORDERS PROVIDING FOR DIFFERENCES IN THE TREATMENT OF THE VARIOUS GROUPS

(i) General

439. This chapter contains an analysis of a number of acts and orders of the Union of South Africa.

440. The Commission realizes that, to give a complete picture of the race situation in the Union of South Africa, it would have been necessary to review a much larger body of statutes and orders applicable at the national, provincial[168] or local levels. As was stated above, the policy of *apartheid* is a recent development of a very old situation. In preparing its report, the Commission has examined a great many statutes and orders, a list of which appears in the annex to this report.[169]

441. The Commission has, however, confined its attention to the most important texts. Moreover, this chapter contains only an analysis of acts which refer explicitly to elements in the population of the Union of South Africa accorded different treatment because of their race or colour, either in the act itself or in regulations issued thereunder or through references to other acts containing such provisions. An analysis of the legislation of a general character whose application specially and in some cases exclusively affects some or all of the members of the non-European population will be found in the following chapter of the report which deals with the living conditions of non-European groups.

442. In the case of some recent acts of particular importance analysed in this chapter reference is also made to the *travaux préparatoires* and other circumstances preceding their adoption and to decisions of South African courts interpreting them. The actual effects of such measures on the individuals and groups to which they apply are summarized in the following chapter.

443. This chapter begins with some preliminary remarks on the dual problem of the definition of the groups making up the population of the Union of South Africa and of the methods by which the membership of an individual in a particular group is determined. These observations are included for three reasons: in the first place, the dual problem referred to is in practice of decisive importance in the enforcement of all acts involving differential treatment; secondly, these observations serve to indicate the practical complications in the lives of individuals and in the administration of the law introduced by legislation involving differential treatment, leaving out of account the measures themselves; thirdly, the discussion of the problem once and for all as a whole makes it unnecessary to return to it, in connexion with each act analysed; the chapter would otherwise have been overburdened with considerations which, although important, are of secondary interest compared with the substantive provisions of the statutes in question.

444. The chapter is then divided into a number of sections which, in some cases, have been subdivided into subsections. The Commission realizes that the method of classification adopted is of only relative value since one act may refer to more than one subject. It considers, however, that the classification makes it possible to clarify to some extent an extremely complex situation. In order to facilitate the comparisons and conclusions contained in the last two chapters of the report the Commission has also tried, so far as possible, to classify the subjects according to the rights mentioned in the Universal Declaration and to indicate, in each section or paragraph, which measures are prior to the United Nations Charter and which have been enacted since the Charter.

(ii) Preliminary observations on the problem of the definition of groups and of the classification of individuals as members of groups

445. It is customary to divide the population of the Union of South Africa into four groups: Natives, Europeans, Coloured and Asiatics. The difficulties of interpreting these terms are described in detail in chapter IV.

446. When the legal definitions of "race" and "colour" are considered, the situation is if possible even more complicated. Here again, the four basic categories are maintained: Natives, Europeans, persons of mixed blood, or as they are usually called, Coloured and Asiatics. It must be noted, however, that "Coloured' applies in some cases both to persons of mixed blood and to Asiatics while in others it is used to designate all non-Europeans.

447. Such looseness in the use of the terms for the various groups was particularly frequent in the legislation of the two Boer Republics—the South African Republic (Transvaal) and the Orange Free State and also, although to a lesser extent, in that of

[168] It should be noted that much legislation enacted before the constitution of the Union in 1909 in the colonies of the Cape of Good Hope and Natal, in the South African Republic (Transvaal) and in the Orange Free State, dealing with matters which, under the South Africa Act of 1909, are exclusively within the jurisdiction of the Union, is still in force, in some cases with amendments by the Union legislature.

[169] See annex VII.

the two British Colonies of the Cape of Good Hope and Natal. This observation is of more than merely historical and retrospective interest, since many acts dating from the period prior to the constitution of the Union of South Africa in 1909 are still in force.

448. The laws enacted by the Union in its early years were frequently equally loose. Again, it is not unusual for an act to empower the authority responsible for making regulations to include definitions of the groups in the regulations or to define in more specific terms the very general definitions given in the act.

A good example of the last method is furnished by the Group Areas Act, (No. 41 of 1950). The Act defines three racial groups: Whites, Natives and Coloured. But the Governor-General is empowered to define by proclamation, within either of the two groups last mentioned, "any ethnic, linguistic, cultural or other group" and to "declare the group so defined to be a group for the purposes of this Act" (section 2). The same method is followed in the Population Registration Act (No. 30 of 1950), studied below.[170]

449. In practice this looseness creates a second problem which is superimposed on that of defining the groups, the problem of classifying individuals in a given group. This problem arises mainly in connexion with "borderline cases", i.e., persons whose characteristics are not sufficiently marked for them to be easily classified, but the number of "borderline cases" may be considerable. Both for the individuals in question and for the authorities and sometimes also for other individuals who may have relations with persons whose status is doubtful, there is therefore a very real problem which merits consideration.

450. It was only recently, in the Population Registration Act, No. 30, of 1950, which will be analysed at the end of these observations, that an attempt was made to solve the dual problem of the definition of the groups and the classification of individuals in those groups. It will, however, be some time before the Act is implemented. Moreover, as the provisions of the Population Registration Act do not apply *de plano* to other enactments, the problem is not fully solved.

451. There would appear to be four different systems used to solve the practical problem of classifying an individual in a group, depending on the provisions of the Act regarding the definition of the groups:

(*a*) A statute may provide a very detailed definition based on a combination of factors such as descent, repute and associations.[171]

(*b*) The statute may indicate that "descent" is the ultimate test; in such case factors like appearance and habits of life are used only as evidence of descent.[172]

(*c*) The statute may leave the matter entirely to the court. In this case "the usual criteria should . . . be applied here, the physical appearance of the person concerned, his origin and his mode of life and associations, appearance being the predominate factor".[173]

(*d*) As a refinement of the third approach, the decision is left to the court but it is assisted by a statutory presumption. Thus the Prohibition of Mixed Marriages Act (No. 55 of 1949) section 3, states: "Any person who is in appearance obviously a European or a non-European, as the case may be, shall for the purposes of this Act be deemed to be such unless and until the contrary is proved".

The Immorality Act (No. 5 of 1927) as amended by Act No. 21 of 1950, contains similar definitions.[174]

452. The application of the Prohibition of Mixed Marriages Act and the Immorality Act, as amended, has already produced many judicial decisions. The courts have held that a person may be classified in either group depending on whether the text of obvious appearance or general acceptance and repute is applied. The criminal courts have tended to construe the definitions in the two Acts in favour of the accused and to hold that the onus is on the Crown throughout to prove that the accused is European or non-European, as the case may be.[175] On the other hand, the civil courts, which have had to apply the Prohibition of Mixed Marriages Act seem to have held that the party concerned was free to prove classification in one group or the other by the test he preferred.[176]

453. As was noted earlier, the Population Registration Act (No. 30, 1950) attempts to find a general solution of the dual problem of defining groups and of classifying individuals in those groups. The statements made by the Minister of the Interior (Mr. T. E. Dönges) in presenting to Parliament the Bill which became the Population Registration Act may be summarized as follows: from several points of view the question of determining the race of individuals was essential. When one obtained transfer of land it had to be determined that one did not belong to a certain race. The same problem arose with regard to the acquiring of land in certain areas. The difficulty experienced in this connexion was one of the biggest problems in matters relating to the franchise and the marriage laws, and the situation would be the same in regard to the Immorality Act (Amendment) Bill, which had not yet been passed. The determination of a person's race was a matter of the greatest importance in the enforcement of any existing or future laws in connexion with the separate residential areas.[177]

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[170] See paragraph 456 *et seq.*

[171] For example, the Representation of Natives Act, (No. 12 of 1936) section 1, and the Native Trust and Land Act, No. 18 of 1936) section 49.

[172] Per Schreiner, J. A., *Rex* v. *Radebe*, 1945 A.D. 590, page 609; *similiter*, *Rex* v. *Abel*, 1948, 1 SALR 654, per Centlivres, J. A.—Descent as the Text.

[173] Per van den Heever, J., in *ex parte* X, 1940 O.P.D. 156, page 159.

[174] Section 7: "In this Act,

"(i) 'European' means a person who in appearance obviously is, or who by general acceptance and repute is, a European;

.....

"(iii) 'Non-European' means a person who in appearance obviously is, or who by general acceptance and repute is, a non-European."

Section 7 *bis* provides: "Any person who seems in appearance obviously to be a European or a non-European, as the case may be, shall for the purposes of this Act be deemed to be such, until the contrary is proved."

[175] See, for example, *Rex* v. *Ormonde* 1952/SALR 272 (AD), page 277. See also *Rex* v. *G.*, 1949, 4 SALR 437 (Cape P.D.); and *Rex* v. *F.*, 1951, 2 SALR 1 (Transvaal P.D.); but compare *Rex* v. *B.*, 1951, 2 SALR 124 (Natal P.D.) These four decisions refer to the Immorality Act. The Cape Provincial Division decided that, when the three presumptions existing under the Act were satisfied, no contrary evidence, in the case in question, a birth certificate was admissible. See *Rex* v. *B. and M.*; 1953, 2 SALR 244 (Cape P.D.).

[176] *Pedro* v. *Tansley*, N.O. 151, 4 SALR 182 (Cape P.D.) and per de Villers, J., *ibid.*, page 187.

[177] *Journal of the Parliaments of the Commonwealth*, 336-339, 1950.

454. In the course of the debate on the Bill in the Union Parliament, the leader of the opposition, Field-Marshal Smuts, said that it was clear that the object of the Bill was to give expression to the policy of *apartheid*, of racial registration, to provide for the elimination of the Coloured people from the voters' roll. Clause five provided:

"Every person whose name is included in the register shall be classified by the Director as a White person, a Coloured person, or a Native, and every Coloured person and every Native whose name is so included shall be classified by the Director according to the ethnic or other group to which he belongs."[178]

455. In view of the extreme importance of the Population Registration Act, an analysis of its most important provisions follows with particular reference to the point under consideration.

456. The Act provides for the compilation by the Director of Census of a register of the Union's population as soon as practicable, based on the returns received under the Census Act of 1910.[179] The register is to be in three parts, respectively covering South African citizens, aliens admitted for permanent residence and aliens admitted for temporary purposes.[180]

The provisions dealing with the classification of persons are contained in section 5, which reads as follows:

"(1) Every person whose name is included in the register shall be classified by the Director as a White person, a Coloured person or a Native, as the case may be, and every Coloured person and every Native whose name is so included shall be classified by the Director according to the ethnic or other group to which he belongs.

"(2) The Governor-General may by proclamation in the *Gazette* prescribe and define the ethnic or other groups into which Coloured persons and Natives shall be classified in terms of subsection (1), and may in like manner amend or withdraw any such proclamation.

"(3) If at any time it appears to the Director that the classification of a person in terms of subsection (1) is incorrect, he may, subject to the provisions of subsection (7) of section 11 and after giving notice to that person and, if he is a minor, also to his guardian specifying in which respect the classification is incorrect and affording such person and such guardian (if any) an opportunity of being heard, alter the classification of that person in the register."

457. According to the definitions contained in section 1:

"(iii) 'Coloured person' means a person who is not a White person or a Native;

. . . . . .

"(x) 'Native' means a person who in fact is or is generally accepted as a member of any aboriginal race or tribe of Africa;

. . . . . .

"(xv) 'White person' means a person who in appearance obviously is or who is generally accepted as a White person, but does not include a person who, although in appearance obviously a White person, is generally accepted as a Coloured person."

178 *Ibid.*, 339.
179 Sections 2 and 3.
180 Section 4.

Section 19 (1) provides for the following presumption:

"A person who in appearance obviously is a White person shall for the purposes of this Act be presumed to be a White person until the contrary is proved."

458. Any person who considers himself aggrieved by his classification by the Director may at any time object in writing to the Director against that classification, and there is a system of appeal provided whereby the case may ultimately be taken to the Supreme Court of South Africa.[181]

459. Every person will be assigned an identity number.[182] The particulars to be included in the register differ somewhat as between Natives and others. It should be noted that only the district of residence is needed for Natives, while the ordinary place of residence must be recorded for others. In addition, the ethnic or other group and tribe must be registered with respect to Natives.[183] Copies of the register will also be kept at the office of the magistrates of every district and a list shall be made, open to inspection by the public, which shall include the following particulars, and no other particulars whatsoever:

(*a*) Name, sex and ordinary place of residence, or, in the case of a Native, the district in which he is ordinarily resident;

(*b*) Classification in terms of section 5;

(*c*) Citizenship or nationality;

(*d*) In the case of a registered voter, the electoral division and polling district in which he is registered as a voter under the Electoral Consolidation Act, 1946 (Act No. 46 of 1946); and

(*e*) Identity number.[184]

460. Section 10 provides that, in the case of a change of residence, the person concerned must notify the Director. However, whereas the period of notification is fourteen days for non-Natives, under section 10 (2):

"Any permanent change in the ordinary place of residence of a Native from one district to another shall be notified to the Director by such person and in such manner as may be prescribed."

461. On the other hand, the provisions of section 14 on the production of identity cards at the request of the authorities do not distinguish between the groups to which the bearers belong.

Similarly, the penalties provided in section 18 for failure to comply with sections 10 and 14 of the act are the same for all.

462. A special problem has arisen in connexion with certain recent Acts (particularly the Group Areas Act (No. 41 of 1950))[185] relating to the right to own and hold immovable property, namely that of classifying corporate bodies as well as natural persons in the various groups defined by [illegible] section 1 (viii) of Act No. 41 of 1950, [illegible] body is deemed to belong

181 Section 11.
182 Section 6.
183 As to whether the "ethnic or other group to which he belongs" should be registered in respect of a "Coloured person", compare section 5 (1) of the act with the list of particulars ("and no other particulars whatsoever") specified in section 7 (1) in respect of all persons other than "Natives".
184 Section 8 (2).
185 A similar problem was raised by the Asiatic Land Te and Indian Representation Act (No. 28 of 1946).

to the group to which the majority of the members of the body belongs and, in the case of a municipality of the Province of the Cape of Good Hope, the group to which the majority of the council thereof belongs; a company is deemed to belong to the group to which the person by whom or on whose behalf a controlling interest is held belongs.

I. Right to nationality

463. In view of the importance which an individual's national status may have from the point of view of the enjoyment or exercise by him of certain rights, in particular political rights, the Commission studied the legislation of the Union on nationality.

POSITION BEFORE THE UNITED NATIONS CHARTER

464. Until 1926, when the British Nationality in the Union and Status of Alien Act, 1926, was enacted, the Union had no legislation of its own on the matter and was governed by British law. The following year the Union Nationality and Flags Act, 1927, was enacted, granting a new status, that of Union national, to certain persons born outside the Union whose fathers were Union nationals at the time of their birth. These Acts contained no distinction on grounds of race or colour.

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

South African Citizenship Act, No. 44, 1949

465. Since the entry into force of the United Nations Charter, a new Act, the South African Citizenship Act (No. 44 of 1949), containing the rules governing the acquisition and loss of South African nationality, has been enacted. Two of the provisions of the new Act are of interest from the point of view of this study. First, under section 3, South African nationality is not conferred upon a person born in the Union after the date of the entry into force of the Act if the father of such person belongs to the category of persons whose immigration is prohibited (see below, section III, paragraph 536). Secondly, South African citizenship which, under the 1927 Act, was granted automatically to subjects of British Commonwealth countries after two years' domicile in the Union may, under the 1949 Act, be granted or refused at the absolute discretion of the Minister. Moreover, the applicant must satisfy stricted residence requirements than under the previous Act.

II. Political rights[186] (Right to vote and be elected and other forms of political representation)

POSITION BEFORE THE UNITED NATIONS CHARTER

466. Before the Union, each of the four territorial units, which combined to form the Union of South Africa, had its own electoral system. In the Transvaal, the right to vote was specifically denied to non-Whites[187] and only Whites were eligible for election.[188] Similarly, in the Orange Free State only burghers could vote and only Whites could be burghers.[189] In Natal non-Whites could be placed on the voters' list if they possessed the necessary qualifications. Under an Act of 1883, however, no person belonging to a class placed by special legislation under the jurisdiction of special courts or subject to special laws and tribunals—i.e., Natives not specially exempted from the operation of Native Law—was entitled to be placed on the voters' list. Similarly, the Franchise Amendment Act of 1896 in fact disqualified Asiatics although it did not specifically refer to them. Only in the Cape of Good Hope were the qualifications for voters the same for all, but the property qualifications and particularly the educational requirement were such that few non-Europeans could be registered as voters.[190]

467. One of the most discussed questions during the debates prior to the adoption of the South Africa Act of 1909 by the United Kingdom Parliament was that of the granting of voting rights to non-Europeans. The representatives of the Transvaal and the Orange Free State were resolutely opposed to this and advocated the extension of the system in force in the two ex-republics to the entire Union. The representatives of the Cape, on the other hand, urged that the relatively liberal system of that Colony should be made universal. The solution finally adopted, not without opposition in the United Kingdom Parliament,[191] was a compromise: the Parliament of the Union of South Africa acquired the right to prescribe by law the qualifications necessary to entitle persons to vote at the election of members of the Assembly, subject to the proviso that [192]

> ". . . no such law shall disqualify any person in the province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the province of the Cape of Good Hope by reason of his race or colour only, unless the Bill be passed by both Houses of Parliament sitting together and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament."

This proviso to section 35 is usually referred to as the "entrenched clause". Another "entrenched clause", supplementing it, was added to section 152: it provides that both section 35 and sections 152 itself may only be repealed or altered by the special parliamentary procedure laid down in that section for legislation impairing the rights of a voter registered under the laws of the Cape of Good Hope by reason of race or colour

[186] This section deals only with legislation relating to the right to vote, the right to be elected and other forms of political representation. A number of statutes and orders have been promulgated, particularly in recent years, concerning public freedoms, such as freedom of opinion and expression and the right of assembly and association. Although these laws are important from the point of view of the racial situation, they have not been analysed in this chapter because they do not themselves prescribe differences of treatment in respect of various groups of the population on grounds of racial origin or colour. An analysis of some of these laws, will, however, be found in chapter VII.

[187] Section 35 of the *Grondwet* (Constitution) of the Transvaal (Act No. 2, 1896) and Act No. 1 of 1876.

[188] Section 43 of the *Grondwet*.

[189] Amended text of the Constitution of the Orange Free State of 1854, reproduced in the Code of 1892.

[190] Mr. Malan has said that it was for that purpose that the property qualification was raised, by the Electoral Act of 1892 (Act No. 9 of 1892), from 25 to 75 pounds. (Speech before the Assembly, 30 *Journal of the Parliaments of the Commonwealth, pages* 147-148, 1949).

[191] The South Africa Act, 1909, is, of course, an Act of the United Kingdom Parliament.

[192] South Africa Act, 1909, section 35.

only. There is thus a double or even a triple safeguard. The question of the interpretation and scope of these two provisions arose, as will be seen later, when the South African Parliament adopted the Separate Representation of Voters Act, No. 46, 1951.[193]

468. In the nineteen-twenties, apparently, a movement arose among the Europeans to remove the Cape Natives from the common roll of electors and a number of Bills for this purpose seem to have been introduced into the lower House of the Union Parliament. However, the grant of the franchise to European women in 1930, with the net effect of virtually doubling the number of eligible voters, had, as one of its consequences, the reduction of the proportionate influence of the Native vote, which was further reduced in 1931 by the grant of the vote to all European men and women without qualification. This change in the proportion of the European to the non-European vote understandably caused some concern among the Cape Coloured people but they were apparently assured by General Hertzog, the Prime Minister of the day, that a complete distinction was drawn between them and the Natives. General Hertzog had, in 1926, gone so far as to introduce a Bill to give the franchise to Coloured men (that is, of mixed blood) in provinces other than the Cape.[194] The Bill does not, however, seem to have made any headway.

Representation of Natives Act, No. 12, 1936

469. In 1936 the Hertzog-Smuts Coalition Government passed the Representation of Natives Act (No. 12 of 1936). This Act, among its other more general provisions, removed all Natives in the Cape Province from the common electoral roll (that is, the general undifferentiated electoral roll covering Europeans, Coloureds and Natives up to 1936) and established a separate Cape Native Voters Roll.

470. All Natives of the Union were given the right to elect four Native senators, one for the Transkeian Territories, one for the rest of the Cape Province, one for Natal and one for the combined area of the Transvaal and the Orange Free State. The election of the senator for the Transkeian Territories was to be conducted by an electoral college consisting of the Native members of the United Transkeian Territories General Council, while there were to be electoral colleges to select the other three Native senators, consisting of chiefs, headmen, local councils, Native reserve boards of management, Native advisory boards and special electoral committees to represent Natives not otherwise represented. The voting units in each electoral college were to represent the Native taxpayers domiciled within their respective areas, and each voting unit was to have a number of votes proportionate to the number of its taxpayers. The Act also provided that, if at any time after the expiration of seven years, the Governor-General was satisfied that the Natives had progressed to such a stage as to justify an increase in their representation in the Senate, he might, by proclamation, increase the number of electoral colleges to six, each of which would have the right to elect one senator. Senators and also members of the House of Assembly (see *infra*), elected under the Act, were to hold seats for five years, notwithstanding any dissolution of the Senate or the House of Assembly. In each case the election was to be indirect and the senators chosen must be, in the terms of the South Africa Act of 1909, of "European descent" and must possess the qualifications required for ordinary senators.

471. In addition, the Natives of the Cape Province were given the right to elect three representatives to the lower House of the Union Parliament—the House of Assembly—all of whom, again, were to be European.[195]

472. In the Province of Natal, while Natives might theoretically acquire a direct vote and be put on the common electoral roll, since the death in August 1946 of the last remaining Native voter, there have been no Africans on the common electoral roll.[196]

473. Side by side with these changes which were effected by the Representation of Natives Act of 1936, the Act also made provision for the creation of a Natives' Representative Council.[197] This Council, which had a majority of elected Native representatives exercised purely advisory functions.[198]

474. The Representation of Natives Act of 1936, particularly its provision removing the Native voters in the Cape Province of the Union from the common electoral role, has been extensively debated. It has on the one hand been described as "the most deliberate attempt yet made in Africa, south of the Sahara, to give Africans of various types a place in the political machinery of their country. It must be considered as a beginning, not an end, in facing the problem of democracy in Africa".[199] On the other hand, it has been said "that the principle of the communal franchise (for Natives) for which the Act provides, is open to the gravest objections as being another step

193 See below, paragraphs 479 and 480.

194 See Hatch, *The Dilemma of South Africa* (1952), page 71.

195 In 1935, there were 10,628 Natives on the undifferentiated electoral roll of the Cape Province. After their removal from the common electoral roll and their being placed on the special Natives' electoral roll for the Cape Province, these numbers had increased to 24,084 by 1945. *Handbook on Race Relations in South Africa*, 1949, Brookes, "Government and Administration", page 29.

196 *Ibid.* There are no Natives on the electoral rolls of the Transvaal or the Orange Free State.

197 The Natives' Representative Council consisted of 22 members: the Minister for Native Affairs presiding at its meetings, the five chief Native commissioners being official members, four Natives being nominated by the Governor-General and the remaining twelve members (who must be Natives) being elected by Natives under an electoral college system. The functions of the Council were to be consultative and advisory: consideration and reporting on proposed legislation affecting the native population; advising on matters referred to it by the Minister of Native Affairs and all matters especially affecting the interest of Natives; and also recommending to Parliament, or to any Provincial Council, any legislation which it might consider necessary in the interest of Natives. If the Minister of Native Affairs certified that any Bill or draft ordinance introduced into Parliament or a Provincial Council contained conditions especially concerning the interests of Natives, it must be referred to the Natives' Representative Council for a report. Reports by the Council were to be laid upon the table in both Houses of Parliament.

198 In August 1946, the Natives' Representative Council, its Native members apparently being dissatisfied with their lack of powers, adjourned *sine die* as a protest against what it termed the Government's failure to meet the urgent needs of the Native people. Tentative suggestions for a reform by the then Prime Minister, General Smuts, proved unacceptable and the Council did not meet thereafter. (See *Handbook on Race Relations in South Africa*, de Villiers, "Politics", pages 513-516). The Natives' Representative Council was abolished by the Bantu Authorities Act (No. 68 of 1951) which established general machinery for the administration of Native affairs (See *Annual Survey of South African Law*, 1951, pages 16-19 and *infra*, paragraph 483).

199 Lewin, *Political Representation of Africans in the Union*, South African Institute of Race Relations, 1942, page 14.

towards segregation and the entrenchment of White domination, it has meant that the representatives of Africans have no longer to represent both Europeans and Africans and thus to consider a variety of divergent and often conflicting interests within one constituency. They can devote themselves to the interests of a single group. On the other hand, it has also meant that the 150 representatives elected by the White voters have shown a marked tendency to devote themselves exclusively to promoting the interests of Europeans and to ignore African needs and interest".[200]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER[201]

Electoral Consolidation Act, No. 46, 1946

475. This Act is of no particular interest, being a mere codification of legislation previously in force.

Asiatic Land Tenure and Indian Representation Act, No. 28, 1946

476. Under the Asiatic Land Tenure and Indian Representation Act (No. 28 of 1946), provision was made, *inter alia*, for the representation of Indians on a communal basis in the Union Parliament. Indians in Natal and the Transvaal might now be represented in the Senate by two Senators (European), in the House of Assembly by three members (European) and in the Natal Provincial Council by two members (Indian). Every male Indian who was a Union national over 21 years of age, and conforming to certain minor property qualifications, was entitled to be placed on a special Indian electoral roll. One of the Indian senators was to be nominated by the Governor-General "on the ground mainly of his thorough acquaintance by reason of his official experience or otherwise with the reasonable wants and wishes of Indians in the Provinces of Natal and the Transvaal", while the other was to be elected by the Indian electors. Indian women, as distinct from males, were not eligible as electors, since the Women's Enfranchisement Act of 1930 was limited to Europeans only.

477. The provisions for Indian representation in the 1946 Act were never put into operation, because it was boycotted by the Indian community which objected strongly to the fact of representation being accorded on a communal basis only. The Indian community insisted on being admitted instead to the common roll.[202] Accordingly, the Union Parliament, by the Asiatic Laws Amendment Act (No. 47 of 1948) repealed the provisions of the Act of 1946 providing for Indian representation.[203]

Separate Representation of Voters Act, No. 46, 1951

478. In 1951 the Malan Government passed through the Union Parliament a Separate Representation of Voters Act, designed, as its Preamble declared: "To make provision for the separate representation in Parliament and in the Provincial Council of the Province of the Cape of Good Hope of Europeans in that province, and to that end to amend the law relating to the registration of Europeans and non-Europeans as voters for Parliament and for the said Provincial Council".[204] The actual plan of the Bill, as introduced by the Minister of the Interior, was to remove the Coloured voters from the normal electoral rolls in the Cape Province to place them on a separate roll and to allow them to vote for four special representatives.[205]

479. In the same way as the Representation of Natives Act, 1936, the Separate Representation of Voters Act, 1951, established a Board of Coloured Affairs under the chairmanship of a Commissioner for Coloured Affairs. It was to consist of three nominated non-European Members from Natal, the Orange Free State and Transvaal and eight elected non-European members, two to be elected from each of the four Cape Electoral Divisions established under the Sepa-

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200 *Handbook on Race Relations in South Africa,* 1949, de Villiers, "Politics", page 511.

The Representation of Natives Act of 1936 had been passed by the Parliament of the Union of South Africa in the apparent belief that it was an act of the nature defined in section 35 of the South Africa Act, for the Government of the day, the Hertzog-Smuts Coalition, proceeded to have it passed at a joint sitting of the Houses of the Union Parliament (Senate and the House of Assembly), in literal compliance with section 35 of the South Africa Act. The Act was challenged in the Supreme Court of South Africa on the ground that, although passed by a joint sitting of the two Houses of the Union Parliament, in terms of section 35 of the South Africa Act, it was not such a law as is contemplated by section 35. When the case came to the Appellate Division of the Supreme Court of South Africa, the Court treated the question purely and simply as one of proof of an Act of Parliament before a court of law and held that the Court could not go behind the formal record and that the Act had been passed by Parliament—an application of the so-called "Enrolled Bill Rule". The challenge to the constitutionality of the Act was therefore dismissed by the Court. (*Ndlwanda* v. *Hofmeyr,* N.O., 1937 A.D. 229 (A.D.)).

201 The South West Africa Affairs Amendment Act (No. 23 of 1949) may be mentioned, although it did not affect voting rights in the Union of South Africa proper. It did, however, alter the composition of the two Houses of Parliament by the addition of six members in the Assembly and of four Senators in the Senate, all belonging to the white race and elected by the white voters of South West Africa.

202–203 See South African Institute of Race Relations, 17th *Annual Report,* 1945-1946; *Handbook on Race Relations in South Africa,* Brookes, "Government and Administration", page 30; *Annual Survey of South African Law,* 1948, page 8.

204 As the Minister for the Interior, Dr. the Hon. T. E. Dönges, acknowledged in introducing the Bill in Parliament, the Bill constituted part of the Government's *apartheid* policy. There were 9 million Natives in South Africa; 1 million Coloured (persons of mixed blood); 300,000 Indians; and about 2,750,000 Whites. Ever since the introduction of representative government in South Africa, the Minister continued, the fear of political domination by the non-Europeans had hung like a dark cloud over the country. Efforts had been made by responsible persons to tone down that danger in a direct fashion, as in the Orange Free State and the Transvaal. The Coloured vote in the Cape, in the Minister's opinion, had always been a sham and fraud. During election time their vote had been canvassed in an improper manner and promises were made which, after the elections, were completely forgotten. (*32 Journal of the Parliaments of the Commonwealth,* page 601, 1951).

205 The ratio between European and Coloured representatives in the House of Assembly would thereby have become 150 to 4. Although, as an opposition member, Mr. Davis, pointed out in the House, it was true that of the 1,030,000 Coloured persons in South Africa, only about 50,000 had a vote, nevertheless because of their concentration in the Cape Colony, the Coloured voters were able to take part in the election of some 55 members to the House, and indeed in 25 constituencies their vote enabled them to have a substantial say in the final outcome (*32 Journal of the Parliaments of the Commonwealth,* p. 607, 1951). In a narrowly divided House, and with constituencies returning members by only small majorities, the position was such that the Coloured voters in the Cape Province could effectively be the arbiters between the nationalist Government and the Opposition (United) Party, a fact which the Minister of the Interior, Dönges, expressly recognized in the debate in the House of Assembly (*ibid.,* page 602). Indeed, the Nationalist Government could reasonably expect to stabilize its small majority in the lower House, if the Coloured voters could be removed from the normal electoral rolls, since it seems agreed that the Coloured vote overwhelmingly favoured the Opposition (United) Party.

rate Representation of Voters Act for election of the non-European members for the Cape in the House of Assembly. The functions of the Board of Coloured Affairs were to advise the Government, at its request, on matters affecting the non-European population of the Union, to make recommendations regarding the interests of the non-Europeans and to act as intermediary between the Government and the non-European population.

480. Since the Separate Representation of Voters Act, 1951, was passed by the Union Parliament by a simple majority of each House of Parliament sitting separately, the Act was immediately challenged in the Appellate Division of the Supreme Court of South Africa on the ground that, though it was an Act falling within the provisions of section 35 of the South Africa Act, it had not been passed in accordance with the special procedures outlined in section 152 of the South Africa Act, that is to say, the two-thirds majority at a joint sitting of both Houses of Parliament.

In *Harris* v. *Minister of the Interior*[206] the Appellate Division of the Supreme Court held the Separate Representation of Voters Act, 1951, invalid.

481. The attempt by the Malan Government, through the device of a High Court of Parliament having power to override the decisions of the Appellate Division, to circumvent the decision in the Harris case met the same fate as the Separate Representation of Voters Act. The Appellate Court unanimously ruled that the High Court of Parliament Act was invalid.[207]

482. The Government has therefore not yet brought the Separate Representation of Voters Act of 1951 into effect, and for the general elections of 1953, the previous electoral rules remained in effect in Cape Province.[208]

Bantu Authorities Act, No. 68, 1951

483. This Act introduced a number of important changes in the administration of Native affairs, and, in particular, in the special representative system established by the Representation of Natives Act, 1936.[209] It abolished the Natives' Representative Council established by the 1936 Act and empowered the Governor-General to convene a conference of Native chiefs in order to ascertain the feelings of the Native population of the Union. It reorganized the local authorities in the Native areas by establishing: (i) a tribal council (consisting of the chief of the tribe and his advisers) to administer local affairs of general interest; (ii) a regional council (consisting of representatives elected by the chiefs and their advisers) with advisory functions and the authority to make certain representations to the Minister on questions of general interest and exercising certain executive functions; (iii) a territorial council (members of which were to be elected from those of the regional councils of each territory) with powers similar to, but wider than, those of the regional councils. The Act provided that representatives of the Minister could sit, in an advisory capacity, on the regional and territorial councils.

III. Movement and residence

484. Both the Boer Republics (the Transvaal and the Orange Free State) and the two British Colonies (the Cape of Good Hope and Natal) had very extensive legislative provisions restricting freedom of movement within their territories, controlling or even prohibiting settlement or residence at certain places, or controlling entry into the territory.

485. Some of these laws were aimed at non-Whites[210] generally while others applied only to Natives[211] or Asiatics.[212] In some cases the law did not state that it was applicable to the members of a particular racial group, but was so in fact.[213]

486. For the sake of convenience this section is divided into three sub-sections corresponding to the three points mentioned in paragraph 484:

(i) Movement inside the country;
(ii) Settlement and residence;
(iii) Entry into the country.

(i) Movement inside the country

Position before the United Nations Charter

487. The laws restricting the movement of Natives inside the country and certain laws controlling their entry into the country are generally known under the rather vague name of "Pass Laws".[214] The restrictions on the entry of Asiatics, in particular Indians, into the Union or into the various provinces, are based on the immigration laws and regulations (see subsection (iii) of this section).

488. In the interim period between the end of the Boer War in 1902 and the formal attainment of union

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206 1952, 2 SALR 428 (A.D.).

207 *Minister of the Interior* v. *Harris*, 1952, 4 SALR, 769 (A.D.)

208 The Prime Minister (Mr. Malan) submitted to the Parliament returned by the 1953 elections a new Bill to amend the South Africa Act, 1909, to bring into effect the Separate Representation of Voters Act 1951, and to define the competence of the courts to rule on the validity of Acts passed by Parliament. It will be noted that the new Bill (South Africa Act Amendment Bill) was submitted to both Houses of Parliament in joint session and therefore in accordance with the special procedure provided by the "entrenched clauses" of sections 35 and 152 of the South Africa Act. The second reading of this Bill took place on 15 July 1953 and the third reading has not yet taken place.

209 See paragraph 473 and footnote 198 above.

210 See Law to provide against Stock Theft, Vagrancy and the Congregation of Coloured Squatters, chapter 133 of the Codified Laws of the Orange Free State and Laws No. 8 of 1893 and No. 8 of 1899 of the same State; *Volksraad* resolution (South African Republic (Transvaal)) of 26 August 1896.

211 See Acts No. 22 of 1867 and No. 30 of 1895 of the Cape Colony; Ordinance No. 2 of 1855 of Natal; Law No. 6 of 1880, the *Volksraad* resolutions of 10 June 1891 and 6 September 1893 and Laws No. 6 of 1880, No. 24 of 1895, No. 15 of 1898, No. 23 of 1899, etc., for the South African Republic (Transvaal).

212 See Act No. 37 of 1904, of the Cape Colony (Chinese Exclusion Act); chapter 23 of the Codified Laws (1892) of the Orange Free State (Law to provide against the influx of Asiatics); resolution adopted by the *Volksraad* of the Transvaal on 9 May 1888, etc.

213 In particular certain laws laid down educational qualifications for immigrants. See Act No. 47 of 1902 of the Cape Colony; Act No. 1 of 1897 of Natal (Immigration Restriction Act) and Act No. 30 of 1903 of Natal. See also Law No. 25 of 1896 of the Transvaal which appears to have applied to European immigrants working in the Transvaal mines and not the non-European population.

214 See generally South African Institute of Race Relations, Fourth Annual Report, 1933. See also Kahn, *Pass Laws* and the report of the *Ad Hoc* Committee on Forced Labour (Official Records: sixteenth session of the Economic and Social Council, Supplement No. 13), document E/2431, pages 600-601 and 604-613.

in South Africa in 1909, several commissions of inquiry investigated the operation of the Pass Laws.[215]

The question was investigated by other commissions of inquiry after the establishment of the Union.[216]

489. Some of the recommendations made by the commissions of inquiry were taken into consideration and partial reforms were carried out. Broadly speaking, however, the system lasted until the passing of the Natives (Abolition of Passes and Co-ordination of Documents) Act in 1952. The passing of this Act did not, however, immediately result in any substantial change as the system it established can only be instituted gradually over a fairly long period.

490. The Native Laws Commission (1946-1948) stated in its report that it was very difficult to find any satisfactory or even uniform definition of what was a "Pass": "neither from European nor from Native witnesses did we receive a satisfactory definition, but we think it would be correct to say that in the mind of the Natives a document is a Pass, to which they object, if it is a document—(*a*) which is not carried by all races, but only by people of a particular race; and which either (*b*) is connected with restriction of the freedom of movement of the person concerned or (*c*) must at all times be carried by the person concerned on his body, since the law lays the obligations on him of producing it on demand to the police and certain other officials and the mere failure to produce it is by itself a punishable offence".[217]

491. According to the three tests mentioned, the documents prescribed (or retained) by the following statutes can be regarded as passes:

(a) *Native Labour Regulation Act, No. 15, 1911*

492. The Act has been applied to certain proclaimed labour districts, through a number of sets of regulations.[218] The Act concerns only those Natives who are recruited for employment or are employed or working on any mine or work, the latter meaning a place where machinery is used;[219] in general it provides that Natives shall be in possession of duplicate service contracts, which serve as passes while on the farm or in the urban area where they are employed. If the Natives want to proceed outside such areas, permits signed by their employers must be obtained. The Natives (Urban Areas) Consolidation Act, 1945 (No. 25 of 1945) gives rather more comprehensive power to frame regulations in urban areas than under the Native Labour Regulation Act of 1911, and the sets of registration regulations framed under the 1945 Act have for that reason gradually superseded those framed under the 1911 Act in proclaimed urban areas. For this reason, by 1947-1948 the Native Labour Regulations Act of 1911 applied principally only to the gold-mining industry.[220]

493. The Native Labour Regulation Act of 1911 was amended by the Native Laws Amendment Act No. 56 of 1949. Power to require every Native under a contract of service to produce a document on demand[221] is now provided for directly in the Act itself, and not as previously in regulations made under the Act.

(b) *Natives' Taxation and Development Act, No. 41 of 1925*

494. Under section 7 (1) of this Act, any receiver or any person authorized in writing by him, any European member of the police or any Native chief or headman appointed or recognized by the Government may demand from any Native, whom he believes to be liable to any tax under the Act, the production of his tax receipt, certificate of exemption or certificate of extension.

495. Failure to produce such receipt or certificate without reasonable cause is a punishable offence, for which the penalty is a fine not exceeding £5 or, in default of payment, imprisonment for a period not exceeding one month (section 10); this offence was distinct from the offence of non-payment of tax.[222]

(c) *Native Administration Act, No. 38 of 1927*

496. Under section 28 (1) of this Act the Governor-General may, by proclamation in the *Gazette*,

(*a*) Create and define pass areas within which Natives may be required to carry passes;

(*b*) Prescribe regulations for the control and prohibition of the movement of Natives into, within or from any such areas; and

(*c*) Repeal all or any of the laws relating to the carrying of passes by Natives.

497. In 1934, a proclamation (Proclamation 150 of 1934) was issued in terms of this section which repealed the pre-existing travelling Pass Laws in the Transvaal and the Orange Free State, and introduced a common system for the two provinces with the exception of scheduled Native areas within those provinces. The proclamation provided that no Native might enter, travel within, or leave either of the two provinces, excluding scheduled Native areas, without a pass issued by an authorized officer.

Travelling passes required in the Transvaal and the Orange Free State under Proclamation No. 150 of 1934, as amended, framed under section 28 of the Native Administration Act of 1927, must be produced on demand to policemen and authorized officers.[223] Under the Natives' (Abolition of Passes and Co-ordination of Documents) Act of 1952, these passes are to be abolished and Reference Books issued to the Natives in lieu thereof, as from a date to be fixed under that Act.

498. Under Proclamation 150 certain categories of Natives are exempted from having to carry a pass.

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215 Inquiries by the South African Natives Affairs Commission (1903); the Natal Native Affairs Commission (1906-1907); and the Transvaal Mining Industry Commission (1907-1908).

216 Inquiry by the Commissioner appointed to inquire into the grievances of mine Natives following a strike in the mining industries in 1918; the Inter-Departmental Committee of Enquiry appointed in 1920 to inquire into the passive resistance campaign by the Natives against the operation of the Pass Law; the Native Economic Commission (1932); and the Native Laws Commission, 1946-1948 (Fagan Commission).

217 Report of the Native Laws Commission, 1946-1948, paragraph 39.

218 *Ibid.*, paragraph 69.

219 Native Labour Regulation Act, 1911, section 2.

220 *Handbook on Race Relations in South Africa*, 1949, Kahn, *Pass Laws*, page 288.

221 See new section 23 (1) *d* bis.

222 Under the Natives' Taxation Amendment Act, No. 25 of 1939, prosecution and penalties in respect of non-payment of tax and failure to produce a certificate may not be consecutive.

223 Report of the Native Laws Commission, 1946-1948, page 67.

They must however carry a certificate of exemption. Individual exemptions may be granted subject to the same requirement.

In addition, under section 28 of the Act the Governor-General may grant to any Native a letter of exemption exempting the recipient from such laws, specially affecting Natives, with the exception of certain specified laws. Regulations[224] made under this section provide that exemptions may be granted from a number of provisions concerning passes.

(d) *Native Service Contract Act, No. 24 of 1932*

499. The object of this Act was to prevent the employment of a Native not in possession of certain documents of identification. The nature of these documents is defined in section 2 (1, 3)[225] and regulations have been issued with regard to their form. Such documents must be produced on demand. If the Native pays tax his tax receipt serves as a document of identification.

500. In respect to documents of identification, the Act applies only to the Provinces of the Transvaal and Natal.[226]

501. Under the Natives (Abolition of Passes and Co-ordination of Documents) Act of 1952, as from the "fixed date", the reference book for which it provides will replace the documents of identification provided for under the 1932 Act.

(e) *Natives (Urban Areas) Consolidation Act, No. 25 of 1945*

502. As its title indicates, this Act consolidates a number of laws regulating the residence of Natives in or near urban areas, the administration of Native affairs in such areas, the registration and better control of contracts of service with Natives in certain areas, the regulation of the ingress of Natives into, and their residence in, such areas, and certain other matters relating to Natives.

503. A more detailed analysis of certain provisions will be found in sub-section (ii) of this section.[227] It will be seen that in the proclaimed areas a male Native must produce on demand evidence that his contract of service has been registered. He must also carry a document certifying that he has applied for permission to be in the proclaimed areas and that he has or has not obtained such permission.

504. One feature of the Natives (Urban Areas) Consolidation Act is that it is made compulsory for female Natives to carry certain documents, whereas under the acts examined earlier the pass system applied in general only to male Natives.

505. Some categories of Natives are exempt from the pass regulations.

506. Section 31, "Curfew", is also important. Under this section the Governor-General may, at the request of any urban local authority or the Minister, declare a permanent curfew, i.e., that no Native, male or female, shall be in any public place within the area controlled by such authority during such hours of the night as are specified in such proclamation unless such Native be in possession of a written permit signed by his employer or by a person authorized by such employer to issue such a permit to such Native or by some person authorized by the urban local authority or the Minister to issue such permits or by a police officer. Every such permit shall bear the date of issue thereof and the date and hours for which it purports to be available. This provision does not apply to the Native quarters or villages, nor to certain classes of Natives.[228]

In 1947, curfew regulations were in force in 285 urban districts of the Union.

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Natives (Abolition of Passes and Co-ordination of Documents) Act ,No. 67 of 1952

507. In introducing this Bill in the Union Parliament in May 1952, the Minister of Native Affairs, Senator Dr. Hon. H. F. Verwoerd, said that the Bill aimed to simplify and improve the so-called pass system, which had proved troublesome both to the Natives themselves and to the Europeans. It proposed to substitute for a whole series of passes and other documents which the Natives were required to carry a single reference book, which was convenient to carry and simple to understand and which, at the same time, would enable the authorities to apply control in as mild a manner as possible. If the Bill was adopted it would be possible to sweep all the old passes—about 27 or 28 documents required in different circumstances—from the Statute Book. The average Native had to take out up to six passes annually—usually tax receipts, travelling passes, immigration permits, permits to look for work and duplicates of one or the other of these. The reference book which would replace them would contain references to everything of which the Native had to furnish proof. The Bill needed to be considered in conjunction with the new population Registration Act of 1950, under which people of all races above the age of 16 must possess personal cards with their photographs.[229] The Department of the Interior was going ahead with the registration of Europeans in terms of this Act, and he proposed to go ahead with the registration of Natives. The Bill

[224] *Government Notice No. 1233 of 1936.*

[225] Section 2 (1) of the Act provides as follows: "No person shall employ any male Native who is domiciled in the Union and no State official shall issue to any such Native any pass or other similar document to enable such Native to proceed to any place other than his home, unless the latter produces to him a document of identification prescribed by regulation of which such Native is the holder and no person shall employ any Native who is or appears to be not more than 18 years of age, unless such Native if a male also produces to him a statement or statements in writing (which may be embodied in or endorsed upon the said document of identification) signed by the owner (or his agent) of the land whereon the guardian of such Native is domiciled and by such guardian, or if such Native is a female, she produces to him a statement in writing signed by her guardian, in either case to the effect that such Native has his permission to enter into a contract of service during any period specified in such statement or statements."

Section 2 (3) reads: "If it appears from any such document of identification produced by any Native in terms of subsection (1) that he is domiciled in the province of Transvaal or Natal on lands situated outside the location, no person shall employ such Native during any period unless he first produces a labour tenant contract between such Native and the owner of such land or a statement signed by such owner or his agent (which statement may be embodied in or endorsed upon the said document of identification, to the effect that such Native is not obliged to render him any service during such period."

[226] Section 13.

[227] See paragraphs 524 *et seq.*

[228] These provisions were amended in some respects by the Natives (Abolition of Passes and Co-ordination of Documents) Act of 1952.

[229] See paragraph 459 above.

would bring about a colossally important change for Native men in that, for the first time since 1857, there would be freedom of movement, not only in practice, but also in spirit. Freedom of movement would only be restricted by the fact that those who wanted to look for work would have to obtain a permit to do so.[230]

508. During the discussion, Senator W. G. Ballinger (Native representative) said that the words "abolition of" should be taken out of the heading, which would then read "Natives (Passes and Co-ordination of Documents) Bill"—an exact description of the measure. When it was considered that one person out of ten in South Africa went to prison for some period every year—in most cases for Pass Law offences—the importance of the measure was clear. The Bill required all Natives to have their finger-prints and palm-prints taken, which they would consider an indignity. This applied especially to Natives not exempted—ministers of religion, teachers, etc., who would particularly resent being taken down to the common level.[231]

509. The Bill, after its second reading, was referred to a select committee for consideration and report. Among the amendments made at the committee stage was an amendment to the effect that Natives who had formerly (that is under the pre-existing laws) been exempted from carrying passes would be given identity books of a different colour from those generally existing, to indicate their previous exemption.[232]

It was also announced, so far as the application of the Bill to Native women was concerned, that since, when Native women registered for work, when the curfew regulations were applicable, or when Native women entered a city they required documents, matters would be made convenient for them by their having an identity book.

510. It is to be noted that during the hearings of the Parliamentary Select Committee appointed in connexion with this Bill, the Cape Western Regional Committee of the Institute of Race Relations gave evidence. In this evidence before the Committee, the Institute announced that it welcomed the repeal of certain laws relating to travelling passes, also the fact that it would be simpler for Africans to carry a reference book instead of a number of separate papers. It noted, however, that the apparent free movement resulting from the abolition of certain travelling passes would apply only to travel to a rural area or to an urban area for a period of under four days. Control measures relating to movement to employment within restricted areas (such as permits to obtain rail tickets, entry permits for periods over three days, contracts of employment, curfew passes) would remain.

In addition, the Act, in the opinion of the Institute of Race Relations, imposed certain new restrictions. In the eyes of most people in South Africa, any document that must be produced on demand, particularly one associated with movement, is a "pass". By making the reference book producible on demand, the Act in effect introduced a new pass which was applicable to women, and to thousands of Africans, particularly in the Cape, who had hitherto not been required to carry documents demandable on the spot. Subjecting women to powers of summary arrest was liable to grave abuses and would be strenuously opposed by Africans.[233]

511. The central provision of Act No. 67 of 1952 is section 2 (1) which provides as follows:

"(1) The Minister may by notice in the *Gazette* require every Native of a class specified in the notice who has attained the age of 16 years and is a resident in an area defined therein, to appear before an officer during a period and at a time and place so specified, in order that a reference book in such form as the Minister may determine may be issued to such Native."

512. All particulars in the reference books are to be recorded by a Native Affairs Central Reference Bureau which will be established.[234] An officer before whom a Native appears in pursuance of a notice under section 2 (1) shall cause the finger-prints of the Native to be taken and issue to him the reference book.[235] With respect to chiefs or headmen, teachers, ministers of religion, advocates and certain other Natives listed and holders of a certificate of exemption issued under Proclamation 150 of 1934, no finger-prints shall be taken but if he is able he shall furnish a specimen of his signature, and the outside cover of the reference book shall be of a different colour from that of the reference book issued to the ordinary Native.[236] The identity card issued to a Native under the Population Registration Act of 1950 is to be affixed in the reference book.[237]

513. If, at any time after the date fixed by the Minister, it is found that any Native obliged to obtain a reference book is not in possession of such a book, he may be brought before a Native commissioner who may detain him in any reception depot, lock-up, police cell or gaol for a period not exceeding seven days, which period may be extended, while making inquiries and arranging for a reference book to be issued.[238]

514. Any Native exempted from a provision of any law or from the operation of Native law and custom may on application have full particulars of that exemption recorded in the reference book.[239]

515. Section 8 provides that:

"(1) Any person who after the fixed date

"(*a*) Enters into a contract of service (not being a contract which is required to be registered in terms of the regulations made under section 23 of the Native Labour Regulation Act (1911) (Act No. 15 of 1911)), with a Native of a class specified in a notice issued under subsection (1) of section 2 who has attained the age of 16 years, in terms of which such Native is to be employed in an area other than an area which has been proclaimed under section 23 of the Urban Areas Act; or

"(*b*) Enters into a contract of service with a Native of the class so specified who has attained the said age and who by virtue of subsection (2) of section 23 of the Urban Areas Act is exempt from the provisions of subsection (1) of the last mentioned section, shall within fourteen days after

230 33 *Journal of the Parliaments of the Commonwealth* 545-546, 1952.

231 *Ibid.*, pages 546-547.

232 Speech by Mr. Verwoerd, Minister of Native Affairs. *Ibid.*, page 760.

233 *Survey of Race Relations*, 1951-1952, page 30.

234 Section 11.

235 Section 3.

236 Section 3 V.

237 Section 4.

238 Section 5.

239 Section 7.

entering into such contract lodge with the Native Commissioner in which this Native is to be employed and record in the reference book issued to such Native, prescribed particulars relating to such contract.

"(2) Any such person shall, if such Native deserts from his service, or if such contract is terminated, advise such Native Commissioner within fourteen days after such desertion or termination of the date of such termination or desertion and in the event of termination of such contract also record the date thereof in such Native's reference book.

". . .

"(4) Every owner (so defined in section 49 of the Native Trust and Land Act 1936 (Act No. 13 of 1936)) of land as so defined shall within one month after the fixed date furnish to the Native Commissioner of the district in which that land is situated, the prescribed particulars in respect of every labour tenant or squatter, as so defined, who was resident on that land on the said date, and shall thereafter furnish to such Native Commissioner the prescribed particulars of every Native who becomes or ceases to be such a labour tenant or squatter on that land.

". . .

"(6) Every Native of a class specified in a notice issued under subsection (1) of section 2 who has attained the age of 16 years, in respect of whom particulars are not required to be furnished to a Native Commissioner under subsection (1), (2) or (4) shall once every three months furnish the Native Commissioner of the district in which he is for the time being resident with such particulars in relation to himself as may be prescribed and the Native Commissioner shall record those particulars in such Native's reference book in such manner as may be prescribed."

However, it is not necessary to give notice of engagement or termination of service contracts with Natives in respect of any contract entered into for a period of less than one month or with a Native who is a day-labourer (*toge*) or casual labourer or works as an independent contractor.[240]

516. With respect to production of reference books on demand, section 13 states as follows:

"13. Any authorized officer may at any time call upon any Native of a class specified in a notice issued under subsection (1) of section 2 who has attained the age of sixteen years to produce to him a reference book issued to such Native under this Act."

517. Any Native who fails or refuses to produce the book on demand of an authorized officer, is guilty of an offence and on conviction liable to a fine not exceeding £10 or imprisonment for a period not exceeding one month.[241] If he is not in possession of the reference book, the penalty is a fine not exceeding £50 or imprisonment for a period not exceeding six months.

518. The extent to which pre-existing laws concerning travelling passes and documents to be produced on demand will be repealed or amended on the "fixed date" mentioned in the Act was indicated above in the paragraphs on earlier legislation in this matter.

[240] Section 8 (3).

[241] Section 15.

(ii) Settlement and residence

Position before the United Nations Charter

519. The essential purpose of most of the statutes mentioned in the previous paragraph is either to prevent Natives from leaving the place in which they have settled or have their residence, or to regulate and limit their settlement in particular districts or areas. The settlement and residence of Asiatics has also been regulated by the immigration legislation which will be examined in subsection (iii) of this section.

Native Labour Regulation Act, No. 15, 1911

520. As already mentioned[242] this Act restrains a Native employed in a district to which the Act has been made applicable from leaving the village or urban area unless he is in possession of a permit signed by his employer.

Native Service Contract Act, No. 24, 1932

521. This Act forbids the employment or movement of a Native subject to it if he is not in possession of certain documents of identification. In the case of a Native subject to the Act domiciled in the province of Transvaal or Natal he must produce either the labour tenant contract between himself and the owner of the land, or a statement signed by such owner that such native is not obliged to render him any service during the period in question.[243]

Native Administration Act, No. 38, 1927

522. This Act is part of the policy of keeping Natives in the reserves. Its provisions as to passes have been analysed above.[244]

523. Under section 5 of the Native Administration Act, 1927, the Governor-General is empowered to order the transfer of a Native or of a Native tribe from any place to any other place, whenever he deems it expedient in the public interest.

Natives (Urban Areas) Consolidation Act, No. 25, 1945

524. This Act, which, as its title indicates, consolidates a number of previous Acts, is chiefly intended to prevent Natives from settling in large numbers in urban areas or in the neighbourhood of those areas. The Act of 1945 generally speaking strengthens provisions laid down by previous enactments.

525. The most important provisions of the Act are contained in section 23 (1). This section requires the registration of every contract of service entered into by a male Native and provides for the administration's right to refuse to register a contract which it does not consider to be *bona fide*.

Further, any Native entering the proclaimed area must obtain permission to be in the proclaimed area, which may be refused by the administration in the following cases:

(i) Whenever there is surplus of Native labour available within the proclaimed area as disclosed by any return rendered under section 26 or 27;

(ii) If he fails to show that he has complied with the laws relating to the carrying of passes by Natives and, in the provinces of Transvaal and Natal, if he is without a document of identification as prescribed by

[242] See paragraph 492.

[243] For text of section 2 (3) see footnote 225.

[244] See paragraph 496.

regulation under the Native Service Contract Act, 1932 (Act No. 24 of 1932), or if he is in possession of such document of identification and it appears therefrom that he is domiciled on land outside a location as defined in the said Act, and has not been released from the obligation of rendering service to the owner, as defined in the said Act, of the land on which he is domiciled;[245]

526. Sub-paragraph (*d*) of section 23 (1) contains similar rules for the residence of female Natives.

527. Section 23 (1) (*h*) is particularly important in that it allows the administration:

"To prohibit any male Native who is not under a contract of service from remaining in the urban area for a longer period, not exceeding fourteen days, than is prescribed, unless the prescribed officer has issued to him a certificate of registration authorizing him to do so for a period stated therein, . . . and to require any Native so registered, who is not under a contract of service, to carry such documents as may be prescribed, and to produce them in demand by an authorized officer: provided that Natives born and permanently residing in such area shall be exempt from such requirements."

528. Section 29 of the Act allowed the authorities, in any urban area or in any proclaimed area, to arrest without warrant a Native suspected of being "idle, dissolute or disorderly". The provisions of this section have been considerably extended and strengthened by the Native Laws Amendment Act, 1952.[246]

529. In addition, the Act limits the right of settlement and residence of Natives in urban areas: the Governor-General may by proclamation forbid any Native to reside in an urban area, other than in a location, Native village, or Native hostel designed for that purpose (section 9).[247]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Group Areas Act, No. 41, 1950

530. The Group Areas Act No. 41 of 1950 is undoubtedly the most important measure enacted in accordance with the *apartheid* policy of the present Government, and has therefore been considered in detail by the Commission. This Act, like the Group Areas (Amendment) Act No. 65 of 1952, by which it is supplemented, imposes substantial restrictions not only on freedom of settlement and residence, but also on the right to own property in so far as immovable property is concerned. The Act is analysed from this point of view in section IV of this chapter.[248]

Native Laws Amendment Act, No. 54, 1952

531. *Inter alia*, this Act amended section 10 of the Natives (Urban Areas) Consolidation Act of 1945. Under section 10 as amended, no Native may remain for more than 72 hours in an urban area or in a proclaimed area, unless—

"(*a*) He was born and permanently resides in such area; or

"(*b*) He has worked continuously in such area for one employer for a period of not less than ten years or has lawfully remained continuously in such area for a period of not less than fifteen years and has not during either period been convicted of any offence in respect of which he has been sentenced to imprisonment without the option of a fine for a period of more than seven days or with the option of a fine for a period of more than one month; or

"(*c*) Such Native is the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Natives Taxation and Development Act, 1925 (Act No. 41 of 1925) of any Native mentioned in paragraph (*a*) or (*b*) of this subsection, and ordinarily resides with that Native; or

"(*d*) Permission so to remain has been granted to him by a person designated for the purpose by that urban local authority."

532. The Act also amended section 29 of the Natives (Urban Areas) Consolidation Act No. 25 of 1945, concerning Natives suspected of being "idle, dissolute or disorderly". The amended text, which gives very wide powers to the authorities in dealing with such Natives, reads as follows:

"(1) Whenever any authorized officer has reason to believe that any Native within an urban area or an area proclaimed in terms of section 23:

"(*a*) Is an idle person in that

"(i) He is habitually unemployed and has no sufficient honest means of livelihood; or

"(ii) Because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise) he fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or

"(iii) He is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or

"(iv) He habitually begs for money or goods or induces others to beg for money or goods on his behalf; or

"(*b*) He is an undesirable person in that he:

"(i) Has been convicted of an offence mentioned in the third schedule to the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), other than an offence against the laws for the prevention of the supply of intoxicating liquor to Natives or Coloured persons; or

"(ii) Has been convicted of selling or supplying intoxicating liquor, other than kaffir beer, or of being in unlawful possession of any such liquor, or has been convicted more than once within a period of three years of selling or supplying kaffir beer or of being in unlawful possession of kaffir beer; or

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[245] As from the "fixed date" prescribed in the Natives (Abolition of Passes and Co-ordination of Documents) Act of 1952, paragraph C (ii) of subsection 1 of section 23 reads as follows:

"If he is not in possession of a reference book issued to him under the Natives (abolition of passes and co-ordination of documents) Act, 1952, or in the provinces of Transvaal and Natal, if he is in possession of such book and it appears therefrom that he is domiciled on land outside a location as defined in the Native Service Contract Act, 1932, and has not been released from the obligation of rendering service to the owner, as defined in the said Act, of the land on which he is domiciled."

[246] See below, paragraph 532.

[247] For the restrictions imposed by the Natives (Urban Areas) Consolidation Act, 1945, in connexion with the acquisition by Natives of real property in urban areas, see below, section IV, paragraph 550.

[248] See paragraphs 555 *et seq.*

"(iii) Has been required under paragraph (*c*) of subsection (1) of section 23 to depart from a proclaimed area and has failed to depart therefrom, or having been required under paragraph (*e*) of that subsection to depart from such an area, has failed to depart therefrom with the period specified in terms of that paragraph, or has returned thereto before the expiration of the period so specified; or

"(iv) Being a female prohibited under paragraph (*d*) of subsection (1) of section 23, from entering any area for any purpose mentioned in that paragraph without the certificates prescribed in that paragraph, has entered that area for such a purpose without the said certificates, or having entered the area, has failed to produce the said certificates on demand by an authorized officer,

"the officer mentioned under (1) may, without warrant, arrest that Native or cause him to be arrested and any European police officer or officer appointed under subsection (1) of section 22 may thereupon bring such a Native before a Native Commissioner or magistrate who shall require the native to give a good and satisfactory account of himself.

"(2) If any Native who has been so required to give a good and satisfactory account of himself fails to do so, the Native Commissioner or Magistrate inquiring into the matter shall declare him to be an idle or an undesirable person, according to the circumstances.

"(3) If a Native Commissioner or Magistrate declares any Native to be an idle or undesirable person, he shall:

"(*a*) By warrant addressed to any police officer order that such Native be removed from the urban or proclaimed area and sent to his home or to a place indicated by such Native Commissioner or Magistrate, and that he be retained in custody pending his removal; or

"(*b*) Order that such Native other than a female referred to in sub-paragraph (iv) of paragraph (*b*) of subsection (1) be sent to and detained in a work colony established or deemed to have been established under the Work Colonies Act, 1949; or

"(*c*) If such Native is declared to be an idle person, order that he be sent to and detained for a period of not exceeding two years in a farm colony, work colony, refuge, rescue home or similar institution established or approved under section 50 of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911), and perform thereat such labour as may be prescribed under that Act or the regulations made thereunder for the persons detained therein; or

"(*d*) If such Native agrees to enter and enters into a contract of employment with such an employer and for such a period as that Native Commissioner or Magistrate may approve, order that such Native enter into employment in accordance with the terms of that contract and, if he deems fit, that such Native be detained in custody pending his removal to the place at which he will in terms of that contract be employed.

"

"(5) In addition to any order made in terms of subsection (3), the Native Commissioner or Magistrate may further order that the Native concerned shall not at any time thereafter, or during the period specified in the order, enter any urban or proclaimed area indicated in the order, not being the area in which he was born and permanently resided at the date of the order, except with the written permission of the Secretary for Native Affairs.

"

"(8) Any dependant of any Native who is ordered to return home or is removed to any place, may at the request of the urban local authority or of such Native or dependant be removed, together with his personal effects, at the public expense, to the said Native's home or the place to which he has been ordered to be removed.

"

"(9) A Native Commissioner or Magistrate inquiring into any matter under this section:

"(*a*) May authorize the fingerprints of any Native, who, in terms of this section, is required to give a good and satisfactory account of himself, to be taken;

"(*b*) May from time to time adjourn the inquiry and may in such case order that the Native concerned be detained in a gaol or in a police cell or lock-up or other place which such Native Commissioner or Magistrate considers suitable, or release him on bail *mutatis mutandis* as if he were a person whose trial on a criminal charge in a Magistrate's court is adjourned;

"(*c*) Shall keep a record of the proceedings and may, in his discretion, summon to his assistance two Natives to sit and act with him as assessors in an advisory capacity."

(iii) Entry into the country[249]

Position before the United Nations Charter

533. The two Boer Republics, the South African Republic (Transvaal) and the Orange Free State, and the two British Colonies, Cape of Good Hope and Natal, had extensive legislative provisions on their statute books concerning immigration and the entry of non-Europeans, especially Asiatics.

The provisions in force in the Transvaal and the Orange Free State before 1909 are particularly important because, as will be seen, they were expressly maintained when the Immigrants Regulation Act No. 22 of 1913 was enacted by the Union of South Africa, and thus serve as a basis not only for restrictions on immigration into the Union as a whole but also for the restrictions on the movements of Asiatics, in particular Indians, from one province of the Union to another.

534. The chapter of the codified statute laws of the Orange Free State of 1892, entitled Law to Provide Against the Influx of Asiatics, declared, *inter alia*, that no Arab, Chinaman, coolie, or other Asiatic coloured person might settle in the Orange Free State or remain therein for longer than two months without permission to do so from the State President;[250] further, no Asiatic coloured person could obtain permission to settle in the Orange Free State unless he

[249] For reasons explained in the text, "country" means not only the Union of South Africa as a whole, but also the various provinces of the Union taken individually. This section deals therefore not only with immigration in its proper sense, but also with the movement of non-Europeans, especially Asiatics, from one province to another, particularly with a view to settlement.

[250] Section 1.

undertook by oath not to carry on trade or agriculture in that State.[251]

535. In the Transvaal, the *Volksraad* had considered the amendment of the Transvaal Convention with Great Britain in order to prohibit "the streaming in of coolies, Chinese and other Asiatics".[252] However, it was not until after the Boer War that Transvaal Act No. 36 of 1908 provided that adult Asiatics who had been residents in the Transvaal for three years in 1899, or who had been duly authorized to enter and reside in the Transvaal by virtue of the settlement at the end of the Boer War, would have the right to obtain a registration certificate (section 3, 4). Any adult Asiatic who failed, after the Act's entry into force, to produce his registration certificate on request could be arrested without warrant and be expelled from the Transvaal after appearing before the magistrate (section 7). Under section 14, no Asiatic could obtain a licence to trade without showing his certificate of registration. The Act provided for the registration of minors born in the colony when they reached the age of 16 (section 5). Section 16 of the Act permitted the issue to Asiatics of entry permits and permits to reside in the Transvaal only for a limited period.

Immigrants Regulation Act, No. 22, 1913 as amended

536. This Act is the most important, although not the only, statute controlling the entry of aliens into the Union of South Africa. It was intended by the legislature to constitute a complete immigration code. It replaced much but not all of the legislation hitherto in force in the four provinces composing the Union. The main provisions of the Act are contained in section 4 (as amended by Acts No. 37 of 1927 and No. 15 of 1931) which defines the persons considered to be prohibited immigrants for the purposes of this Act.

The most important part of section 4 provides that:

"Any such person as is described in any paragraph of this subsection who enters or has entered the Union or who, though lawfully resident in one Province, enters or has entered another Province in which he is not lawfully resident, shall be a prohibited immigrant in respect of the Union or that other Province (as the case may be), that is to say:

"(*a*) Any person or class of persons deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof;

"(*b*) Any person who is unable, by reason of deficient education, to read and write any European language to the satisfaction of an immigration officer or, in case of an appeal, to the satisfaction of the board; and for the purpose of this paragraph Yiddish shall be regarded as an European language;"[253]

Under section 5:

"The following persons or classes of persons shall not be prohibited immigrants for the purposes of this Act, namely:

"....

"(*e*) Any person born before the commencement of this Act in any part of South Africa included in the Union whose parents were lawfully resident therein and were not at that time restricted to temporary or conditional residence by any law then in force, and any person born in any place after the commencement of this Act whose parents were at the time of his birth domiciled in any part of South Africa included in the Union, provided that such person, if born outside the Union, enters or is brought into the Union within three years from the date of his birth;

"(*f*) Any person domiciled in any Province who is not such a person as is described in paragraph (*e*), (*f*) or (*i*) of subsection (1) of section 4;

"(*g*) Any person who is proved to the satisfaction of an immigration officer or in case of an appeal, to the satisfaction of the Board, to be the wife, or the child under the age of 16 years, of any person exempted by paragraph (*f*) of this section, provided that the wife or child (as the case may be) is not such a person as is described in subsection (1) (*d*), (*e*), (*f*), (*g*) or (*h*) of the last preceding section: and provided further that no child who is not accompanied by its mother shall be admitted unless its mother is already resident in the Union or is deceased, or the Minister in any special case authorizes the admission of such child;

"....

"Provided that nothing in this section contained shall be construed as entitling a person to whom the provisions of subsection (1) (*a*) of the last preceding section apply, to enter and reside in a Province in which he was not lawfully resident before the first day of August 1913."

537. Under section 25 (1), the Minister may, in his discretion, exempt any person from the provisions of paragraphs (*a*), (*b*), (*c*), (*d*) of subsection (1) of section 4 in respect of his entry into or residence in the Union or any particular Province, or, subject to the provisions of section 7, may authorize the issue of a temporary permit to any prohibited immigrant to enter and reside in the Union or any particular Province or a particular portion of a province upon such conditions as may be lawfully imposed by regulation.

538. As stated above, the legislation already in force in the Transvaal and in the Orange Free State was expressly maintained. As has been seen, those laws were concerned particularly with Asiatics. The two pertinent sections of the Act of 1913 are as follows:

"Section 7. Any such person as is described in chapter XXXIII of the Orange Free State Law Book shall, notwithstanding that he is lawfully resident in a particular Province or that he has been permitted to enter the Union, continue to be subject in all respects to provisions of sections 7 and 8 of the said chapter XXXIII, and if he acts in contravention of those provisions, he may be dealt with under this Act as a prohibited immigrant in respect of the Orange Free State."

"Section 28. Anything to the contrary notwithstanding in Act No. 36 of 1908 of the Transvaal, a person who has been exempted from the provisions of paragraphs (*a*), (*b*), (*c*), (*d*) of subsection (1)

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[251] Section 8.

[252] Resolution of 9 May 1888.

[253] The remainder of the text lists other persons who are prohibited from immigrating: persons likely to become a public charge, deemed to be undesirable inhabitants, prostitutes, persons convicted of certain offences, either in the Union or abroad, persons suffering from certain diseases or disabilities, persons who have been removed from the Union, etc.

of section 4 of this Act or, on the authority of a temporary permit issued under subsection (1) of section 25 of this Act, has been permitted to enter and reside in any part of the Union, shall not be deemed to be subject to registration under the provisions of the said Act of the Transvaal."

539. On 1 August 1913, the date of the coming into force of the Immigrants Regulation Act, 1913, the Minister of the Interior (General Smuts) published the following notice:

"Under the powers conferred on me by paragraph (*a*) of subsection (1) of section 4 of the Immigrants Regulation Act, 1913 (Act No. 22 of 1913) I hereby deem every Asiatic person to be unsuited on economic grounds:

"(1) To the requirements of the Union; and

"(2) To the requirements of every Province of the Union:

"(*a*) In which such person is not domiciled; or

"(*b*) In which such person is not, under the terms of any statute of such Province, entitled to reside."

After a series of contradictory decisions by lower courts, the Supreme Court of the Union of South Africa held in 1923 that the Minister's declaration was *intra vires*.[254] Following this decision, section 4 (1) of the Immigrants Regulation Act of 1913 has become the chief legislative measure used both to prevent Asiatics from entering the Union and to hinder their movement from one province to settle in another.

540. The courts have recently had to rule upon another question, the admission into the Union of the wives and children of Asiatics, under section 5 (1) (*g*) of the 1913 Act, with reference in particular to the definitions of "child" and "wife" given in section 5 (2).[255]

Aliens Act, No. 1, 1937

541. Under section 4 of this Act, a permit for permanent residence in the Union may only be issued on the recommendation of the Immigrants Selection Board; this board may not, in particular, give such a recommendation if the applicant is not "likely to become regularly assimilated with the European inhabitants of the Union . . . within a reasonable period after his entry into the Union".

[254] *Rex* v. *Padsha* (1923), AD 281.

[255] In paragraph (*g*) of subsection (1):

"(*a*) 'Child' means the offspring of the exempted person by his wife as hereinafter defined, or by a deceased woman who, if she had been alive, could have been recognized as his wife (as so defined) or whose union with the exempted person could have been registered as a marriage under section 2 of the Indians Relief Act, 1914;

"(*b*) 'Wife' includes any one woman between whom and the exempted person in question there exists a union recognized as a marriage under the tenets of any Indian religion, even though a simultaneous union of that exempted person with another woman would also be recognized as a marriage under the tenets of that religion: Provided that no woman shall be deemed to be the wife of that exempted person:

"(1) if he entered into a marriage or such a union as aforesaid with any other woman who is still living and who resides or is entitled to reside in any province or whom an immigration officer recognized as his wife under the said paragraph (*g*), or

"(2) if he has, by any woman who is still living, offspring residing or entitled to reside in any province."

See *Ministry of the Interior* v. *Ebrahim* (1950) 1 SALR, 54, (TPD). *Principal Immigration Officer* v. *Bry* (1950) 1 SALR, 207 (CPD). *Latiefa* v. *Principal Immigration Officer* (1951) 2 SALR, 589 (CPD).

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

542. The Commission understands that the Minister of the Interior, Dr. M. F. Verwoerd, intends, if time allows, to introduce a bill during the present session of Parliament to prevent South African Indians from bringing their wives and children into the country.[256]

IV. Property rights

543. Differentiation with respect to ownership of immovable property and other interests in such property (e.g., leases), is closely linked with certain provisions concerning settlement and residence. In both uses the object of the legislation is essentially the same: the segregation of the different racial groups. The Group Areas Act, 1950, probably the most important legislative instrument of *apartheid* policy, not only deals with both settlement and residence on the one hand and ownership of property on the other, but does so to some extent *pari passu*, often in the same provisions. For that reason it has been considered appropriate to close this section with a study of this Act as a whole.

POSITION BEFORE THE UNITED NATIONS CHARTER

544. Long before the creation of the Union of South Africa, extensive legislation imposed restrictions of various forms on the rights of non-whites to own immovable property, more especially in the Orange Free State and in the South African Republic (Transvaal).

545. In the Orange Free State no Coloured person had the right to have fixed property registered in his name, and no Coloured person was permitted to become a merchant or farmer.[257] Later, Law No. 16 of 1894 permitted Coloured persons[258] who had resided for a period of five years within the Orange Free State, and carrying on any calling and not subjects of any tribal chief, to have *erven* and buildings in towns registered as their property provided they produced certificates of good civil and moral conduct. Another enactment, however, Law No. 8 of 1893, had given local municipal authorities very comprehensive powers concerning Coloured people in towns and villages, including power to keep separate one or more locations where Coloured people must reside, and to supervise and make regulations with regard to conditions under which such people might dwell or reside within such locations.

546. Similar measures had been taken in the South African Republic (Transvaal) with regard to Asiatics. These included a prohibition against any such persons becoming owners of immovable property, the right of the authorities to point out certain streets, wards and locations for Asiatics to live in, and a prohibition against their living in business places outside the locations provided for.[259] These provisions were sometimes evaded, particularly through the use of White

[256] *The Cape Argus*, 13 June 1953.

[257] Chapter 23 of the Statute Laws of the Orange Free State, as codified. These provisions were modified somewhat (*ibid.*, chapter 34) in favour of persons born of lawful marriage between a White father and a Coloured mother, or a Coloured father and a White mother, provided they resided in the Orange Free State.

[258] This expression here refers to all non-Whites.

[259] Law No. 3 of 1885.

nominees, and measures were passed to prevent these practices.[260]

547. The measures affecting property rights adopted by the Union of South Africa between 1909 and the passing of the Group Areas Act, 1950, were directed in some cases against Natives, and in others against Asiatics.

(a) *Measures affecting Natives*

Native Land Act, No. 27, 1913

548. Under this Act Natives were prohibited from purchasing, leasing or acquiring any land situated outside certain areas known as "scheduled native areas". Any person attempting to evade certain provisions of the Act was guilty of a criminal offence.

Native Trust and Land Act, No. 18, 1936

549. This Act set up a body known as the South African Native Trust, responsible, *inter alia,* for the management of land situated within the scheduled Native areas and in released areas. The Trust was authorized to purchase up to 7,250,000 morgen of fresh land for the settlement of Natives. These purchases were to be financed from funds provided by the Union Government over a period of five years, and were to constitute the final settlement of the problem of the distribution of land between Europeans and Natives.

The Natives of Cape Province were thus deprived of the right they had hitherto enjoyed to purchase land outside the scheduled Native areas.

Natives (Urban Areas) Consolidation Act, No. 25, 1945[261]

550. Section 6 of this Act prohibited a Native from entering into any agreement or transaction for the acquisition from any person other than a Native of any land situated within an urban area, or of any right to any such land without the approval of the Governor-General given after consultation with the local authority concerned. Certain exceptions were provided for, in favour of insurance companies, building societies, and the like, where the interest held by Natives did not exceed 20 per cent. This prohibition applied to all land not expressly reserved as Native villages by the Governor-General.[262]

(b) *Measures affecting Asiatics*

Measures enacted by the Province of Natal and by the Durban Co-operation

551. The first measures with regard to Indians were enacted in Natal. The Lange Commission, appointed by the Union Government in 1920, had recommended *inter alia* that the right of Indians to own farmlands should be restricted to a coastal belt in Natal, twenty to thirty miles wide, and that there should be a system of voluntary segregation under which municipalities should lay out residential areas for Indians. No governmental action was taken on the Lange Commission's recommendations. The Durban Co-operation subsequently secured the enactment of Ordinance No. 14 of 1922, giving it powers to introduce racial restrictions in its sales and leases of lands. Thereafter an anti-Asiatic clause was featured in the title deeds of property sold by the municipalities to Europeans. This practice was also adopted apparently by Europeans, who did not want their properties to be subsequently owned or occupied by Indians. However, two Bills introduced into the Union Parliament by the Government, and providing for the compulsory segregation of Indians in Natal on the lines followed in the Transvaal, were never enacted.[263]

Trading and Occupation of Land (Transvaal and Natal) Restriction Act, No. 35, 1943

552. It was not until 1943 that the Government secured the approval of the Union Parliament for this Act, which was of a temporary nature, prohibiting for a period of three years the acquisition and occupation of land in Durban as between European and Indian except by special consent.[264]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Asiatic Land Tenure and Indian Representation Act, No. 28, 1946

553. This Act was a definition and demarcation of the conditions under which Indians might thereafter own or occupy land and other immovable property. Certain of its provisions, however, were to some extent absorbed by the much more comprehensive and more general provisions of the Group Areas Act of 1950.

554. Under Act No. 28 of 1946, Natal was divided into "exempted" and "unexempted" areas. In the exempted areas there was no prohibition as regards the purchase and occupation of land and other immovable property and an Indian was free to buy, occupy or mortgage any such property irrespective of the race or colour of the vendor, lessor, or mortgagee. In the unexempted areas, no Asiatic was permitted to buy or occupy any immovable property without a permit from the Minister of the Interior. Every application for a permit had to be examined by a Land Tenure Advisory Board consisting of five persons, two of whom might be Indians. The Minister of the Interior could refuse to grant a permit. Exceptions to the prohibition of occupation were made where Indians occupied premises exclusively for licensed trading purposes and not for residence; but in such cases they could not reside or sleep on the premises without a special permit from the Minister. The vested rights of Indians were protected and any property owned by them in unexempted areas might be sold or leased by them to other Indians, but not to non-Asiatics unless a permit were obtained from the Minister of the Interior. So far as the Transvaal was concerned, the Act made no major changes in regard to ownership of land, but did bring about changes in regard to occupation. Certain provisions of this Act were intended to remedy shortcomings in the Transvaal laws which, according to the Government, made illegal occupation of land possible under certain circumstances.[265]

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[260] *Volksraad* resolutions of 5 July 1888, 5 August 1892 and 8 September 1893.

[261] The provisions referred to in this text were expressly kept in force by the Group Areas Act, 1950 (see footnote 272 below).

[262] For the provisions of the Natives' (Urban Areas) Consolidation Act of 1945 concerning Natives' rights of settlement and residence in urban areas, see above, paragraph 525.

[263] The Class Areas Bill, 1924, and the Areas Reservation, Immigration and Registration Bill, 1925. The latter was withdrawn after a conference between the Union Government and the Government of India in 1926-1927.

[264] *Handbook on Race Relations in South Africa,* 1949; Webb, *"Indian Land Legislation"*, page 206, and pages 207, 210.

[265] *Handbook on Race Relations in South Africa,* 1949, Webb, pages 210-211.

555. During the preliminary stages of its passage, the Group Areas Bill was referred to by members of the Government as the cornerstone of their *apartheid* policy.

556. After explaining the general principles of the bill to the House of Assembly, the Minister of the Interior, Mr. T. E. Dönges, went on to give a detailed account of the evidence which had been collected by several governmental commissions regarding the dangers of racial juxtaposition and the necessity for establishing separate areas for different racial groups. He stated that ever since the establishment of the Union of South Africa in 1909 it had been hoped that the problem could be solved by voluntary segregation, but repeated failure to carry the matter forward had led the Government to conclude that they must find a new solution. The Minister added the following words:

> "The desire to live among one's own people is not a desire limited only to White persons in South Africa. It is shared by other sections of the community, by other groups. There is a natural, if slow, gravitation towards this end by all members of the same group. That is the experience of all of us in South Africa. It is the natural feeling of oneness and of group awareness which makes the members of the same group desire to live in the same area."[266]

557. During the debate that followed the Minister of the Interior's speech, the leader of the Opposition, the Hon. Mr. J. G. N. Strauss, conceded that so far as the principle of social and residential separation was concerned there was no difficulty at all for the Opposition. The Joint Parliamentary Report on the subject emphasized that this was the traditional policy of South Africa in this connexion, and it was clearly stated in paragraph 327 that it would be "difficult to point to any other vital problem in the history of South Africa in regard to which the two sections of the White population held such identical views and co-operated so well as on the Asiatic question". But the Minister had thrown at them a massive, ill-digested, complicated piece of contentious legislation with thirty-eight involved clauses. In the days of the Government under the late General Hertzog quite a different method had been followed with regard to both the Asiatic and Native questions. The series of Bills known as the "Native Bills" which, after investigations that had been carried on since 1903, were formally introduced in 1927, engaged the attention of a Joint Select Committee for nine years, during which the path of patient consultation was followed in an attempt to get an agreed measure. The gradual creation of group areas would stabilize a state of uncertainty which would be most dislocating to the property market in South Africa; and the Bill introduced the principle of gross interference with vested rights without any provision for compensation. Another point was that their system of land registration was weakened and undermined by the Bill.[267]

558. On behalf of the Labour Party, Mr. L. Lovell announced that on the question of the principle of social and residential segregation or separation there was no difference between any of the parties in the House, but there was a very vast difference between them on the question as to how to carry out that policy. All previous legislation had maintained certain principles; it had sought to peg existing conditions, to introduce only a small measure of compulsion as regards Natives in urban areas, to make the authorities financially responsible for the housing of those non-Europeans who had been put into a separate kraal, and to impose legal responsibility for finding alternative accommodation for anyone uprooted, and providing some form of compensation for any person evicted. The Bill, on the other hand, did not include any of these important safeguards. It was in the towns of South Africa that segregation had always been most difficult to enforce. In those areas where Europeans and non-Europeans were concentrated in closest proximity, the problems of mutual accommodation arose in their most acute forms; and as a result of segregation legislation emanating from pre-Union Governments, the Natives in the urban areas had been cooped up in two per cent of those areas. In the countryside, where the Native population was about four or five times that of the Europeans, the Natives were allocated thirteen per cent of the land. In urban areas the Natives were often uprooted when the towns expanded, and it was not fair to talk glibly about penetration by one or another group. The non-Europeans were not the only people who penetrated; penetration took place on both sides.[268]

559. The following is an outline of the principal provisions of the Group Areas Act, as enacted.[269]

560. Since the purpose of Act No. 41 of 1950 is to segregate different racial groups into separate areas set aside for each, the two fundamental notions underlying the Act are "groups" and "areas".

561. For the definition of the various groups, and the method of classing individuals or communities in them, reference may be made to the preliminary remarks with which this chapter opened (see paragraphs 448 and 462).

562. So far as the areas are concerned, it should be noted first of all that the substantive provisions of the Act come into operation in each province only on proclamation by the Governor-General-in-Council; and in the Cape Province, Natal and Transvaal, they can be brought into operation in different parts of each such province at different times.

563. The Act provides for a number of categories of areas, with varying systems.

564. 1. *Controlled areas.* Immediately the proclamation is made the area concerned becomes a "controlled area".[270] Thereafter the acquisition of immovable property in that area is prohibited to any person of a race other than that of the owner of such property, unless a special permit is obtained from the Minister.

565. Within the controlled area the occupation of immovable property is also subject to severe restrictions.

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[266] *Journal of the Parliaments of the Commonwealth,* vol. 31, page 586, 1950.

[267] *Journal of the Parliaments of the Commonwealth,* vol. 31, pages 587-588, 1950.

[268] *Journal of the Parliaments of the Commonwealth,* vol. 31, page 591, 1950.

[269] See, generally, *Annual Survey of South African Law,* 1950, pages 24-25 and 102-109; also Johnson, *The Group Areas Act—Stage One,* 1951, 68 SALJ 286; Hatch, *The Dilemma of South Africa,* 1952, page 57 *et seq.;* Sachs, *The Choice before South Africa,* 1952, page 67; and see, generally, Hiemstra, *The Group Areas Act,* 1953.

[270] Following the entry into force of the Act, the term "controlled area" according to section 1 (iv), applies to any area not being a group area or a scheduled area, location, Native village, Coloured persons' settlement, mission station, or communal reserve referred to in section 3 (3) (*c*).

566. Before examining the nature and scope of these restrictions, it should be noted that "immovable property" includes any real right in immovable property, any right which upon registration would be such a real right, and any lease or sub-lease of immovable property, with the exception of a lease or sub-lease in a "specified area".[271] It does not include any right to any mineral, or a lease or sub-lease of any such right, or mortgage bond (section 1 (xi)).

567. As for *acquisition*, under section 81, no person may, except under a permit issued under the relevant provision of section 14, enter into any agreement in terms whereof any disqualified person or any disqualified company (that is to say, a person or company belonging to a racial group other than that of the transferor) would acquire any immovable property in the controlled area.

568. In the case of companies, the Act even provides for the forced sale of immovable property. If at the commencement of the Act, a company of any group holds immovable property in the controlled area and thereafter becomes a company of another group, it cannot continue to hold that property except under permit. The same applies if after the commencement of the Act a company of one group acquires immovable property in the controlled area and thereafter becomes a company of another group (section 9).[272]

569. The *occupation* of land or premises in the controlled area is also restricted. Section 10 (1) provides that no disqualified person may occupy and that no person may allow any disqualified person to occupy any land or premises in the controlled area except under permit. A number of exceptions are enumerated in section 10 (2), such as occupation in pursuance of a statutory right or under a lawful agreement entered into or testamentary disposition made on or before 24 April 1950, or by a servant, employee, or visitor of a lawful occupier of the land or premises. Section 10 (4) deals with testamentary dispositions by which a disqualified person would acquire a right to occupy any land or premises.

570. The Governor-General may by proclamation, for the period specified therein, exclude any part of the controlled area from the restrictions on occupation. Such proclamation, however, does not remove the restrictions on the acquisition and holding of immovable property in the controlled area. Consequently, although there is freedom of occupation in an area so exempted, a person belonging to a group other than that of the owner cannot obtain, for instance, a lease or sub-lease of land or premises without a permit (section 10 (3)).

571. 2. *Special areas.* A "special area" is a portion of controlled area declared such by proclamation of the Governor-General (section 11).[273]

572. The creation of a special area does not affect the provisions as to the acquisition and holding of immovable property in such area, except that the term "immovable property" does not in this case include a lease or sub-lease (section 1 (xi)).

573. On the other hand, the position as to occupation is very similar in a "special area" to that in a "controlled area". As from the date specified in the proclamation, there can be no occupation by any person who is not a member of the same group as the occupier at the said date. The persons exempted under section 10 (2) (*e*) (*f*) (*g*) (*h*) and (*i*) are *mutatis mutandis* exempted here.

574. 3. *Group areas.* The aim of the Act is to arrive ultimately at the proclamation of "group areas" for each group specified in the Act. There are three classes of group areas. The Governor-General may, whenever it is deemed expedient, by proclamation declare that an area shall be a group area (*a*) for occupation or (*b*) for ownership or (*c*) for both (section 3 (1) and (2)). The approval of Parliament is normally required but there are numerous exemptions (section 3 (3) (*a*)). The areas enumerated in section 3 (3) (*c*) may not be included in a group area.[274]

575. (*a*) *Group areas for occupation.* Every group area for occupation forms part of the controlled area for the purposes of the provisions of the Act relating to the occupation of land and premises (section 1 (v)).

Occupation of immovable property in a "group area for occupation" is prohibited to persons not belonging to the racial group to which the group area is allocated, except under permit. Section 4 (2) contains a number of exemptions, *inter alia*, the husband, wife, minor children, employees and visitors of a person lawfully occupying land or premises in the group area. Provisions in title deeds prohibiting or restricting the occupation or use of immovable property in a group area for occupation by persons who are members of the group for which the area has been established lapse, and no such provision may thereafter be inserted in a title deed (section 4 (3)).

576. (*b*) *Group areas for ownership.* Restrictions on the acquisition and holding of immovable property in a "group area for ownership" are contained in section 5 of the Act.

No person who is not a member of the racial group for which the area was established and no company wherein a controlling interest is held by such a disqualified person may, on or after the date on which the area becomes a group area, acquire any immovable property within the area, not even in pursuance of any agreement or testamentary disposition entered into or made before the said date, except under a permit. This provision does not apply to acquisition of immovable property by a statutory body.

577. A disqualified company which is on the above date the holder of immovable property within the group area is not allowed to hold that property after the expiration of a period of ten years except by permit (section 5 (1) (*b*)).[275]

A company which on or after the date on which the group area was established becomes or again becomes a disqualified company, may not hold without a permit

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271 See below, paragraphs 571 *et seq.*

272 These provisions do not apply to the acquisition by a Native, as defined, of immovable property within a released area as defined in the Native Trust and Land Act, No. 18, of 1936, or to any acquisition of immovable property governed by that Act or by the Native (Urban Areas) Consolidation Act, No. 25, of 1945. For these two Acts, see above, paragraphs 549 and 550.

273 Section 11 (3) contains a special provision for the municipality of Durban.

274 These are mostly areas and other territorial units already reserved either for Natives or for Coloured persons in pursuance of previous laws.

275 This provision, however, does not render it unlawful for a company engaged in mining operations or in operations carried on in a factory as defined in the Factories, Machinery and Building Work Act, No. 22, of 1941, in which machinery acquired at a price of not less than £5,000 has been installed, to hold any immovable property used in connexion with such operations (section 5 (2)). For the method of determining the group to which a company belongs, see paragraph 462.

any immovable property within the group area which it has on or after the said date acquired otherwise than in pursuance of a permit (section 5 (1) (*c*)).

578. Provisions in title deeds prohibiting or restricting the acquisition of property by members of the group for which the area is established, lapse, and no such provisions may be inserted in the title deed of any immovable property in the group area (section 5 (1) (*d*)).

579. The provisions of section 5 (1) apply notwithstanding anything contained in any statutory provision relating to the acquisition or holding of immovable property. A testamentary disposition or intestate succession by which any person would acquire or hold any immovable property in contravention of section 5 (1) is, unless the beneficiary is authorized to acquire or hold such property under permit, to be deemed to be a testamentary disposition of, or succession in respect of, the net proceeds of such property.

580. (*c*) *Group areas for occupation and ownership.* Where an area has by proclamation been declared a group area for both occupation and ownership, the provisions relating to group areas for occupation and group areas for ownership equally apply (section 3 (2)).

581. *Certain provisions common to all areas.* Some of the provisions of the Act apply to all areas which may be designated in pursuance of the same.

582. *Provisions against evasions of the Act.* Section 18 declares null and void any condition or provision in any document whatsoever, empowering any disqualified person to exercise any influence upon the transfer of immovable property. But where at the time such condition or provision was made, the person or company concerned was not a disqualified person or a disqualified company in relation to the property in question, the condition or provision revives if the person or company ceases to be a disqualified person or a disqualified company in relation to that property.

583. Section 19 forbids the acquisition or holding on behalf of, or in the interest of, another person, of any immovable property which such other person may not lawfully acquire or hold.

584. The Governor-General may make regulations prescribing requirements to be complied with in connexion with the registration of immovable property for the purpose of ensuring compliance with the provisions of the Act (section 36 (1) (*d*)), and the officer in charge of a deeds registry may not register any transfer of immovable property in the controlled area or in a group area unless these requirements have been complied with (section 22 (1)). Registration of immovable property in the name of a person who may not lawfully acquire or hold the property is not invalid (section 22 (2)). But, while it would appear that the transferee becomes the owner of such property, Section 20 provides for the sale of property thus illegally acquired or held. The Minister may order the sale of any immovable property which is acquired or held in contravention of any provision of the Act or which is dealt with or used contrary to any condition of a permit (section 20 (1) (*a*)).

585. *The forms and conditions of permits authorizing exemption from certain provisions of the Act.* Section 14 defines the form and the conditions on which permits may be issued by the Minister authorizing (i) the acquisition or holding of immovable property in a group area or the controlled area; or (ii) the occupation of any land or premises in a group area, in the controlled area, or in a specified area. The Minister may issue a permit in his discretion and subject to such provisions as he may determine. The Minister may not grant a permit for the acquisition or holding of immovable property or the occupation of land or premises in a group area, unless he is of the opinion that the refusal of the permit would cause undue hardship or that the issue of the permit would be in the interest of the group for which the area has been established (section 14 (2) (*a*)). The discretion of the Minister is further restricted in that he may not authorize any person to acquire, hold or occupy any land or premises contrary to any restrictive provisions in the title deed as to the acquisition, holding or occupation of land or premises by persons belonging to any group or class (section 14 (2) (*b*)).

586. A permit authorizing the holding of immovable property or the occupation of land or premises may be issued for an indefinite or a specific period or until withdrawn at the discretion of the Minister (section 14 (4)). A permit to occupy land or premises may be revoked, after not less than one month's notice to the holder of the permit, if the land or premises are occupied or used contrary to any condition of the permit (section 14 (11)).[276]

Group Areas Amendment Act, No. 65, 1952

587. As the application of the Group Areas Act of 1950 had revealed certain possibilities of circumventing its provisions, the Minister of the Interior, (Mr. T. E. Dönges) introduced in 1952 a bill designed to close these loop-holes. When passed, this Bill became the Groups Areas Amendment Act No. 65 of 1952, to be read and construed as one with the 1950 Act. Its principal provisions are as follows:

588. *Steps preparatory to the proclamation of a group area.* Section 4 of the Amending Act of 1952 adds a new section 3 *bis* to the Group Areas Act. The Governor-General may now by proclamation define any area which he proposes to proclaim a group area for occupation by members of the group specified in the proclamation (section 3 *bis* (1)). In this way a new stage is allowed before the proclamation of a group area. After a proclamation defining an area as a proposed group area for occupation, the provisions of section 3 *bis* (3) apply to any land situated within the area. No owner of such land, other than a statutory body, may, during the intervening period, until the area in which the land is situated is proclaimed as a group area for occupation, either sub-divide his land or use the surface of the land or enter into any agreement whereby he purports to grant any person the right to use the land for any purpose for which it was not being used on the date of the proclamation (section 3 *bis* 3 (*c*)). It should be noted that here the word "land" does not include any building or other structure erected on the land (section 3 *bis* (3) (*b*)). Moreover, the above provisions relating to the use of land and the granting of the right to use land may not apply in respect of the use of any land for the purposes of prospecting for minerals.

589. *Ministerial action contrary to conditions contained in title deeds.* An important change is also made

[276] Since the provisions of section 13 (5) of the Act were amended by the Group Areas Amendment Act No. 65 of 1952, they will be examined in the course of the analysis of the latter Act (see below, paragraph 589).

in section 13 (5) of the Group Areas Act. Under the old wording of the Act the Minister could not make any determination under section 13 (3) contrary to any condition in the title deeds of any building, land, or premises, prohibiting or restricting occupation by persons of one or more racial groups. Section 11 of the 1952 Act substitutes for section 13 (5) of the 1950 Act a new subsection which provides that any provision in the title deeds of any building, land or premises in a specified area which prohibits or restricts the occupation thereof by persons of one or more groups, is to be suspended in so far as it conflicts with the terms of a determination made under section 13 (3).

590. *Prohibition against retention of property by a person who becomes a member of another group.* Section 7 of the Amending Act of 1952 provides for the insertion of a new section 9 *bis* in the Group Areas Act of 1950, to the effect that a person holding immovable property in the controlled area who becomes a member of another group than the one for which the area was established, may not hold that property except under a permit.

V. Work and the practice of professions

591. In the Union of South Africa the problems relating to work and the practice of professions are closely bound up with the two problems examined in sections III and IV of this chapter.

It was mentioned in section III that the "Pass Laws" include the Native Labour Regulation Act, No. 15 of 1911, and the Native Service Contract Act, No. 24 of 1932, the titles of which indicate their main purpose. The Natives (Urban Areas) Consolidation Act, No. 25 of 1945, as amended by Act No. 54 of 1952, falls within the same category. Each of these Acts contains many provisions regulating native working conditions: engagement, forms of service contracts, registration of contracts by the authorities, working permits issued by the authorities, etc. It may be said more generally that the laws governing movement and residence inevitably restrict the access to employment of the persons to whom they apply.[277]

592. In the same way the statutes relating to property (which govern all kinds of interests in immovable property other than ownership, and also the right of occupation in many different forms) definitely shape the conditions under which persons to whom they apply may practise trades or professions or engage in commerce. A number of these Acts, including the Group Areas Act, No. 41 of 1950 (as amended by the Group Areas (Amendment) Act, No. 65 of 1952, contain express provisions governing these matters. (See section IV above.)

593. Only those provisions of the enactments mentioned in paragraphs 154 and 155 which have not been studied elsewhere will be examined here. The study will deal mainly with the provisions of certain other statutes and orders intended to prevent or hinder members of certain sections of the population from entering certain trades and professions, or to create pronounced differences between the rates of pay and other conditions of work granted to members of various groups.

[277] To these laws must be added the Native Trust and Land Act, No. 18 of 1936 (mentioned in paragraph 112), and the Prevention of Illegal Squatting Acts, No. 58 of 1951 and No. 24 of 1952, which indirectly affect access to employment.

594. It is important to point out here that the study of statutes and regulations expressly concerned with the different racial or colour groups provides only a very incomplete picture of the differences which exist between the various sections of the population of the Union of South Africa in work and the practice of professions. Account must also be taken of the effect of certain general Acts, like the Wage Act, No. 44 of 1937, as amended in 1942, and of the action of trade unions, particularly in the application of the "colour bar" and of what is called "the Civilized Labour Policy". These questions are examined in chapter VII.

POSITION BEFORE THE UNITED NATIONS CHARTER

Native Labour Regulation Act, No. 15 of 1911

595. This Act, mentioned above[278] ratified the former system of recruiting Native labour.

By section 14 a breach by a Native of any clause of his service contract is punishable by a fine not exceeding £10 or a term of imprisonment not exceeding two months.

Mines and Works Act, No. 12 of 1911

596. This Act, which dates from the same time as the one just mentioned but was amended in 1926,[279] introduced a legal colour bar into the mining industry by preventing the employment of Natives as skilled workers in mines.[280] The Mines and Works Act, 1911, controls conditions of work and safety in mines, mills, and other establishments using machinery. Section 4 of the Act empowers the Governor-General to make regulations concerning, *inter alia*, the issue of certificates of competence to skilled workers in mining and engineering. Under those regulations such certificates are not to be granted to coloured persons in the Transvaal or the Orange Free State, and certificates granted to coloured persons in the Cape and Natal are not valid in the northern provinces. In 1923, the courts declared these provisions to be *ultra vires*.

Mines and Works Act, 1911, Amendment Act, No. 26 of 1926

597. Following these decisions an amendment to the Act was adopted in 1926 limiting the granting of certificates of competency for engine-driving, blasting, surveying and other skilled occupations to "Europeans, Cape Coloured and Mauritius Creoles or persons from St. Helena".

Industrial Conciliation Act, No. 36 of 1937

598. The initial form of this Act dates from 1924. The Act of 1937 provides for "the registration and regulation of trade unions and employers' organizations, for the prevention and settlement of disputes between employers and employees, for the regulation of conditions of employment by agreement and arbitration, for the control of private registry offices and for other incidental matters". It may be applied to any undertaking, industry, trade or occupation except farming, domestic services, governmental and provincial employment, and employment in certain educational and charitable institutions. It makes provision

[278] See paragraphs 492 and 520.

[279] See following paragraph.

[280] See, for general reference, Sachs, *The Choice before South Africa* (1952), pages 164-165. See also *Handbook on Race Relations in South Africa*, 1949, page 109; van der Horst, *Labour*, pages 146-149; and *Report of the Industrial Legislation Commission of Enquiry*, 1951.

for the establishment of industrial councils and conciliation boards, and for the appointment of mediators and arbitrators to help in the settlement of industrial disputes. Industrial councils are permanent bodies consisting of representatives of employers and of registered trade unions, with wide powers to make agreements regarding wages, hours and conditions of work. They may not, under the Act, differentiate on the ground of the race of an employee as regards rates of pay, conditions of work or any other matter.

599. Under the Act, however, the definition of "employee" excludes persons whose contracts of service are subject to the Native Labour Regulation Act or to certain other legislation relating to Natives.

600. Industrial agreements do not apply to Natives unless specifically extended by the Minister to include them. The Act does not make provision for the registration of trade unions consisting of Africans excluded from the definition of "employee". At the same time it has been held that registered unions may admit to membership only "employees" within the meaning of the Act.[281]

The position, therefore, is that under the Industrial Conciliation Act, 1937, the definition of "employee" excludes the pass-bearing Native (since he is not an "employee" within the meaning of that definition); and the Native is not therefore recognized as eligible for registration in a trade union.

Similarly a trade union containing Africans could not, by definition, be regarded as a trade union of "employees" under the Act, and could not be registered as a trade union.

601. One of the many anomalous situations arising from the Industrial Conciliation Act is that since Native women do not normally carry "passes" they are not excluded by the Act, and unions which admit them may therefore continue to be registered under the Act. That, apparently, is why the Garment Workers' Union, predominantly composed of European women but now also including a considerable number of Native and Coloured women, is entitled to register.[282]

602. As a result, therefore, of their exclusion from the operation and benefits of the Industrial Conciliation Act, 1937, male Natives have lacked access to the machinery for the prevention and settlement of industrial disputes otherwise than by recourse to strikes. Yet a strike by a group of Native workers may be a criminal offence either under one of the comprehensive Masters and Servants Acts of varying dates, relating to separate provinces of the Union, or under the Native Labour Regulation Act, 1911.[283]

Native (Urban Areas) Consolidation Act, No. 25 of 1945

603. The provisions of this Act, and particularly of its section 23 (1), which have an extremely important bearing on the access of Natives to work in urban areas, have been studied above.[284]

604. Under section 23 (1, g), moreover, the Governor-General may prohibit or instruct the local urban authority to prohibit any male Native from working as a *togt* or casual labourer or from carrying on any work as an independent contractor in the proclaimed area unless the prescribed officer has by licence authorized him to do so for a period stated therein.

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Registration for Employment Act, No. 34 of 1945; Native Laws Amendment Act, No. 54 of 1952; Regulations under section 23 (o) of the Native Labour Regulation Act, No. 15 of 1911

605. The Registration for Employment Act, No. 34 of 1945, is an enabling Act permitting the establishment of public labour exchanges for Africans and other non-Europeans as well as for Europeans. Its provisions need not be applied to Africans, and can be applied to them by the Minister of Labour only after consultation with the Minister for Native Affairs. Up to November 1947 the Act had apparently not been applied to Africans.[285]

606. The Native Laws Amendment Act No. 54 of 1952, again made possible the establishment of such labour bureaux for Africans.[286] On the other hand, regulations have apparently now been issued under section 23 (o) of the Native Labour Regulation Act, No. 15 of 1911, for the establishment and control of Native labour bureaux. District bureaux are now established in the office of each Native Commissioner, except in certain prescribed areas where the local authority controls local labour bureaux. The purpose of the bureaux is, according to the regulations, "to place (Native) work-seekers in employment and to regulate the

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281 *Handbook on Race Relations in South Africa*, van der Horst, pages 147 and 148.

282 Rheinallt Jones, *op cit.*, page 47. The Report of the Industrial Legislation Commission of Enquiry, 1951, notes (paragraph 281) that the Act's operation, by virtue of the definition of "employee", excludes the vast majority of native workers. The report agrees (paragraph 1071) that under the Act "Natives cannot belong to registered trade unions"; in paragraph 115 the report concludes that since "Native trade-union organizations are not recognized and consequently Natives cannot participate in collective bargaining, while workers of other races have adequate means not only of stating their views but of enforcing their demands, Native workers are in a weak position *vis-à-vis* their employers." See also paragraphs 1448-1457 of the Report.

It is also to be noted that the Industrial Conciliation (Natives) Bill, published in 1947 under the auspices of the Smuts Government, though expressly recognizing the exclusion of all Native trade unions and Natives from the provisions and benefits of the industrial conciliation machinery under the Industrial Conciliation Act, 1937, planned to set up a separate system of conciliation machinery for African trade unions, thus on the one hand expressly introducing the principle of racial separation into industrial legislation but in effect providing more or less equal facilities for Natives. The Bill, however, had not been passed at the time of the defeat of the Smuts Government in 1948, and the new Prime Minister, Dr. Malan, who succeeded General Smuts, announced that he did not propose to proceed with this Bill recognizing Native trade unions, but would evolve other machinery (van der Horst, *op. cit.*, pages 148 and 149). For the Native Labour (Settlement of Disputes) Bill, 1953, see footnote 283.

283 See, generally, *Handbook on Race Relations in South Africa*, van der Horst, page 148; report of the Industrial Legislation Commission of Enquiry, 1951, paragraphs 1438-1447. A special Bill relating to industrial conciliation but concerned only with Native workers (the Native Labour (Settlement of Disputes) Bill) was introduced by the Minister of Labour in the Assembly in 1953. The second reading of this Bill took place on 9 July 1953.

284 See paragraph 525.

285 *Handbook on Race Relations in South Africa*, 1949, van der Horst, "Labour", pages 155 and 156.

286 *Survey of Race Relations*, 1951-1952, pages 29 and 30, 61.

supply of labour with a view to correlating it with demand".[287]

Native Building Workers Act, No. 27 of 1951[288]

607. This Act represents the most important legislative measure establishing a legal "colour bar". It is thus related to the Mines and Works Act, No. 12 of 1911.[289]

608. In introducing this Bill into the House of Assembly on 7 February 1951, the Minister of Labour, the Hon. B. J. Schoeman, said that the Bill provided protection for White and Coloured workers against the undermining of their wage standards by cheap Native labour. In certain areas where industrial agreements were in operation an employer in the building industry could employ a European, a Native, a Coloured person or an Asiatic to do some specific work, but had to pay such a worker the wage laid down in the agreement. The agreements did not, however, apply to ordinary householders or to owners of buildings, flats, shops or factories, nor to municipalities, who could employ anyone in building work, paying any wages they were prepared to pay and the worker prepared to take; municipalities were also exempt from the provisions of the industrial agreements. Consequently building-industry employees were only protected if they were employed by registered employers in the areas where those agreements were in operation; and it was found that private owners of factories were making fairly extensive use of cheap Native labour to do their repair, maintenance and even building work. In that way the White artisan's wage standard was undermined.

To meet the serious shortage of houses, the building of which with White labour was uneconomic, the Natives should be enabled to build their own houses.[290] They should first have a reasonable good training; but Natives so trained would naturally not get the wages now paid to White skilled artisans. To a large extent their work would be semi-skilled. The Native would receive his training in an institution, after which he would be placed with an approved employer. As these workers would be paid a lower wage commensurate with the standard of skill they had reached, and taking into account particularly the standard of living of the Native, they would build considerably more cheaply than the skilled artisans were building at the moment. The Natives would thus be trained in as many branches as possible so that they would be in a position to erect their own buildings in their own areas. On the other hand, by virtue of the Bill no employer in the building industry would be able to employ Natives in an urban area to perform skilled work within the meaning of the definition. This would affect only employers in the building industry and could be applied to all the urban areas in the country. The Minister would also have power to bring semi-urban areas under the provisions of the Bill. A proclamation by the Minister applying the Act to any urban or semi-urban area meant that every person—private person, municipality, factory owner, etc.—would be prevented from employing a Native to do skilled building work. Certain classes of persons, however, or certain parts of an area could be exempted from this prohibition.[291]

609. The Act came into force on 1 October 1951.[292]

610. The main provisions of the Act restricting the employment of Natives in skilled work in the building industry are to be found in its sections 14 and 15.

611. *Control of employment in the building industry*

"14 (1) After the entry into force of this Act no employer in the building industry shall, except with the written consent of the Minister

"(*a*) Employ a Native upon skilled work in the building industry within an urban area, elsewhere than in a Native area;

"(*b*) In any Native area employ a European otherwise than in the capacity of a supervisor or instructor on any building where a Native is employed on skilled work in the building industry.

"(2) Any employer who contravenes the provisions of subsection (1) shall be guilty of an offence.

612. *Restriction of employment in certain areas*

"15 (1) The Governor-General may, on the recommendation of the Minister made after consultation with the board, by proclamation in the Gazette prohibit

"(*a*) Any person (other than an employer in the building industry), or any person belonging to a specified class of such persons, or any person other than a person belonging to a specified class of such persons, from employing any Native on any specified class of skilled work in connexion with the erection, completion, renovation, repair, maintenance or alteration of a building in a specified urban area or part of such area, elsewhere than in a Native area; and

"(*b*) Any Native from performing as an employee or in any other capacity such work in connexion with any such building, not being a building owned by him and occupied or intended for occupation by himself and his dependants,

"and may in like manner amend or repeal any such proclamation.

"

. . . . .

"(3) Any person who contravenes any provision of a proclamation issued in terms of subsection (1) shall be guilty of an offence."

613. It seems clear that the Native Building Workers Act, 1951, erects a substantial colour bar against Na-

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[287] *Annual Survey of South African Law*, 1952, page 288.

[288] The Native Building Workers Bill was first published in draft form in October 1949 and introduced into the House of Assembly in February 1950. However, owing to pressure of other legislation it was not proceeded with during the 1950 session of Parliament. As first introduced it was an obvious attempt to steer a middle course between the interests and fears of European building workers and the needs and aspirations of Africans (*Survey of Race Relations*, 1949-1950, pages 53-55).

As reintroduced in the 1950 session of the Union Parliament the Bill had been subjected to a number of changes, of which the most interesting are as follows: (1) A Native area for the purposes of the Act now included any area which in the opinion of the Minister was predominantly occupied by Natives; (2) Thatching was excluded from the list of skilled work that Natives would not be allowed to do outside their own areas; (3) The original total prohibition against the employment of Natives in building in urban areas was modified to be applicable to part of the urban area only, and to allow Natives to work outside their own areas on buildings occupied by them. Europeans, however, were not allowed to place contracts with Native builders. (*Survey of Race Relations in South Africa*, 1950-1951, page 12).

[289] See above, paragraph 596.

[290] On this subject see chapter VII, paragraph 740.

[291] *Journal of the Parliaments of the Commonwealth*, vol. 32, 348-350, 1951.

[292] *Survey of Race Relations in South Africa*, 1950-1951, page 12.

tive labour in the building industry,[293] since it is no longer permissible to employ Africans in the erection and maintenance of buildings to which the Act applies, thus depriving a considerable number of Africans of "jobbing" work.[294]

VI. Use of public services

POSITION BEFORE THE UNITED NATIONS CHARTER

614. Before the establishment of the Union of South Africa in 1909, only the Transvaal appears to have had any major legislation with regard to public transport. Following a resolution by the *Volksraad* of 14 October 1897 the Government took measures to separate Coloured travellers from European travellers in first-class railway carriages.

615. Although, generally speaking, no comprehensive legislation has been passed by the Union regarding use of and access to public services, differences of treatment exist according to racial and colour group.

616. In railway transport these differences of treatment are based on regulations made under the Railways and Harbours Regulations, Control and Management Act, No. 22 of 1916, section 4 of which states:

> "Subject to the approval of the Governor General, the Administration may make regulations, not inconsistent with this Act, with respect to any of the following matters, that is to say, with respect to:
>
> ". . . . .
>
> "(6) The reservation of railway premises (including conveniences), or of any train, or of any portion thereof, for the exclusive use of males or females, persons of particular races, different classes of persons or Natives, and the restriction of any such persons to the use of the premises, train, or portion thereof so reserved."[295]

617. In other cases the differences in treatment result largely from the operation of by-laws made by inferior law-making authorities, or else from simple administrative practice not supported by statute.

618. A very convenient way of observing the existing patterns of differentiation is to review the work of the Supreme Court of South Africa over a period of years.

619. In a 1916 case, *George* v. *Pretoria Municipality*,[296] the Transvaal Provincial Division had upheld a conviction of a Coloured person for boarding a tramcar reserved for the use of White persons in Pretoria, and refusing to leave the same, at a time when no separate tramcars were provided for the use of Natives, Asiatics or other Coloured persons. The Transvaal Provincial Division rejected the argument that it was *ultra vires* for the town council to make by-laws appointing separate tramcars for the use of White persons and of non-White persons respectively and restricting the use of such cars to such persons; the Court also dismissed the argument that there must be equality between White and Coloured until such time as provision was made for separate cars.

620. In the 1934 case of *Minister of Posts and Telegraphs* v. *Rasool*,[297] the Appellate Division of the Supreme Court ruled that the mere fact that a by-law divided the community for the purpose of its operation into White and Coloured did not render it *ultra vires* on the ground of unreasonableness. The point at issue was a division of post-office accommodation into European and non-European. Since it was conceded that the services rendered at the non-European counter in the post office were equal to those rendered at the European counter, the only issue was the reasonableness of making a distinction between European and non-European.[298]

In effect, the majority of the Appellate Division upheld the judgment of Acting Chief Justice Stratford that racial discrimination in the form of separation on a racial basis was valid so long as the facilities afforded to the different races were equal. One of the concurring justices, Beyers, J. A., however, appeared to have based his concurrence on rather broader grounds, in effect denying the principle, advanced in the same case by Gardiner, A. J. A., in a very strong dissent, that in the eyes of the law all men are equal. Beyers, J. A., pointed out that in his opinion separation ran through the whole fabric of social life in the Union—for instance in hospitals, cemeteries, public baths and conveniences, playgrounds, tramcars and in numerous other instances. The Appellate Division of the Supreme Court of South Africa thus attained in *Rasool's* case, though without any citation or reference to American cases, the American constitutional-law doctrine of "separate but equal".[299]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Railways and Harbours Regulations, Control and Management (Amendment) Act, No. 49 of 1949

621. In the 1950 case of *Rex* v. *Abdurahman*,[300] the Appellate Division of the Supreme Court of South

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293 "[The Bill] aims at training Native artisans to build houses for their own people in their own areas, at the same time protecting European artisans in European areas from being undercut by the new Native labour force. One common South African practice which the Bill is intended to stop is that of European householders who employ Natives to do odd spare time building jobs about the house. In future, jobs that require any skill would have to be done by Europeans, or by Coloured workers, both of whom charge more than the Natives. The training which the Government intends for the new Native artisan will not be as thorough as that given to European apprentices: it should merely be enough to equip them to build their own fairly simple dwellings." (*South Africa*, No. 3189, 4 March 1953, page 172).

294 Rheinallt Jones, *Industrial Relations in South Africa*, *International Affairs*, vol. 29, page 43, 1953; c.f. also; *Survey of Race Relations*, 1949-1950, pages 53-55; *Survey of Race Relations*, 1950-1951, pages 12-13 and 33-34.

295 Section 36 of the Act makes it an offence for any person knowlingly to enter any coach, compartment or other place reserved by the Administration for the exclusive use of particular races, or for any person having entered such coach, compartment, or other place so reserved to remain therein after having been asked by a railway employee to leave it.

296 1916, SALR 501 (Transvaal P.D.).

297 1934, SALR 167 (A.D.).

298 The court here applied the test of Lord Russell in the well-kown English case *Kruse* v. *Johnson*, (1898) 2 Q.B.D. 91, laying down the criteria under which courts may condemn by-laws as invalid because unreasonable: whether the by-laws were found to be "partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subjected to them as could find no justification in the minds of reasonable men."

299 This same principle was invoked in the case of *Rex* v. *Carelse* (1943) SALR 242 (Cape P.D.), in which Mr. Justice Davis, of the Cape Provincial Division, directly applied *Rasool's* case to the use of bathing beaches. In the Union of South Africa, he held, for the court to be entitled to interfere with a by-law involving discrimination between White and Coloured on the ground of unreasonableness, it must be proved that the discrimination was coupled with an inequality of treatment which was in all the circumstances manifestly unjust or oppressive.

300 (1950), 3 SALR 136 (A.D.).

Africa had before it a regulation issued under Section 4 of the Railways and Harbours Regulations Control and Management Act, 1916 (see paragraph 616 above), reserving certain coaches to persons of European race but not restricting such persons to the use of those coaches. Non-Europeans using the coaches reserved for Europeans were made liable to a penalty. The Appellate Division of the Supreme Court held by a unanimous vote that the regulation as applied resulted in partial and unequal treatment to a substantial degree as between Europeans and non-Europeans, and that the action taken under it was not authorized by the Act under which it was made. Centlivres, J. A., for the Court, directly applied Lord Russell's test in *Kruse* v *Johnson* (at page 149): "It is one thing to authorize discrimination, and quite another thing to authorize discrimination coupled with partiality and inequality of treatment". He found it impossible to assume that the Legislature had intended, in its statute of 1916 conferring general regulation-making power on the railway administration, that one section of the community should be treated unfairly as compared with another section. He said: "The State has provided a railway service for all its citizens, irrespective of race, and it is unlikely that the Legislature intended that users of the railways should, according to their race, have partial or unequal treatment meted out to them. The conclusion at which I arrive is that the regulations have been improperly applied by the Administration in the circumstances of this case. As in my view the regulation can be applied with impartiality and equality between members of different races, it cannot be said that the regulation itself is *ultra vires* the enabling Act".

622. In consequence of the challenge made in *Abdurahman's* case to the principle of segregation in railway transportation the Malan Government had taken steps during the pendency of the *Abdurahman* case to amend the Railway Act of 1916 by inserting a new section 7 *bis* (1) (by Act No. 49 of 1949) reading:

> "7 *bis* 1: The Administration may, whenever it deems expedient, and in such a manner or by such means as it may consider most convenient to inform any person affected thereby of the fact of such reservation (*sic*)—
>
> "(*a*) Reserve any railway premises (including conveniences) or any portion thereof, or any train or any portion of a train for the exclusive use of males or females or persons of particular races, or different classes of persons or Natives;
>
> "(*b*) Reserve all or certain trains travelling over a particular route for the exclusive use of persons of particular races or different classes of persons or Natives."

Following this amendment to the Act the Administration also amended the General Railway Regulations by inserting the following article 20 (*a*) as follows:

> "Whenever the Administration has, in terms of section 7 *bis* of the Act, reserved any railway premises (including conveniences) or any portion thereof, for the exclusive use of males or females or of persons belonging to a particular race or class, no person who does not belong to the category of persons for whose benefit the reservation has been made shall make use of the premises or portion thereof so reserved".

623. The Act and regulation as amended above were challenged in the Appellate Division in 1953 in the case of *Rex* v. *Lusu*.[301]

The Court held, through Chief Justice Centlivres, with Greenberg, Schreiner and Hoexter, JJ. A., concurring, that the Railway Administration could not, when reserving railway premises or any portion thereof as waiting rooms for the exclusive use of males or females or particular races or different classes of persons,[302] exercise unfettered discretionary rights and powers where the exercise of such rights and powers might result in partial and unequal treatment to a substantial degree as between such persons, races or classes.

Applying *Rex* v. *Abdurahman*, in which the Court had held that the 1916 Act (unamended) did not authorize partiality and inequality between members of different races, Chief Justice C ntlivres felt that the new section 7 *bis* 1 (*a*) inserted by the 1949 amendment could not authorize the Administration to discriminate between different races and classes on a footing of partiality and inequality.[303] If this were not so, it would follow that the Administration could, under the new section inserted by the amendment of 1949,

> "reserve conveniences on railway premises for members of a particular race only and provide no conveniences for members of any other race. This could not, in my opinion, have been the intention of Parliament; for, as was stated in *Abdurahman's* case at page 149, 'The State has provided a railway service for all its citizens, irrespective of race, and it is unlikely that the Legislature intended that users of the railways should, according to their race, have partial or unequal treatment meted out to them (p. 481)' ".

On the other hand, Mr. Justice van den Heever, in a very strong dissent, contended that the new provision inserted in the 1916 Act by the 1949 amendment authorized the Administration to reserve railway premises (including conveniences) for the exclusive use of different classes of persons, which implied discrimination.[304] . . .

624. The position therefore seems to be, so far as access by the various races and Colour groups to public transport and public places is concerned, that segregation as such may be applied by the Administration, but that in such a case facilities that are in fact equal must be provided for the different races. The court has never ruled on the question of whether segregation is invalid *per se* irrespective of the actual treatment given to the different races under segregated conditions. There is obviously, however, considerable scope for the exercise of judicial scrutiny upon the question of fact whether in the particular case the facilities provided actually are equal.[305]

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301 (1953), 2 SALR 484 (A.D.).

302 Under section 7 *bis* 1 (*a*) of the Act of 1916, as amended.

303 (1953) 2 SALR 484 (A.D.), at page 489.

304 *Ibid.*, page 498.

305 See, for example, *Rex* v. *Lepile* (1953) 1 SALR 225 (Transvaal P.D.), where the Transvaal Provincial Division, applying in this respect the strictly factual test, rejected an attack upon the application of a railway regulation based on the argument that the dining-room or refreshment-room facilities provided by the railway administration for the use of non-Europeans, being inferior to those provided for Europeans, amounted to partial and unequal treatment to a substantial degree. The court held in this respect that some degree of inequality could not be avoided and that a temporary inconvenience, as in its view the present amounted to, did not constitute unequal treatment to a substantial degree.

625. The courts have also shown some disposition to insist on the Crown strictly discharging its burden of proof in prosecutions arising from segregation practices.[306]

VII. Legislation in the field of social rights

POSITION BEFORE THE UNITED NATIONS CHARTER

626. Before the Union of South Africa came into being the law seems to have prohibited mixed marriages between White and Coloured persons in the South African Republic (Transvaal) only.[307]

The law also punished "immoral acts" committed by a White woman with a Coloured man,[308] and by a Coloured man with a White woman even with her consent.[309]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Prohibition of Mixed Marriages Act, No. 55 of 1949

627. In presenting this Bill the Minister of the Interior (Hon. T. E. Dönges) explained that its object was to prohibit marriages between Europeans and non-Europeans, and as far as possible to check blood mixture and to promote racial purity. It was naturally only the first step and must be followed by the prohibition of extra-marital blood mixture. In that connexion the Minister of Justice had given notice to introduce a Bill to amend the *Immorality Act,* 1927.[310] The Minister of the Interior referred to the recommendations of the Commission on Mixed Marriages, which in submitting its report in 1939 had emphasized the very strong general feeling in the Union against mixed marriages. Apart from the desire to preserve race purity, there was the feeling that efforts should be made to obviate the social problems arising from blood mixture. Opposition to mixed marriages was not restricted to Europeans; the report of the Commission referred to the strong opposition of the Natives to such marriages. Coloured persons were also opposed, though not in favour of legislation. Even the Indians expressed themselves against mixed marriages, but they too were against legal sanctions. Certain arguments against legislation had been advanced by people who nevertheless realized that mixed marriages were an evil. One of the arguments was that legislation involved restrictions on personal liberty. The Commission had pointed out that "Every law implies a curtailment of personal liberty, and acts such as marriage, which have wide social effects, cannot be considered as purely private and personal". A second argument quoted the relatively small number of mixed marriages occurring each year. The real point, however, was the steadily increasing total. The question was, what would be the position in one hundred years' time? The third argument was that to make such marriages impossible would be to remove what might be regarded as the only means of restitution for an injustice that had been committed. But such cases were relatively few and, if the proposed legislation were adopted, would become even fewer. The Minister then referred to the difficulties of defining Europeans and non-Europeans. The Bill was not intended to give a legal definition but to serve as a practical guide to the official who solemnized the marriage.[311]

628. In the debate which followed in the Union House of Assembly the leader of the opposition, Field-Marshal Smuts, said that the attitude of the South African people as a whole, and their outlook and tradition, had undoubtedly been against racial intermixture. The fundamental question, however, was whether the evil could be remedied by legislative treatment and prohibitions; moreover, there was the difficulty of making definitions in the Act.[312]

629. Dr. A. H. Jonker, of the United Party (Opposition), said that except for an increase in the number of mixed marriages from 1940 to 1945, when the European and Native populations had also increased, the percentage of mixed marriages had grown smaller. The fact that a White population existed and that the percentage of miscegenation was so small was the most striking proof that the character both of the White man and the Native, in that connexion, was such that it had kept the evil within limits over a period of three centuries. The solution of the problem lay in creating separate residential areas and in raising the Coloured population to an economic level at which there would no longer be a craving amongst them, and particularly among the Coloured women, to escape to the side of the White people in order to achieve a higher social status.[313]

630. Mr. A. Davis (Opposition), United Party, emphasized the importance of immigration in fortifying the purity of the White population. So far as the definition section of the Act was concerned, and the test of appearance, there were many people in the Transvaal who were quite dark but were of European descent, education and breeding.[314]

631. Mr. T. W. B. Osborn, Labour Party, said that in the early days of the Cape there had been mixed marriages: in 1800 the figure had been given as 5 per cent of all marriages, and some had put it as high as 10 per cent. Mixed blood introduced at that stage was still there; it would never be bred out. A small proportion of Coloured blood was in the European population—in the older, more eminent families—and if the original figure of mixed marriages was assumed to be 5 per cent it followed that all the older families had an average 5 per cent of Coloured blood. At the present moment the factor probably responsible for the biggest increase in the proportion of Coloured people in the White community was that people who were really coloured but obviously [that is, in appearance] White or nearly White were escaping into the White community. In South Africa it paid to be White from the moment you were born. You got better schooling, you could go to the city, sit anywhere you liked on transport, get a better

306 See for example, *Rex* v. *Sita* 3 SALR 460 (Transvaal P.D.). The Committee has been informed that the Minister of Transport (Mr. P. O. Sauer) has recently promised to introduce a Bill into Parliament enabling railways to provide, in spite of recent decisions by the Supreme Court, different races with separate but not substantially equivalent facilities. *Cape Argus,* 13 June 1953.

307 Law No. 3 of 1897, article 17. "Coloured person" in this Act means a person belonging to any of the indigenous races of South Africa or of indigenous ancestry, or belonging to any of the indigenous races of Asia, including Coolies, Arabs, Malays and the Moslem subjects of the Turkish Dominion.

308 Section 6 of Law No. 11 of 1889.

309 Section 7 of the same law.

310 See paragraph 635, below.

311 30 *Journal of the Parliaments of the Commonwealth,* pp. 467-469, 1949.

312 *Ibid.,* pages 469 and 470.

313 *Ibid.,* page 470.

314 *Ibid.,* page 471.

job, bring up your family decently, get the vote and control your destiny. While that situation existed, Colored people would escape into the White community no matter what laws were passed.[315]

632. The Prohibition of Mixed Marriages Act, No. 55 of 1949, section 1 (1), states that with effect from the date of commencement of the Act no marriage may be solemnized between a European and a non-European, and any such marriage solemnized in contravention of the provisions of the section shall be void and of no effect. The following important exception, however, is made to the operation of the Act: any such marriage shall be deemed to be valid if (i) it has been solemnized in good faith by a marriage officer, and neither of the parties concerned, nor any other person in collusion with one or the other of them, has made any false statement relating to the said marriage; and (ii) any party to such marriage professing to be a European or a non-European, as the case may be, is in appearance obviously what he professes to be, or is able to show, in the case of a party professing to be a non-European, that he habitually consorts with non-Europeans as a non-European: section 1 (1, a).

633. For information on the definition of groups and the method of classifying persons in groups, see paragraph 451 (*d*) above.

634. For the penal sections of the Act, see section X, paragraph 660, below.

Immorality (Amendment) Act, No. 21 of 1950

635. This Act[316] is the logical sequel to the Prohibition of Mixed Marriages Act, 1949, and is in fact the further statutory provision referred to by the Malan Government's spokesman during the debate on the Prohibition of Mixed Marriages Act. The Immorality Act of 1927, amended by the Act of 1950, prohibited illicit carnal intercourse between Europeans and Natives. This Act is mentioned in this section of the report because it has been enforced not only against casual relationships but also in cases of long-standing cohabitation between persons belonging respectively to the European and the non-European group, and even where a marriage had been annulled under the 1949 Act prohibiting Mixed Marriages.[317]

636. The amended text of this Act contains the following prohibition:

> "*Section 1:* Any European male who has illicit carnal intercourse with a non-European female, and any non-European male who has illicit carnal intercourse with a European female, in circumstances which do not amount to rape, an attempt to commit rape or indecent assault . . . shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.
>
> "*Section 2:* Any non-European female who permits any European male to have illicit carnal intercourse with her, and any European female who permits any non-European male to have illicit carnal intercourse with her, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding four years.
>
> "*Section 2* bis: It shall be a sufficient defence to any charge under section one or section two if it is proved to the satisfaction of the court or jury . . . that the person so charged at the time of the commission of the offence had reasonable cause to believe that the person with whom he or she committed the offence was a European, if the person so charged is a European, or a non-European if the person so charged is a non-European."

637. The amending Act of 1950 also replaced the definition section of the 1927 Act.[318]

VIII. Social security

POSITION BEFORE THE UNITED NATIONS CHARTER

Workmen's Compensation Act, No. 30 of 1941, as amended by Act No. 27 of 1945 and Act No. 36 of 1949

638. Workmen's compensation has been regulated in the Union of South Africa since 1914, the present law being contained in Act No. 30 of 1941, as amended by Act No. 27 of 1945 and Act No. 36 of 1949. The Workmen's Compensation Act, as amended, is a general code governing compensation for disablement caused by accident suffered or industrial diseases contracted by workmen in the course of their employment, or for death resulting from such accidents or diseases. The schedule of benefits that may be accorded under the Act, however, varies somewhat according to race, payments for Natives being frequently considerably below payments for Europeans for the same disability. One of the most widely criticized features of the amended Act is the provision regarding compensation for total permanent disablement: pensions are paid to Europeans but only lump sums to Natives.

639. The Act as it existed in 1941 did not cover domestic servants or persons employed in agriculture or mining unless their employment involved the use of vehicles or machines driven by mechanical power, or the use of explosives. Consequently, since most of these persons were Natives, large groups of Africans were entitled to benefit from the provisions of the Act. This anomaly, however, was rectified by the amending Act of 1945, and domestic and other workers hitherto excluded from the operation of the Act may now be voluntarily insured by their employers under the Act.[319]

Miscellaneous Pensions Legislation

640. The pensions payable under various statutes provide differential rates of payment or benefits in kind for persons of different race or colour.

Old Age Pensions Act, No. 22 of 1928, as amended in 1944

641. Originally old age pensions were available only to Europeans and Coloured persons, but since 1944 the Act has applied also to Natives and Indians, though with lower rates of payment for those two classes of beneficiaries.

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315 *Ibid.*

316 During the debate on the Immorality Amendment Act of 1950, Opposition members contended that miscegenation could not be prevented by legislation but only by moral, social and religious sanctions: it was contended also that the 1927 Act had given rise to a large number of cases of blackmail and that it was likely that the amending Act would give rise to even more. (*Survey of Race Relations*, 1949-1950, pages 25-26; *South Africa*, No. 3190, March 11, 1950, page 193).

317 *Rex* v. *Ormonde* (1952) 1 SALR 272 (A.D.).

318 See paragraph 451 (*d*) and footnote 174 above.

319 See, generally, *Handbook on Race Relations in South Africa*, van der Horst, "Labour", pages 153-154, *Survey of Race Relations*, 1944-1945.

War Veterans Pensions Acts, No. 45 of 1941 and No. 44 of 1942

642. Similar principles underlie these Acts, with the additional provision that Natives are excluded from benefit. Native veterans, however, may receive assistance from a vote of the Department of Native Affairs; some 3,000 Natives were drawing benefit in 1946 and the financial provision for this purpose during that year was £35,000.[320]

Blind Persons Act, No. 11 of 1936, as amended by Acts No. 48 of 1944 and No. 24 of 1946

643. This law differentiates for purposes of pension payments between Europeans, Coloured persons, Indians and Africans.[321]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

644. The amendments to the Workmen's Compensation Act, 1941, made by Act No. 36 of 1949 are given above.

Unemployment Insurance Act, No. 53 of 1946, as amended by Act No. 41 of 1949

645. This Act, as amended by the Act of 1949[322] also contains provisions establishing racial discrimination in the payment of compensation and other benefits.

646. Under previous legislation in this field (the Unemployment Benefit Act, 1937, as amended in 1942) provision had been made for the establishment of unemployment benefit funds for particular industries. Unemployed workmen received statutory benefits only if a fund had been established for their industries. Beneficiaries, however, might not include labourers—that is, persons earning less than £78 per annum and engaged on certain types of work, or persons whose contract of service was regulated by the Native Labour Regulation Act.

647. The 1946 Act extended unemployment insurance to workers earning less than £78 per annum and previously excluded. The Act was not to apply, however, to persons of any racial group who were employed in domestic service, agriculture, the public service or the provincial administrations, or to persons in the permanent employ of the Railways Administration; in addition, Natives employed in gold and coal mines who were provided with food and quarters, and Africans employed in rural areas elsewhere than in factories or industrial undertakings, were excluded.

648. The Amending Act, No. 41 of 1949, now in effect restores the situation which existed before the 1946 Act, for the Act does not now apply to a Native earning £182 or less per year. Furthermore, "seasonal workers", who are specially defined, are now excluded, and the Minister may also declare that persons employed in specified businesses or persons of a specified class fall outside the Act.[323]

Pensions Laws Amendment Act, No. 47 of 1951

649. This Act amended certain provisions of the pensions legislation referred to above, but the differentiation between racial or colour groups was maintained.

IX. Education and public health

650. Under the South Africa Act, 1909, education and public health are provincial matters and do not concern the Union Government; consequently, there is no Union legislation on these matters. The present situation resulting from provincial decrees and administrative and other practices is studied in Chapter VII of this report.[324]

X. Criminal law

POSITION BEFORE THE UNITED NATIONS CHARTER

Penalties for offences against certain provisions of law involving differential treatment

651. In considering the statutes and regulations providing for differential treatment of various sections of the population, the Commission noted that breaches of certain provisions of these enactments have been made criminal offences punishable by fine or imprisonment. In many cases the offences can be committed only by persons belonging to a single group; this naturally leads to differentiation in the application of the criminal law.

652. The many laws on travelling passes mentioned in Section III, subsection (i) of this chapter form a special branch of these enactments. In most cases it is a criminal offence for a Native not only to lack a document prescribed by law or to refuse to show it on demand, but merely not to be carrying it on his person. Colonel Reitz, Minister for Native Affairs, announced in March 1942 that in the three years 1939, 1940 and 1941 in the Transvaal alone a total of 297,000 Natives had been arrested, and 273,000 of these subsequently convicted, for pass offences. The Minister said: "No one can call this offence a crime; a contravention of the pass laws is committed in 90 per cent of the cases through sheer ignorance".[325]

653. The Native Labour Regulation Act, No. 15 of 1911, may be included in the same category. Section 14 of this Act made a breach of a civil contract by an

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[320] See generally *Handbook on Race Relations in South Africa*, 1949; Rheinallt Jones, "Social Welfare", 413, at page 424.

[321] Rheinallt Jones, *op cit.*, page 425; *Survey of Race Relations*, 1945-1946. See also the pension provisions under the Disability Grants Act, 1936, as amended in 1946, for persons over the age of 16 suffering from permanent mental or physical disabilities rendering them incapable of maintaining themselves. (Rheinallt Jones, *op cit.*, page 426; *Survey of Race Relations*, 1945-1946).

Compare the grants for the care of orphans, widows with young children, deserted children, and families whose breadwinners are incapable of earning, under the Children's Act, No. 31 of 1937, as amended by Act No. 25 of 1944. (Rheinallt Jones, *op. cit.*, page 428).

[322] See paragraph 638.

[323] *Handbook on Race Relations in South Africa*, van der Horst, pages 154-155; *Survey of Race Relations*, 1946-1947, page 15; *Annual Survey of South African Law*, 1949, page 285.

[324] It should be pointed out, however, that the Government may shortly lay before the Union Parliament a Bill giving effect to the majority recommendations of the Native Education Commission by transferring Native education from the Ministry of Education to the Ministry of Native Affairs. This would result in the complete separation of Native education from education of any other kind; it would integrate education into the life of the Natives and accentuate its technical rather than its academic side (*Cape Argus*, 13 June 1953).

[325] Kahn: *Pass Laws*, page 285; see generally *South African Institute of Race Relations*, 15th annual report, 1943 and 1944, page 5; see also statements by Senator W. G. Ballinger in the debate on the Bill for the abolition of Native Passes and Standardization of Documents (see above, paragraph 508).

African a criminal offence punishable by a fine of £10 or two months' imprisonment.[326]

Native Administration Act, No. 28 of 1927, as amended by Act No. 9 of 1929

654. This Act extended all the powers previously held by the Governor-General over Natives in Natal Province to cover those in the provinces of Transvaal and the Orange Free State.

Under section 9, the Governor-General may by proclamation confer criminal jurisdiction on a native commissioner, who will then exercise it concurrently with the powers of a magistrate's court.

Natives (Urban Areas) Consolidation Act, No. 25 of 1945

655. Many provisions of this Act[327] regarding working permits, labour contracts, native travelling passes, etc., carry penalties of fine or imprisonment. Most of these measures were already in force under previous enactments, which were merely codified by the 1945 Act.

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

Native Laws Amendment Act, No. 54 of 1952

656. Special mention should be made of the provisions of section 29 of this Act, as amended by Act No. 54 of 1952, giving administrative officials and magistrates very wide powers over Natives reputed to be "idle" or "undesirable".[328]

Natives (Abolition of Passes and Co-ordination of Documents) Act, No. 67 of 1952

657. As stated above (see paragraph 511), this Act introduced a reference book for Natives, to replace by a single document the various passes which they were obliged to carry. A Native required to carry a reference book, who is unable or who refuses to produce it on the demand of an authorized official is guilty of an offence and on conviction is liable to a fine not exceeding £10 or imprisonment for a period not exceeding one month.[329] If he does not possess a reference book he is liable to a fine not exceeding £50 or imprisonment for a period not exceeding six months. The Act applies to certain classes of persons who were exempted under previous statutes concerning native passes.

658. Some recent Acts include provision for differential treatment of various sections of the population of the Union of South Africa, but contain penalties applicable without distinction to offenders of any group. The following Acts in particular are of this kind:

Prohibition of Mixed Marriages Act, No. 55 of 1949

659. Sections 2 and 4 of Act No. 55 of 1949 contain penalties for certain offences.

Under section 2 any marriage officer who performs a marriage ceremony between a European and a non-European, knowing that the parties to the marriage do not belong to the same racial group is liable to a fine not exceeding £55. Under section 4 any person who, in order to induce the marriage officer to perform a marriage ceremony, makes a false statement to the officer regarding the group to which he belongs is liable to the penalties for perjury.

Immorality Amendment Act, No. 21 of 1950

660. The penalties provided in sections 1 and 2 of this Act were discussed above.[330]

Population Registration Act, No. 30 of 1951

661. For article 18 of this Act see paragraph 461 above.

XI. Taxation

POSITION BEFORE THE UNITED NATIONS CHARTER

662. Even before the Union of South Africa came into being, Natives in the various territories of which the Union was formed were subject to certain special taxes.

Under Law No. 22 of 1895 of the South African Transvaal Republic, Natives crossing the frontier were required to pay a tax of one shilling. Another law of the same period, Law No. 24 of 1895, established a poll tax of £2 per year on every male adult Native and an annual tax of ten shillings on every straw hut or house lived in by a Native. By the Volksraad resolution of 26 August 1896 all coloured missionaries on the proclaimed gold fields not working as servants in the employ of White persons had to obtain from the Superintendent of Natives a band and plate valid for one year and a yearly pass costing five shillings. A resolution of the first Volksraad of 8 September 1893 provided that all Chinese must have a special pass carrying a £25 stamp and valid for one year only.

Chapter 70 of the Legal Code of the Orange Free State provided that certain taxes should be levied on Coloured persons employed in public mines (mineral deposits). Any Coloured man working in a public diamond digging was required to pay a registration fee of one shilling per month. Under chapter 71 of the same Code a poll tax of ten shillings per year was to be levied on any Coloured man over 16 and under 70 years of age not employed in a public digging. The severity of this provision was somewhat attenuated by an amendment adopted in 1896.

Native Taxation and Development Act, No. 41 of 1925, and Native Taxation (Amendment) Act, No. 25 of 1939

663. This Act obliged all adult male Natives not exempt from its provisions to pay a general tax of £1 if they were domiciled within the Union or had lived there for twelve consecutive months immediately before the date on which the tax became due.[331] Furthermore, a local tax of ten shillings was imposed on every hut or dwelling occupied by a Native in a Native location within the Union.[332]

MEASURES INTRODUCED SINCE THE UNITED NATIONS CHARTER

664. No measures of any importance have been adopted since the signature of the United Nations Charter.

[326] See generally Sachs: *The Choice Before South Africa* (1952), page 39.
[327] See paragraphs 502 *et seq.* and 524 *et seq.*
[328] See paragraph 532.
[329] Section 15.
[330] See paragraph 636.
[331] Article 2 (1).
[332] Article 2 (2).

XII. Other measures involving differential treatment

665. The Commission also noted the following legislative measures providing for differential treatment of the various sections of the population of the Union of South Africa.

Arms and Ammunition Act, No. 28 of 1937

666. Before the Union of 1909 both the Transvaal and Natal had had legislation restricting the possession of firearms by non-Europeans. After the Union was formed the laws of the various provinces were amended and consolidated into a single code, the Arms and Ammunition Act of 1937. Under this act no person may possess firearms without a permit, and no permit to possess arms may be granted to a non-European without special permission from the Minister of Justice.

Liquor Act, No. 30 of 1928, as amended by Act No. 14 of 1951

667. The Act of 1928 on alcoholic liquor generally prohibits the supply of any alcoholic drink to Natives, who under section 29 have no right to obtain or possess alcoholic drinks. The same restriction applies to Asiatics and Coloured persons in the Transvaal and the Orange Free State. In the province of Natal the sale of drinks to Asiatics is permitted, but only in certain places especially designated, and only for consumption on the premises.[333]

Chapter VII

LIVING CONDITIONS OF NON-EUROPEAN GROUPS

Preliminary observations

668. In the previous chapter the Commission analysed the substance of South African legislation in so far as it provides for or implies discriminatory treatment by the legislating European minority of the other ethnic groups.

It will now briefly describe the living conditions of these various ethnic groups in a singular political community where the former colonizers live side by side with the indigenous inhabitants, where a long-standing tradition has established and consolidated a more or less empirical and rigid line of demarcation between Whites and non-Whites, and where a deliberate, organized governmental programme of more systematic segregation or *apartheid* than previously existed has just reached the stage of implementation.

669. The task that has been undertaken is an arduous one. There are serious difficulties in the matter of documentation, to which the Commission draws attention in the introduction to this report.[334] Having been unable to learn the facts direct in South Africa, it was obliged to resort to indirect methods: it had to content itself with hearing witnesses and judiciously scanning the newspapers; it had to rely upon publications by South African authors and studies of the Union of South Africa by foreign observers. In order, however, to reduce the possibility of error to a minimum, it had first to subject these publications and studies to criticism and ascertain their value and objectivity. In particular, it made use of the books and documents enumerated in the bibliography at the beginning of the *Official Yearbook* of the Union of South Africa.

Complications peculiar to the Union of South Africa

670. Other difficulties encountered by the Commission are due to the heterogeneous demographic structure of the population of some ten million human beings who are subjected to discrimination. These ten millions consist of (*a*) the Bantus, by far the largest group, who form a solid block in the four provinces of the Union; (*b*) a group of Coloureds, chiefly concentrated in the western part of the Cape Province; (*c*) a group of Indians, consisting of about 10 per cent of immigrants, fairly well on in years and 90 per cent of descendants of immigrants, chiefly concentrated in the Province of Natal.

671. The nature and strictness of the segregation vary greatly according to the traditions that existed in each province before the Union came into being with the South Africa Act of 1909, and which have not yet disappeared. Thus in the Cape Province Coloureds still, at least for the time being, possess electoral rights denied to those in the Transvaal, and a non-White can, equally with a European, sit undisturbed on any bench in the Cape Town Botanical Gardens, whereas in the public gardens of other towns in other provinces he can sit only on a bench which is clearly marked as being for his use. In Natal Indians have so far retained the right to own property, although that right may be withdrawn, while in the Orange Free State they have not even right of residence. The Bantus receive different treatment in various departments of daily life, in each of the four provinces.

672. Since 1910 there has been a trend towards uniformity in South African legislation. The goal is however far from being attained. For example, Coloureds are legally prohibited from buying alcoholic liquor in the Transvaal but not in the Cape Province. The authors of the report on the bloody clashes between Indians and Bantus which occurred at Durban on 13 and 14 January 1949 cited the following among the "concomitant causes":[335]

Obtaining liquor

> "Natives assert that they are as fond of the 'Queen's tears' (European liquor) as the Indians. Until recently the Indians could freely purchase liquor in bottle stores, and may still obtain it in bars, whereas it is an offence for the Native to be in possession of liquor."

[333] These prohibitions and restrictions do not apply to the drink known as "Kaffir beer". Moreover, under section 90 (2) any farmer in Cape Province may supply a certain amount of wine free to any Native or Coloured day labourer working on his farm. This is known as the "Tot system".

[334] See preface, paragraphs 5 and 6.

[335] *Union Gazette* 36-49, page 18 XI *a* and XI *b*.

Pass laws

"The impression one gets is that in Durban and its peripheries the Pass Laws are honoured in the breach rather than in the observance. Yet the Native resents it that, in theory at least, he has no freedom of movement, whereas the Indian may move at will within the confines of the Province."

673. These specific cases, quoted here merely as examples, show clearly the labour that would be involved in describing with any accuracy the life of the three principal ethnic groups. Apart from the variations between groups there may be variations between provinces or within each group. It would be quite impossible to describe the life of the Bantus in the Cape Province alone without taking into account the considerable divergencies in their way of life, their mentality and the treatment they receive (*a*) in the Reserves, (*b*) in the country districts and (*c*) in urban areas.

674. The Commission will therefore confine itself to the study of certain specific aspects of the life of the non-Europeans in the cultural, political, economic and social spheres. It will try where practicable to deal under the same heading with the three main ethnic groups, but this will not always be possible.

The aspects that will be dealt with were chosen because of their importance for the harmonious development of the community as a whole and for the part they will inevitably play in any effort to raise the material and intellectual level of the South African masses.

Past and present

675. The brief sketch the Commission has tried to give below was drawn up bearing in mind the fact that the General Assembly resolution instructed the Commission to study the racial situation in the Union of South Africa as a whole. That situation is to a large extent a heritage from the past. As the Afrikaners (who were then called Boers) occupied the country, forcing the Bantus to retreat into the largely mountainous areas which served them as "redoubts", a natural *apartheid* was established between Blacks and Whites, the boundaries of these redoubts, which were rather indefinite at first, became fixed and the future "Reserves" continued to live their own tribal life. The process was perpetuated and extended, first by custom and then by legislation, since in fact the compounds attached to White men's farms, the hostels near the mine-heads and the "locations" on the outskirts of the towns are small "Reserves" of the traditional type but adapted to the new conditions of modern economic life. As the Prime Minister has said on a number of occasions, the South African Government's recent policy of *apartheid* is a "traditional" policy. Its object is to strengthen, to codify, to systematize and to present as a body of doctrine and a goal an accumulation of racial attitudes and time-honoured measures and to extend them to racial groups other than the original group of Bantus and to new spheres such as industry.

Thus this chapter covers both the racial situation prior to the recent legislative measures and the new situation which is being created by the psychological impact of this legislative avalanche and by the first implementation of the measures voted by the Cape Parliament.

676. The chief difference between former legislation and that recently enacted is that the former was sporadic and empirical. Even that, however, is not entirely true, for as long ago as 1936-37, under the direction of General Hertzog, the Prime Minister, Parliament made a considerable and deliberate attempt at segregation in the hope of "solving" once for all the problem of the indigenous inhabitants. That attempt soon proved to be inadequate or futile. The present government returned to the charge, but this time, while strengthening the measures of segregation, it categorically declared that they were beneficial not only for the South African population as a whole but especially for the Bantus and the two other ethnic groups, Coloureds and Indians, to whom it was proposed to extend them. It is alleged that the most desirable future for the Bantus lay, not in superficial assimilation or pseudo-adaptation to White civilization but in maintaining the fine Bantu traditions of honour, obedience to the chief, patriarchal dignity, etc., and in developing the natural genius of the race. It is further urged that the first prerequisite for such development is segregation "tactfully and patiently" carried out and as far as possible freely accepted.

The Government has in fact recently been making increased attempts at persuasion; for example on 14 and 15 August 1953 the Prime Minister received four deputations of Coloureds and explained to them the benefits their people could hope to gain if they agreed willingly to the proposed governmental measures.[336]

677. But while holding before the eyes of the three non-White ethnic groups a distant future full of fair promise—a future based entirely on the permanent diversity of the races concerned—the South African Government does not apparently take sufficiently into consideration the economic evolution at present taking place and, as far as can be foreseen, likely to continue in the years to come.

678. There is general agreement on one point: irrespective of recent legislation which is only just beginning to produce its effects, the present standard of living of the non-Whites is very low and their opportunities of economic advancement, social progress and access to more varied and better paid kinds of work are very slender, even though they have so far been appreciably greater than in the neighbouring Bantu lands, from which there is a persistent and frequently clandestine movement of Africans in search of the much higher industrial wages obtainable in South Africa. But while holding out to the Bantus in the Reserves, the countryside and the towns these distant prospects, of which they apparently grasp the somewhat illusory nature, the South African Government is depriving them of opportunities of development, limited perhaps but immediate, on the other side of the imaginary barrier of segregation, i.e. in the world of the Whites. As far as can be judged by reading the Bantu Press, for instance the *Bantu World* of Johannesburg, which includes a "Readers' Forum", many Bantus realize the advantages they enjoy, in spite of everything, in the mixed "White-non-White" system where they are today assured of a humble place, and

[336] He was referring in particular to the Separate Representation of Voters Act, 1951, which is analysed in chapter VI, paragraphs 478 *et seq.* In this connexion see the extracts from a statement made by the President of the Council on 17 August 1953, published in the London *Times* of 19 August 1953.

are not at all anxious t return to tribal conditions of life.

In any event, there is no doubt that even if many of the Bantus are unable to understand the meaning and scope of the measures voted by the "big pitso"[337] (Parliament) of the Cape, they have a confused feeling that something is afoot which will deprive them of a little of what is theirs. This individual and collective uneasiness is profound and is likely to increase rapidly, concurrently with the development of the *apartheid* policy.

Indirect effects of discrimination

679. The Commission has noted another danger which is likely to arise: the intensified *apartheid* policy started by the present government in 1948, which alarms many Indians and even uneducated Bantus, may render the non-Whites suspicious of measures which have no connexion with racial discrimination but which they believe are designed to injure them instead of being, as they are, in their interests. One example will be enough: that of the selection and limitation of cattle in the Reserves.

Cattle and overgrazing

680. Overgrazing is one of the most serious problems in the Reserves.[338] The only remedy is to weed out the cattle and get rid of the less good beasts in order to reduce the herd to a reasonable size. To do so, however, arouses a good deal of resistance. Traditionally, cattle for the Bantus have a social and symbolic rather than an economic or monetary value. In other words, the Native is less interested in the market value of his cattle than in their number, even if they are only skin and bone. A young man who wishes to marry can procure a more or less desirable wife of a higher or lower social position according to the number of his cattle. This bride-price paid to the bride's father by the future husband or his father is called *lobolo* in Xhosa and *bohali* in Sesuto.

In pursuance of the policy of *apartheid* the Minister of Native Affairs will have to intensify the campaign against overgrazing so as to develop the indigenous Reserves and enable them to support a larger number of Bantus; that will entail limiting the number of head of cattle and persuading the Natives to accept the idea of weight and quality rather than quantity.

The officials of the Ministry are patiently trying to do so. Nevertheless, although some of the Bantu tribesmen seem to have understood, many of them believe, or allow themselves to be convinced, that the Whites wish to impoverish them. That is what occurred recently in the Reserve of Witzieshoek (Orange Free State). The characteristic series of outbreaks which took place there was the subject of a detailed report[339] from which the Commission feels it should give the following facts:

681. The Witzieshoek Reserve is inhabited by two Basuto tribes, the Bathlokoa and the Bakoena. It covers approximately 50,000 morgens[340] of which only 6,000 to 7,000 are arable. Under the terms of the 1939 Proclamation on "Betterment Areas",[341] the Witzieshoek Reserve was proclaimed a Betterment Area on 13 October 1939. The directives with which the Natives had to comply were explained to them and during a meeting held during the same year they adopted—or so at least the officials of the Department of Native Affairs believed—a resolution accepting the proclamation.

The next step was to assess the carrying capacity of the Witzieshoek grazing land. A surplus of nearly a thousand head of cattle was noted which had to be eliminated. Two attempts at weeding out (in 1942 and 1946) aroused much resentment and hostility, particularly on the second occasion. The reasoning of the Natives was as follows: "We were told that only inferior cattle would be eliminated. The cattle is now being weeded out in order to cut down its number. The tribe has been deceived. It did not accept any limitation on the number of cattle".

From that moment, resistance steadily increased. The Natives pointed out again and again that they had agreed to "stock improvement" but that no mention had been made of "stock limitation", for which they would never have voted. Deputation succeeded deputation, petition followed petition, and one stormy meeting led to another. Soon afterwards the first cases of sabotage occurred. It was not, however, until the second half of 1945 that they became really serious. Three "plantations"[342] were partly destroyed by fire, barbed-wire fences were pulled down over a distance of more than two miles. The situation became even worse in July and August 1950; more fences were destroyed, more "plantations" were burned down, veld fires were started on a large scale, a sheering shed was damaged and so on.

682. The Commission of Inquiry appointed by the Governor-General established beyond all possible doubt that the violence of local resistance was partly due to external pressure from members of the Witzieshoek tribes working near Johannesburg who were apparently fired by the resentment aroused in all urban areas by the first *apartheid* laws voted by the Nationalist Government.

683. In such a political atmosphere ill-informed masses may oppose measures which not only involve no discrimination against them—because the principle underlying them is accepted by the Whites—but are designed to improve their future lot.

The explanation here is both simple and tragic. The authorities who carried out the limitation of stock by selection were Whites; those to whom the law was applied and who had in fact been consulted in advance, were Natives. That distinction contains all the elements of serious and lasting racial tension likely to make the problem of future food supplies for the Bantus in the Reserves insoluble.

684. Further, the variations in wealth among individuals and social classes, which for centuries have been more or less readily accepted in all countries of the world, take on a provocative character against a background of racial discrimination. So utterly un-

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337 Sesuto word meaning "council of the tribal chief". Thus they call the South African Parliament "the big pitso".

338 That is, the situation which is created when too many beasts are fed on grazing-land. Not only are they undernourished, but they prevent the grass from growing again and denude the soil, which leads to destructive erosion.

339 *Union Gazette* 26-1951.

340 The South African morgen is equivalent to two and one-ninth acres.

341 Heavily eroded areas where farmers undertake to comply with certain directives designed to arrest erosion and improve the grazing and agricultural resources of the area.

342 In South Africa a distinction is always made between natural forests and plantations of pines and eucalyptus trees, for example, established by the Department of Forests.

just do they seem that they become intolerable and give rise to extremely grave tension. Several examples of this phenomenon will be found in the following study.

Differences in the reaction to discriminatory measures

685. The reaction of individuals and groups to discriminatory measures varies widely according to their level of development and culture. What cuts one to the quick may leave another almost indifferent. The Indians, for example, with their long tradition of trade, would be much more sensitive to a discriminatory measure applied to trade than would the Bantus whose view of life is still based on a subsistence economy despite the fact that they are now involved in a monetary economy. A primitive Zulu still at the pre-logical stage of development reacts to discrimination very differently from a professor of the Native College at Fort Hare.

686. From this standpoint, the social structure of each of the three non-White ethnic groups might be compared to three pyramids of equal height but with varying bases.

The pyramid with the largest base in relation to its height obviously represents the "African" community. Next come those representing the Indian and Coloured communities. At the base of all three pyramids are the primitive people who live in the Reserves under the tribal system, who are agricultural workers employed by White farmers, or who live together in hostels or locations in the towns, where they remain for a short time only and for a temporary period of work (for example, in the mines). For the most part these people cannot read or write or have forgotten the little they learned in primary schools.

687. At a higher level, but still some way from the apex of the pyramid, is an intermediate class composed of those who may conveniently be called semi-educated. These people have usually been to school for a few years and been in close contact with Whites either in factories or as servants;[343] they have perceived certain differences in the amenities of life, learned a little English or Afrikaans (if they do not speak the latter from birth as do most Coloureds), read or heard news from newspapers, have some desire for progress and are already aware that they are underprivileged.

688. At the apex of the pyramid is the small educated majority whose cultural attainments, way of life, intellectual and other needs and aspirations bring them closest to the level of the Whites. It may be said that they have almost assimilated Western civilization in their way of life, or rather the way of life they eagerly desire for themselves, but which the interracial structure of South Africa makes impossible of attainment.

The proportion of educated persons is noticeably higher among Coloureds and Indians than among the Bantus but all these educated persons may be said to have reached a comparatively high level of modern culture. They are town-dwellers, which is hardly surprising, for the relatively high proportion of educated persons among the Indians and Coloureds is due precisely to the fact that large numbers of them have long lived in the towns.

689. In character, these educated persons, who are almost all advocates of integration or assimilation (that is, of a process diametrically opposed to *apartheid*), fall into two categories, the first of which includes the impatient, the militant and the headstrong, who are prepared for every exertion and struggle in order to obtain immediate equality and the second, the moderates, whose aims and programme are identical but who believe it preferable, in the interest of their racial brothers, to avoid recourse to subversion or violence.

690. Leaving aside the difference in their mode of action, these two categories of educated persons have the same reaction to discriminatory measures affecting them, their entire ethnic group or non-Europeans as a whole. Aware of their responsibility as members of the intellectual *élite* of their group, they suffer—as if by proxy—far more than their uneducated or semi-educated brothers, from a measure which leaves the latter indifferent, but which to them appears in the light of a "degradation" or "humiliation". These words, indeed, are often used by the leaders of the African National Congress and of the South African Indian Congress. An uneducated Native who was met in a European grocer's shop with the greeting: "Hello, Jim, what do you want?" would be unlikely to take offence at this "counter-christening", which represents the familiarity of a master addressing a servant. But if he was accompanied by an educated non-White, the latter would resent the greeting, though not addressed to himself, as an insult and would take it deeply to heart.

The educated person who is himself the victim of discrimination is concerned to find that his uneducated brother does not share his suffering: he regards this insensitivity as a form of ignorance which he wishes to remove. He is often called an "agitator" whereas in fact he is only an "awakener".

691. There is no doubt that during the next few years and particularly under the increasing pressure of *apartheid*, these "awakeners" will become more and more numerous and they will have less and less difficulty in awakening those still half-asleep. For the desire for a better life, the pleasures of modern civilization, artificial though they may be, and the enjoyment of all the opportunities available on the other side of the "colour bar" cannot fail to grow under the (almost irresistible) impact of the flow of information that modern technology brings to all men, even to those living in kraals in the Drakensberg mountains.

When the Zulu hymn was sung at Caux (Switzerland) in September 1951 by two Zulus invited to the annual Moral Rearmament Assembly, the *African Eagle* of Lusaka (Northern Rhodesia), which is read by many Africans in Johannesburg and even as far south as Cape Town, spread the news throughout South Africa.

When on 8 June 1953 the United States Supreme Court decided that the restaurants of Washington, D. C., should serve both Negroes and Whites, the news immediately appeared in the *Bantu World* of 13 June and gladdened the hearts of many Africans.

Quite recently (August 1953) the Union newspapers announced that alterations were being made in the post offices of Northern Rhodesia so that, instead of having separate entrances and counters, there would in future be common entrances and counters for both

[343] There are about 350,000 Bantu servants of both sexes. Moreover, domestic servants in European households and hotel staff include a large number of Indians and Coloureds.

Whites and Natives. Any educated or even uneducated non-European in South Africa would be moved by this news to make an unfavourable comparison between the trend of racial policy in Northern Rhodesia and present policy in South Africa.[344]

692. These are some of the considerations of which the Committee took account in its study of the present racial situation. That situation is described in the following chapter.

I. Educational opportunities

693. In the communities which still include a large number of illiterates, as is the case with the three ethnic groups who are the subject of this survey, educational questions are of primary, although varying, importance to all levels of the population. Those who, in very difficult conditions, have managed to assimilate the basic elements of European culture almost invariably direct their efforts not only towards using the knowledge thus acquired but also towards helping the more backward members of their race to reach a level equivalent to their own. The fact is that this intelligentsia, still a scattered few, feel isolated and powerless if they are not supported by an appreciable number of brethren of their race who are able to understand them or read what they have written. Moreover, the semi-literate try to improve and increase their education, impelled both by a spirit of emulation and by the fact that their observation of European society has convinced them that without education there is no question of obtaining well-paid employment or advancing in life. Thus, step by step, the need for education reaches those who form the base of the pyramid.[345]

Since this aspiration is more or less shared, or will inevitably be so in the near future, by all the Indians, all the Coloured people and all the Bantus, it is well to begin by considering this aspect of the racial situation in South Africa.

694. The education of non-Europeans in South Africa is rapidly emerging from the historical phase when it was almost entirely in the hands of missionaries, who brought with them the spiritual and intellectual equipment of western civilization. The provincial authorities, who are responsible for all primary and secondary education, have gradually been led to subsidize these schools and in some cases even to supplement them with "government" schools.

695. The principal fact to be borne in mind is that primary and secondary education for the non-Whites is now given in schools entirely separate from those for European children. The word "now" must be emphasized, for as late as 1860 or thereabouts European and "Coloured" children in the Cape Province often attended the same schools and shared the same classrooms. Soon afterwards, however, the tendency was to separate European and "Coloured" children in the Cape Province and Natal. In the Transvaal and the Orange Free State, however, there had from the very beginning been a strict separation of Whites from non-Whites. Thus it was the racial attitude of the republics in the North that finally pervaded the entire Union. It is easily understandable that the more advanced Coloured people, of whom there are many, were and are very bitter on this score.

(i) Primary education

696. Primary education is compulsory for the Whites. It is not compulsory for the non-Whites,[346] but has been developing rapidly since the beginning of the twentieth century.[347] According to the latest statistics provided by the competent South African authorities,[348] in 1953 there were in the Province of the Transvaal 6,000 teachers for Bantu education, 1,442 schools, (as against 1,015 in 1945) and 275,000 pupils (as against 202,000 in 1946).

697. The sums devoted to Bantu education by the Central Government, which distributes it to the four Provinces, which are responsible for the administration of education, are increasing rapidly from year to year. During the past seven years, the rate of increase has been about ten per cent each year over the previous year, with the result that the annual budget for Native education in the Union of South Africa now exceeds £8,000,000. In 1946-47, the Transvaal budget provided for an expenditure of £736,041 for Native education. By 1950-51 that figure had risen to £1,597,735. There has been no slackening in the progress of education since the Nationalist Party came to power. Even if the *apartheid* programme described in chapter V is progressively applied, the primary education provided for the Bantus will for some time to come still fall far short of the level of education which the present government regards as indispensable to enable the Bantus to play the very humble part allotted to them in society.

698. The important point here is that although the ratio of children attending primary school to the total population in a given ethnic group is almost as high for Coloured persons as for Europeans (about 1/5), it is lower for Indians (about 1/6) and lowest of all for Bantus (about 1/11). In considering these figures,[349] however, it must be remembered that among the Europeans children represent a much smaller fraction of the population than among the non-European groups and that the average period of school attendance is much shorter for non-European than for European children. This means that for at least two of the three ethnic groups mentioned the situation is actually much worse than appears at first sight.

The statisticians—whose source material is apt to be unreliable, since the authorities have not yet been able to make vital statistics registration compulsory in the Reserves—estimate that the 900,000 or so Bantu children attending school do not account for even half the children of school age.

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[344] Since 1949 all post offices in the Union of South Africa are required to have two counters, one for Europeans and the other for non-Europeans.

[345] See the evidence submitted to the Commission by Mrs. M. Crosfield (19th meeting, 5 August 1953—document A/AC.70/1).

[346] It is the education of Coloured persons that is closest to the stage where the authorities believe it can be made compulsory. In 1945 the Council of the Cape Province promulgated an ordinance permitting school boards with the necessary facilities to make primary education compulsory for "Coloured" children. The following six towns of the province have been able to take that important decision and have made attendance at primary schools henceforth compulsory for the children of this ethnic group: Simonstown, King William's Town, Keiskammahoek, Kimberley, Cradock and Alice.

[347] See chapter IV, paragraph 398.

[348] The Commission is referring here to statements made by the Administrator of the Transvaal when he submitted the provincial budget on 17 August 1953. A summary of those statements was given in the London *Times* of 18 August 1953.

[349] Computed by the National Bureau of Educational and Social Research of the Union of South Africa.

699. There is a general shortage of school buildings for non-European children, despite the encouragement of the Provincial authorities, whose policy is to make grants-in-aid to all communities which themselves make an initial financial effort clearly indicating their desire to have a school.[350] Most of the school buildings are very rudimentary. Many schools have only one classroom and only one male or female teacher, so that children who are of different ages and at different stages of education must all be taught at the same time. Classes of fifty pupils are not unusual. There are not enough textbooks and those available are often out of date or of poor quality. In short, the results of an education subject to such obstacles and inadequacies are made even more discouraging by the fact that the actual period of schooling for the children who have the "privilege" of attending school is too short: often only two or three years instead of the eight years provided in theory.

700. The examinations reveal that the children of the Native schools are at least two years behind European children of equivalent ages both in the knowledge they have acquired and in their intellectual development. This is hardly surprising when it is remembered that the European children not only work in much better conditions, but also are spared the linguistic difficulties with which the young Bantus have to contend.

It must be borne in mind that when the young Bantus first attend primary school they speak only their native language, which may be Zulu, Xhosa, Sesuto or some other. In accordance with the methods and practice now accepted in all countries of the world, the language of instruction of these children in the South African schools is their mother-tongue. The time soon comes, however, when they must learn Afrikaans or English or even some rudiments of both. Even if these children have a gift for languages, and that is not unusual, the great effort of memorizing and assimilating contributes in no small measure to their position of inferiority and backwardness in comparison with the White pupil.

This language difficulty is no less a handicap to the young Indians, who also come to schools speaking a multitude of different languages.[351] The "coloured" pupils, however, do not have to contend with the same difficulty, because their ethnic group has no language of its own and ordinarily speaks Afrikaans.

(ii) Secondary education

701. While the non-White ethnic groups are clearly at a disadvantage in relation to the Europeans as regards primary education, they are even worse off in the case of secondary education. The reasons are not hard to understand. The families whose child might wish to continue his education beyond primary school are generally so poor that, even if they live in a town and the father and mother both work, they cannot afford, despite the fact that education is free, to pay the child's fare to the secondary school, which is often far away from the home, support the child while he is away from home, buy his textbooks, etc. It is poverty, and not the lack of any desire to learn, that is to blame for the small number of non-European students attending secondary schools. In 1946 there were only 22,015 Bantu students in all classes of the secondary schools throughout the Union. Since then this figure seems to have risen considerably, but in proportion to the total population it is still very low.

702. Although in theory and in practice the curriculum of the primary schools for young Africans is quite different from that of the schools for Europeans, in the secondary schools the curriculum and examinations are the same for all ethnic groups.[352] There is no doubt that the parents of the young non-Whites, and the young non-Whites themselves, desire an education designed for Europeans and subject to the same examinations as are taken by the Europeans.

703. In the ordinary course of events, the matriculation certificate should enable the young persons who hold it to obtain better paid work than that to which the uneducated masses are of necessity restricted. It is precisely here, however, that the colour barrier intervenes. In many occupations the wage-earning opportunities of educated students are hardly any better than those of the Bantus without an education, and the two groups may even work side by side in such tasks as sweeping, unloading ships, or household or hotel service. The result is discouragement and the feeling of being able to find only work that calls for a mere fraction of their ability—in short a painful feeling of frustation that can quickly and easily engender a complex first of bitterness, then of open aggressiveness and finally of rebellion.

704. South Africa has no special educational establishments for training future school teachers. The training of primary school teachers devolves principally upon the secondary schools; so much so that the best, or even the majority, of the non-European students with secondary education find their principal, and almost their only, intellectual outlet in education.

(iii) The universities

705. There is not one among the different charters of South African universities[353] that contains a legal "colour barrier" excluding properly qualified young non-Europeans who have the desire and the means to continue their education. In actual fact, however, the Universities of Cape Town and Witwatersrand are the only two universities for Europeans which admit non-Europeans to the same courses and lectures as Europeans. Non-European students are also admitted to the University of Natal, but their courses, although exactly parallel to those of their European fellow-students, are held in different premises or at different hours. Between 100 and 200 non-White students are enrolled each year at the University of Witwatersrand and about the same number at the University of Cape Town. Some study medicine—but in the face of untold difficulties, owing mainly to the racial prejudice which is rampant even in the dissection rooms[354]—and some study law, but the majority take up science, literature, administration or education.

706. In the southern part of the Cape Province there is a Native university, Fort Hare, which was founded

[350] The extreme poverty of many non-European communities must, however, be borne in mind.

[351] See chapter IV, paragraph 343.

[352] It will be seen that this situation is threatened (see paragraph 710).

[353] In contrast to the primary and secondary schools, the universities are under the control of the Central Government, which is directly responsible for their financing.

[354] See the evidence submitted to the Commission by Mrs. M. Crosfield (19th meeting, 5 August 1953—document A/AC.70/1). It should be added that the Union Government provides five medical scholarships each year at the University of Witwatersrand for young Natives who reside in the Union.

in 1916. It is affiliated, for examinations, with Rhodes University (for European students) and provides about three hundred students with as good an education as its very modest resources permit. Although the great majority of the students are Natives, there are also a few young Coloured persons and young Indians. Only a few subjects are taught; laboratories are either non-existent or rudimentary and the professors are poorly paid. Thus, despite the moral calibre and erudition of its teaching staff and despite the thirst for knowledge of its students, this university gives the impression of being in a state of stagnation.[355]

(iv) Access to the professions

707. This is perhaps the most pathetic aspect of the racial situation as studied by the Commission in the field of education. Almost all professions, other than education and the church, are closed to cultured young Natives who have completed their studies.[356] Unlike the Indians, they are not yet resourceful enough to engage in business, for their very recent tribal past and the centuries during which they have been accustomed to a subsistence economy have thus far prevented them from becoming tradesmen in a monetary economy, with the result that as buyers of consumer goods they are still almost invariably customers of the Whites, the Indians and the Coloured people.

(v) The Press

708. There is one field, however, where some hope for the future seems to lie for educated Bantus, and that is journalism. The Bantu, the Indian and the Coloured press is, to be sure, still very modest. It consists solely of weekly newspapers with a very rudimentary information service. It has, however, an important function to fulfil—and is already beginning to fulfil it—as an agent for disseminating in a simple form economic, commercial, artistic and historical information that can be very useful for those of little education who know how to read. Nothing is more enlightening in this regard than a perusal of the various newspapers in this category, which in some respects resemble similar weeklies published about thirty years ago in the United States by coloured people for coloured people: the *Chicago Defender,* for example.

709. This Press was originally established by Europeans with European funds. For example, one of the first newspapers for Natives was established by a group of tea merchants who had the ulterior motive of instilling in the Natives, by direct or indirect means, a taste for tea. Similarly, the Chamber of Mines still has a partial interest in a chain of newspapers published partly in English and partly in Sesuto, Zulu, Xhosa and Chwana. It is a pleasure to observe the independence and the critical spirit of many of the articles written by non-Europeans.

710. There does not seem to be any censorship of articles like the one which recently appeared in *Ilanga lase Natal,*[357] the leading non-European newspaper of Durban, concerning the important report of the Government Commission on Native Education.[358] The authors of that report recommend that Native education should be placed under the Department of Native Affairs. Up to the present Native education has been the joint responsibility of the Department of Education, Arts and Science at Pretoria (which is common to all ethnic groups in the Union) and the Provinces.

The members of the above-mentioned commission would like to set the education of Natives clearly apart from that of Europeans and make it less "academic" and more practical. The associations of Native teachers have vigorously rejected those recommendations. The author of the article in *Ilanga lase Natal* is also opposed to the recommendations, because he fears that the Department of Native Affairs will "regiment" Native education according to its ideology and give it a narrower and more "realistic" tenor that will confine the younger generation even more rigidly to poorly-paid occupations that are regarded by the Europeans as too hard, too arduous or too undignified. The author suggests that a far more urgent matter than this administrative change would be the teaching of at least the rudiments of education to the disquietingly large number of Native children who have never seen the inside of a classroom. He then recalls that the Government spends £50 a year for each European child, £16 for each Asiatic or Coloured child and £7 for each Native child.

711. So great is the interest of both editors and public in educational questions that scarcely an issue of the newspapers of this Press appears without some reference to education; the readers may be invited to attend such and such a concert in such and such a hall at Sophiatown for the benefit of a new Methodist African school or they may be told about the annual conference of the Transvaal African Teachers' Association or the like.

712. In short, this Press already has an educational value which will apparently continue to grow. It is developing apace; there is an increasing volume of advertising, even on the part of European firms, which realize how the purchasing power of the Bantu population in the towns is growing. Complaints against the Europeans are expressed frankly and sometimes even sarcastically. In the realm of culture this is perhaps the principal sector where actual *apartheid,* in the form of a Bantu and an Indian Press distinct from the European Press and hence quite poor, is accepted as a natural state of affairs, or at least without resentment.

II. Political aspects

713. It is undoubtedly the political and parliamentary aspects of *apartheid* which are most keenly felt by the small number of Bantus, Indians and Coloured persons whose acquisition of a European culture, or whose close and continuous contact with that culture at a high level, have made them politically conscious. As witnesses of the parliamentary struggles between the two great European parties, the Nationalist Party and the United Party, they not only follow those struggles in the Press and understand them, but they realize that it is they themselves for whom the Whites are legislating and that their situation, which is already none of the best, is liable to be made a great deal worse. They understand perfectly the significance of the manœuvres being prepared and discussed in the House of Assembly, and they are particularly attentive and alarmed if they see that the new legislation directly threatens their principal asset, their great potential

[355] See John Hatch, *The Dilemma of South Africa,* 1952, page 185.

[356] Dentistry, for example, is restricted to young Europeans.

[357] June 1953.

[358] See U.G. No. 53/1951.

strength in the struggle for fundamental rights already acquired in other African territories, namely, the leadership of the as yet inarticulate but serried masses.

(i) Three recent laws

714. This particular sensitiveness of the non-White intelligentsia is undoubtedly the reason for the vigour of their protests, which were supported by one wing of the United Party, against the following three recent laws: (1) the Suppression of Communism Act, No. 44 of 1950 as amended by Act No. 50 of 1951, (2) the Public Safety Act, No. 3 of 1953, and (3) the Criminal Law Amendment Act, No. 8 of 1953.

715. The first of these Acts, which is partly the result of revelations concerning various communist activities,[359] is, in the words of the Minister of Justice, the Honourable C. R. Swart,[360] intended "to declare the Communist Party of South Africa to be an unlawful organization; to make provision for declaring other organizations promoting communistic activities to be unlawful and for prohibiting certain periodical or other publications; and to prohibit certain communistic activities".

716. The outstanding feature of the Act is its very broad definition of the meaning of communism. In section 1, communism is defined as the doctrine of Marxian socialism as enunciated by Lenin and Trotsky, that of the Comintern and the Cominfo.m or related theories, and as applicable in particular to any doctrine or scheme which aims at:

(i) The establishment of despotic government based on the dictatorship of the proletariat under which only one political organization is recognized;

(ii) Bringing about any political, industrial, social or economic change within the Union by the promotion of disturbance or disorder, by unlawful acts or omissions or by the threat of such acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threat;

(iii) Bringing about any political, industrial, social or economic change in the Union under the direction of or in co-operation with any foreign government or institution one of whose purposes is to promote in the Union a system akin to that in operation in a country which has a despotic government based on the dictatorship of the proletariat;

(iv) The encouragement of hostility between the European and non-European races in South Africa, the results of which are likely to further the achievement of a despotic government based on the dictatorship of the proletariat or the change within the Union set out in (ii) above.

717. This Act is not discriminatory. It applies to the Whites as well as to the non-Whites and has in fact already been used against both, in particular against certain White leaders of the trade union movement. Its sharpest hidden barbs, however, seem to be directed against: (*a*) the European members of Parliament who are the representatives and the official, but very vigorous, defenders of the Natives;[361] and (*b*) the non-European leaders, who under paragraph (ii) are in fact prevented from publicly expressing their opposition to any particular government measures and from trying to induce their hearers to share their views, for any convinced speaker who knows how to sway the crowds can be regarded as an agitator "named" as a Communist and can thus be liable to a sentence of up to ten years' imprisonment.

718. The purpose of the 1951 amending Act was to close up loopholes that had appeared in the original Act.

719. Of the two other Acts referred to above, the first is intended "to make provisions for the safety of the public and the maintenance of public order in cases of emergency" and the second to increase the penalties provided by criminal law "for offences committed under certain circumstances". This Act contains two innovations which deserve mention, viz., the corporal punishment it prescribes may be applied to women, and the offences subject to such a sentence are in most cases political offences.

720. An examination of this set of laws leads to the conclusion that one of their purposes seems to be, and that their effect certainly will be, to make it much more difficult than before for non-White organizers to launch any concerted campaign of resistance against the laws, and even to prevent non-European leaders stating their opposition to a bill introduced by the Government or criticizing it.

721. It is understandable that the activists among these leaders, i.e., those who feel themselves called to make the masses (non-White) aware of their underprivileged status in relation to the privileged minority (the Whites), are chafing under the restraint and wondering whether they will be forced to resort to clandestine activities.

(ii) Separate Representation of Voters Act

722. There is another statute (which has actually been held to be unconstitutional by the Appellate Division of the Supreme Court) which for three years has been the focus of political discussion. In various ways it affects, and even agitates, all advanced non-Europeans, since its object is and its effect would be to reduce a population group, the Coloured persons, who since 1853 have enjoyed considerable voting rights in Cape Province, to a situation analogous to that of Natives under the Act of 1936.[362] The statute in question (Act No. 46 of 1951) has been discussed in an earlier chapter[363] and its vicissitudes will not be described again.[364] However, as a symbol it has value and, as a threat, it helps to maintain the present atmosphere of expectation and tension.

723. Naturally, it touches the emotions of the politically conscious stratum of the Coloured persons. Having voted side by side with the Whites ever since 1853, they were proud of being, in this respect, on the same footing as the Europeans—being themselves partly of European descent—even though suffrage for them was not "universal" and only 40,000 of them

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359 See, for example, the reports of the commissions of enquiry concerning the disorders at Krugersdorp, Langlaagte, Randfontein and Newclare (U.G. No. 47/1950) and the disorders at Witzieshoek (U.G. No. 26/1951).

360 See *Journal of the Parliaments of the Commonwealth*, 1950, page 596.

361 Sam Kahn, for example, a former member of the House of Assembly, has been unseated under the Act.

362 See chapter VI, paragraphs 469 *et seq*

363 See chapter VI, paragraphs 478 *et seq*.

364 See chapter VI, paragraph 208.

had acquired it. Less aggressive than the Africans, often in a quandary on account of their dual origin, they give the impression at times of vacillating somewhat in their political line and certainly they are divided, some of the moderates being almost indifferent.

724. But since the interview between Dr. D. F. Malan, the Prime Minister, and four deputations of Coloured persons, on 14 and 15 August 1953, in the presence of two other members of his Cabinet, one thing seems certain: three of the deputations which apparently yielded to the arguments[365] and persuasiveness of the Prime Minister, represent small minorities having special interests.

On the other hand, the Coloured Peoples National Union, led by Mr. George Golding, which continues to reject "separate representation" categorically, is a truly representative organization embracing all the important Coloured town population.[366]

725. This Act is of interest to the Africans also, for they see in it a further indication of the course which the Government is increasingly following: the constant curtailment of the liberties, rights and possibilities of advancement of all non-Europeans. Moreover, a number of Coloured people live in the areas reserved to Natives, share their daily life and, being of keener intelligence, sometimes become their accepted leaders.

726. The Indians appear to be even more concerned, since the fate that awaits the Coloured people is precisely what would have overtaken them if the Asiatic Land Tenure and Indian Representation Act, No. 28 of 1946 (which they nickname the "Ghetto Act") had been applied to them. It was not applied, however, owing to the fierce opposition and boycott with which it was received.

727. But there is one provision identical in all these Acts—and, incidentally, in the South Africa Act of 1909 also—which arouses general dissatisfaction and sarcastic comment among advanced elements. It is the provision that non-European ethnic groups shall be represented in Parliament by Europeans and the traditional clause that has been used since the Union Act of 1909 to define the qualifications required for appointment as senator by the Governor-General: ". . . on the ground mainly of his thorough acquaintance by reason of his official experience or otherwise with the reasonable wants and wishes of the coloured races of South Africa".

The same formula was repeated, for example, in the Indian Representation Act, No. 28 of 1946, the only difference being that the words "Indians in the provinces of Natal and the Transvaal" were substituted for "the coloured races of South Africa".

728. The tragedy is that while such representation of the interests of the coloured races by Europeans was still acceptable to, and accepted by, those concerned some forty years ago, it is no longer so to the same extent today. The mentality of the minor ward has given place to that of the adult who is impatient for emancipation and will no longer consent to be treated as an irresponsible person. The question "enlightened" circles of the three non-White groups are asking is, what is the criterion whereby our "wishes" are to be deemed "reasonable" or "unreasonable"? For example, is it unreasonable for a Coloured assistant foreman in a factory who does the work of a White foreman less capable than he but required by the regulations to wish to receive the same wage?

Mr. Z. K. Mathews, a Native, professor at the University of Fort Hare, has condemned in the following terms what he regards as the archaic paternalism of this persistent representation of non-Whites by Whites: "The African people have ceased to be interested in representation by Europeans. Human history has not yet produced a group of men who can so impartially divine what is good for others that self-government can be dispensed with. Africans will continue to believe that in dealing with their White fellow countrymen they are dealing with fallible human beings . . ."[367]

(iii) The Bantu Authorities Act

729. There is another political act which has aroused serious dissatisfaction and opposition among the Bantu intellectual and urban *élite*. We refer to The Bantu Authorities Act, No. 68 of 1951, which has been analysed above.[368]

Its main purpose is to make use of the authority of tribal chiefs, assisted by their tribal councils, to a greater extent than was the case in the earlier system which regulated the administration of Native reserves; the idea, a legacy from Lord Lugard and the British colonial administration of the beginning of the century, seems fair enough: it is necessary to build on whatever is already in existence and the system of tribal councils which prevails in primitive societies contains the embryo of contemporary democratic society. One of the most modern constitutions the Commission knows of for indigenous communities, that drawn up for Eritrea by the United Nations, is partially based on this idea.[369] But Eritrea is not an enclave, still less a mass of enclaves engrained in a European State with a highly developed capitalist economy. It remains to be seen whether the juxtaposition in one and the same state of "Bantu authorities" and a European administration is feasible.

730. In any event, the Nationalist Government has committed itself firmly to this path. On 18 June 1953 *Die Burger*, a Cape Town daily newspaper, published a dispatch from Pretoria reporting the very first installation of Bantu authorities in a Native Reserve, namely, the Witzieshoek Reserve, already mentioned in this report.

A month earlier, the *Gazette*[370] had published some "General Regulations for Bantu Tribal Authorities", which seemed to us to be worthy of close examination. The Commission will confine itself to noting two facts which emerge from this examination:

(1) The chiefs recognized by the South African Government may be regarded as appointed and paid officials. Thus, in the specimen form for the annual budget, which appears as an appendix, the first item under the heading "Estimates of Expenditure" is entitled: "Administration: Chief: Salary and allowances".

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365 Namely, that separate representation implies no curtailment of rights but means that the Coloured "voter" would exercise his rights differently and more effectively. See also *The Times* (London) of 17, 19 and 20 August 1953.

366 The 200,000 Coloured of Cape Town (where their number is substantially the same as that of the Europeans) naturally form the vanguard of their racial brethren.

367 Z. K. Mathews, *The African Response to Racial Laws*, Foreign Affairs, October 1951, page 97.

368 See chapter 6, paragraph 483 *et seq.*

369 See *Final Report of the United Nations Commissioner in Eritrea*, New York, 1952 (paragraph 670 in particular).

370 8 May 1953, pages 33-58.

Under the new system any chief may be deposed, as was the case with Albert James Luthuli, former Zulu chief of the Grandville Mission Reserve, who was deposed recently for having been engaged in activities deemed to be incompatible with his functions.

(2) If we turn to the section of the regulations which concerns the appointment of tribal counsellors by the chiefs, we note, *inter alia*, the two following provisions:[371]

"The Native Commissioner shall have the right . . . to veto the appointment of any person as counsellor and . . . the person concerned shall cease to be a councellor."—"The Native Commissioner shall have the right to veto the appointment of any person appointed to take the place of a counsellor whose appointment has been vetoed."

731. After perusing these regulations, which reveal the nature of the "Bantu authorities", we are not so surprised to find this opinion, by the same Professor Mathews, of the Act establishing them:

"This system is described as a Magna Carta for Africans but to Africans it seems a long step backward. The real effect of the Bantu Authorities Act will be to widen and strengthen European authority. The Bantu will be divided into a multitude of units, each with the shadow instead of the substance of power. The purpose is to delay indefinitely the development of a sense of national unity among Africans. The African people were not consulted about the Act; had they been, their leaders would have rejected it, for the efforts of all responsible leaders of the African people are directed towards welding the different tribal groups together."

732. Impartiality compels us to point out that the provisions of the Act considerably strengthen the financial powers of the chiefs and bring nearer the time when an African community will know how to administer a budget wisely. This apprenticeship is undoubtedly useful.

733. But the Commission doubts whether this system will ever be accepted. The new Native leaders in the towns are unanimously against it and it appears that they will have no difficulty in discrediting their rivals, the traditional chiefs in the Reserves, by depicting them as servants and nominees of the dominating minority, the Europeans.

III. Property and residence; housing; liquor; relations with the police

734. At first sight it may appear arbitrary and illogical to include such diverse aspects of the daily life of non-Europeans under one and the same heading. This is not so in South Africa, as will be seen. They form a group of subjects which cannot be dissociated but must be treated as a whole, for it would seem that no other group, not even the work-wages-food-transport group, which will be discussed below, are responsible for such dangerous racial tension.

(i) Property and residence

735. We have seen in the preceding chapter[372] that, whilst throughout the Union of South Africa the Natives have been subjected since 1936 to a very strict system and whereby they were forbidden to hold property outside their Reserves, the Indians were able until 1946 to resist successive attempts to restrict by legislation the property rights which had been recognized as theirs in Natal when their labour contracts as immigrants expired.

736. The Cape Coloured had exactly the same property rights in the Cape Province as Europeans. That is why no mention was made of them in the chapter dealing with legislative discrimination in that field.

As Cape Town grew larger, however, and Europeans tended to go and live in the suburbs, the Coloured people who were already living there, after owning property, found themselves in a difficult position and were gradually uprooted.[373] The Europeans bought the land they wanted at prices which appeared high to the seller but were in reality much below the real value. At the same time real-estate syndicates were formed which bought, for a mere song, a vast area in a suburban zone partly flooded during the rainy season and known as Cape Flats. These they sold back to the Coloured people on a mortgage basis at a considerable profit. Thus, little by little, a large number of Coloured families have been compelled to live in hovels which are among the worst in the Union of South Africa.

737. Henceforward, as we have seen, the three non-White racial groups are to be subjected, in virtue of the Group Areas Act, No. 41 of 1950,[374] to uniform conditions, which many of those concerned fear will be worse even than before. That, however, will only come about on completion of a process which has been seen to be highly complicated. It was for the legislator to try to unravel the tangled skein of races throughout the country, and particularly to disentangle the various groups which were intertwined in the big mushroom-towns like Johannesburg and Durban and to efface once and for all the "black spots" or others in areas mainly inhabited by Europeans and the "white spots" in areas mainly inhabited by Bantus, Indians or Coloured people. The application of this law is naturally a slow and difficult task. At the moment it has reached the stage of a detailed "control" of all property transactions (including letting), with a view to prohibiting any that do not represent progress in the direction laid down by the Act.

738. To give some idea of the difficulty of this control, the Commission will confine itself to quoting two cases among the hundreds which have recently occurred in Cape Town alone:

1. "The Cape committee of the Land Tenure Advisory Board began hearings in Cape Town today of more than 30 applications under the Group Areas Act. H. M. Peywalker, an Indian, applied for permission to occupy one room and the kitchen of his own house in Pope Street, Salt River. It was stated that Mr. Peywalker and his family lived in the house and that a room and the kitchen were let to Coloured people. He now wanted these rooms but, as they were let to members of a different racial group, the board's permission was necessary."

2. "A Malay, Mohamed Alie, asked the board for permission to occupy a house in Lady Grey Street,

[371] *Gazette*, 8 May 1953, page 34.

[372] See chapter VI, paragraphs 548 *et seq.*

[373] See John Hatch, *Dilemma of South Africa*, page 211.

[374] See chapter VI, paragraphs 555 *et seq.*

Paarl, which was previously owned by a European. It was stated that the house was behind a factory.

"Non-Europeans from a laundry nearby passed it to and from their work. No European would consider living there. The area was a mixed one. It included Europeans, Indians, Malays and Coloured people.

"The Board reserved its decision in both cases."[375]

The bewilderment of municipalities required by the Act to define or delimit zones to be reserved to particular racial groups can well be imagined. The problem is especially difficult in Johannesburg, where whole blocks of population will have to be transplanted. Anxiety over these moves—in which everybody is afraid of losing in the exchange, however primitive his present dwelling may be—is creating a state of insecurity which tends to aggravate the chronic racial tension.

(ii) Housing

739. The Commission has had before it a mass of documents, photographs and films on the subject of non-European housing in South Africa. The Reverend Michael Scott and Mr. Tom Wardle, who are well acquainted with Johannesburg and Durban respectively, having plumbed the depths of poverty in those cities in their professional capacities, gave the Commission information which corroborated the data already in its possession. The facts, accordingly, are beyond dispute: tens of thousands of non-Europeans are camping, rather than living, in the worst conditions of promiscuity, filth and destitution, exposed to every vice and every disease.

740. In endeavouring to analyse the situation, notably that prevailing around Johannesburg and comparing it to the peripheral slum areas existing in many countries, the Commission noted that the manifest general lag in house-building is due, among other reasons, to the disparity between the high amortization cost of any new building and the rent which workers, labourers, or petty employees can reasonably pay, allowing for the cost of living.

But in the Union of South Africa this disparity is even more marked than in most countries. Till quite recently, urban dwellings for Bantus were built exclusively by White skilled workers, earning wages three times as high as those of the men to be housed there with their wives and children. Hence municipalities desirous of housing their under-privileged citizens were compelled themselves to bear the bulk of the cost of the "non-economic" houses they were obliged to build. And the burden became so high for the unwilling White tax-payers that some way out of this impasse had to be found at any cost. This is the genesis of Act No. 27 of 1951, the object of which is to make the Bantus themselves build the dwellings intended for them. This Act also contains certain discriminatory features which were discussed in the previous chapter.[376]

(iii) Liquor

741. The question does not arise for the Malays, who, being Mohammendans, take neither wine nor alcoholic beverages, or for the Moslem Indians. In the case of the Coloured people it is an urgent problem from the specific point of view of addiction to alcohol and the consequent danger of moral decay for the whole ethnical group.[377]

742. In the case of the Bantus, as will be seen later, it assumes particular importance in connexion with the town-dwelling Bantus.

743. Although a ban on the sale of spirits to Natives was in force in South Africa long before the South Africa Act of 1909, it did not affect one particular drink, kaffir beer, a slightly fermented beverage with an alcohol content of scarcely more than 2 per cent, made from kaffir corn mash. Apart from the harmlessness of the beverage, there was a serious reason for proceeding with caution in the matter, in the fact that this beer had—and still has to some extent—a quasi-sacramental value in the eyes of the Natives. It will be seen why:

In the religious tradition of the pagan Bantus, if the living neglect their duties to their ancestors, the latter may cause illness to break out among the members of the kraal, the cattle to perish, the harvest to wither. The head of the family, who is also a priest, must intercede with them and for that purpose must make offerings of meat and beer to them. These offerings must be placed in the *emsamu*, in other words at the foot of the wall of the hut which faces the entrance. That is a sacred place. While this rite is no longer universally observed, it has given the Bantus of South Africa, at least, a beer complex (similar to their cattle complex), which lends a particular air of solemnity to their communal beer-drinking.

A very curious document published recently confirms that this is indeed a really traditional institution. It is a collection of the personal experiences of A. S. Mopeli-Paulus, a Basutoland chief born in Wietzieshoek, told in the form of a novel by an English writer, Peter Lanham, under the title of *Blanket Boy's Moon*.[378] South Africans familiar with the Bantu mentality and way of life seem to be unanimous in admitting that—in the form of fictitious action and dialogue—it contains genuine sociological observations made by a Bantu from the Bantu point of view, and that this sombre picture of the present-day life of the Natives, torn between the world as conceived by their forbears and that of the Whites, is consistent with the facts. There is hardly a chapter of the book in which reference is not made to the quasi-ritual ceremonies in which kaffir beer plays the leading role.

744. Since the Bantus came to the towns, bringing with them their custom of communal beer-drinking on specific occasions, a whole jungle-growth of acts and successive amendments has come into force to regulate the manufacture, distribution and consumption of kaffir beer in urban centres throughout the territory of the Union.[379]

745. As far as the present situation can be summed up, it is as follows:

There are three systems for the distribution of kaffir beer:

(*a*) Home manufacture in quantities and under conditions governed by regulations;

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375 *Cape Argus*, 12 June 1953 (retranslated from French).

376 See chapter VI, paragraph 608.

377 See report of the Commissioner for Coloured Affairs for the year ending 31 March 1952 (U.G. No. 45/1952), pages 18 and 19.

378 Collins, London, 1953.

379 See Natives (Urban Areas) Act of 1923, Liquor Act of 1928, Natives (Urban Areas) Amendment Act of 1937 and Natives (Urban Areas) Consolidation Act of 1945.

(*b*) Sale by licensed Natives;

(*c*) Municipal monopoly.

746. Where the local authorities do not themselves undertake to distribute kaffir beer or do not make arrangements for its licensed sale, home manufacture is legal. Provision is also made for the authorization of home manufacture concurrently with municipal distribution or licensed sale. The Minister is empowered to prohibit home manufacture if he considers that such manufacture is not warranted by local conditions because the Natives are a floating population, or that it is not in the best interest of the Natives owing to abuses.

747. Large municipalities like Johannesburg and Pretoria have adopted the system of municipal monopoly and sell kaffir beer in canteens. Of the three systems, however, the municipal monopoly is unquestionably the least acceptable to the consumers. They much prefer the system of home manufacture and persistently claim the right to engage in such manufacture. They base their claim on a number of arguments: the fact that they regard kaffir beer as their national drink; its nutritional value (confirmed by medical authorities); the importance of the beverage in their social and religious life; the excessive price that they are obliged to pay in the municipal beer saloons; the "scandalous" profits that these high prices yield for the municipalities, etc.[380]

748. Anyone who has known or studied the manifold effects and the true facts of the prohibition of alcoholic beverages in the United States of America from 1920 to 1932, which applied to the entire population, will realize how irritating and even exasperating a prohibition or a discriminatory regulation applying to only one section of the population can be to its victims. The Commission will merely cite, practically at random, two extracts from recent regulations.

749. Following certain discoveries in 1946, new goldmines were opened up in the Orange Free State; one of these is the "Loraine Gold Mines, Limited" at Allanridge, District of Odendaalsrus. The government notices in the *Gazette* of 1 May 1953 include the following:

> "Under section 127 (1) of the Liquor Act, No. 30 of 1928, I, Charles Robberts Swart, Minister of Justice for the Union of South Africa, do hereby authorise the brewing and consumption on the premises of Loraine Gold Mines, Limited, situate at Allanridge in the District of Odendaalsrus, Province of the Orange Free State, of reasonable quantities of kaffir beer, not exceeding seven pints per employee per week to be supplied gratis by the said Company to its Native and Coloured employees; such brewing and consumption to take place under the supervision of a responsible European male person."

In the eyes of the Natives, however, this measure is naturally vitiated by two considerations. Firstly, many regard the maximum amount of a pint a day as insufficient; it is a fact that after working in the torrid heat of the mine galleries, perspiring heavily and breathing dust, the miners do not like to be restricted to a daily pint. Secondly, the "responsible male person" has to be a European, so that the colour barrier between the dominant group and the dominated group is again in evidence.

750. Another equally typical regulation is that contained in section 34 of the Natives (Urban Areas) Consolidation Act, 1945, as amended, governing the management and supervision of premises where kaffir beer is manufactured, sold or supplied in the urban area of Estcourt, Natal Province.

The section contains, *inter alia*, the following provisions:

> ". . .
>
> "2. (1) Subject to the provisions of sub-regulation (3), kaffir beer may be sold or supplied only: (*a*) on weekdays, exclusive of the Day of the Covenant, between the hours of 8 a.m. and 6:30 p.m.; (*b*) on Sundays and on the Day of the Covenant between the hours of 2 p.m. and 6 p.m.;
>
> ". . .
>
> "(2) The urban local authority may, by resolution passed as provided in subsection (3) of section thirty-four of the Natives (Urban Areas) Consolidation Act, 1945, authorise the prescribed officer to issue, in approved cases, written permits for the sale or supply of kaffir beer in quantities not exceeding four gallons for consumption off the premises referred to in sub-regulation (1) (*c*).
>
> ". . .
>
> "6. No male Native under the apparent age of eighteen years and no female Native of any age shall enter or be in any room in which kaffir beer is sold to male Natives except as is provided in regulation 8.
>
> "7. No male Native of any age and no female Native under the apparent age of twenty-one years shall enter or be in any room in which kaffir beer is sold to female Natives except as is provided in regulation 8." (*Gazette*, 1 May 1953).

Even a cursory perusal of these extremely detailed provisions, when set against the needs and aspirations—whether or not reasonable—of the Natives, reveals many subjects of possible complaints and disputes, such as the closing of beer saloons at 6 p.m. and the determining of the "apparent" age of young people.

751. Apart from such discriminatory regulations, extending to the minutest details, there are some far worse aspects which concern the housing and private life of the Natives.

The prohibition of the home manufacture of kaffir beer in large towns such as Johannesburg seems to have stimulated the illicit manufacture of much stronger and more harmful concoctions, such as "skokiaan" and "barberton" which ferment much more quickly and are therefore easy to manufacture secretly.

This has given rise to an illicit traffic which is often connected with prostitution. The trade is mainly carried on by Bantu women, who are known throughout South Africa as "shebeen queens".

752. The most irritating factor of all for the Natives is the frequency with which the European police enter houses in the locations at all hours of the day and night and search them, without warrants, for concealed stocks of illicitly manufactured alcoholic beverages. This naturally results in innumerable arrests in homes and to all kinds of incidents. The inhabitants and especially the mistresses of the houses are often so exasperated that the incidents can easily flare up into

[380] The profits, however, have to be paid into the Native Revenue Account.

serious riots. The Commission will mention, among many others, the characteristic incidents which took place in the suburbs of Johannesburg, at Randfontein on 11 November 1949 and at Newclare on 29 January 1950.[381]

753. At 6.45 p.m. on 11 November 1949, three detectives entered the Randfontein location to search for liquor in a certain house which they suspected. No liquor, other than a small pool of "barberton" on the floor, was found. The search continued. A large number of obviously hostile youths and women began to gather by the front and back doors of a house which was being searched. Stones were thrown at the house. On leaving the house, the three detectives were met with a shower of stones and had difficulty in reaching their car. Police reinforcements arrived. The number of Natives had by now increased to several hundred. The tension grew. The showers of stones became more frequent, the women urged on the men, who now numbered between 500 and 700. The report states laconically in paragraph 115 (page 7): "The danger of envelopment was imminent and necessitated the use of firearms".

The casualties amounted to three male Natives killed and three wounded and twenty-four members of the police injured.

On the following day, the location was patrolled by the police and 110 Natives were arrested. The three Natives killed in the riot were buried on 15 November in the Randfontein Native Cemetery. Many Natives made speeches, without police opposition. The principal speaker was Dr. A. B. Xuma, who spoke under the stress of great emotion. A summary of his speech is given as an annex to the report of the Commission of Enquiry. It includes the sentence "God did not create us to be the footstools of other men".

754. Two and a half months later, on 29 January 1950, similar violence broke out at Newclare, Johannesburg, after an attempt by the police to arrest a Native who was openly carrying a four-gallon tin of "barberton" in the street. That these riots were less serious than those at Randfontein is probably due to the fact that the police used tear gas in time.

In its conclusions, the Commission of Enquiry distinguished between:

(*a*) The immediate causes of the riots;

(*b*) "Incitement", the principal factors of which are "communist activities" and the "part played by Native women", and

(*c*) Causative factors in background.

755. The United Nations Commission will refrain from any comment here, but it cannot but conclude after observing the collective state of mind of the Natives in the towns, that the constant threat of house search by police looking for liquor and the searches themselves seem to play greater havoc with their feelings than the majority of the "unjust laws" of *apartheid* which have been passed in recent years, and most of which are practically incomprehensible to the Natives.

(iv) Relations with the police

756. South Africans have often remarked that, although the laws and regulations on spirituous liquors and passes may be justified by plausible motives such as the wish to protect the Natives against the ravages of alcoholism and to prevent the large-scale influx into the towns of Natives for whom the municipal authorities cannot ensure decent housing or even, in some cases, work, these laws have the harmful result of bringing about mass arrests of Natives for the contravention of simple regulations, when they do not feel they have committed any crime or offence against moral law. In other countries, the fact of being led off to prison by the police arouses among the spectators the idea that moral law has been infringed. In South Africa, however, the spectacle of a Native in handcuffs only rouses in his Coloured brethren the idea that the act committed is in no way reprehensible. The concept of justice is thus nullified. The police, which is supposed to be the guardian of law, personifies in the eyes of the non-Europeans the "unjust" law of the Whites.

757. The police are the more hated because the great majority of the White inspectors and constables are Afrikaners, in whom racial prejudice is deeply rooted and who belong to the least cultured class of the White population and, hence, to the class whose economic position approximates most closely to that of the non-European wage-earner.

The situation is further complicated by the fact that many of the lower-ranking policemen who take part in location raids or even carry them out are Natives. Theirs is, needless to say, an unenviable position, for if they show too much sympathy for their Coloured brothers they are invariably discharged and lose their means of livelihood.

758. The Commission considers that the existing relations between the police and the inhabitants of locations in urban areas have been described and analysed objectively in the report of the above-mentioned three-member Commission of Enquiry presided over by Mr. J. de V. Louw.[382] The Commission therefore feels that it cannot do better than to quote the following two passages:

> "1. A factor contributing to the riots (at Krugersdorp), according to Native witnesses, was the prevalence of raids for liquor, passes and permits by the South African Police during the night or early morning. Witness after witness stressed the matter of its inconvenience to householders generally; that workers were deprived of their sleep, that family life was disrupted . . . There is no doubt that a deep resentment of police raids has taken root among the Natives at Krugersdorp. The alleged constant recurrence of these raids resulted in an accumulation of resentment.[383]
>
> "2. Both the South African and the Municipal Police are generally detested by many Natives; the reasons advanced are that their houses are entered and searched in an unreasonable manner, with the result that their privacy is intruded upon.
>
> "Liquor and pass raids conducted in the early morning hours are particularly resented because the police wake up the whole household and they are alleged to pull blankets from beds in their search for hidden concoctions of liquor.
>
> "Again, under arrest, it is alleged young policemen are wont to assault their prisoners and generally treat them with unwarranted harshness.

[381] See Government report U.G. No. 47/1950.

[382] See U.G. No. 47/1950.

[383] See paragraph 85, *op. cit.*

"There sems to be justification for the complaints against some of the younger members of the South African Police. It appears that they treat Natives with undue harshness and this has grown into a grievance testified to by several witnesses.

"Young children see their parents arrested and this arouses a feeling of resentment which is directed towards the persons who cause them discomfort; in the result they hate the police.

"In bearing the police a grudge these youngsters seek revenge, with the result that on every occasion they thwart the police in the execution of their duty; they become transgressors of the law; to have committed an offence and escaped the clutches of the police is the mark of a hero. According to their thoughts it is quite proper to stone the police—in fact it is permissible to do anything to satisfy their desire for revenge . . .

"In addition this irritation is fanned by agitators who remain in the background.

"Another matter irritating some Natives is the multiplicity of by-laws and regulations applicable to themselves. Their argument is that the White man has made these laws, e.g., pass laws to keep the Natives down to curb their freedom, and that the police are much too assiduous in carrying out the letter of the law.

"The main factor causing the wide-spread anti-police attitude is the enforcement of laws considered by the Natives to be oppressive whereas ill treatment of Natives by some members of the police is contributory. The anti-police attitude is not racial because non-European members of the force are equally disliked. In reviewing Native opinion in this regard your Commission has borne in mind the complete disrespect for authority of any kind shown by a large lawless element within the areas visited."[384]

759. The Commission feels that only one comment need be added to the above observations, which are obviously based on thorough knowledge of the situation in the urban locations. It is stated above,[385] perhaps rather bluntly, that "the anti-police attitude is not racial, because non-European members of the police force are equally disliked". It may be asked whether the reason why Native police are subject to the same animosity as the European police is that the former being mere tools of the latter, they are looked on as traitors to their group and are therefore involved in the same obloquy.

IV. Labour; wages; food; transport

(i) Pass system

760. In a previous chapter the Commission tried to sift and classify the purposes of the very complex acts and orders on the various types of passes governing the movements of Bantus.[386] As will be seen below, some of the most important of these relate to employment.

761. Viewed from a different angle, however, all passes of this kind also come within the scope of the previous section, on residence and housing. One of the objectives of the legislator has been, and is more than ever, to control and restrict or stop the mass migration of Natives inside and outside the Union to the already over-populated locations in the large cities. Wherever he may be—on the road, in a station, at a tram stop—a Native may be called on by a police officer to produce papers proving his right to be there. Inspection of this kind, accordingly, is sporadic and can only lead to minor personal incidents.

762. However, the type of inspection which offers really effective results—mass inspection in the locations —is quite a different matter. Naturally these districts harbour many irregulars, law-evaders or wanted persons to whom their racial brothers, out of a feeling of solidarity, offer precarious hospitality. In this kind of check the police use methods exactly the same as those they apply in connexion with the prohibition of alcoholic beverages, and encounter the same hostility: police detachments raid the location at a time considered appropriate, often just before dawn, enter houses, thus disturbing family life, and often make arrests.

763. In the resentment caused by these raids, or even by the mere obligation of having to carry a pass, women seem to be playing a part, the importance of which is growing at least commensurately with the increasing numbers of them living in the towns.[387]

764. Whenever Bantu women are involved or believed to be involved, the men react with savage violence. The disturbances which broke out at Krugersdorp (near Johannesburg) on 1 and 2 November 1949, during which two Natives were killed and many Natives and police officers injured, are very instructive in this connexion. The direct cause was the transfer of the Administration of Service contracts from the Department of Native Affairs to the local authorities, a normal development under the Natives (Urban Areas) Consolidation Act No. 25 of 1945.[388] But the Krugersdorp Native Advisory Board, to which the transfer proposal had been duly submitted, rejected it because "Native women would then have to carry passes". That rumour was circulating throughout the location, and it assumed such proportions that on the morning of 1 November 1949, there were gatherings of threatening Natives armed with sticks. A few stones were thrown at the police. The Beer Hall was set on fire, as frequently happens on such occasions, and the police noticed that the Natives were converging on them from three sides and that an attack seemed to be imminent. The report of the Commission of Enquiry continues laconically: "They decided to accept battle and some 50 shots were fired and the attackers then withdrew."[389]

765. The principal, or even the sole, cause of the disturbances which took place at Klerksdorp near Johannesburg on 14 September 1953 is also to be found in resentment over the inspection of passes.[390] Two municipal officials and six Native members of the municipal police force were attacked by the Natives just after they had entered the location in order to arrest about forty Africans suspected of being illegally in the location, in other words, of not being in possession of the prescribed documents.

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384 See paragraphs 209-218, *op cit.*

385 See paragraph 218, *op cit.*

386 See chapter VI, paragraphs 484 *et seq.*

387 See chapter IV, paragraph 550.

388 The Commission will note that this fact shows by implication the at least relative confidence which the Natives apparently sometimes place in the Department of Native Affairs.

389 See U.G. No. 47/1950, paragraph 76.

390 See *The Times*, London, 15 September 1953.

766. All these facts clearly show the major role played by passes in the lives of town-dwelling Bantus, and their consequent resentment against the Whites—in this instance the police responsible for enforcing the regulations, which they obviously feel as a deeply hurtful yoke. The climax was reached at Krugersdorp when they thought that the hated obligation of carrying passes was to be extended to women too.

767. It will have been noted from the foregoing chapter[391] that in 1951 an Act was passed to abolish the numerous passes and other documents which the Natives had hitherto been required to carry and replace them by a single reference book which was convenient to carry and would enable the authorities to apply control in as mild a manner as possible. This would give Native men greater freedom of movement than in the past, but on the other hand, control would be more effective.

The Act does not seem to be easy of execution—which is not surprising. It involves operations which would be complicated in any social environment, and are particularly so in South Africa; for example all Natives hitherto obliged to carry passes are to be fingerprinted.

768. It is too early to judge how the Natives will react to this preliminary measure and future ones. But although it may be assumed that there will be some improvement in the situation of most Native men, two psychological difficulties may already be anticipated—and indeed are anticipated by the government:

(1) Any document which must be produced to show authorization of the bearer's presence in the streets or in a location is a pass;

(2) The proposed standardization and simplification will undoubtedly have the major disadvantage of in effect bringing into existence a new pass henceforth applicable to women and to thousands of Africans previously exempt.

769. One of the most important types of pass consists, as has been seen, of a certificate proving that the Native interrogated by the police has a proper employment contract or a permit authorizing him to apply for work in a given area. One of the purposes of this measure is to prevent the large contingent of Bantus who are authentic migrant workers—in other words who leave their reserves temporarily to work for Europeans—from being swelled by an element considered to be superfluous and undesirable.

(ii) Non-European workers

770. The living conditions of non-European workers vary considerably as between Bantus, Indians, or Coloured. The Indians and Coloured are physically less fit for heavy work, which is the worst paid work in every country in the world.

Hence there is a certain hierarchy in the types of work done by the three non-White ethnic groups.

(iii) Wages

771. The hardest and worst paid work seems to be done by the Natives recruited by the mining companies within and outside the Union.

It is difficult to draw any accurate comparison between their average wages and those of the least favoured category of Indian or Coloured workers, because the latter generally pay for their own board and lodging, whereas the Bantu miners are housed and fed by their employers. The values of the lodging provided by the company to a Bantu "residing" in a dormitory of thirty or forty beds, and of the (well-balanced and calorie-rich) daily food ration provided free of charge to every miner are difficult to calculate accurately in shillings and pence, but would appear, according to experts' calculations, to be equivalent to about 3 shillings per days. The minimum cash wage is about the same, 3 shillings per shift, which represents a total of about six shillings per shift.

But these allowances in kind are naturally often forgotten in the over-simplified calculations of the persons concerned; they think mainly, or solely, of the portion of their wages paid in cash, which enables them, if they are thrifty, to buy one or two head of cattle when they return to their reserves, or to buy bright-coloured blankets and other ornaments or trinkets for their wives.

772. It should be noted, however, that up to the beginning of 1953 the basic minimum wage was only 2 shillings and 8 pence. Throughout the war of 1939-45 and the years following, cash wages remained almost unchanged at a very low level, in spite of the substantial rise in the cost of living. That was one of the causes of the attempted strikes and serious disorders which occurred in the Rand gold mines in 1946. But since the devaluation of the pound sterling in September 1949, the mining companies have made some improvements. Quite recently, at the beginning of 1953, they were prompted to raise the minimum wage level by two considerations: firstly, the difficulty of recruitment due to the fact that the booming "secondary" industries offered the Bantus higher wages, paid entirely in cash; and secondly, the prospect of higher returns from the gold mines, which one after the other are becoming uranium mines also.

The daily increase of 4 pence amounts to scarcely 10 shillings per month, but some categories of semi-skilled workers are receiving higher rises.[392] Moreover, the mechanization actively promoted by the mining companies[393] will probably have the same effects here as elsewhere: to the extent possible under the colour bar introduced by the Mines and Works Act No. 12 of 1911, the Bantus will be given access—although much too slowly for their liking—to less strictly manual and better paid types of work.

(iv) Separation of families

773. However, the main improvement introduced by the companies, by force of circumstances and very belatedly, is certainly the decision to shorten the length of the normal contract from 270 to 180 shifts. The entire labour organization in the Rand mines is based on the principle and practice of separation from the family: the men go off to work in the "golden city" while the women and children look after the fields and cattle in the reserves.

The evils of this system, which, among other things, has resulted in the semi-abandonment of the cultivable land in the reserves and the creation, in the hostels of the Johannesburg outskirts, of conditions under

391 See chapter VI, paragraphs 507 *et seq.*

392 With regard to wage questions, see *The New Statesman and Nation*, 29 August 1953, page 228.

393 In 1941, 1,064 miners were needed for every thousand tons of ore mined, as against 895 today.

which homosexuality and other perversions wreak havoc, have been sufficiently ventilated. How far this separation of married couples is responsible for the Bantus' dislike for mine work cannot be said exactly; but it is probably an important factor in the preference shown by available Native labour for the secondary industries, which offer the great advantage not only of not separating families but also of opening many jobs to African women, who are becoming increasingly numerous in the textile mills, the canning factories, etc.

774. This type of discrimination against Bantu families, who are subjected to a system of separation which does not affect European, Indian and Coloured families, seems to be one of the worst in existence. The efforts of employers in the newly opened gold fields of the Orange Free State to organize family housing for a certain percentage of their miners will be followed with interest. The present government has shown hostility to this development,[394] but does not so far seem to have taken any action to stop it.

(v) Hierarchy of non-European occupations

775. Above mine work in the occupational hierarchy there are all kinds of jobs assigned more or less indiscriminately, depending on circumstances, to members of any of the three non-White ethnic groups: domestic service, hotel work (including cooking), street cleaning, cleaning work in business premises and offices, road work, newspaper selling and distribution, house deliveries, agricultural work, fruit picking in industrial orchards, loading and unloading of trucks and ships, factory work not requiring special apprenticeship or needing only short training, etc.

776. At the highest level—and this is a ceiling which is seldom exceeded because of the traditional or legislative colour bar—there are the somewhat better-paid semi-skilled jobs, which are increasing in numbers every year as the machine invades new sectors, comes into general use and, as it were, becomes "declassed". Thus when the automobile first appeared, and for some time after, all drivers in South Africa were Whites, whereas the majority of lorry drivers and even taxi drivers and private chauffeurs no longer are. In the country areas one may now see Coloureds at the wheel of heavy tractors, or Bantus operating moderately complicated machines in the cement or explosives factories. Gradually skilled work is becoming semi-skilled work. The "ceiling" of accessible jobs is rising, and rising fairly rapidly, even if still too slowly for the liking of the people concerned; for although the colour bar has been lifted a little it is still there, and the feeling of racial discrimination persists—or if anything is becoming more marked.

(vi) Food

777. So far as food is concerned, the price of wheaten bread is now the most important factor in South Africa as in many other countries. The traditional food of the Bantus, of maize or sorghum harvested by their own hands in their own fields, is being rapidly superseded by the rectangular two-pound loaf of white bread. In the towns, it is almost the sole food of the poorest classes. When Mr. Havenga, the Minister of Finance, submitted to the Assembly in July 1953 a draft budget providing for a two-pence increase per loaf of white bread, there was therefore an outcry among all the non-Europeans. But protests were hardly less vehement among the European working classes.

Duly impressed, the Minister of Finance agreed to reduce the proposed increase by one-half. The government will thus continue to subsidize indirectly all bread consumers, irrespective of ethnic group, to the extent of several million pounds. Even after this increase, the price of bread in South Africa is still considerably below world prices, and the difference is met by the government by means of taxation. As the share of taxes paid by the ten million non-Europeans is tiny in comparison to the European share, the main beneficiaries from the subsidy are the non-Europeans.

778. It should be added that the government grants a special benefit to the consumers of whole wheat or enriched bread. Those two kinds of bread, particularly the second, are of much higher nutritional value than white bread, but they cost 25 per cent less. The exhortations in both official languages to be found everywhere, even in postmarks (*Eet verrykte brood;* Eat enriched bread), have so far had little effect, although many non-Europeans are obviously undernourished.

(vii) Transport

779. As the urban locations are usually a good distance from the Natives' places of work, transport is a very important item in their budget. The average increase of almost 14 per cent in railway fares recently announced (July 1953) raised a storm among the European working class. It must therefore affect the non-European workers even more.

780. But the usual sources of discontent are the trams, buses and trolley-buses, precisely because fare increases in these services more seriously affect the poorer classes, and thus particularly the non-Europeans. The Committee has studied in particular, and considers as typical, the outbreaks at Newlands, near Johannesburg, on 1 November 1949. The following is an account of the events which occurred:[395]

A tram service had been operating since 1930 between the location known as the Western Native Township and the centre of Johannesburg, about five miles away. The tickets cost twopence for adults and one penny for children, a very low fare which involved a deficit. This deficit, paid by the Johannesburg City Council and hence by the city's taxpayers, continued to increase and by 1948 was running at an annual rate of £52,000.

As early as 1946 efforts had been made to raise the fares, but the residents of the location had strenuously opposed the proposal, and no action had been taken. Finally, financial considerations carried the day and it was decided to raise the fare to threepence for adults and twopence for children.

> "With a view to enlisting the co-operation of the Natives", the report states,[396] "a meeting was held with the Western Native Township Advisory Board, to whom the full implications of the proposed increased fare were explained. The Members of the Board were strongly opposed to any increase in fares and contended that the economic position of the Natives made it impossible for them to countenance any increase in fares. They also contended that, if non-Europeans were employed on the run-

[394] See *South Africa*, 28 June 1952, page 506.

[395] See Report of the Commission of Enquiry, U.G. No. 47/1950.

[396] *Ibid.*, paragraph 13.

ning staff of the trams, a considerable saving would result . . ."[397]

"The residents of Western Native Township during August 1949 held a mass meeting where they expressed strong opposition to the proposal to increase the tram fares . . .

"[They] decided to boycott the trams as from Thursday, 1st September 1949, unless the Council rescinded its decision to increase the tram fares."

However, the Council stood firm and the fare increase became effective on the morning of 1 September 1949. That first day of September turned out to be a critical day. It was marked by the following incidents: booing and acts of violence directed against the few Natives who, despite the boycott decision, had taken their seats in the trams; stones and bottles thrown at the trams and the police who tried to protect the few passengers; baton charges by the police; exchange of a few shots between the police and the rioters.

781. The list of casualties was as follows: six members of the police force were injured by stones; one constable sustained a bad scalp injury caused by a broken bottle; one Native killed; one police vehicle smashed; three tramcars damaged; a number of tramway officials injured.

(viii) Clothing

782. Clothing is a very important item for town-dwelling non-Europeans and even, to an increasing extent, for those who live in the country.[398] On weekdays, of course, the men wear abundantly patched working clothes, or (particularly the Bantus) clothes so torn and threadbare that they look very much like rags. But on Sundays and holidays, the quality, even the elegance of their clothes—impeccably pressed trousers, two-tone shoes, fancy ties, felt hats—is often surprising.

The owners of small ready-made clothes shops at Johannesburg and Cape Town say that their main customers for expensive trousers are the Bantus, the average European preferring to buy cheaper articles. As the Bantus live in very low-rent dwellings or have accommodation provided, they can apparently spend a large part of their income, modest as it is, on clothing.

The same is true of the women—servants or factory workers—in the towns, who like to wear high-heeled shoes even on weekdays and fine stockings even in warm weather.

(ix) Recreation

783. It would seem that once the non-Europeans have spent what they have to on the necessities of life, they have little pocket money left for entertainments. In any case, cinemas are rare and theatre performances to which they have access even rarer.

784. The intellectuals of the three non-European ethnic groups suffer considerably from their exclusion from the cultural life of the Whites. When a theatrical company comes from abroad, the efforts of some Europeans to reserve at least one show for non-White audiences are frequently unsuccessful. It would appear that the situation in this respect is less bad in Cape Province than in the Transvaal, for example. Thus in Cape Town no racial distinction is made in the public library. Similarly, Coloureds are ordinarily admitted to the municipal concert hall.

785. Most of the non-Europeans are passionately fond of all the European sports, from rugby and association football to basketball and boxing. There are innumerable clubs. Wherever possible there are competitions and championships. But there are no sports contacts between Whites and non-Whites.

Of course each ethnic group has its own preferences. Some remain faithful to their own games; for example, the Bantus of Pretoria are enthusiastically addicted to *Amalaita* wrestling, which enables them to expend their excess strength and energy on their free afternoons. But it is boxing, perhaps, which attracts them most. They naturally follow with great interest the successes of their Coloured brethren in competitions in the northern hemisphere.

Sometimes a South African Native will carry off the laurels in these competitions, as occurred recently when Jaka Tuli won the Commonwealth Flyweight Boxing Championship.

786. But as too often happens, this triumph was marred by the shadow of the colour bar. The champion was to be welcomed by his friends and admirers in the Johannesburg City Hall towards the end of July 1953; but the organizers had to give up the hall as the police stated that it might be difficult to keep order.[399]

V. Social services: remnants of inter-racial co-operation

(a) *Social services*

(i) Social welfare[400]

787. A Department of Social Welfare was established in the Union of South Africa in 1937. As in all countries, the Department co-operates closely with the Department of Public Health and the Ministry of Labour. Its main functions are to administer social welfare measures, to assist financially and to advise voluntary organizations and agencies to administer social welfare and rehabilitation establishments and to control rents.

788. As the poorest classes of the population belong to the non-European ethnic groups, the Department of Social Welfare is called upon to take a special interest in their conditions. But it has great difficulty in securing the extension to them on a more extensive scale of the benefits of existing social welfare facilities and in promoting the adoption of legislation more favourable to them. It was faced at the outset of its work with a rather confused situation in which the European element, although less poor, was specially privileged.

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397 What the Natives want is to be given access to the job—among others closed to them—of tram conductor. That is one type of discrimination they complain of. But if they succeeded another type of discrimination would remain: in accordance with the traditional laws a Native tram conductor would be paid a much lower wage than a European tram conductor. Hence the reference to "a considerable saving".

398 In the reserves the main article of clothing is the blanket.

399 See *The Times*, London, 31 July 1953.

400 As in many cases in the preceding chapters, the main figures quoted here by the Committee are taken from the most recent edition of the *Official Yearbook* of the Union of South Africa.

(ii) Situation in 1943

789. The report of the Social Security Committee appointed by the Prime Minister in January 1943 to investigate existing social services and s[illegible] security arrangements and to make recommend[illegible]s pointed out the following facts:

". . . In the Union, social assistance and social insurance, national and voluntary, now cost some £9,750,000 a year. This amount includes poor relief; it excludes grants-in-aid and war pensions. Of the total yearly sum, £8,300,000 goes to Europeans; Coloured and Asiatics get £800,000; Natives £600,000. The Central Government bears about half the cost, employers a third, employees an eighth. The money value of charitable effort is relatively small."[401]

790. The same committee found that the scale of benefits was different for Europeans, Coloureds and Asiatics, and for Natives. Thus the maximum paid in annual pensions to the blind was as follows: Europeans, £36; Coloureds, £24; Asiatics, £15; Natives, £12.

791. Although the United Nations Commission was unable to obtain exactly comparable figures from which to assess the progress made since then in distributing social welfare expenditure among the various ethnic groups, those for recent years to which it had access have led it to the conclusion that the gap between the amounts spent on Europeans, on the one hand, and on Coloureds, Asiatics, and Natives, on the other, has narrowed somewhat. It would seem, however, that in many cases the proportion of 3 for Europeans, 2 for Coloureds and 1 for Natives (which is not the least favourable for the non-Europeans) has been maintained in the regulations.

792. The Commission cannot examine in detail the social welfare measures at present applied in the Union of South Africa for the benefit of the three non-European ethnic groups subject to the standard system of differential treatment. It has, however, selected some which it regards as typical.

(iii) Old-age pensions

793. Under the Old-Age Pensions Act No. 22 of 1928 as amended in 1931 and 1937, old-age pensions could be granted only to Europeans and Coloureds. In 1944, however, the Natives and Indians were also included in the pension scheme. To qualify for a pension a man must be at least 65 and a women 60. The maximum pensions are as follows: Europeans: £60, £54 and £48; Coloureds and Indians: £36, £27 and £18; and Natives: £12, £9 and £6 a year, according as the pensioner lives in a large town, a small town, or in the country. In 1946, the number of old-age pensioners was: Europeans: 64,279; Coloureds and Indians: 34,830; Natives: 114,000.[402]

(iv) War veterans' pensions

794. Under the War Veterans' Pensions Acts No. 45 of 1941 and the War Veterans' Pensions Amendment Act No. 44 of 1942, pensions may be granted to Europeans, Coloureds or Indians who have served in the Boer War or in the First or Second World War and who, although not physically disabled, are destitute and are not eligible for any grant from the other permanent social welfare services. Applicants for pensions must be 60 years of age, but the age limit may be lowered if the applicant is completely unfit for work, as ex-combatants often are.

795. It will be noted that Natives are not mentioned in the pensions acts. Native veterans of the two World Wars, however, may receive financial assistance on the recommendation of the Department of Native Affairs. There were 3,000 such Native pensioners as at 31 August 1946.

(v) Social welfare for the blind and for persons with impaired vision

796. The incidence of blindness in the Union of South Africa is very high, varying between 0.9 per 1,000 Europeans and 2.7 per 1,000 Natives.

797. Under the Blind Persons Act No. 11 of 1936, as amended by Act No. 48 of 1944, pensions administered by the Commissioner of Pensions may be granted to blind persons of all races according to the same scale as for old-age pensions. In 1946, there were 2,376 Europeans, 160 Asiatics, 2,207 Coloureds and 28,300 Natives classified as blind pensioners.

798. Blind children are dependent on the voluntary organizations for their education, as are blind persons for their vocational training and subsequent organized employment, but they may receive grants-in-aid from the State. There are two boarding-schools for blind children: one for Europeans and the other for non-Europeans.

(vi) Pregnant working women

799. Under the Shops and Offices Act, No. 41 of 1939, and the Factories, Machinery and Building Workers' Act, No. 22 of 1941, pregnant women may not be employed in factories or shops during the four weeks preceding, and the eight weeks following, their confinement. For factory workers, the first period may be increased to eight weeks. The Department of Labour pays such women weekly allowances equivalent to their wages. All the provisions of these acts apply to all races. During the year ending 31 March 1946, the State paid the following maternity allowances: £7,287 5s. 3d. to 483 European women; £26,037 3s. 9d. to 1,726 Coloured women; £1,583 15s. to 105 Asiatic women; and £2,986 16s. to 192 Native women.

As the number of Native women employed in industry has since greatly increased, more recent statistics would probably show a great increase in the above figure for Native women.

(vii) Accident and disability insurance

800. Under the Workmen's Compensation Act, No. 30 of 1941 (as amended in 1945 and 1949) workmen receive benefits for disability caused by accidents suffered or industrial diseases contracted by them in the course of their employment; the benefits are also payable to the beneficiaries if the workman dies as a result of such accident or disease. Accident benefits are paid out of an accidents fund to which employers must make contributions, the amount of which is fixed each year.

801. Among the persons originally excluded by the restrictive definition of the word "workman" were do-

[401] Report of the Social Security Committee, U.G. No. 14/1944, paragraph 15.

[402] These figures are taken from the reports of the Department of Social Welfare for 1945 (U.G. No. 22/1946) and for 1946 (U.G. No. 42/1947).

mestic servants and persons employed in agriculture and mining, unless such employment involved the use of vehicles or power-driven machines or the use of explosives. Many Natives were thus not entitled to benefit under the Act. In 1945, however, Parliament enacted an amendment authorizing the employers of workers hitherto excluded from operation of the Act to subscribe to the fund on a voluntary basis. Very many employers took advantage of this authorization, thus making whole groups of non-European workers eligible for benefit.

802. Thus the current trend in the Union of South Africa is generally towards a rapid expansion of the number of non-European underprivileged persons receiving financial assistance from the State.

803. Nevertheless, there still remain many social and racial injustices which nationals of countries with ethnically more homogeneous populations find it difficult to understand. The Commission will mention only one more injustice in addition to those it has cited in the course of this study: a person totally disabled as the result of an accident normally receives a pension calculated on the basis of his wages, but a Native does not; he receives a lump sum. A Native 100 per cent disabled may not receive more than £800.

(viii) Other social welfare institutions

804. In addition to the State, the local authorities also undertake social welfare work on a scale which is tending to increase. This assistance is mainly in the form of free dispensaries, child clinics, etc. Some towns employ both European and non-European certified nurses and some have women social workers trained in special establishments. In Johannesburg, for example, a number of Native girls graduate each year from the Jan H. Hofmeyr Social Welfare School.

(ix) Voluntary associations

805. Special note, however, must be made of the number and activities of the private social welfare organizations. There are over 1,000 of them. Some, which originally gave only intermittent attention to non-Europeans, without excluding them completely from their activities, are now taking a systematic interest in them. Since these organizations are dependent on public donations, street collections for various charities are organized week after week (especially on Saturday mornings) in all the cities of the Union. Fetes, theatrical performances, sales and house-to-house collections afford the subscribers, who are mostly Europeans, an opportunity to contribute towards the founding of an institute for deaf-mutes or of a free soup kitchen.

The public is invariably generous but it is never generous enough, since these private efforts are of special importance: the State often undertakes to match whatever contributions are collected.

(b) *Remnants of inter-racial co-operation*

806. In the foregoing chapters there have been such constant references to segregation, discrimination, dominating and dominated ethnic groups, European legislators and subjugators and non-European subjected, that the abstract conclusion might be drawn that the only relations between the governors and the governed are those of master and servant, employer and employee, or oppressor and oppressed.

In fact, however, this is not the case.

807. Not only do remnants of traditions and attitudes based on a concept of equality between man and man, between European and non-European, still persist, especially in Cape Province, but the needs of everyday life in its family or economic aspects—to mention only these—are compelling and demand social solidarity. As a result, there are large areas in South Africa where, despite legislation, *apartheid* does not apply and where even the intellectuals and theorists of South African nationalism apparently have little thought of enforcing it.

A Bantu may buy a loaf of bread in a grocery, like a European, although once again a distinction must be made. It is mainly in the popular shops selling cheap articles, like the "O.K. Bazaars" chain, that Europeans, Natives and Indians rub shoulders in the large towns. And when two or three customers are waiting at the counter to be served, it is almost always the White who is served first, even if he came last.

808. Childhood is perhaps the strongest factor making for the abolition of the colour bar, reminding adults, in the words of the Basuto proverb, that "blood has only one colour and the soul has none". There are hardly any young European couples in South Africa who do not entrust their children to Native or Coloured nurses. Not only are the latter the most maternal of domestic helpers but very often, especially in the country, the European child himself insists on playing with his nurse's child.

809. In adult life also there are human contacts between the races which might be called "normal".

In every sphere a number of liberal-minded Europeans realize that before taking action directly affecting non-Europeans, they should learn their views and in all justice consult them. These Europeans deplore the obstacles and prejudices which impede the free discussion, among members of different ethnic groups, of questions of mutual interest, and which make it so difficult for Europeans and non-Europeans to become friendly, despite their mutual affinities. The Commission proposes to indicate below some of these spheres of inter-racial co-operation.

(i) Joint Councils

810. For some thirty years, privately organized Joint Councils which try to improve race relations have existed in many South African towns. They are essentially local in character and, depending upon the structure of the population, they may include European and Native members, or Europeans and Indians, or Europeans and Coloureds, or members of all these ethnic groups. Their activities are as numerous and varied as the problems inherent in racial relations. They try to intervene with the municipal authorities and to pave the way for equitable decisions in cases which come to their knowledge, such as the too literal or too strict application of administrative measures, difficulties with the police or town officials, inadequate transport for non-Europeans living far from their place of work, lack of sanitary facilities, shortage of good fountains in a location, dilapidation of a school building, etc. One Joint Council may undertake to found a primary school; another may organize free elementary evening courses at which the illiterate may learn to

read and write. Naturally, the results obtained by the individual councils vary according to the energy and strength of character of its leading spirit. Some of them, the Bloemfontein Council for example, appear to have done extremely good work.

(ii) Institute of Race Relations

811. The central organization most active in the improvement of inter-racial relations appears to be the South African Institute of Race Relations, founded in 1929 "to work for peace, goodwill and practical co-operation between the various ethnic groups in the country. It [has] no preconceived 'solutions' to offer, no dogma to expound. It was founded in the faith that it is possible for men of all races to live together in amity and to work together in a common bond of loyalty to a common state".[403]

The Institute has a large membership, of high intellectual level; hence the publications and periodicals it issues are a source of objective information eagerly consulted by South Africans desiring access to impartial documentation. The Council of the Institute is of mixed composition; it meets at regular intervals and is sometimes presided over by one of the vice-presidents, Professor D. D. T. Jabavu, who belongs to a well-known indigenous family.[404]

(iii) Co-operation in education

812. One of the oldest and most persistent forms of inter-racial co-operation has been joint work by European and non-European teachers for the education of non-European youth. In education the State is tending to supersede the missions, and European teachers are gradually being supplanted by a non-European teaching body of increasingly high ability. While, however, almost all primary schools have a wholly non-European teaching staff, this situation does not yet exist either in the secondary and vocational schools or, still less, at Fort Hare University, where non-European teachers work side by side with European colleagues.

813. Until recently there were secondary schools in Cape Province where European teachers worked under a Coloured headmaster; and perhaps such cases still exist. In the country as a whole, however, the converse case, of non-European teachers working in a secondary school under a European head, is far more frequent. In view of the present government's policy it will probably be impossible in the future for a European to take a teaching post under a non-European.

814. Between European and non-European colleagues in secondary education a feeling of mutual goodwill and solidarity appears to prevail. But, here again, there are points where questions of discrimination cast their usual shadow: in Cape Province, the most liberal of the four provinces, non-European male and female teachers of equal qualifications and seniority with their White colleagues are paid a salary one-fifth lower.

(iv) Co-operation in other sectors

815. The other main existing sectors of inter-racial co-operation—which seem ineluctably doomed by legislation and recent trends to dwindle or contract—are the few mixed trade unions mentioned in chapter V,[405] social and cultural activities, and the activities of the various churches.

VI. Relations between non-European ethnic groups

816. While the racial situation in South Africa is in general conditioned by the relations between the dominant ethnic group, the Europeans, on the one hand, and the three non-European ethnic groups on the other, the picture of the situation which the Commission has tried to give would be incomplete or even biased if it failed to take into account the relations between the latter three groups.

(i) Relations between Coloured and Natives

817. The Commission is not unaware that there is some animosity among Coloured workers towards Natives in Cape Province. This is due to the fact that the Natives, who are prepared to work for lower wages, are gradually supplanting the Coloured in occupations in which they had a virtual monopoly before the Native "infiltration".[406] Moreover, some factory owners in Cape Province prefer occasionally to replace their "Coloured" labor, even at the same wages, by indigenous new arrivals who, while perhaps slower to learn, are more reliable and less given to drinking.

These few grievances and irritations, however, do not appear serious enough to arouse genuine mass feeling.

(ii) Relations between Coloured and Indians

818. As a rule, relations between these two ethnic groups appear to be normal and peaceful. Moreover, the main centres of the two groups (Cape Town and Durban) are more than 600 miles apart.

Relations between the Cape Malays and their co-religionists, the Moslem section of the Indian group, seem to be even cordial.

(iii) Relations between Natives and Indians

819. Relations between Natives and Indians are quite different, and present a real problem.

The problem exists, as is known, in every territory of the East African coast, since all of them have for the past hundred years admitted large numbers of Indian immigrants apparently unassimilable into the Native environment. But nowhere is it more acute than in Natal Province, especially in Durban—as is shown by the riots of 13 and 14 January 1949 in that city. The accumulation of bitterness and even mutual hostility which gave rise to the riots is underlined by the toll they exacted: 142 deaths (including 87 Natives and 50 Indians); 1,807 injured (including 541 Natives and 503 Indians); 306 buildings destroyed (including 1 factory, 58 stores and 247 dwellings); 1,939 buildings damaged (including 2 factories, 652 stores and 1,285 dwellings).[407]

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[403] *A Survay of Race Relations in South Africa*, 1950-51, page 1.

[404] Mention should also be made of various associations of similar leanings, such as the National Council of Women, the Penal Reform League and SABRA (South African Bureau of Racial Affairs); a rival organization of the Institute which has functioned on parallel lines for several years but which subscribes to the nationalist viewpoint.

[405] See chapter V, paragraph 432.

[406] See, *inter alia*, Miss Sheila Patterson's well-documented study *Colour and Culture, a Study of the Status of the Cape Coloured People within the Social Structure of the Union of South Africa*, chapter V, "Economic Life", Routledge and Kegan Paul, London, 1953.

[407] These figures, and those which follow, are taken from the report of the Commission of Enquiry appointed by the Governor-General following the Durban riots (U.G. No. 36/1949).

(a) *Facts known prior to the riots of 13-14 January 1949*

820. The Durban municipal authorities and the Natal provincial authorities were well aware, immediately after the Second World War, that there was some animosity between the Bantus (mainly Zulus) and Indians living side by side in the wretched hovels and shanties on the outskirts of Durban. The dizzy industrialization of the city was bringing about an unprecedented influx of Native labour. Between 1930 and 1946 the Native population had increased by 40,000; and from the psychological point of view a paradoxical situation had been created: the Indians, who had been settled there for more than two generations, and many of whom owned real estate, felt "at home" despite their complaints of persecution by the Europeans, and looked askance at these "intruders" arriving to compete with them in certain occupations. On the other hand, the Zulus, having had their tribal home nearby for centuries, considered they had a better right to be and live there than the Indians, who in their eyes were "intruders" in a far more real sense.

821. Furthermore, it was not long before horizontal economic stratification set in between the two races. The Africans, being of stronger physique and probably less suited to town life, quite naturally found themselves relegated to the hard and ill-paid manual tasks, while the Indians moved up a step in the occupational hierarchy. The Indians, being able traders, sold to the Africans at a profit the food and other commodities the latter needed. In a nutshell, a uniform socio-economic stratum alien to the country had insinuated itself between the Europeans and the Bantus. The latter, not without bitterness, reasoned more or less as follows:

> "The Indian was introduced into this country as a labourer. Now we find we have to serve two masters. Our ancestors fought the Europeans and lost. We accepted the European as our master—we will not tolerate this other black master."[408]

(b) *What the riots brought to light*

822. The authors of the report of the Commission of Enquiry appointed by the Governor-General after the riots readily admit that the latter took the European authorities completely by surprise: "On the 13th January, 1949, at about 5 p.m., the disorders broke out as unexpectedly as a bolt from the blue . . . The spark which caused this tragic explosion was almost ludicrous in its insignificance."[409]

823. The first main conclusion they reached was as follows: "The Natives were generally the aggressors and they attacked with increased ferocity. They now gave expression to a definite aim; to be rid of the Indian once and for all. When the Police dispersed bands of Natives the latter cried: 'Our fight is not with you but with the Indians; you prepare the ships, we will see to it that they embark—in two days there will not be a single Indian left in the country!' "[410]

824. The chief factors contributing to racial animosity seem, by the implicit admission of the Commission of Enquiry to have been somewhat underestimated by the European authorities, including the police, but were clearly revealed by the violence of the disorders. They are stated by the authors of the report to be the following:

Racial pride and the persistence of warlike instincts in the Zulus, who attacked Indian shops in their traditional military formations ("impis"), frenziedly chanting their old war-cries.

The repercussions of the political emancipation of India and Pakistan on the attitude of the Indians in South Africa, who had become more "arrogant" towards the Natives.

The more or less conscious fear of the Natives that their future is threatened by the explosive fecundity of the Indians, whose fertility rate is much higher than their own.

The apparently fairly numerous cases of seduction of Zulu women by Indians, who are wealthy by comparison with the average male Bantu.[411]

The sincere but apparently exaggerated conviction of the Natives that Indians bus owners were treating them badly.

The conviction among the Natives, which may have more justification,[412] was that they were being exploited by many Indian traders.

(c) *Apparent developments in Native-Indian relations since the 1949 riots*

825. In the four years which have elapsed since the 1949 riots, no new factor of any importance appears to have arisen to alter substantially the picture of economic and psychological relations between the Native and Indian masses drawn by the Commission of Enquiry.

826. There has, however, been some development in certain old factors. One of the effects of Act No. 41 of 1950, the Group Areas Act establishing separate areas for the different racial groups has been to place the Indians under the same restrictions as the Bantus in respect of real estate ownership. Formerly the Natives were aggrieved at finding the Indians authorized to own land and houses in many parts of Durban, when a Native could not own property in the city area. There is now no longer any discrimination in this respect between any of the non-European ethnic groups within the over-all system of discrimination set up by the Europeans to the detriment of all the non-European ethnic groups. This may have reduced tension between Natives and Indians.

827. In addition, the Natives have made some progress in business. Little by little some of them have become traders, and are now offering the Indians serious competition as suppliers of the vast Bantu market. The European authorities have helped them to do so. Thus, in public transport for Natives, they have done their utmost to grant a larger number of licences to Natives able to prove to their satisfaction adequate

408 *Ibid.*, page 13.

409 *Ibid.*, pages 4 and 5.

410 *Ibid.*, page 4.

411 "We have found this grievance to be one of the most powerful motives of anti-Indian feeling on the part of the Natives. If the provisions of the Immorality Act could be extended to illicit carnal intercourse between Natives and Indians it would in some measure repress this evil." (*Ibid.*, page 14).

412 The authors of the report mention (page 16) that in the Durban area during the two years ending 31 December 1948 the following number of persons were convicted under the price control regulations:

For selling at excessive prices: 64 Europeans, 162 Indians, 21 Natives and 3 Chinese;

For exposing goods for sale on which the prices were not marked: 10 Europeans, 95 Indians, 6 Natives and one Chinese.

competence from the standpoint of passenger safety. There is now a certain number of apparently successful Bantu bus owners.

828. The Bantus' feelings of jealousy and animosity towards the Indians may therefore have dwindled somewhat in recent years. The Indian attitude to the Natives is perhaps a little less "contemptuous and disdainful"[413] than before. The advanced elements in both groups have certainly brought to bear all the influence they possess to bring about a relaxation of tension and to weld the "united front" which they feel to be so necessary in view of the threat common to both groups represented by the intensified policy of *apartheid*.

829. But a very recent event shows that fundamentally the state of mind of the Native masses has scarcely changed since 1949.

On 20 September 1953 the accidental death of a South African Native who, apparently by his own fault, fell under the wheels of a bus owned and driven by an Indian set off in Durban a series of disorders which were the most serious to break out since 1949. The Natives set fire to eight Indian shops, and damaged and looted at least six others at Cato Manor, a Native quarter near Durban. The police fired on the crowd, killed one Native and arrested others for looting, rioting and burglary.[414]

This sufficed to confirm many Zulus in the naive belief that their "two masters", the European and the Indian, are in league against them.

830. To sum up, the Natives still have quite strong grievances against the Indians, and the picture of the South African racial situation is affected and complicated thereby.

VII. The campaign of "defiance of unjust laws" (1952)

831. We have seen above[415] that the new, coherent and sizable instalment of *apartheid* legislation passed since the National Government came to power in May 1948 has produced lively reactions, certainly in the advanced and articulate sections of the three ethnic groups concerned, if not throughout the non-European population. That reaction of indignation and opposition found its clearest and most direct expression in a campaign of so-called "defiance of unjust laws" conducted in 1952. As that campaign had its own lasting and noteworthy psychological effects, its influence has continued to affect the entire racial situation as observable in the Union of South Africa today. The Commission has accordingly been obliged to give this campaign special attention.

(i) The origins of the campaign

832. The choice of 1952 for this essentially political manifestation had a special meaning, for its organizers intended the campaign to coincide with the solemn tercentary celebration of the settlement of Europeans at the Cape decreed by the Government and observed by the White population of South Africa (more particularly, perhaps, by the section of it which is of Dutch or Huguenot stock). The main event of the tercentenary was a great popular exhibition organized at Cape Town on the theme "We Build a Nation". This exhibition, which recalled, symbolized and glorified the occupation of South African soil by Europeans, was more or less tacitly boycotted by almost all non-Europeans.[416]

833. Towards the end of 1951, swayed by the feeling aroused by the series of Acts just passed by Parliament, the two main Bantu and Indian organizations, the African National Congress and the South African Indian Congress, set up a Joint Planning Council to co-ordinate the efforts of non-European organizations to secure the repeal of legislation regarded as discriminatory.

834. The Council's proposals were submitted to the session of the African National Congress held at Bloemfontein from 15 to 17 December 1951, and shortly afterwards to the South African Indian Congress, which met at Johannesburg from 25 to 27 January 1952.

(ii) Exchange of correspondence

835. A decision having been taken by the session of the African National Congress to adopt the Joint Council's proposals, a letter signed by the President-General of the Native organization, Dr. J. S. Moroka, and by the Secretary-General, W. M. Sisulu, was sent on 21 January 1952 to the Prime Minister.

The signatories began by noting that since its establishment in 1912 their organization had endeavoured by every constitutional method to bring to the notice of the government the legitimate demands of the African people and had repeatedly pressed in particular, "their inherent right to be directly represented in Parliament, Provincial and Municipal Councils and in all Councils of State".[417] They added that "the position [had] been aggravated in recent times by the Pass Laws, Stock Limitation, the Suppression of Communism Act of 1950, the Group Areas Act of 1950, the Bantu Authorities Act of 1951 and the Voters' Act of 1951", that the cumulative effect of that legislation was "to crush", and that "after serious and careful consideration of the matter, the Conference unanimously resolved to call upon [the] Government . . . to repeal the aforementioned Acts by not later than the 29th day of February 1952, failing which the African National Congress [would] hold protest meetings and demonstrations on the 6th day of April 1952,[418] as a prelude to the implementation of the plan for the defiance of unjust laws".

836. Acting on parallel lines, but somewhat later, the South African Indian Congress held its conference in Johannesburg from 25 to 27 January 1952, following which a similar but more comprehensive letter, signed by Y. M. Dadoo, President, and by D. U. Mistry and Y. A. Cachalia, Secretaries, was sent to the Prime Minister on 20 February 1952.

The essential paragraphs of this letter read as follows:

> "This plan of action [which was aimed to secure the repeal of the six Acts or series of measures mentioned above] was endorsed by the Conference of the South African Indian Congress . . . In terms of this decision we have been instructed to convey to you

[413] See U.G. No. 36/1949, page 13 *et seq.*

[414] *Le Figaro*, Paris, 22 September 1953.

[415] *Inter alia*, in the section on political aspects, paragraphs 713 *et seq.*

[416] A very low price of admission was fixed in order not to keep away the poorest class. On the boycott by the Coloured community see the report of the Commissioner for Coloured Affairs for the year ended 31st March 1952 (U.G. No. 45/1952, page 20, "Van Riebeeck Festival").

[417] On this subject see annex VI.

[418] The anniversary of the landing of Jan van Riebeeck in 1652.

the full support of the South African Indian Congress to the call made upon your Government by the African National Congress for the repeal of the above-mentioned Acts, failing which the South African Indian Congress will participate with the African National Congress in holding protest meetings and demonstrations on the 6th day of April 1952 as a prelude to the implementation of the Plan for the Defiance of Unjust Laws. . . .

"We unhesitatingly and emphatically state that our struggle is not directed against any national group, that we bear malice or ill-will to none and that our struggle is solely against unjust laws."

837. Mr. M. Aucamp, Private Secretary to the Prime Minister, replied on 29 January 1952 to the letter from the African National Congress. He denied the validity of the arguments advanced by the African National Congress spokesmen, according to whom the Acts concerned "constituted an insult and humiliation", and towards the end of his letter said:

"I must, now, refer to your ultimatum. Notwithstanding your statement that your Congress has taken the decision to present its ultimatum to the Government in full appreciation of the consequences it entails the Prime Minister wishes to call your attention to the extreme gravity of pursuing the course indicated by you. In the interests of the Bantu he advises you to reconsider your decision. Should you adhere to your expressed intention of embarking on a campaign of defiance and disobedience to the Government, and should you in the implementation thereof incite the Bantu population to defy law and order the Government will make full use of the machinery at its disposal to quell any disturbances and, thereafter, deal adequately with those responsible for inciting subversive activities of any nature whatsoever.

"The Prime Minister has instructed me to urge you to let wiser counsels prevail and to devote your energies to constructive programmes of development for the Bantu people. This can be done by the opportunities offered by the Government for building up local Bantu government and administration within all spheres of Bantu life."

838. On 11 February the National Executive of the African National Congress replied to the Prime Minister, observing *inter alia* that the Acts represented as "motivated by a desire to protect the interests of the African people" were calculated rather to advance the interests of Europeans. It concluded:

"With reference to the campaign of mass action which the African National Congress intends to launch, we would point out that as a defenceless and voteless people, we have explored other channels without success. The African people are left with no alternative but to embark upon the campaign referred to above. We desire to state emphatically that it is our intention to conduct this campaign in a peaceful manner, and that any disturbances, if they should occur, will not be of our making."[419]

(iii) The development of the campaign

839. The campaign thus announced was in fact launched shortly afterwards. A fund was established to finance it. On 6 April 1952, the anniversary of Jan van Riebeeck's landing, protest meetings against the unjust laws and religious services at which prayers for "freedom" were offered, were held in many towns of the Union; but law and order were respected in all cases. Volunteers enrolled for the campaign, in accordance with which they were to commit "technical" offences, such as contraventions of the Pass Laws, the *apartheid* regulations governing the use of seats and waiting rooms on railway stations and the use of railway carriages, motor and trolley buses and post office counters,[420] and contraventions of the curfew regulations.

840. The campaign proper began on 26 June 1952. In the next three months approximately 5,000 offenders, chiefly Bantus, were arrested, nearly half of them in Port Elizabeth and East London, that is to say in the eastern part of Cape Province where the Bantu population is densest.

841. At first sentences were fairly light, varying according to the nature of the offence but involving on the average only a fine of £2 sterling or 30 days' imprisonment. Gradually, however, more severe sentences were passed, and young persons were sentenced to four strokes of the lash. In some urban centres the prisons became overcrowded, as virtually all arrested offenders given the alternative of a fine or imprisonment chose imprisonment.

842. Two events in particular must be mentioned. The first took place at the beginning of August 1952 within the context of the defiance movement: twenty non-European leaders or agitators were arrested, including Dr. J. S. Moroka, President-General of the African National Congress and Dr. Y. M. Dadoo, President of the South African Indian Congress. They were accused of violating article 11 (*b*) of the Suppression of Communism Act by "seeking to bring about a political, industrial, social or economic change within the Union by the promotion of disturbance or disorder".

843. Later on seven Europeans also joined the militants of the defiance movement, among them two well-known personalities: Mr. Patrick Duncan, the son of a former Governor-General of the Union, and Miss Bettie du Toit, a prominent trade unionist. They were all arrested after entering the location of Germiston, near Johannesburg, without permission and holding a meeting there. At the same time the police arrested fourteen Natives and eighteen Indians, including Manilal Gandhi, the second son of Mahatma Gandhi.

844. Shortly before Christmas 1952 the campaign of defiance of unjust laws was suspended. Eight thousand and sixty-five persons had been imprisoned between 26 June and the end of 1952.[421] At the beginning of January 1953 Mr. Yusuf Cachalia, joint secretary of the South African Indian Congress and the African National Congress action committee, announced that the new regulations concerning the incitement of Natives to break the law, gazetted jointly by the Minister of Native Affairs and the Minister of Justice, would have some effect on the campaign, but that it would go on in spite of them.

845. It must be noted that many non-European organizations had not joined the defiance movement; indeed the Coloured, who had in any event not been represented

[419] The text of these four letters will be found in annex VI.

[420] Seats, entrances and counters reserved for Europeans carry the bilingual legend: *Slegs vir Blankes;* Europeans only.

[421] It would have been useful to know the respective numbers of Indians and Natives in this total, but the Commission has been unable to obtain these figures.

among the initiators of the campaign, had held off so completely that the authors of the memorial transmitted to the Prime Minister on 14 August 1953 by a deputation of the Coloured People's National Union had no hesitation in drawing to his attention "the exemplary conduct of the Coloured people during the recent racial disturbances".[422] The Bantu National Congress, a new association formed at Ladysmith, Natal, and the Natal Indian Organization likewise abstained entirely; the Paramount Chief of the Zulus explicitly voiced his opposition. Some two hundred other Zulu chiefs also came out in opposition to the passive resistance movement on the ground that the Indians "were using the Bantu people as a political pawn".[423]

(iv) The Government's counter-measures

846. The Government's legislative counter-measures against the civil disobedience movement were not long delayed. Shortly afterwards, as we have already seen (paragraph 719), Parliament passed a very severe Public Safety Act and a Criminal Law Amendment Act providing for an increase in penalties. The organizers of the campaign then studied the new situation thus created with a view to adapting their plan of action accordingly.

847. The present state of affairs is thus one of expectation or suspense, but also one of tension. It will no doubt be seen in the near future whether, and how far, organized resistance will be resumed in the face of the Government's increased powers of suppression.

(v) "Turning the screw"

848. At all events the process briefly described above, colloquially known as "constant turning of the screw", is not new. It does not appear to be denied by any historian that since the Union of South Africa was founded in 1909, Parliament has steadily increased the number of restrictions on non-Europeans, restrictions which in their turn have confronted the public authorities with new responsibilities of enforcement and control. Those whom the new restrictions were designed to cover have either sought to evade them, by making use of gaps or inconsistencies overlooked by the legislators, or run the risks involved in their violation.

The next stage has been a fresh attempt, through one or more amendments, to fill the gaps in the law. Frequently the amendments have been combined or consolidated with the previous legislation on the same subject. Despite this theoretical simplification, the responsibilities of the police in connexion with the enforcement of the laws have in reality increased.

849. The least that can be said of this dual trend, on the one hand towards ever stricter, more precise and more vexatious governmental regulation and on the other, in spite of that fact or perhaps because of it, towards circumvention or contravention by those concerned, is that it is unhealthy. Inherent in it are dangers to which the members of commissions of inquiry appointed by the government after one or other racial disturbance have not failed to call attention. The chapters in these reports headed "Causative Factors in Background" and the like frequently conclude that the increasingly vexatious application of a particular regulation has fostered the creation of an "explosive" or "inflammable" atmosphere.[424]

(vi) Four significant facts

850. Moreover the Commission believes that in the recent campaign of defiance of unjust laws there are four facts of particular significance in connexion with the recent development of the racial situation in South Africa.

851. (*a*) It should first be noted that the Acts and regulations singled out by the two initiating organizations as "of nature to aggravate the position of the African people" are listed in the letter of 21 January 1952 to the Prime Minister, in the following order:

1. The Pass Laws;
2. Provisions concerning stock limitation;
3. The Suppression of Communism Act, 1950;
4. The Group Areas Act, 1950;
5. The Bantu Authorities Act, 1951;
6. The Separate Representation of Voters Act, 1951.

It appears to the Commission that in thus giving priority, as it were, to the old Pass Laws and the 1939 regulations concerning livestock selection, the organizers of the movement sought to obtain for the campaign the largest possible following from among the more or less illiterate Native and Indian masses. For while these masses doubtless have little grasp of the meaning of the four 1950-1951 Acts mentioned above, there can scarcely be any migrant workers or inhabitant of a location who has not had to show his pass or letter of exemption to the police (or who has not had trouble with them on that account), while there are no such obligations on any European.

852. Moreover, the mass of the Natives in the Group Areas, as has already been said,[425] do not yet appear fully to realize, despite the patient explanations of the Minister of Native Affairs, that the limitation of livestock by selection is the only remedy for the evils of over-grazing. Many mistrustful Natives believe that the Europeans' real aim in this connexion is to impoverish or rob them. It is on the persistence of this attitude of mind in certain Group Areas that the campaign organizers seem to have relied in their attempts to recruit supporters among the tribes.

853. (*b*) As the Prime Minister had hitherto shown little inclination to receive the delegations of the two organizations (African and Indian) which consider themselves "the premier, oldest established and most responsible organizations of their respective population groups",[426] they addressed their letters of protest or demand, apparently for the first time, direct to the Prime Minister. While politely worded, these letters are violent or even threatening in substance.

854. (*c*) The effort at co-ordination between Indians and Bantus appears to have been better organized than

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[422] See the brief summary in *The Times*, London, 17 August 1953.

[423] *African World*, February 1953.

[424] See for example paragraphs 156 and 160 of the report of the Commission Appointed to Enquire into Acts of Violence Committed by Natives at Krugersdorp, Newlands, Randfontein and Newclare, Government Printer, Pretoria, U.G. No. 47/1950.

[425] See paragraph 681.

[426] Introduction to the joint memorandum addressed to the seventh session of the United Nations General Assembly by the African National Congress and the South African Indian Congress.

on previous occasions, although the vast majority of the militants arrested and imprisoned seem to have been Bantus.

855. (*d*) For the first time, so far as the Commission has been able to ascertain, the Bantus adopted the traditional Indian tactics of "passive resistance" or "civil disobedience".

856. Before concluding this brief review of the "defiance of unjust laws" campaign, it may be noted that the Commission sought to learn whether there was any connexion between the campaign and the rather serious racial conflicts which broke out at Port Elizabeth on 19 October, at Johannesburg on 3 November, at Kimberley on 8 November and at East London on 9 November 1952. It was unable to consider the matter, however, as no information was available.[427]

[427] The South African Government did not take the customary action of appointing a commission of inquiry to report on the causes of these disorders.

All the Commission has felt competent to observe in this connexion, at long range, is that apart from the bloody clashes in Durban on 13 and 14 January 1949, in which Indians and Africans (with no Europeans involved) came violently to grips for the first time, the racial disorders which took place between 1948 and 30 September 1953 do not appear to have been more serious than those in any other five-year period in the tragic history of South Africa, including the very disturbed post-war period of 1918-1923.

857. It is nonetheless true that the increased and more systematic legislative pressure exerted by the present Government on the three non-White elements of the population in order to protect (*a*) the integrity and (*b*) the dominating position of the white race, has set off a very lively reaction among large numbers of at least two of the three non-European sections of the population: the Bantus and the Indians.

Unfortunately it appears possible that this must be regarded as a premonitory symptom of fresh racial tensions.

PART III

Chapter VIII

REVIEW OF THE MEASURES PROVIDING FOR DIFFERENTIAL TREATMENT IN THE LIGHT OF THE PROVISIONS OF THE CHARTER RELATING TO HUMAN RIGHTS AND IN THE LIGHT OF THE UNIVERSAL DECLARATION

858. The analysis of the relevant legislation and the study of certain practices contained in the two preceding chapters of this report show that differential treatment in the most varied spheres for persons belonging to different racial or colour groups is a salient feature of the situation in the Union of South Africa. In chapter II, when discussing its own terms of reference, the Commission indicated the obligations of the States Members of the United Nations under the provisions of the Charter relating to human rights and fundamental freedoms. In the present chapter, the Commission selects a number of statutes and compares them with those obligations.

859. Having noted elsewhere[428] the close connexion which exists between the Universal Declaration of Human Rights and the provisions of the Charter relating to those rights, more particularly, the provisions of Article 56, the Commission has also seen fit to compare the texts it has selected with the provisions of the Universal Declaration. In doing so, it has been guided by its terms of reference under which it was to carry out its studies in the light of "the resolutions of the United Nations on racial persecution and discrimination". Those resolutions include resolution 217 (III) by which the General Assembly adopted the Universal Declaration of Human Rights. Nevertheless, the Commission has deemed it sufficient to confine its comparisons to those enactments providing for differential treatment which have come into force since the Charter.

860. On the one hand, the Union of South Africa did in fact take part in the San Francisco Conference at which the United Nations Charter was drawn up and adopted. It deposited its instruments of ratification of the Charter on 7 November 1945 and is thus an original Member of the United Nations.

861. On the other hand, the differential treatment and unequal status of racial groups are traditional in the Union of South Africa, originating much earlier than the United Nations Charter or the formation of the Union in 1909. While the degree of differentiation and, still more, of inequality was perhaps not the same in all the various territories which today form the four Provinces of the Union, the actual principle of differential treatment and inequality appears always to have been accepted by the great majority of the population of European origin which, as always in the past, alone possesses political power.

862. In accepting the Union of South Africa as an original Member of the United Nations, the other Member States were perfectly aware of the situation which prevailed in that country. They could not then expect that this situation would be radically transformed overnight by the complete elimination of all discriminatory measures resulting either from statutory provisions or from administrative or private practices.

863. Nevertheless, the other Members of the United Nations, and the United Nations itself as such, had the right to expect that the Union of South Africa would, as stated in Article 2, paragraph 2, of the Charter, fulfil in good faith the obligations assumed by it in accordance with that instrument: namely, the obligation to eliminate gradually all discriminatory measures based, *inter alia,* on race or colour in the sphere of human rights and fundamental freedoms; the obligation to co-operate with the Organization for the achievement of universal respect for and observance of, those rights and freedoms for all; and, most important of all, the obligation not to take any action calculated to aggravate or increase discrimination. The Commission would recall the terms of General Assembly resolution 616 B (VII) whereby the Assembly, after declaring that "in a multiracial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on a basis of equality", affirmed that "governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter".

864. As noted in chapter VII, the Commission is not unmindful of the fact that certain statutes providing for differential treatment may actually protect the interests of the Natives or other population groups affected. It has also noted that some of these statutes provide for exceptions in special circumstances or possible exemptions for certain categories of persons.

865. Without personal experience of local conditions it is not always possible to determine whether certain differential measures may help to protect the persons to whom they apply.

On this point the co-operation of the Union Government would have been especially valuable.

866. The Commission has no doubt that as a whole the system which prevailed in the Union of South Africa at the time when the Charter came into force, whether with respect to the right to vote and be elected or to movement and residence, property rights, work and the practice of professions, use of public services, social security, education and public health, criminal law, and so forth, involved serious discrimination on a

[428] See chapter II, paragraphs 101 *et seq.* and 169 *et seq.*

wide scale against the non-European groups of the population. The Union has taken no steps since the coming into force of the Charter to remove this discrimination although required to do so by virtue of the undertakings it has assumed.

867. What is worse, the policy of *apartheid* since embarked upon has had the result of increasing the number of discriminatory measures and aggravating their effects.

868. In the present Chapter the Commission has attempted to appraise the racial situation with special reference to the measures adopted since the Charter; it has compared those measures, on the one hand, with the provisions of the Charter relating to human rights, and on the other hand, with the provisions of the Universal Declaration.

I. Comparison of certain Acts and orders which have come into force since the Charter with the obligations of the Union of South Africa under the provisions of the Charter relating to Human Rights

869. Comparison of the Acts and orders which have come into force since the Charter and which are analysed in chapter VI of this report with the obligations of the Union of South Africa under the provisions of the Charter relating to human rights has led the Commission to the following conclusions:

(i) The increase and aggravation of discrimination by measures enacted since the United Nations Charter constitute a failure on the part of the Government of the Union of South Africa to fulfil the obligation it assumed under Article 56 of the Charter, "to take joint and separate action in co-operation with the Organization" for the achievement of the purposes set forth in Article 55 c, namely, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

(ii) All these measures, and more particularly those enacted in furtherance of the policy of *apartheid,* are in contradiction with the purpose enunciated in Article 1, paragraph 3, of the Charter which is: "To achieve international co-operation . . . in encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". The resulting situation is one of the "situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations", referred to in Article 14 of the Charter.[429]

II. Comparison of certain Acts and orders which have come into force since the Charter with the provisions of the Universal Declaration of Human Rights

870. In comparing the Acts and orders which have come into force since the Charter and which are analysed in chapter VI of this report, with the provisions of the Universal Declaration of Human Rights, the Commission has attempted first of all to determine how far each of these enactments is in harmony with the provisions of the Universal Declaration relating to a particular right, and then to estimate how far these texts as a whole conform to certain provisions of the Declaration which embody general principles.

(a) *Comparison of the statutes selected by the Commission with the provisions of the Declaration relating to particular rights*[430]

POLITICAL RIGHTS (RIGHT TO VOTE AND BE ELECTED AND OTHER FORMS OF REPRESENTATION)

871. The prevailing system governing the right to vote and be elected has been described in broad outline in chapter III;[431] it is discriminatory in regard to all the non-European groups of the population. This system has not been changed to any significant extent since the coming into force of the United Nations Charter.[432] Nevertheless, the special system of representation for Natives introduced under the Representation of Natives Act, No. 12, of 1936[433] has been modified as the result of the coming into force of the Bantu Authorities Act, No. 68, of 1951:[434] the consultative organs elected by the Natives under Act No. 12 of 1936 have been replaced by organs composed of *ex officio* members or members nominated by the authorities.

MOVEMENT AND RESIDENCE

(a) *Movement inside the country, Natives (Abolition of Passes and Co-ordination of Documents) Act, No. 67, of 1952*

872. Act No. 67 of 1952[435] introduced a reference book which had to be carried and produced on demand by all Natives, including those who, under the pre-existing laws, had not been required to carry passes or had been granted exemption.

873. The Commission considers that the provisions of Act No. 67 of 1952 are not in harmony with those of Article 13, paragraph 1, of the Declaration, the text of which is as follows:

> "(1) Everyone has the right to freedom of movement and residence within the borders of each state."

(b) *Settlement and residence*

Group Areas Act, No. 41, 1950

Native Laws Amendment Act, No. 54, 1952

874. Act No. 41 of 1950[436] establishes separate areas for the various racial groups. It provides for the regulation, on the basis of the various racial groups, of the acquisition of immovable property and the occupation of land or premises situated in the areas created under the Act. The effect of the Act is thus to restrict freedom of settlement.

875. Act No. 54 of 1952 intensifies the restrictions on the Natives' right of settlement in an urban or proclaimed area.

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429 Article 14 of the Charter provides that: "Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations."

430 The various subjects are here dealt with in the same order as in chapter VI.

431 See paragraph 291.

432 *The Separate Representation of Voters Act, No. 46,* of 1951, has not been brought into effect (see paragraph 482).

433 See paragraph 473.

434 See paragraph 483.

435 See paragraphs 507 *et seq.*

436 See paragraph 530 and paragraphs 555 *et seq.*

Under section 10 of Act No. 25 of 1945, as amended by Act No. 54 of 1952,[437] no Native who does not fall within a category defined by the Act may remain for more than 72 hours in such an area.

Under section 29 of Act No. 25 of 1945, as amended by Act No. 54 of 1952,[438] a "Native adjudged to be idle or disorderly" may be removed from an urban or proclaimed area and sent to and detained in a work colony or similar institution; further, such a Native may be forbidden to enter an urban or proclaimed area at any time or during a specified period, until he obtains special permission.

876. The Commission considers that the above-mentioned provisions of Acts No. 41 of 1950 and No. 54 of 1952 are not in harmony with those of article 13, paragraph 1, of the Declaration, which reads as follows:

"Everyone has the right to freedom of movement and residence within the borders of each State."

PROPERTY RIGHTS

Asiatic Land Tenure and Indian Representation Act, No. 28, 1946

Group Areas Act No. 41, 1950 and Group Areas Amendment Act, No. 65, 1952

877. Act No. 28 of 1946[439] imposed restrictions with regard to the acquisition and occupation of immovable property by Asiatics in the Province of Natal and amended the law relating to the possession or occupation of immovable property by such persons in the Transvaal.

878. Act No. 41 of 1950, as amended by Act No. 65 of 1952,[440] establishes separate areas for different racial groups and subjects the acquisition of immovable property and the occupation of lands or premises situated in the areas established under the Act to a system of regulation based on segregation of racial groups.

879. The Commission considers that the provisions of the Acts mentioned above infringe the property rights of certain persons by making the rights contingent on membership in a racial group, and are not in conformity with the provisions of article 17 of the Declaration, which is worded as follows:

"1. Everyone has the right to own property alone as well as in association with others.

"2. No one shall be arbitrarily deprived of his property."

WORK AND THE PRACTICE OF PROFESSIONS

Native Building Workers Act, No. 27, 1951

Native Laws Amendment Act, No. 54, 1952

880. Act No. 27 of 1951[441] regulates the hiring and conditions of employment of Native building workers and prohibits the latter from working on buildings situated in an urban area, elsewhere than in a Native area.

881. Act No. 54 of 1952 amends section 29 of Act No. 25 of 1945.[442] Under this section, as amended, a Native declared to be idle or undesirable may be sent to and detained in a work colony, farm colony or similar institution to perform thereat such labour as may be prescribed under the Act or the regulations made thereunder.

882. The Commission considers that the provisions of Acts No. 27 of 1951 and No. 54 of 1952 referred to above are not in conformity with the provisions of article 23, paragraphs 1 and 2, of the Declaration, which states the following:

"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."

FAMILY RIGHTS

Prohibition of Mixed Marriages Act, No. 55, 1949

883. Act No. 55 of 1949[443] is designed to prohibit marriages between Europeans and non-Europeans.

884. The Commission considers that the provisions of Act No. 55 of 1949 are not in harmony with those of article 16 of the Declaration, and more particularly of paragraph 1 of that article. The text of article 16 of the Declaration is as follows:

"1. 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.

"2. Marriage shall be entered into only with the free and full consent of the intending spouses.

"3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

SOCIAL SECURITY

Unemployment Insurance Act, No. 53, 1946, as amended by Act No. 41, 1949

Workmen's compensation Amendment Act, No. 36, 1949

885. Act No. 53 of 1946, as amended by Act No. 41 of 1949,[444] provides for the payment of allowances to certain unemployed persons. The benefits are not the same for persons belonging to different racial groups.

886. Act No. 36 of 1949 amends the Workmen's Compensation Act No. 30 of 1941.[445] The schedule of benefits that may be recorded under the Act varies according to the race of the beneficiary. By the terms of the Act as amended, a Native who suffers permanent total disablement is paid a lump sum, whereas a European in the same circumstances receives a disability pension.

887. The rights provided for in the above-mentioned Acts do not exist everywhere in the world, since the fulfilment of certain economic conditions is essential for their application. Nevertheless, the Commission considers that once proclaimed in any country, rights of this kind should be applied in conformity with the principle of non-discrimination embodied in the Charter and the Declaration.[446] Act No. 53 of 1946 and

[437] See paragraph 531.
[438] See paragraph 532.
[439] See paragraphs 553 *et seq.*
[440] See paragraphs 555 *et seq.* and 587 *et seq.*
[441] See paragraphs 607 *et seq.*
[442] See paragraph 532.
[443] See paragraphs 627 *et seq.*
[444] See paragraphs 645 *et seq.*
[445] See paragraphs 638 and 644.
[446] See articles 1, 2 and 7 of the Declaration, as reproduced below, paragraph 890.

Act No. 36 of 1949 do not conform to this principle and the Commission therefore considers that they are not in harmony with article 25, paragraph 1, of the Declaration, which reads as follows:

"1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and 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."

CRIMINAL LAW

Native Laws Amendment Act, No. 54, 1952

888. Act No. 54 of 1952 amends section 29 of the Natives (Urban Areas) Consolidation Act No. 25 of 1945.[447] By the terms of that section, as amended, a Native declared to be an idle or undesirable person, may be arrested without a warrant and brought before a Native Commissioner or a magistrate.

The Native may be required to give a good and satisfactory account of himself. If he fails to do so, the Native Commissioner or the magistrate may declare him to be an idle or undesirable person, according to the circumstances.

A Native declared to be idle or disorderly may be removed from the area in question. He may, moreover, be sent to and detained in a work colony, farm colony or similar institution to perform thereat such labour as may be prescribed under the Act of the regulations made thereunder.

889. The Commission considers that the provisions of section 29 of Act No. 25 of 1945, as amended by Act No. 54 of 1952, are not in harmony with Articles 3 and 9 and Article 11, paragraph 1, of the Declaration. The text of these provisions is as follows:

Article 3

"Everyone has the right to life, liberty and security of person."

Article 9

"No one shall be subjected to arbitrary arrest, detention or exile."

Article 11

"1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

(b) *Conclusion as to how far the statutes enacted since the United Nations Charter conform as a whole to certain articles of the Declaration embodying general principles*

890. The Commission considers that all the measures enacted since the United Nations Charter in furtherance of the policy of *apartheid,* a policy which is based on the concept of the inequality of human races, are in contradiction with the provisions of articles 1, 2 and 7 of the Universal Declaration of Human Rights, the text of which is as follows:

Article 1

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 2

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

"Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Article 7

"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."

891. The Commission further considers that the situation resulting from the measures so enacted does not permit the full application of the principles proclaimed in article 29, paragraph 2, of the Declaration, which reads as follows:

"2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

Chapter IX

SUMMARY OF THE COMMISSION'S CONCLUSIONS

892. The Commission has set down in the body of its report a number of partial conclusions on various aspects of the problem before it. These conclusions may be found in the sections on the United Nations competence in matters of violation of human rights and the fundamental freedoms on the impact produced on various groups of the population by legislation in the Union of South Africa, and on the compatibility of that legislation with the provisions of the United Nations Charter and the Universal Declaration of Human Rights.

The Commission has drafted this summary of the conclusions scattered throughout the text in order to express the gist of its views on the whole question and to facilitate the Assembly's study of this report.

In order to present these conclusions concisely, some of the explanations given in the text had to be omitted.

[447] See paragraphs 532 and 656.

Thus, for a full knowledge of the substance and finer points of the Commission's views, frequent reference should be made to the complete text.

The Commission's conclusions may be summarized as follows:

(a) *The Commission's terms of reference in relation to certain Charter provisions and General Assembly resolutions*[448]

893. (i) When setting up the Commission and establishing its terms of reference, the Assembly affirmed its own competence in principle to study and act on problems of racial discrimination. Nevertheless, in inviting the Commission to have regard to various articles of the Charter, including Article 2, paragraph 7, in carrying out its terms of reference, the Assembly undoubtedly wished the Commission to study the extent to which those articles might determine, condition or restrict the competence of the United Nations.

The Commission therefore assumed that the Assembly had placed in its terms of reference a definite instruction to study this problem. The Commission carried out that study most carefully in chapter II of the report and reached a formal conclusion. The Assembly, assisted by the commissions which it establishes and authorizes, is permitted by the Charter to undertake any studies and make any recommendations to Member States which it may deem necessary in connexion with the application and implementation of the principles to which the Member States have subscribed by signing the Charter. That universal right of study and recommendation is absolutely incontestable with regard to general problems of human rights and particularly of those protecting against discrimination for reasons of race, sex, language or religion.

The exercise of the functions and powers conferred on the Assembly and its subsidiary organs by the Charter does not constitute an intervention prohibited by Article 2 (7) of the Charter.

894. (ii) The Commission is convinced that this interpretation, which it believes to be legally correct and which has been confirmed by the invariable practice of the General Assembly, also serves the cause of peace and the legitimate aspirations of mankind. The study which it has carried out has enabled it to appreciate the serious dangers of a problem such as this, not only to the social equilibrium of the countries concerned, but also friendship and peace among nations. The Commission therefore considers that in such cases the Assembly is not merely exercising a right, but actually fulfilling a duty in using its functions and powers under the Charter.

(b) *The substance of the question*

895. (iii) The Commission has observed that the racial problem in the Union of South Africa, which results from a policy of segregation, is no new thing in the life of that nation and did not begin when the Nationalist Party conceived and began to apply the so-called *apartheid* doctrine. Almost from the beginning of European colonization in the mid-seventeenth century such segregation had existed between Europeans and non-White groups in the territory of the present Union of South Africa. That segregation has been established either spontaneously as a result of the historical circumstances attending the contact between those entirely different groups and strengthened by the religious and racial prejudices peculiar to the era, or by sporadic and empirical legislation originating in vestiges of the political and social concept associated with the colonial and semi-colonial periods of the nation's life.

896 (iv) The Nationalist Party, which has held power since the general elections of 1948, initiated and developed the doctrine which it calls *apartheid*. This doctrine, which the Government avowedly intends to apply to its full extent, has been explained in chapter V of this report on the basis of official statements made by the most authoritative persons in the country.

This doctrine lays down the principle that full and complete segregation is a desirable end, likely to promote the parallel development of the various ethnic groups, and constitutes the best method of subsequently achieving equal opportunity and possibly an equal standard of living for those groups, in a diversity which is deemed advisable by the authors of the doctrine but which is fundamentally irreconcilable with humane thinking. The doctrine is based on the theory that the White race, as the heir to Western Christian civilization, is in duty bound to maintain inviolate and to perpetuate its position in Western Christian civilization, and must at any cost, although in a numerical minority, maintain its dominating position over the coloured races. It refutes all dogmas of civic equality and therefore cannot grant the Natives or Bantus, or any other non-White groups such as the Coloured persons and Indians, the political rights which the White population enjoys and which confer on it the management of public affairs. The doctrine also encourages ethnic groups to maintain and develop a "sense of colour" and to safeguard the purity of their racial characteristics.

897. (v) Since the Nationalist Party came to power, it has systematically applied its *apartheid* doctrine. To that end it has enacted and intends to continue to enact a series of statutes, regulations and administrative measures. The most important aspects of that legislation are considered in chapter VI; an attempt has been made in chapter VII to describe its effects on the various groups of the population, and in chapter VIII to compare its provisions with those of the United Nations Charter and the Universal Declaration of Human Rights.

In view of the differences observed between certain groups or specific geographic areas, these legislative and administrative measures affect to a greater or lesser degree nearly all aspects of the domestic, familial, social, political and economic life of the non-White population, who make up 79 per cent of the whole population of the country. They affect its most fundamental rights and freedoms: political rights, freedom of movement and residence, property rights, freedom to work and practise occupations, freedom of marriage and other family rights. They establish obvious inequality before the law in relation to the rights, freedoms and opportunities enjoyed by the 20 per cent of the population consisting of "Whites" or "Europeans", or of persons regarded as such.

For example, approximately 3 million Bantus live in Native "Reserves", which constitute a mere 9.7 per cent of the area of the Union; non-Europeans may not marry members of the White ethnic group; an Indian from Natal may not cross the frontier of his province to go to another province of the Union without previously obtaining a written authorization; no Bantu may

[448] See chapter II.

buy a bottle of wine; no non-European may order a meal in a restaurant or spend a night in a hotel other than the few reserved for non-Europeans; no Bantu may move freely at night in the urban zones subject to curfew; no Bantu living on a Reserve may leave it to seek work in a town without previously obtaining a written authorization; no non-European may enroll as a student in the universities of Pretoria or Potchefstroom; no non-European may play on a Rugby football team consisting of Europeans; no non-European may operate a hoist in the gold mines of the Rand or drive a locomotive; a non-European may not be elected to Parliament, and his voting rights are restricted and are subject to different conditions from those of the Whites. Because of all kinds of restrictions, Bantus working in urban areas are obliged to live in communities where the proportion of men is nearly double that of women; in the gold-mining areas that disproportion is even greater.

898. (vi) These facts and situations constitute obvious racial discrimination. Four-fifths of the population are thereby reduced to a humiliating level of inferiority which is injurious to human dignity and makes the full development of personality impossible or very difficult. The alleged purpose of the policy is to extend, to a population subjected to strict discrimination and having a very low standard of living and very limited opportunities for development, eventual opportunities equal to those enjoyed by White people. The truth is, however, that for the time being the policy excludes them from the extensive opportunities for development which exist on the other side of the "colour bar".

899. (vii) The *apartheid* policy has given rise to the serious internal conflicts described in chapter VII, and maintains a condition of latent and ever-increasing tension in the country. The studies referred to in chapter IV show that the non-White population is increasing more rapidly than the so-called European population—so rapidly that it has been estimated that by 1980, or in a single generation, the European population will constitute a mere 17.9 per cent of the total. The studies also show that the economic needs of the country, which is rapidly becoming industrialized, will compel the increasing use of non-European manpower in industry, contrary to the purposes of *apartheid*. That would imply the intellectual and cultural development of non-European workers and their increased incorporation in the group which the Commission has described as "developed". That is the group which directs and supports the resistance movement against discriminatory measures and practices. The Commission observed an apparent acceptance of discriminatory measures by the "undeveloped" groups. This acceptance or apparent indifference is usually based on ignorance. Aspirations towards a better life and towards the enjoyment of all the opportunities open to persons free from discrimination cannot fail to grow as a result of the aggressive information which modern technical civilization distributes, more or less powerfully and rapidly but inevitably, to all men across all frontiers and across the strongest barriers of discrimination, and also as a result of the constantly-increasing contacts between the *discriminators* and the manpower *subject to discrimination,* and of the daily-growing need of the former for the latter.

900. (viii) Among the population subjected to discrimination in the Union of South Africa there are 365,000 persons of Indian origin, who either immigrated under contract by virtue of a treaty signed by the authorities which then administered India and the rulers of the territories now belonging to the Union of South Africa, or are descended from such immigrants. These thousands of persons, who belong to the most "developed" groups, maintain ties and relations with the citizens of their country of origin, which now consist of India and Pakistan. These countries are watching with increasing anxiety the development of the policy of discrimination against that part of the population; their persistent appeals to the General Assembly to deal with the question and help to find a solution show the extent of their anxiety.

The Commission also notes the profound alarm which is spreading in Africa, the Middle East and, generally speaking, wherever the spirit of solidarity among Coloured persons has resented the attack made upon it. Publications, statements and resolutions bear witness to that alarm. The Commission is convinced that the pursuit of this policy cannot fail immediately and seriously to increase the anti-White sentiment in Africa resulting from nationalist movements, the force of which must not be underestimated. This policy is therefore contrary to the efforts of the part of mankind which believes in the unity of the destiny of peoples and the necessity of the maintenance of peace and which aspires to use such aspirations through peaceful channels of international collaboration to carry out the purposes laid down in the United Nations Charter, including that of "the right of peoples to self-determination."

There can be no doubt, therefore, that the position in the Union of South Africa is, to say the least, "likely to impair the general welfare or friendly relations among nations", in the sense of Article 14 of the Charter.

901. (ix) The Commission considers that the doctrine of racial differentiation and superiority on which the *apartheid* policy is based is scientifically false, extremely dangerous to internal peace and international relations, as is proved by the tragic experience of the world in the past twenty years, and contrary to "the dignity and worth of the human person".

The Commission agrees with the conclusions reached by the group of anthropologists and geneticists of various countries who, under the auspices of UNESCO, made, on 18 July 1950, a statement on the nature of race and racial differences. The statement pointed out the fallacy of the concept of racial superiority and of the existence of pure races. The Commission has taken the following extracts from the statement, with which it agrees entirely:

> "All normal human beings are capable of learning to share in a common life, to understand the nature of mutual service and reciprocity, and to respect social obligations and contracts. Such biological differences as exist between members of different ethnic groups have no relevance to problems of social and political organization, moral life and communication between human beings.
>
> "... biological studies lend support to the ethic of ... brotherhood; for man is born with drives toward co-operation, and unless these drives are satisfied, men and nations alike fall ill. Man is born a social being who can reach his fullest development only through interaction with his fellows. The denial at any point of this social bond between man and man brings with it disintegration. In this sense every man is his brother's keeper. For every man is a piece

of the continent, a part of the main; because he is involved in mankind."

902. (x) All the previously-described discriminatory legislative and administrative measures, especially those laid down in pursuance of the *apartheid* policy, conflict with the solemn declaration in the Preamble of the United Nations Charter, in which the signatories state that they are determined to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal right of men and women and of nations large and small". They are also contrary to the purpose of the Charter to "achieve international co-operation in . . . encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

903. (xi) Those measures are also contrary to the purposes of international economic and social co-operation laid down in Article 55 of the Charter, which states that the United Nations should, "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations", promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Thus the measures taken in application of the *apartheid* policy constitute a failure by the Government of the Union of South Africa to observe the obligation undertaken by it under Article 56 of the Charter, "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55". This failure is clear to the Commission, because that Government has, after having signed the Charter, not pursued a policy for the progressive elimination of discriminatory measures contrary to the Charter, but has instead adopted new measures likely to aggravate the situation with regard to racial discrimination.

904. (xii) The Commission's study of previous General Assembly resolutions on racial persecution and discrimination showed that the racial policy pursued by the Government of the Union of South Africa is also contrary to the whole doctrine repeatedly and firmly upheld by the United Nations, and in particular with:

(*a*) The Universal Declaration of Human Rights, and especially its Articles 1, 2 and 7, which read as follows:

Article 1

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made on the basis of the political, juisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

. . . . .

Article 7

"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."

(*b*) General Assembly resolution 377 E (V) of 3 November 1950 entitled "Uniting for peace":

"*The General Assembly* . . .

". . . *Is fully conscious* that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also on the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for an observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly

"*Urges* Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas."

(*c*) General Assembly resolution 103 (I) of 19 November 1946, which has been restated several times by the General Assembly and which reads as follows:

"*The General Assembly declares* that it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination, and calls on the Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end."

(*d*) General Assembly resolution 616 B (VII) of 5 December 1952, parts of which read as follows:

". . . in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed, or colour, and when economic, social, cultural and political participation of all racial groups is on a basis of equality.

". . . governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter."

905. The members of the Commission are aware that prophecy is within neither their terms of reference nor their capacity. Nevertheless, they believe that it is their duty as free and responsible men to transmit to the Assembly a conviction which they bore in mind during their long work and which was strengthened daily.

They wished to communicate their concern to the Assembly. They reached the following conclusions:

(*a*) It is highly unlikely, and indeed improbable, that the policy of *apartheid* will ever be willingly accepted by the masses subjected to discrimination;

(*b*) Efforts at persuasion, however powerful they may be or may become, by the Government and Europeans can never convince the non-Europeans that the policy is based on justice and a wish to promote their material and moral interests, and not on pride of race and a will to domination;

(*c*) As the *apartheid* policy develops, the situation it has made is constantly being aggravated and daily becomes less open to settlement by conciliation, persuasion, information or education, daily more explosive and more menacing to internal peace and to the foreign relations of the Union of South Africa. Soon any solution will be precluded and the only way out will be through violence, with all its inevitable and incalculable dangers. Moreover, in this atmosphere of growing tension there is a danger that the forces of agitation and subversion, which the Government is resisting by strong legislative measures, will find an increasingly favourable soil; there is a serious risk that they may come into the hands of non-Europeans and eventually be regarded by these as a hopeful instrument of liberation.

906. The members of the Commission, faced with a situation which is so serious and which seems to them to be fraught with such grave and imminent threats, feel in duty bound to communicate to the Assembly for its consideration on certain suggestions which have occurred to them concerning the assistance which the community of peoples convened in the United Nations could, and therefore should, give to help a Member, the Union of South Africa, to solve those problems at a difficult moment in its history. The members of the Commission realize that the Commission was set up for inquiry and not as a commission of good offices, but are willing to risk reproach for an unduly wide interpretation of their terms of reference if they make the following suggestions:

907. (i) The competent organs of the United Nations, especially the General Assembly, are the guardians of the principles of the San Francisco Charter. It is their duty to affirm those principles clearly and firmly whenever to do so seems necessary. Human beings in general, and especially whose who are persecuted, who suffer injustices, who are dispossessed and who are refused the bread and salt of freedom and human dignity, have the right to hope that the Organization which was set up at San Francisco under the sign of "faith in fundamental human rights" will be the first to give them its moral support. Contrary to the views held by many, there is value in firm and constant proclamation of the principles on which peaceful and friendly communal life, both national and international, is based. The moral strength of an organized international community consisting of sixty countries and over a thousand million human beings is immense, whatever may be thought of it by those who live behind physical or spiritual fortifications which progress and civilization are daily rendering more illusory. The effects of this moral force are already felt and will continue to increase in the future.

908. (ii) Nevertheless, international co-operation has another duty as important if not more important: to face reality and seek by all peaceful means, not neglecting any, a manner in which to help to solve problems. Every Member State going through a serious and difficult period is entitled to receive aid and assistance. This aid must include all the friendly advice which the great family of the United Nations is able to give to one of its Members in a spirit of brotherhood. In the case of the Union of South Africa, there is a great opportunity to give both moral and material aid and assistance and thus to confirm international solidarity and co-operation by deeds.

The United Nations, in view of its serious anxiety at the development of ethnic tensions in South Africa and at the feelings which those tensions have aroused in other States and among other peoples, might *express the hope* that the Government of the Union of South Africa will be able to reconsider the components of its policy towards various ethnic groups. The United Nations might *suggest* ways and means in which the Union might draw up a new policy: for example, a round-table conference of members of different ethnic groups of the Union, which would, in an effort towards conciliation, make proposals to the Government to facilitate the peaceful development of the racial situation in the Union of South Africa. The United Nations might offer its help to that conference by sending a number of United Nations representatives, so that all parties might be sure that the principles of the Charter would guide the debates.

909. (iii) Nevertheless, the South African racial problem cannot be solved by the mere wish of a government which has decided to change its policy. In the course of its survey the Commission has stressed the multiple and complex factors from which the problem has arisen and which the *apartheid* policy has systematized and co-ordinated. These historical, religious, social and economic factors have played and will continue to play an active part in South African life, and their effects, even in the most favourable circumstances, can only disappear gradually. Obviously the economic and social factors are especially important.

The non-European groups, especially the Natives, constitute the major part of the proletariat of the Union of South Africa, which suffers not only from discriminatory measures but also from those conditions which affect the proletariat of any economically under-developed country. The economic development of the whole country, the actual diminution of the social inequality which is now so great, and the opening of real opportunities and openings for individual and collective progress, together with the sincere wish of the Government and of the European population progressively to eliminate discrimination must be combined if the situation is to be appreciably improved.

The Commission therefore considers that the best course of international co-operation would be to offer the Government of the Union of South Africa at an opportune moment all the material and intellectual assistance which an international organization should and can give to one of its Members in difficulty. This assistance, if it were requested and accepted, might take the form of carrying out studies, setting up conciliation machinery, or lending, through technical, financial, economic and social assistance, the Organization's effective support to a policy and projects aimed at facilitating, in education, health, housing, agriculture, industry and public works, the maintenance of peaceful relations among the ethnic groups of the Union of South

Africa and the progressive development of their collaboration in the life of the community.

910. In conclusion, the Commission considers it fitting to recall the words of a man who gave evidence before it and who, after describing and censuring the *apartheid* policy, pointed out that the campaign of resistance in South Africa was directed against injustice but had not yet developed into hatred among men. The Commission welcomed that testimony as a ray of hope and hoped that its optimism would be confirmed by events. In any case, the Commission was convinced that if the South African Government merely indicated its wish to review its racial policy and to accept spontaneously, in complete sovereignty and independence, the fraternal collaboration of the community of nations in solving that problem, a simple gesture of that kind might even now clear the air and open a new path of justice and peace to the development of the Union of South Africa within the United Nations.

ANNEXES

[A/2805/Add.1 (incorporating A/2505/Add.1/Corr.1 & 2)]

ANNEX I

Resolutions 616 A and B (VII) adopted by the General Assembly at its 401st plenary meeting held on 5 December 1952

THE QUESTION OF RACE CONFLICT IN SOUTH AFRICA RESULTING FROM THE POLICIES OF *apartheid* OF THE GOVERNMENT OF THE UNION OF SOUTH AFRICA

A

The General Assembly,

Having taken note of the communication (A/2183) dated 12 September 1952, addressed to the Secretary-General of the United Nations by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, regarding the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa,

Considering that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling that the General Assembly declared in its resolution 103 (I) of 19 November 1946 that it is in the higher interests of humanity to put an end to religious and so-called racial persecution, and called upon all governments to conform both to the letter and to the spirit of the Charter and to take the most prompt and energetic steps to that end,

Considering that the General Assembly has held, in its resolutions 395 (V) of 2 December 1950 and 511 (VI) of 12 January 1952, that a policy of "racial segregation" (*apartheid*) is necessarily based on doctrines of racial discrimination,

1. *Establishes* a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1 b, Article 55 c, and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session;

2. *Invites* the Government of the Union of South Africa to extend its full co-operation to the Commission;

3. *Requests* the Secretary-General to provide the Commission with the necessary staff and facilities;

4. *Decides* to retain the question on the provisional agenda of the eighth session of the General Assembly.

B

The General Assembly,

Having taken note of the communication (A/2183) dated 12 September 1952, addressed to the Secretary-General of the United Nations by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, regarding the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa,

Considering that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling that the General Assembly declared in its resolution 103 (I) of 19 November 1946 that it is in the higher interests of humanity to put an end to religious and so-called racial persecution, and called upon all governments to conform both to the letter and to the spirit of the Charter and to take the most prompt and energetic steps to that end,

1. *Declares* that in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on a basis of equality;

2. *Affirms* that governmental policies of Member States which are not directed towards these goals, but which are designed to perpetuate or increase discrimination, are inconsistent with the pledges of the Members under Article 56 of the Charter;

3. *Solemnly calls upon* all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms.

Letter dated 12 September 1952 addressed to the Secretary-General by the permanent representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Syria and Yemen

[*Document A/2183*]
New York, 12 September 1952

On instructions from our respective Governments, we have the honour to request that the following item be included in the agenda of the seventh regular session of the United Nations General Assembly:

"The question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa."

An explanatory memorandum in accordance with rule 20 of the rules of procedure of the General Assembly is enclosed.

(Signed) Sultan AHMED
for Permanent representative of Afhganistan
Fouad EL-PHARAONY
Acting permanent representative of Egypt
L. N. PALAR
Permanent representative of Indonesia
A. KHALIDY
Permanent representative of Iraq
Ahmed S. BOKHARI
Permanent representative of Pakistan
Asad AL-FAQIH
Permanent representative of Saudi Arabia
Farid ZEINEDDINE
Permanent representative of Syria
Ba MAUNG
Liaison officer of Burma to the United Nations
Rajeshwar DAYAL
Permanent representative of India
A. G. ARDALAN
Permanent representative of Iran
Karim AZKOUL
Acting permanent representative of Lebanon
Carlos P. RÓMULO
Permanent representative of the Philippines
A. ABOUTALEB
Permanent representative of Yemen

EXPLANATORY MEMORANDUM

The race conflict in the Union of South Africa resulting from the policies of *apartheid* of the South African Government is creating a dangerous and explosive situation, which constitutes both a threat to international peace and a flagrant violation of the basic principles of human rights and fundamental freedoms which are enshrined in the Charter of the United Nations.

Although Africa's importance in world affairs is increasing rapidly, many parts of that continent still remain subject to racial discrimination and exploitation. The founding of the United Nations and the acceptance by the Member States of the obligations embodied in the Charter have given to the peoples of these areas new hope and encouragement in their efforts to acquire basic human rights. But, in direct opposition to the trend of world opinion, the policy of the Government of the Union of South Africa is designed to establish and to perpetuate every form of racial discrimination which must inevitably result in intense and bitter racial conflict. *Apartheid,* which is the declared objective of the Government of the Union of South Africa, implies a permanent white superiority over the non-Whites, who constitute the great majority of the Union's population. To achieve *apartheid,* the following measures are being taken:

(*a*) Under the notorious Group Areas Act, non-Whites are compelled to abandon their present lands and premises and to move to new and usually inferior reserved areas without compensation or provisional alternative accommodation;

(*b*) Complete segregation is enforced in public services, such as railways, buses and post offices;

(*c*) The Suppression of Communism Act is being used to suppress democratic movements, especially of the non-Whites, for example, those which advocate racial equality or urge opposition to *apartheid;*

(*d*) Non-Whites are debarred from combat service in the armed forces;

(*e*) No voting or other political rights whatsoever are enjoyed by non-Whites, except in Cape Province, where Africans and the "Coloured" inhabitants have a limited franchise;

(*f*) Africans are confined to reserves, and their movements are restricted to certain places after specified hours under certain restrictive laws. The interprovincial movements of non-Whites are also restricted;

(*g*) Non-Whites are excluded under the Mines Works Amendment Act of 1926 from certain classes of skilled work and a systematic drive is in progress to replace them, even in the lower grades of the public services, by Whites;

(*h*) The education of non-Whites and their housing and living conditions are deplorable. Such facilities of this type as are available to non-Whites are vastly inferior to those offered to the White population.

As a result of these measures, a social system is being evolved under which the non-Whites, who constitute 80 per cent of the population of the Union of South Africa, will be kept in a permanently inferior state to the White minority. Such a policy challenges all that the United Nations stands for and clearly violates the basic and fundamental objectives of the Charter of the United Nations.

The Preamble and Article 1, paragraph 3, and Article 55 c of the Charter proclaim universal respect for, and the due observance of, human rights and fundamental freedoms, without distinction as to race, sex, language, or religion. Under Article 56, all Members have pledged themselves to take joint and separate action in co-operation with the United Nations for the achievement of these purposes.

Under resolution 103 (I), adopted unanimously by the General Assembly in 1946, the United Nations called on governments to put an end to racial persecution and discrimination. Resolution 217 (III) proclaimed the Universal Declaration of Human Rights, and article 2 of the Declaration affirms the equal application of these rights without distinction as to colour, race or religion. Under resolution 395 (V), the United Nations held that the policy of *apartheid* was necessarily based on doctrines of racial discrimination and therefore called upon the South African Government not to implement or enforce the provisions of the Group Areas Act. These findings and this recommendation were repeated in resolution 511 (VI) adopted at the sixth session of the General Assembly.

It is recognized in all countries, as well as among liberal South African Europeans, that the solution of South Africa's racial problem lies not in any domination of one race by another, but in a partnership of races on a basis of equality and freedom.

Thus the *apartheid* policy of the Government of the Union of South Africa is contrary not only to the basic premises of the United Nations and to its specific and repeated recommendations, but also to the trend of opinion all over the world.

Because they have been unable to secure redress by constitutional methods and because the South African Government has turned a deaf ear to the repeated appeals of the United Nations not to embark on a policy of racial discrimination, the non-Whites of the Union have been compelled to launch a completely non-violent resistance movement against the Government's unjust and inhuman racial policies. In their efforts to destroy this movement, the Government has so far arrested over 4,000 persons. Despite the non-violent character of the campaign, physical violence such as flogging is being used to suppress it. The South African Government's reaction to a movement of peaceful resistance against legislation which world opinion and the United Nations have repeatedly and emphatically condemned, is having wide repercussions. We are convinced that the continuance of such repression will only aggravate race conflict throughout Africa and arouse indignation elsewhere. A new tension is thus being created which is no less serious than others affecting world peace.

It is therefore imperative that the General Assembly give this question its urgent consideration in order to prevent an already dangerous situation from deteriorating further and to bring about a settlement in accordance with the Purposes and Principles of the United Nations Charter.

ANNEX III

Communications addressed to the Commission by governments

(i) Communication from the Government of Syria

New York, 28 July 1953

I have been instructed by my Government to communicate to you its observations on the question of racial conflict in the Union of South Africa, pursuant to the provisions of General Assembly resolution 616 A (VII).

The above-mentioned observations are attached.

I have the honour, etc.

(*Signed*) Salah Eddine TARAZI
Acting Permanent Representative of Syria to the United Nations

OBSERVATIONS OF THE SYRIAN GOVERNMENT ON THE SUBJECT OF RACIAL CONFLICT IN THE UNION OF SOUTH AFRICA

By its resolution 616 A (VII) of 5 December 1952, the General Assembly of the United Nations decided to establish a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1 b, Article 55 c and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session.

It is evident from this text that the Commission was appointed to study the problem of race conflict in the Union of South Africa in the light of three essential criteria, namely:

(1) The provisions of the Charter relating to respect for human rights and fundamental freedoms;

(2) The principle of reserved jurisdiction (Article 2, paragraph 7, of the Charter);

(3) The various resolutions adopted by the United Nations on racial persecution and discrimination.

The Commission must therefore consider the question of jurisdiction at the outset. Can the policy of racial discrimination pursued by the Union of South Africa be studied and discussed in the General Assembly of the United Nations? If the reply to that question is in the affirmative, the Commission must consider the question whether the statements made in criticism of the Government of the Union of South Africa have any material foundation, and decide whether the facts in question constitute a violation of the provisions of the Charter relating to respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. In so doing, the Commission must be guided by the provisions of the Charter and the resolutions previously adopted by various organs of the United Nations.

The Government of Syria will confine itself to some brief observations on each of the above-mentioned criteria. These observations make no claim to be exhaustive. They are intended only to help to clarify certain data. For this purposes, the two following questions will be considered in turn:

(1) Jurisdiction of the General Assembly;

(2) Violation of provisions of the Charter.

I. *Jurisdiction of the General Assembly*

Has the General Assembly of the United Nations any jurisdiction to deal with the policy of racial discrimination put into effect by the Government of the Union of South Africa? Such is the significance of the words "with due regard to the provision of Article 2, paragraph 7" in the General Assembly resolution. That paragraph relates to what is generally called the "reserved field of action" or "exclusive jurisdiction" of the States Members. The Charter has prohibited interference in matters which belong to the reserved field of action. In such matters, the domestic jurisdiction of the States Members is exclusive.

In the discussions in the *Ad Hoc* Political Committee, the representative of the Union of South Africa has already made the claim, based on the provisions of Article 2, paragraph 7 of the Charter, that the United Nations has no jurisdiction. He even submitted a draft resolution to that effect, which the Commission rejected by an overwhelming majority. (See *Official Records of the General Assembly, Seventh Session, Ad Hoc Political Committee, 21st meeting,* page 122).

Was the *Ad Hoc* Political Committee mistaken in adopting a position contrary to that proposed by the delegation of the Union of South Africa? It was not. On the contrary, it decided in favour of a fair and sound interpretation of the provisions of the Charter.

Article 2, paragraph 7 prohibits the organs of the United Nations from interfering in the domestic affairs of States when those affairs are not related to matters covered by the Charter or affecting other States. This view has been unanimously supported by such exponents of the modern theory of international public law as Mr. Scelle, Mr. Rousseau, Mr. Preuss and Mr. Rolin. In Mr. Rolin's view, the reserved field of action consists of:

". . . all the matters falling within the jurisdiction of a given State in respect of which the exercise of such jurisdiction is neither bound by a rule or principle of international law nor likely to affect the recognized interests of other States or of the international community." (Henri Rolin: "Les Principes du droit international publique", *Recueil des cours de l'Académie de droit international de la Haye,* 1950, II, page 388).

On the basis of such a definition, we reach the following conclusions:

(1) The policy of racial discrimination practised by the Union of South Africa concerns questions covered by the Charter. Considered from this point of view, such a policy cannot escape the attention of the qualified organs of the United Nations;

(2) If the policy were to be continued its effect would be to endanger international peace and security. All matters which concern peace and security are the concern of the United Nations;

(3) The policy applies to all persons who are not of European origin in the Union of South Africa. Among the groups at which it is aimed are persons of Indian origin. As early as 1946, the Government of India submitted to the General Assembly its dispute with the Government of the Union of South Africa on the subject of the Indians resident in that country. At every session, the General Assembly has reaffirmed its jurisdiction and maintained its right to discuss the question. At the second part of the third session, the delegation of the Union of South Africa submitted a draft resolution claiming, on the basis of Article 2, paragraph 7, that the United Nations had no jurisdiction. The First Committee rejected that claim by a large majority. (*Ibid., Third Session, Part II, First Committee,* page 321).

If that was the decision in the case of the treatment of the Indians, which is only a part of the policy of racial discrimination, the policy as a whole cannot but be subject to the examination and supervision of the General Assembly. To assert the contrary would be tantamount to applying to the part a treatment different from that which was to be given to the whole. Such an attitude would, to say the least, be illogical.

II. *Violation of provisions of the Charter*

The Syrian Government was one of those which requested that "the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa" should be included in the agenda of the seventh session of the General Assembly. The facts and grounds set forth in the explanatory memorandum annexed to that request are in themselves sufficient to show that the policy of *apartheid* is contrary to the provisions of the Charter, and particularly to the obligations embodied in Article 55 c. That explanatory memorandum should therefore be borne in mind. (See document A/2183, 15 September 1952.)

It is scarcely necessary to add that the Union of South Africa has already carried into effect measures which constitute an infringement of the principles which the Charter was intended to safeguard.

Among such measures may be mentioned the Act of 1946, which placed a number of restrictions on the exercise of the right of Asians to possess property.

It is scarcely necessary to state that this policy is contrary to the resolutions already adopted by the General Assembly and particularly to those adopted in 1946, 1949, 1950 and 1952 on the question of the treatment of persons of Indian origin in the Union of South Africa.

(ii) Communication from the Government of India

Ministry of External Affairs
New Delhi
27 July 1953

No. AI/53/1531/28

Subject: Question of Race Conflict resulting from the policies of *apartheid* of the Government of the Union of South Africa

The Minister for External Affairs, Government of India, presents his compliments to the Commission established by the United Nations to study the racial situation in the Union of South Africa, and with reference to their communication dated 4th July 1953 (received on the 15th July) on the subject mentioned above, has the honour to forward herewith the following documents:—*

(*a*) A memorandum briefly describing various administrative and legislative measures adopted by the Government of the Union of South Africa in pursuance to their policies of *apartheid* (Annexure (i))

(*b*) Copy of a publication entitled "Disabilities of Non-White Peoples in the Union of South Africa (Annexure (ii))

* Annexures mentioned in (*b*), (*c*), (*d*), and (*e*) are not reproduced.

(*c*) Note regarding the reports of the official Commissions appointed by Union Government on various occasions (Annexure (iii))

(*d*) Pamphlets published by the South African Institute of Race Relations, etc. (Annexure (iv))

(*e*) Copies of books on South Africa by eminent authors who had intimate knowledge of the various discriminatory practices against non-Europeans prevalent in the Union (Annexure (v))

The Government of India have noted with great regret the recent declaration of the Prime Minister of the Union of South Africa that his Government will not furnish any material or evidence to the Commission nor allow the Commission to pay a visit to that country. It is, however, earnestly hoped that notwithstanding this the efforts of the U.N. Commission would contribute substantially towards a satisfactory solution of the problem of race conflict in the Union of South Africa. The Government of India also take this opportunity to assure the Commission of their co-operation and assistance in the successful completion of the work entrusted to it by the United Nations.

The Minister for External Affairs takes this opportunity to convey to the U.N. Commission the assurances of his highest consideration.

MEMORANDUM

LEGISLATIVE AND ADMINISTRATIVE MEASURES AND SOCIAL AND OTHER PRACTICES IN THE UNION OF SOUTH AFRICA BASED ON THE POLICIES OF *apartheid*

The non-White people of the Union are subject to many disabilities, political, economic and social. Since the beginning of this century systematic attempt has been made by the Europeans in South Africa to take away the limited rights of the non-Whites with the distinct object of perpetuating their position of subordination and inferiority to the Europeans. With the advent of the Nationalist Party to power in 1948 this process has been intensified. Dr. Malan's Government has been relentlessly building up a social and political structure based on the doctrine of *apartheid*. In practice this means the segregation of the non-Whites, who constitute about 80 per cent of the entire population of the Union, with the object of relegating them permanently to an inferior status. It has already meant to the non-Whites loss of their lands, denial of opportunity of development and of citizenship and other human rights. Everything possible has been done in the administrative and legislative spheres in the Union to impose fresh disabilities, discrimination, hardships and indignities on the non-Whites from time to time.

The real purpose of the policies followed by the Nationalist Party is abundantly clear from the following typical statements made by their leaders at the time of the elections held in 1948 and in 1953.

Mr. Strydom, now Minister of Lands, in one of his speeches in 1948 said as follows:

> "The Hon'ble Minister of Mines (Mr. Hofmeyr) rejects with contempt the principle of the white man's domination. He dismisses with scorn the *herrenvolk* idea . . . Are we ruling South Africa as a result of his stupid leadership idea? No, we are ruling South Africa today because the legislation placed power in our hands and not in the hands of his friends . . . : But he does not want to rule the country by power. Our policy is that the Europeans must stand their ground and must remain *baas* in South Africa. If we reject the *herrenvolk* idea and accept the principle that the white man cannot remain *baas*, if the franchise is to be extended to the non-Europeans, and if the non-Europeans are given representation and the vote and the non-Europeans are developed on the same basis as the Europeans, how can the Europeans remain *baas*, with the leadership idea of the Minister of Mines? Our view is that in every sphere the Europeans must retain the right to rule the country and to keep it a white man's country. That is our standpoint in the country—our standpoint".

Dr. Malan, now Prime Minister, then stated as follows:—

> "Give the non-Europeans numerical strength in such cases, let them be stronger numerically than the European element, give them education on top of it; also give them the same social security as we know social security here; give them the same social security which we give to the Europeans; give them the right to organize in the field of labour, that is to say, give them trade union organizations which enable as a working class to enforce their will in several respects by means of strikes; give them political equality such as the Deputy Prime Minister has clearly outlined and such as many members on the other side have also clearly outlined, give them political equality and give them arms, and then there is only one ultimate result and that is that the non-European will govern the country and the European will have to leave it. That happened in India and today you see the result."

In his opening speech for the election campaign in March 1953 Dr. Malan stated that his party would ask the electorate for a renewed mandate for their *apartheid* policy. He said that a stage had been reached when South Africa must decide on a definite course. According to him "there were only two courses to choose from, which sooner or later must lead them to one of two termini—Equality or *Apartheid*. Between these two no middle course could be possible. The Nationalist Party had chosen *Apartheid*".

Explaining his Government's policy in regard to Native labour Mr. Schoeman, Minister of Labour, stated in the Senate on 1st May 1951 "let us say quite clearly that I am not in favour of throwing open the doors of the skilled trades to the Natives. I am not in favour of Natives becoming indentured in terms of the Apprenticeship Act in European Areas, but when industries are established in Native Areas the Natives should have the opportunity of becoming skilled workers in their own industries. We have difficulty enough in finding a sufficient number of European youths to become indentured, and in a few years' time we should get Natives in terms of thousands becoming skilled workmen if we allow them to become indentured. Can we allow it? . . . The whole drux of the policy of the Government is that we do not want to create a permanent stratum of European unskilled labour and then allow Native labour to advance beyond the Europeans".

Referring to these remarks of the Minister of Labour the Star, a leading newspaper of the United Party, in an editorial in its issue of 2 May 1951 stated: "Stripped of its disguises this policy simply means that the urban Natives at any rate—and they are about a quarter of the whole—shall never be allowed to rise

above a certain level. Talk of their own areas will deceive no one; the urban Natives have no areas of their own. They have townships in which they live, and a few tradesmen may thrive there in the service of their community. But in the mass they are an adjunct to European trade and industry and there can be no thought of a self-contained economy, as to some extent there might be in the reserves. The horizontal bar is, in fact, an absolute barrier to progress . . .".

This policy of retarding the progress of non-Europeans and attempting to hold them down in unskilled and poorly paid jobs is restricting the purchasing power of this vast section of the South African community and the labour is kept unnecessarily inefficient.

Since 1946 South Africa has flouted the resolutions passed by the General Assembly of the United Nations every year. She has been ruthlessly pursuing her policies of *apartheid* in relation to the non-Whites defying the United Nations Charter and in flagrant and complete disregard of the Declaration of Human Rights. All efforts to persuade the Government of the Union of South Africa to modify its racial policies have failed.

Since 1951 there has been great unrest and agitation among the non-whites against the oppressive laws of the Union based on the policies of *apartheid*. Driven to desperation the African people including the Indian community, which forms an integral part of the African population, launched in June 1952 a peaceful and non-violent resistance movement against the Government's unjust laws. About 8,000 non-Europeans who took part in this movement have been arrested. Many of these have been sentenced to pay fines or undergo imprisonment. Not content with these methods of punishment the Union Government resorted to caning of the passive resistance volunteers. Reports have also been received of cases of severe ill-treatment meted out to the passive resisters by the police authorities. Extensive use was also made of the wide autocratic powers under the Suppression of Communism Act to muzzle the voice of the voteless and defenceless non-Europeans. In addition the Nationalist Government have recently assumed dictatorial and autocratic powers by enacting two new laws, viz: the Public Safety Act and the Criminal Law Amendment Act, which were described by the *Rand Daily Mail,* a leading newspaper of the Union, as "the most shocking measures ever placed before Parliament. . . . The bills amount to nothing less than dictatorship aimed at killing the freedom of speech and many other democratic freedoms we now enjoy. . . . This is a reversion not to authoritarian dictatorship but to barbaric despotism. It is unheard of in any civilized country in time of peace". Both these laws are intended to be used by Dr. Malan's Government against the peaceful and non-violent passive resistance movement of the non-Whites.

Although there is an apparent lull in the passive resistance movement in South Africa at the present moment it is clear beyond doubt that discrimination and denial of ordinary human rights will no longer be acquiesced in by the non-White people of South Africa and that their struggle will continue in one form or other till the Government of the Union modify their policies in relation to the non-Whites.

The racial tension created as a result of the policies followed by the Government of a politically dominant minority of Whites in South Africa and the bitterness and hostility created between Whites and non-Whites involves a serious threat to peace and co-operation between the races. This threat must sooner or later inevitably react on the peace of the world. Racial harmony in Africa, which is essential not only to the peace and progress of that continent but to the peace of the world, is, in the considered opinion of the Government of India, an objective of the highest priority. In Africa, the upsurge of a new desire and a new resolve among the politically subject populations of different races to seek social justice and political equality is a portent of our times which it would be dangerous to ignore.

The various legislative and administrative measures and social and other practices in the Union of South Africa are described below:

(*a*) LEGISLATIVE MEASURES

The most important *apartheid* legislative Acts are the Group Areas Act, the Registration of Population Act, the Mixed Marriages Act, the Separate Representation of Voters Act, the Suppression of Communism Act and the Bantu Authorities Act. A copy each of these as also other Acts based on the policies of *apartheid* is enclosed.

South Africa Act, 1909

Under this Act, which embodies the constitution of South Africa, only persons of European descent are eligible to become members of the Union Parliament. The Act provides that the qualifications of parliamentary voters, as they existed in the several colonies at the time of the establishment of the Union, shall be the qualifications necessary to entitle persons in the provinces to vote for the election of members of the House of Assembly.

Before the establishment of the Union in 1909, the Africans in the Cape Province had franchise but not in the other three Provinces. The Africans of Cape Province continued to exercise franchise till 1936 when the Natives Representative Act was passed which deprived them of their right of a common franchise in the Cape Province.

So far as the Asiatics are concerned, in Natal and Transvaal they were deprived of the franchise rights in 1896 and 1885 respectively. They had therefore not acquired the right to vote at the time of the establishment of the Union in 1909. Those residing in the Cape Province exercised certain limited franchise rights in common with the Coloured community. They have no municipal franchise except in the Cape Province. The Asiatic Land Tenure and Indian Representation Act, 1946, provided for representation of the Indian community in Natal and the Transvaal on a separate roll by three European members in the House of Assembly and two in the Senate. Even this limited indirect representation was abolished by the Nationalist Government in 1948.

Mr. Strydom, the Union Minister of Lands, said on 8th December 1950:

> "We say to the United Nations that we shall fight to the last drop of our blood to maintain white supremacy in South Africa. In order to do so we must keep the right to vote in our own hands."

Mines and Works Act No. 12 of 1911 and Mines and Works Act, 1911, Amendment Act, 1926:

Under this Act Natives and Indians are debarred from working in certain skilled and administrative jobs

in mines or works where machinery is installed. (*Vide* section 4 of the Act).

Native Labour Regulation Act, No. 15 of 1911 amended up to 1933

This Act provides for control of labour agents and recruitment of Native labour. Under this Act it is a criminal offence for a Native labourer to desert or absent himself from his place of employment or to fail to enter upon or carry out the terms of his contract of employment. (*Vide* section 14)

Under the regulations for the establishment and control of the Native Labour Bureau issued by the Governor-General in Notice No. 2495 published in the *Gazette* dated 31 October 1952 (copy enclosed) the right of Africans to seek employment independently and move for this purpose freely has been taken away from them.

Immigrants Regulation Act, No. 22 of 1913

Under section 4(1)(*a*) of this Act the Minister is authorized to deem any particular class of persons as unsuited to the requirements of the Union or any particular province thereof and to include such class of persons in the category of prohibited immigrants. Asiatics have been declared prohibited immigrants under these powers.

This Act also restricts movement of Asiatics from one province to another. They have to obtain temporary permits for visits to Provinces other than their own. There have been cases in which bridegrooms' parties visiting the Union from outside or visiting one Province from another could not take friends and relations with them even temporarily because entry permits were refused by the authorities.

The Minister is empowered under this Act to exempt in his discretion any person from the provisions of this Act in respect of his entry into and residence in the Union. How the discretion of the Minister is used against non-Europeans is clear from the following cases:

Two Negro bishops, Bishop Frederick Jordan, first Vice-President of the Missionary Department of the African Methodist Episcopal Church and Bishop Howard Primm of Nashville, Tennessee, citizens of the United States of America, were recently refused temporary entry permits to enter the Union. This church has a following of 150,000, mostly Cape Coloureds and Africans in South Africa. Since the foundation of the church, in South Africa in 1896, it has been customary for bishops to come out for four years' tour on duty.

The Union immigration authorities refused to grant entry permits to several non-European boxers invited to South Africa by the Durban Indian boxing promoters. In reply to a representation made on behalf of the promoters by Dr. Vernon L. Shearer, M.P., the Minister of the Interior, Dr. Dönges answered in August 1951 that the Government would not grant permits to non-European boxers, Asiatics or otherwise, to enter the Union to compete even against non-European boxers. The policy, he stated, was laid down in 1934 and the Government was unable to depart from it. In the reverse direction the Government have refused to permit a soccer team consisting of players of Indian origin from paying a visit to India.

The British Medical Association had to cancel a meeting, which they proposed to hold jointly with the Medical Association of South Africa, in Johannesburg in July 1951, because their members belonged to various races, colours and creeds, and no assurance was forthcoming from the Union Government that they would be admitted to the Union.

There were other instances when proposals for international conferences had to be abandoned because of the *apartheid* policy of the Union Government. In 1950, the Union Government refused permits to non-European delegates for the proposed conference in South Africa of the International Students Service. Plans for holding the International Pre-History Conference in South Africa in 1951 had to be similarly abandoned because the Government would not allow non-White delegates to confer in that country with Whites. For the same reasons plans to hold an international conference of trigonometrical surveyors in South Africa had to be abandoned. The Fourth International Conference of African Touring and the Triennial Conference of International Council for Women met the same fate. One of the reasons given by the Acting Minister of the Interior, Mr. Schoeman, for the Government's refusal to allow non-White delegates to come to South Africa for international conferences was that the social intercourse between non-European delegates and Europeans would not in that case be avoided.

The world famous Indian dancer Ram Gopal had to cancel his projected visit to South Africa after all other arrangements had been finalized by his manager, as the Union Government refused to grant him necessary entry permit for this purpose. This is how *apartheid* is exercised even in the field of cultural or recreational activities.

Professor Z. K. Mathews of the University College for Africans at Fort Hare and President, Cape African National Congress, who had gone to the United States of America and whose letter on the subject of the policies of the Union Government in relation to the non-Europeans was circulated in the last session in the General Assembly, was refused extension of his passport. On arrival in Johannesburg he was roughly handled by the police "simply because he happened to be a black man with strong views about the Government" to quote the *Cape Times* comment.

The Immigrants Regulations Act excludes wives and children of persons domiciled in South Africa from the term "prohibited immigrants" *vide* para 5 (1)(*g*) of the Act. Even this minor concession is now sought to be removed. The Minister of the Interior recently announced the Union Government's decision to deprive wives and children of South African Indians of their rights of entry into the Union and to enact legislation for this purpose, which is intended to have retrospective effect up to the date of announcement of the decision, i.e., 10 February 1953. This right of entry of Indian women and children was duly admitted by the Union Government when it accepted the Reciprocity Resolution passed by the Imperial Conference in 1918, on which all Commonwealth countries were represented. This arrangement was later reaffirmed in the Cape Town Agreement of 1927 which was reached at a Round Table Conference between India and South Africa.

This decision of the Government of the Union of South Africa will result in the separation of families and untold suffering and unhappiness to them. It would be most arbitrary, high handed and inhuman.

Natives Land Act, No. 27 of 1913

This Act prohibits Natives from purchasing, hiring or acquiring any land outside certain restricted areas called the "Scheduled" Native areas. Contravention of this provision is a criminal offence (*vide* sections 1 and 5).

Railways and Harbours Regulation, Control and Management Act, No. 22 of 1916

This Act authorized the Railway Administration to reserve railway premises (including conveniences) or any train or any portion thereof or to restrict their use to persons of particular races. This enabled the Railway Administration to discriminate between Europeans and non-Europeans. (*Vide* section 4(6)).

In the Union Railways, a number of first-class compartments are reserved for the exclusive use of the Europeans. From July 1949, *apartheid* has been introduced at the Johannesburg railway station by providing separate entrances for Europeans and non-European passengers. The Central entrance is for Europeans and non-Europeans have to take a longer route to reach their trains. There are separate waiting rooms for Whites and non-Whites at the railway stations. The standard of equipment and facilities provided in the waiting room for non-Europeans is invariably much inferior to those in the waiting rooms for Europeans.

Stock Theft Act, No. 26 of 1923 and Stock Theft Amendment Act, No. 16 of 1942

This Act provides heavy penalties for stock theft. It gives the extraordinary power to "any person, without warrant, to arrest any other person upon reasonable suspicion" of offences under this Act. The power is intended to be used by Europeans and the provisions of the Act are aimed against non-Europeans (*vide* sections 6, 9 and 10).

Native Taxation and Development Act, No. 41 of 1925 and Amendment No. 37 of 1931

Under this law every adult Native male is liable to pay poll tax of £1 and hut tax of 10 shillings per annum. Not only non-payment of these taxes but non-production of tax receipts is also a punishable offence. The Natives are also liable to pay, in addition, tribal levies. These taxes are a heavy burden on the Natives, who are compelled thereby to leave the tribal area to work for the White man at low wages to be able to pay the taxes.

Master and Servants (Transvaal and Natal) Amendment Act, No. 26 of 1926

Each province of South Africa has its own Masters and Servants Laws but their provisions are substantially identical. It has been the practice of the European farmers to permit a Native to cultivate a small plot of land for his subsistence and that of his family and in return give his labour and that of the members of his family to the European farmer. Such Natives are called labour tenants. This Act renders the agreement to give service by such labour tenants a contract of service between master and servant and thus makes it a criminal offence for the Native tenant not to abide by the terms of such a written, oral or implied contract. A Native engaged on a daily wage basis is also brought under the ambit of this Act and is subject to penalties as for criminal offence.

Immorality Act, No. 5 of 1927

This makes intercourse between Europeans and Natives a criminal offence.

Native Administration Act, No. 38 of 1927

This Act provides for "control and management" of Native affairs. It gives very wide powers to the Administration over Natives. The Governor-General is the Supreme Chief of all Natives and can legislate for them by mere issue of proclamation and without having recourse to Parliament.

The Governor-General of the Union Government in his proclamation No. 276 of 1952, and the Department of Native Affairs in their Notice No. 2753, published in the *Gazette* dated 28 November 1952 (copy enclosed), have banned holding of meetings, gathering or assemblies of more than 10 Africans at any one time. The ban applied to all kinds of gatherings barring a few specified ones and becomes part of the normal law of the country.

Liquor Act, No. 30 of 1928

This Act is also based on racial discrimination. Supply of liquor to Natives is prohibited. Its supply to Indians is prohibited in all provinces except the Cape Province. Coloureds in Transvaal and Orange Free State also cannot be supplied liquor.

Home brewing of Kaffir beer, which is regarded by the African as a national drink, is prohibited. The police carry out regular "beer" raids and in this process terrorize the Africans by entering their houses any time of day or night, often digging floors in search of beer.

Women Enfranchisement Act, No. 18 of 1930

This Act extended the franchise to all adult European women in all the provinces. Franchise was not extended to non-European women even in the Cape Province, where alone in the whole of the Union the non-European males enjoy franchise rights.

Franchise Laws Amendment Act, No. 41 of 1931

This Act extended the franchise to all adult European males in all the provinces. Similar right was not granted to non-Europeans, not even in the Cape Province.

Native Service Contract Act, No. 24 of 1932

This Act amends the Transvaal and Natal Masters and Servants Laws. It prohibits anyone to employ a Native and any official to issue a Native a pass or any such document unless the Native concerned produces a statement from the European farmer, on whose lands he or his guardians are living, that he has permission of the European farmer to enter into a service contract. Failure to comply with this provision is a criminal offence. This provision makes a Native labour tenant, i.e., one who agrees to give labour in return for permission to occupy a plot of land, and members of his family more or less slaves of the European farmer. The nature of the labour contract is well exhibited in section 5 (2) of the Act, which says "Notwithstanding anything contained in any other law, a labour tenant contract entered into for any period or at any place shall not be invalid merely by reason of the fact that it was not entered into in any particular manner or form". The word of the White farmer is, therefore, law. This Act also provided punishment by whipping for offences under Masters and Servants Laws.

Representation of Natives Act, No. 12 of 1936

This Act deprived Natives in the Cape Province of their ordinary franchise rights. Instead it provided that they would be entitled to elect three Europeans to the House of Assembly and two Europeans to the Cape Provincial Assembly. Natives of the whole Union were given the right to elect four Europeans to the Senate. A Native Representative Council was established. This Council was purely advisory. The Malan Government abolished even this Council in 1951.

Native Trust and Land Act, No. 18 of 1936

This Act established a body called the South African Native Trust for management of land in Native Scheduled and Released areas. It was authorized to acquire additional land up to 7,250,000 morgens for use of Natives. The land was supposed to be acquired with funds to be provided by the Union Government within five years as a final settlement of division of land in South Africa between Europeans and Natives. The Natives in Cape Province, who still had the right to purchase land outside the Scheduled Native areas, were thereafter deprived of that right. The offer of additional land was a *quid pro quo* for diminishing the franchise rights of the Natives in Cape Province under the Representation of Natives Act, No. 12 of 1936. Even after a lapse of seventeen years hardly half the promised areas of the land has been transferred to the Native Trust. Even if the entire areas as provided for in the Act were transferred the total land available for Natives would come to about 14 per cent of the land while they form about 70 per cent of the population against 20 per cent of Europeans.

Arms and Ammunition Act, No. 28 of 1937

This Act prohibits issue of arms licences to non-Europeans without the permission of the Minister of Justice. The permission is granted by the Minister in very exceptional and rare cases. In contrast, a European may obtain a licence from the local magistrate under a procedure so simple and easy as to amount to a formality.

Industrial Conciliation Act, No. 36 of 1937

The benefits and safeguards provided in the Act for the workers have been denied to the Natives, who are excluded from the definition of "employees". Native workers' unions are neither registered nor given recognition by Government. They are thus enable to negotiate with employers or use the strike method to secure improvement in wages and other conditions of work. In fact, it is unlawful for them to go on strike and they commit a criminal offence if they absent themselves from work. (*Vide* section 1).

Native Laws Amendment Act, No. 46 of 1937

Please see remarks against Native (Urban Areas) Consolidation Act No. 25, 1945. This Act includes prohibition on acquisition of land by Natives in urban and rural areas and restrictions on entry into and occupation of premises by Natives in urban areas. It also authorized the Government to close down any place of entertainment, school or institution mainly meant for the benefit of Natives and situated in an urban area outside a Native location or village or hostel.

Native Trust and Land (Amendment) Act, No. 17 of 1939

Under this Act the Government is empowered to proclaim any released Native area to cease to be such an area or expropriate any land in Scheduled Native areas, provided land of equivalent agricultural or pastoral value was acquired by the Native Trust. This provision enabled land in Native areas to be excised for the benefit of Europeans.

Native Taxation (Amendment) Act, No. 25 of 1939

Under this Act if a Native, who is charged for non-production of receipts for poll and hut taxes, is unemployed, a Native Commission may compel him to accept employment with any employer. If the Native loses or leaves such employment he is liable to rearrest. The taxes are deductible from the wages of such a Native.

Native Laws Amendment Act, No. 36 of 1944

Please see remarks against Native (Urban Areas) Consolidation Act, No. 25 of 1945.

Apprenticeship Act, No. 37 of 1944

Although this Act does not directly prohibit non-Europeans being taken as apprentices, Natives in particular and other non-Europeans in general are in actual practice not permitted to become apprentices. This is achieved with the assistance of the White employers, the White trade unions, technical schools and the wide range of administrative powers exercised by the Minister of Labour and the Department of Labour under sections 16 and 23. Apprenticeship has been made obligatory under this law for practically all kinds of skilled trades and vocations and this condition works as an effective bar to non-Europeans being able to qualify for the various trades and vocations.

Native (Urban Areas) Consolidation Act, No. 25 of 1945

The object of this Act is the control of the entry, stay and residence of Natives in urban areas according to the requirements of labour for the White employer without the least regard for the needs of the Natives themselves or their aspiration for development.

Restrictions imposed under this Act include residence in segregated locations, prohibition to purchase land, permission to enter, seek work or stay therein, requirement to carry passes and register service contracts, liability of removal, etc.

Disability Grants Act, No. 36 of 1946

This Act provides for payment of grants to persons suffering from physical or mental disabilities and permits grants to be made to all the racial groups except that in the case of Natives, the Act was to apply in such areas and with effect from such date as might be declared by the Minister of Native Affairs. It discriminates between the various racial groups by providing different rates of grants, Europeans getting the highest.

Pensions Laws Amendment Act, No. 41 of 1948

This Act provides for revised rates of various pensions retaining discrimination for pensioners of various races.

Unemployment Insurance Amendment Act, No. 41 of 1949

The Unemployment Insurance Act of 1937 did not discriminate among workers of various races. The Amendment Act of 1949, however, amended the definition of "contributor" to exclude Natives whose rate of earning did not exceed £180 a year. This limit did not apply to Europeans and other workers. This has resulted in virtual deprivation of all Natives from the benefits of this Act as the number of Natives who earn more than this amount is extremely limited (*vide* section 3 (*b*)).

Railways and Harbours Amendment Act, No. 49 of 1949

This Act provided for further discrimination in regard to reservation of railway premises, trains, docks, wharves, jetties, landing places for aircraft, etc., on the basis of race.

Prohibition of Mixed Marriages Act, No. 55 of 1949

Under this Act marriages between Europeans and non-Europeans are prohibited. Should such a marriage be solemnized it is considered void and of no effect. Marriage officers performing such marriages would be guilty of an offence punishable by fine. This Act is an unwarranted attack on the freedom of the individual.

Native Laws Amendment Act, No. 56 of 1949

Please see remarks against Native (Urban Areas) Consolidation Act, No. 25 of 1945. This Act of 1949 provides for the establishment of Native labour bureaus.

Immorality Amendment Act, No. 21 of 1950

This Act prohibits carnal intercourse between Europeans and all non-Europeans except between husbands and wives married before passing of the Mixed Marriages Act of 1949.

Registration of Population Act, No. 30 of 1950

This Act provides for the separate registration of Europeans, Asians, Natives and Coloureds. According to Field-Marshal Smuts the Act was designed to help the Government to carry out their policy of *apartheid* and to provide for the elimination of the "Coloured" from the voters' roll. Every person over 16 years of age is to be issued under this law an identity card giving a description of his person and the ethnic group to which he belongs. These cards are required to be presented to authorized police officers. This Act coupled with the Mixed Marriages Act is intended to ensure the supposed purity of the white race.

Group Areas Act, No. 41 of 1950

This Act provides for demarcation of Group Areas for different racial groups. When an area is proclaimed a group area for a particular racial group, members of that group only will be able to acquire or occupy land or premises in that area. Members of other groups living in the area must leave that area. There is no provision in the Act to provide alternative accommodation or compensation to persons rendered homeless. This Act introduces complete segregation in the whole of the Union and envisages uprooting of thousands of non-Whites and particularly the Indians from their settled localities; the Government of India have separately brought to the notice of the United Nations in a recent special report, the move of the South African Government to expedite proclamation of Group Areas in the Union under this Act in defiance of the repeated recommendations of the United Nations that the implementation of this Act should be held up. As stated in that report, under the various plans at present under active consideration with the Land Tenure Advisory Board in respect of different cities, thousands of Indians face the peril of being uprooted, without compensation and without alternative accommodation, from their homes and established businesses, which they have built up with many years of hard work and sacrifice. The estimated loss of their property which they will have to abandon with all their cultural and religious institutions like mosques, temples, churches and schools, runs into million of sterling. The areas allotted to them in the different proposals are invariably worse localities at considerable distance from the cities and uninhabitated places with little or no prospect of their being able to earn a living.

A pamphlet entitled "Action taken by the Government of South Africa under the Group Areas Act, 1950" is appended herewith for the Commission's perusal.

Suppression of Communism Act, No. 44 of 1950

This Act gives very wide powers to the Government to pursue their policy of *apartheid* and curb the democratic aspirations of non-Europeans in the guise of action against Communism. The definition of Communism includes, *inter alia,* any doctrine or scheme

(*a*) Which aims at bringing about any political, industrial, social or economic change by the promotion of disturbances or by unlawful acts and

(*b*) Which aims at the encouragement of feeling of hostility between the European and non-European races calculated to further the objects mentioned at (*a*).

The definition is so wide and elastic that it could cover cases of persons advocating racial tolerance or higher wages for workers. This legislation was viewed with great apprehension by the non-European population, who expressed strong opposition to this measure. The ruthless way in which this Act is being enforced against non-Europeans has fully confirmed the fears of the non-European population. The Act vests arbitrary powers in the Minister to name any person or organization as "communist" and take any action against him, to restrain him, to arrest him, to prohibit him from holding any public office, to exclude him from membership of either House of Parliament of Provincial Council, to impose restrictions on any suspect, to declare organizations unlawful and confiscate their property, to ban meetings and publications and suppress newspapers. There is no appeal against the arbitrary decision of the Minister and such cases under this Act are not to be referred to courts.

Mr. Horace Flather, Editor of *The Star,* a leading United Party paper, in an article entitled "Restrictions on information" published in the January 1953 issue of the monthly bulletin of the International Press Institute, at Zurich stated that "editing a newspaper under South Africa law was like walking blindfold through a mine-field."

To quote a few typical instances of the misuse of the powers under this Act by the Minister, Mr. Sam Kahn, a representative of Africans in the Parliament, and Mr. Fred Carnesan, their representative in the Cape Provincial Council, were declared as Communists and unseated as they did not suit the policy of the Govern-

ment. Mr. Emil Solomon Sachs, formerly General Secretary of the Garments Workers Union and Secretary, Civil Rights League, was arrested for attending meetings called by his Union in defiance of a prohibitory order issued under the Act. Dr. Dadon, President of the South African Indian Congress, Mr. Bopaper, Secretary Transvaal Indian Congress and Mr. Moses Kotane, Member of the African National Congress executive, who defied the orders served on them not to attend public meetings and to resign from their respective organizations, were arrested.

Native Building Workers Act, No. 27 of 1951

This Act prohibits employment of Natives in skilled work in building industry in an urban area elsewhere than a native area. The definition of skilled work is very wide and includes simple operations. The Act empowers the Minister of Labour to prohibit anyone to employ Natives for skilled work in connexion with even ordinary repairs to a building. The prohibitions are made in the interest of White workers. There is a partial prohibition of White workers to be employed in Native areas but in effect that is meaningless. (*Vide* sections 14 and 15).

The Separate Representation of Voters Act, No. 46 of 1951

This Act is intended to reduce the Coloured people from their already inferior status to the status of the African. It aimed to remove the Coloured voters of the Cape Province from a common roll to a separate roll and provided for their being represented in Parliament by four Europeans, and in the Senate by a Senator to be nominated by Government on the ground of his "acquaintance with the wants and wishes of the Coloured people". This law was enacted by a narrow majority in the teeth of strong opposition both by Europeans and non-Europeans and constituted a violation of the provisions of the Union Constitution, which lays down that any measure attempting to reduce the franchise rights of the Coloureds would require a two-third majority of the two Houses voting together. It was accordingly declared *ultra vires* of the Parliament, but the Union Government in utter disregard of the Rule of Law subsequently enacted an Act entitled "the High Court of Parliament Act" in order to override the decision of the Supreme Court. This led to a great constitutional agitation among the English-speaking section of the Europeans, who threatened the secession of Natal from the Union. This caused confusion, turmoil and unrest in the Union. Even this latter Act has been declared void by the Cape Provincial Division of the Supreme Court and later by the Appellate Division of the Supreme Court.

Bantu Authorities Act, No. 68 of 1951

This Act seeks to set up dummy tribal councils for the Africans and to offer them, instead of the full franchise, government-controlled bodies which will make a pretence of giving them political representation. Under this Act chiefs will be more than ever tame civil servants at the beck and call of the Government, since the Minister of Native Affairs is empowered to cancel the appointment of any councillor or any member of these bodies, if the Minister regards it desirable "in the interests of the Natives". It has abolished the Native Representative Council (which though an advisory body always attacked the racial policies of the Government). Natives have already rejected the establishment of such tribal bodies.

Criminal Sentences Amendment Act, No. 33 of 1952

This Act provides for compulsory sentence of whipping in cases of certain offences. It also provides for declaring a person a habitual criminal if he is convicted of certain offences for the third time. This Act is aimed at the Natives and was passed after a demand by the Nationalist party supporters, who argued that prison sentence was no hardship to a Native where he was at least sure of food and lodging.

High Court of Parliament Act, No. 35 of 1952

Please see remarks against the Separate Representation of Voters Act No. 46 of 1951.

Native Laws Amendment Act, No. 54 of 1952

Please see remarks against Native (Urban Areas) Consolidation Act No. 25 of 1945. This Amendment Act makes it a criminal offence for a Native to neglect to perform any work given to him, to refuse to obey any lawful command of his employer or any person placed in authority over him or to use insulting or abusive language to his employer or person placed in authority over him. It gives powers to Inspectors of Native-Labour to perform the judicial functions of summary trials of native labourers committing such offences and sentencing the labourers to fines up to £2 which can be deducted from his wages. This Act also empowers the Government to remove a tribe or portion of it from one place to another. It introduces stricter measures about entry into, staying in and removal of Natives from urban areas. Natives of long standing residence in a town can be asked to leave that town for temporary loss of employment. Government can declare a Native an "idle person" and send him to a work colony or a farm colony.

Natives (Abolition of Passes and Co-ordination of Documents) Act, No. 67 of 1952

The title of this Act is deceptive. Although it abolished some travelling passes whose utility has ceased to exist, it places the whole system of passes on a more efficient basis, which will make the control of Natives more effective. The Native under this Act will have to carry a "Reference Book" which will contain his identity number, full particulars, photograph, tax receipts, service contract, etc. He must produce it on demand any time. Failure to do so will be a criminal offence. It provides for the establishment of a Native Affairs Central Reference Bureau, which will have all particulars of the Natives as given in the Reference Books and will classify all the finger-prints taken.

Public Safety Act, No. 3 of 1953

This Act and the Criminal Law Amendment Act of 1953 are specifically designed to suppress the agitation and Passive Resistance Movement by the non-Europeans against the unjust laws of the Nationalist Government and to wipe out the last vestiges of human rights enjoyed by them.

The Public Safety Act empowers the Governor-General to declare a state of emergency in the whole of South Africa or in any part of it if in his opinion at any time it appears that the safety of the public or maintenance of public order is seriously threatened. When an emergency has been declared, the Governor-

General may make regulations which will have the authority of law. These regulations, *inter alia,* may provide for empowering persons or bodies to make rules, orders and by-laws and to lay down and impose penalties for contravening any regulation. It provides that different regulations may be made for different areas in the Union and for different classes of persons in the Union. Another extraordinary clause in the Act provides that the emergency regulations may be made retrospective in effect for four days. The intention of this clause is to legalise illegal acts committed by the police, the military or those in authority. The only exception provided is that no such regulation shall make punishable any act or omission which was not punishable at the time when it was committed. This Act is aimed at the ruthless suppression of the non-Europeans' passive resistance movement which has been conducted in a peaceful and well-disciplined manner. The Nationalist Government already possesses very wide powers under the various native laws, e.g., the Riotous Assemblies Act and the Suppression of Communism Act.

Criminal Law Amendment Act, No. 8 of 1953

This is the second legislative measure enacted by the Nationalist Government to deal with the passive resisters and provides for severe penalties of fine up to £300 or imprisonment up to three years or whipping up to ten strokes or a combination of these punishments for any person, who is convicted for any offence "committed by way of protest or in support of any campaign against any law or in support of any campaign for the repeal or modification of any law . . ." Any persons who "advises, encourages, incites, commands, aids, or procures, any other person or persons in general" to commit an offence by way of protest against any law or in support of any campaign will also be liable to be sentenced to similar punishments. Acceptance of any money or other article for the purpose of assisting of any campaign is also made an offence punishable with severe penalties.

This Act is apparently not intended as an emergency measure but is a permanent addition to the Statutes of South Africa designed to stifle for all time to come the voice of the non-European against the *apartheid* laws. Punishment by whipping for a political offence is unknown in any civilized country.

Native Labour (Settlement of Dispute) Bill, 1953.

This bill seeks to deny the African workers the right to form trade unions. It also denies the African workers' right to strike which is made an offence punishable with fine up to £500 or imprisonment up to three years or both.

(*b*) Discriminatory administrative measures

(i) *In public services*

The Union Government have launched a systematic drive to replace non-Whites by Whites in government services. So far the openings available to non-Europeans were only in the lower grades of services. Even these are being denied to them now. In 1949, the Prime Minister's office issued a directive that Europeans should replace the Natives in the public services. As a result of this many Native cleaners in Government Departments with services ranging from 10 to 35 years were served with notices.

In September 1949, the Government decided that non-Europeans in the Union's permanent force would in future be non-combatants only. They would work as cooks and other assistants and their dress would not resemble military uniforms. Their status is much lower than that of Europeans in the Defence Forces. Instead of ranks they are designated by their jobs, such as police boy, guard and driver. The Union Government has also disbanded the Cape Coloureds Corps, a unit of the South African Union's permanent force.

(ii) *Trade licensing laws*

Under these laws in Natal and the Transvaal the grant or renewal of licences to Indians can be refused without assigning any reasons. Sometimes the renewal of a petty hawker's licence is refused without assigning any cause, even though the applicant has decades of continuous clean record.

(iii) *Cultural bodies with mixed membership*

The Union Government decided in October 1951 to withdraw their grants-in-aid from cultural bodies which have mixed membership or have mixed audiences. A number of cultural organizations which are engaged in the development of inter-racial understanding have been affected. These include the UMCA, the International Club, the Institute of Citizenship, Cape Town; the Labia Repertory Theatre, Cape Town; the Christian Education Movement and several organizations doing adult education work. The South African Section of the International Society for Contemporary Music refused a grant of £250 from the Government which was subject to the condition that the society would not allow mixed audiences. The Chairman of the Society stated that the constitution of the Society did not allow the introduction of colour bar. Government's grant of £1,000 to the South African Association of Arts was made on the condition that "no mixed audiences of Europeans and non-Europeans will be permitted to attend any exhibition, functions, etc., given by the Association". The official letter of notification indicated that "this assurance is required from all voluntary organizations receiving grants from the National Advisory Council for Adult Education".

Recently the South Africa Institute of Race Relations wrote to the Minister of Native Affairs requesting him to receive a deputation from the Institute to discuss certain matters relating to its annual conference. The Deputation was to consist of Europeans and Professor D. D. Jawabu, an African. The Minister replied that he would prefer to see European and non-European members of the deputation separately.

(iv) *In post offices*

In post offices in the Union there are separate entrances and separate counters for serving the Europeans and non-Europeans. In 1952, the Minister for Posts and Telegraphs announced that measures would be taken to separate Europeans and non-Europeans at the General Post Office in Cape Town, and at forty other post offices in Cape Province. Out of 1,250 post offices in the Union there is *apartheid* in [illegible]. At the Transvaal Nationalist Party Congress in September, 1949, a resolution was passed urging *apartheid* in telephone booths also. The resolution said "It was scandalous that Europeans and Kaffirs should be allowed to use the same telephone". Since then separate telephone booths have

been provided at a number of post offices. At the post offices Europeans invariably get priority and more favourable consideration than that given to non-Europeans.

(v) *In transport services*

A non-European must not travel in European buses, trams and taxies. In buses provided with separate seating arrangements for Europeans and non-Europeans much superior seats are provided for Europeans while the non-Europeans are made to use hard and uncomfortable seats.

According to a Press message from Johannesburg dated 7 December, 1950, air hostesses belonging to South African Airlines were warned that they had not been observing the colour bar properly and that they must do so. A new set of instructions stated that linen head-rests used by non-Europeans must be removed immediately after use and sent for "hygienic processing or dry-cleaning" instead of the usual laundering applied to articles used by White people. As soon as a plane lands and non-European passengers leave their seats, the air hostesses are required to put a red tag on all articles used by non-Europeans. In washrooms air hostesses must no longer issue linen towels. Special paper towels must be used "because of the risk of both European and non-European passengers using the same linen towels".

(vi) *In public places*

An African—and this applies equally to non-Europeans as well—must not enter a European place of entertainment. European cinemas, theatres, playgrounds, public places of recreation and public libraries are all barred to him.

(vii) *In lifts*

In some buildings there are lifts specifically marked "Europeans only" and a non-European must not use such lifts. In November 1945, a building by-law was promulgated by the City Council of Johannesburg in accordance with which plans for new buildings of more than four storeys were not to be approved unless there was provision in the plans for separate lifts for Europeans and non-Europeans.

(viii) *In hospitals*

A non-European cannot be treated in a European hospital. Even in non-European hospitals an African or non-European doctor is not permitted to attend to patients of his own race to avoid European nurses taking orders from him. The Union Government grant bursaries to African medical students on the express condition that in no circumstances throughout their career they would treat Europeans.

The Union Health Department recently stated that there were no posts for which non-European doctors could apply in the government service. Three Indians who qualified as doctors and were unable to obtain employment as internees in hospitals (which is a prerequisite to admission to the medical register) appealed to the Medical Association for assistance. It was stated that the presence of white nurses in hospitals made it impossible to appoint non-Europeans as internees, since the nurses declined to work under non-European doctors. The result was that non-European medical students who qualified as doctors were unable to set up practice, as they were unable to complete their internship.

The Union Government propose to introduce in the present session of their Parliament a legislation to provide for *apartheid* on railways and other public places including post offices, town halls, hospitals and sports grounds throughout the Union.

ix) *In education and housing*

The disabilities and discrimination suffered by the non-Europeans in the matter of education and housing facilities are given in detail in the enclosed pamphlet entitled "Disabilities of the non-White people of the Union of South Africa".

(c) *Apartheid* IN THE SOCIAL SPHERE

Inhuman treatment

African Natives and other non-Europeans are not only denied political rights and economic opportunities, but they are also socially treated as inferior human beings irrespective of the individual's status or personal attainment. An African must always conduct himself with due respect to a White man because of his membership of the master race. Failure to do so may sometimes result in his being met with rough and ready justice at the hands of the white hooligans. At times the mere fact that an African is well dressed may excite the racial arrogance and violent aggressiveness of the White man or may make the African subject of attention of a policeman.

Acts of hooliganism on the part of members of the White community are based on the desire "to keep the Native in his place" and to inculcate a feeling of permanent inferiority. Cases of illegal assaults and severe ill-treatment of non-Whites are so frequent in the Union that the Chief Magistrate of Cape Town addressing a medal parade of South African police on the 17th July 1952 stated that "friends of the Police were distressed by the number of Policeman who had appeared before the Courts recently . . . Do not forget that even animals have the right not to be mistreated". The Natal Synod of the Methodist Church passed a resolution on the 9th August 1952 asking for strong precautions to be taken to prevent warders from assaulting Native prisoners and against policemen assaulting accused Natives. It would not be out of place to mention here a few typical instances of the treatment of non-Europeans by the police and other government authorities.

In July 1952, Mr. Griffith Zanzile, a 37-year-old African, was assaulted by two detectives and was kicked on the stomach and on the kidneys and hit over the head, shoulders, arms and back with a length of rubber hose. In his plaint before the court he stated he could not count the blows and that they were many.

Another African woman, Johanna Skozena, told the Germiston magistrate how three police detectives assaulted her. "I was taken to a charge office where Van der Merwe tied a hose-pipe round my neck. Van der Merwe then seized one end of the hose pipe and another constable the other end and pulled it. This choked me and I lost consciousness. When I recovered Van der Merwe was striking me with the hose-pipe over my shoulder and elsewhere on my body. Van der Merwe told me I must pray because it was my last day."

The Johannesburg Press correspondent of the *Daily Express*, London, recently reporting about a farm prison in the Union, stated as follows. "When the police sergeant visited a farm near Johannesburg, he found 106

African labourers working in the fields wearing sack-cloth. Fifty of them had wounds on the body and legs. In a locked room on the farm, which had all the appearance of a prison, the sergeant found other Africans also in sack-cloth. Three of them had body wounds. In a neighbouring room he found a number of whips and sticks. A South African farmer and his son were convicted of assaulting an African labourer by keeping him chained at night and under surveillance by day for about three weeks. They were fined £55. The magistrate remarked, "You kept this Native chained up at night and under surveillance by day to prevent him from absconding. This was an open infringement of a human being's rights. You would not have dreamed of doing it to a European".

Another Press report, date-lined Johannesburg, April 14, 1953, stated how a judge wanted to know why proceedings had not been taken against the White police officers, who had connived at and approved the torture of an African in a police camp. Mr. Justice Selke heard at Pietermaritzburg (Natal) that three African policemen handcuffed and arrested an African while he was in a sitting posture. They put a piece of wood under his thighs, lifted him off the ground and spun him around. On three days the African was hung from a tree. A chain was fixed to a branch and then to the handcuffs. His arms were above his head and his feet scarcely touched the ground. Once he hung from the tree for more than 24 hours.

The judge dismissed the appeal of the three torturers who had been sentenced by a magistrate—two to three months each, the third to four months and flogging. He said it was wrong that only the Africans had been prosecuted.

The passive resisters under trials were also similarly ill-treated by the police authorities. A batch of African volunteers released from a farm colony alleged that they were made to do heavy manual labour non-stop from 7 a.m. to 12 noon and after a break of three quarters of an hour, till almost five in the evening. During that time, they alleged, they were continuously assaulted by the warders. They were made to work in waist-deep water, constructing a dam and while doing so the warders "pushed their heads under the water". Several volunteers stated that medical treatment for the prisoners were poor and scanty, if not totally absent. Responsible persons have vouched for the correctness of these allegations. The Rev. Trevor Huddleston, a well-known Anglican clergyman, in a recent interview said: "Personally I am quite persuaded that there have been of late a number of cases of ill-treatment of passive resisters while they have been in jail in connexion with the non-white defiance campaign . . . I have interviewed these resisters personally, and I cannot believe that their stories are made up".

Police have on a number of occasions been convicted for raping non-White women they had arrested, for beating up prisoners and even for homicide. Far from taking stern action to stamp out such excesses they are regarded leniently and even encouraged by the Nationalist Government.

On July 19, 1952, two railway ticket examiners were charged in court on the charge of assaulting George Mzikayasi by hitting him on the mouth with a ticket clipper, by kicking him on the leg and by striking him several times about the face and body with clenched first. One of the ticket examiners said to Mzikayasi: "You make yourself a White man and you think you are clever." Mzikayasi told the court that the kick he had received on his ankle had fractured the bone. He had been kicked and punched as he lay on the ground, rolling towards the fence at the side of the platform; and a third White man in uniform then arrived from the back of the train and also proceeded to kick and punch Mzikayasi as he lay on the ground.

Cases of the White civilians taking the law into their hands and assaulting non-Whites for merely being "cheeky" and not knowing their "place" are also quite frequent in South Africa. A few years ago a well dressed African domestic servant waiting for a tram was set upon and beaten so severely by two White men that he subsequently died. In the Court, they explained that they were infuriated by his good clothes and particularly by the fact that he was wearing gloves.

The *Cape Times* published in its issue of the 3rd March 1953 how a European set an African Native on fire by pouring a bottle of thinners into his mouth and down his neck and setting it alight with a match. Rangariyayi, who was employed in the Bulaway municipal workshop as a mechanic's assistant, was busy cleaning a tractor with fluid out of a bottle on the 14th February when Arnold Longworth who was also employed in the same workshop, approached him. "He picked up the bottle and poured some of the liquid into my mouth and on to my neck. Longworth then lit a match and put it to my face. He ran away. I tried to put out the fire by wiping my face with a jersey." The Native received a number of extensive burns on the left side of his face and ear and secondary burns on the back and arm. He was suffering from shock. The injuries were dangerous to life and permanent disfigurement was inevitable.

Assaults on Africans by "Whites" just for the sake of fun are not uncommon. Another typical case was reported in the *Star* of Johannesburg in its leader of the 16th October 1952. "In the Springs Magistrate's Court yesterday three White men in the early twenties were found guilty of having without provocation assaulted five Native men and one Native woman who were using a public road on Saturday evening last August. The evidence showed that five of the Natives were cycling peacefully on the main highway from Springs when they were stopped by the White men and attacked, suffering bodily harm and damage to their bicycles. A sixth Native who intervened was also assaulted. The accused had nothing to say in their own defence and the magistrate justifiably described their conduct 'as nothing than hooliganism'." In the circumstances the court exercised a considerable degree of restraint in passing a sentence of no greater severity than a fine of £15 with the alternative of 30 days' imprisonment.

The life of a non-European has little or no value in South Africa. An owner of a farm facing the Johannesburg-Vereeniging road, Mr. C. R. Pantell, has put up a notice board warning Natives, Indians and Coloureds that if they entered into the farm premises at night they would be shot by the armed guards on sight and their corpse would be devoured by savage dogs. Mr. S. Kahn, a representative of the Natives in the Parliament, inquired from the Government whether their attention had been drawn to this notice board and whether the owner of the farm would be prosecuted for such threats of violence and whether the Government would take steps to have the notice board removed. Mr. Kahn received a reply from the Commis-

sioner of Police stating that the notice board did not constitute contravention of law.

Non-Europeans cannot be accommodated in European hotels, whatever their status. They are not welcome in European homes on terms of equality. An African dare not knock at the front door of a European's house. He must go via the back door. Even in some shops separate counters are provided for non-Europeans. In such shops the non-Europeans must wait till all the Europeans have been served.

(iii) Communication from the Government of Pakistan

U.K. 18/5/53

Subject: Race conflict in South Africa resulting from the policies of *apartheid* of the Government of the Union of South Africa

I am directed to refer to the correspondence resting with this Government's letter No. U.K. 18/5/53, dated 24 July 1953, and to forward herewith a memorandum (with one spare copy) on the above subject.

(*Signed*) J. A. RAHIM
Secretary to the Government of Pakistan

MEMORANDUM

MEMORANDUM ON THE QUESTION OF RACE CONFLICT IN THE UNION OF SOUTH AFRICA RESULTING FROM THE POLICY OF *apartheid* OF THE GOVERNMENT OF THE UNION OF SOUTH AFRICA

Part I

INTRODUCTION

1. This memorandum has been drafted with a view to give an objective account of the persistent policy of racial discrimination followed by the Government of the Union of South Africa over a number of years, viz., from 1909, when the South Africa Act was passed and the Union of South Africa came into existence, up to the present day. It has not been considered necessary for the purpose of this memorandum to go into the details of the history of the struggle of the non-White population, particularly of persons of Indo-Pakistan origin (for the sake of convenience referred to in this memorandum as Indians), against the discriminatory treatment meted out to them. Stress has, therefore, been laid on the import of the various Acts that bear on the discriminatory racial policy of the Union Government (Part II of this memorandum) and on the tangible effects of that policy on the day-to-day life of the non-European in the Union of South Africa (Part III of the memorandum). The concluding part of the memorandum mentions briefly the views of the Government of Pakistan on the problem which the Commission has before it.

Part II

IMPORT OF THE VARIOUS ACTS BEARING ON THE DISCRIMINATORY RACIAL POLICY OF THE UNION GOVERNMENT FROM 1909 TO 1953

1. *The South Africa Act, 1909.* This Act which brought the Union of South Africa into existence may be considered to be the origin of the policy of racial segregation in the Union. This Act debarred non-Europeans from becoming members of the Senate or the House of Assembly. In three provinces (the Transvaal, Natal and the Orange Free State) non-Europeans were denied the right of franchise. Similarly non-Europeans in those three Provinces were denied the right to participate in the elections for members of the Provincial Council or to become members of the Provincial Council.

2. *Mines and Works Act, No. 12 of 1911 (and Mines and Works Amendment Act No. 25 of 1926).* This Act debarred Natives and Indians from working in certain skilled or administrative jobs in mines or works where machinery was used.

3. *Native Labour Regulation Act, No. 15 of 1911 (amended up to and including 1933).* This Act provided for control of labour agents and recruitment of Native labour. It made it a criminal offence for a Native labourer to desert or absent himself from his place of employment or fail to carry out the terms of his contract of employment.

4. *Immigrants Regulation Act, No. 23 of 1913.* This Act authorized the Minister of the Interior to discriminate against Asiatics on the basis of racial origin. According to the provisions of this Act all Asiatics are deemed as "prohibited immigrants".

5. *Natives Land Act, No. 27 of 1913.* This Act prohibited Natives from purchasing, hiring or acquiring any land outside certain restricted areas, called the "scheduled" Native areas. Contravention of this provision was made a criminal offence.

6. *Railways and Harbours, Control and Management Act, No. 22 of 1916.* This Act authorized the railway administration to reserve railway premises (including conveniences), trains or any portion thereof or to restrict their use to persons of particular races. This enabled the railway administration to discriminate between Europeans and non-Europeans.

7. *Native (Urban Areas Consolidation) Act, No. 25 of 1945.* The original (Urban Areas) Act was passed in 1923 which replaced provincial legislation on entry and residence of Natives in urban areas. In 1945, the Native (Urban Areas) Consolidation Act was enacted. Further Amendment Acts have also been passed. The object of this Act and the Amendment Acts is to control the entry, stay and residence of Natives in urban areas according to the requirements of labour for the White man irrespective of the needs of Natives themselves or their aspiration for development.

8. *Stock Theft Act, No. 26 of 1923 (and Stock Theft Amendment Act No. 16 of 1942).* This Act provides heavy penalties for stock theft. It gives the extraordinary power to "any person" to arrest without warrant, any other person upon reasonable suspicion of any offence under this Act. The power is intended to be used by Europeans and the provisions of this Act are aimed primarily against non-Europeans.

9. *Industrial Conciliation Act, No. 36 of 1937.* This Act was originally passed in 1924. It was revised in 1937. In this Act the definition of "employee" excludes Natives and thus they are denied all the benefits and safeguards provided in the Act for the workers. Native workers' unions are not registered and are not given recognition. They are thus unable to negotiate with employers or to strike work in order to get their grievances redressed. In fact it is unlawful for them to go on strike and they commit a criminal offence if they absent themselves from work.

10. *Wage Act, No. 44 of 1937.* This Act provides for determination of wages in various trades but it does not apply to those employed in agriculture, horticulture or pastoral pursuits or in forestry or as domestic servants in private households. According to this Act, when a wage determination has been made and the minimum wage rate fixed in a trade, it is an offence for an employer to pay less than that rate. But this Act in practice has proved to be an effective bar to the employment of non-Europeans in higher paid jobs because the White employer prefers to employ White workers instead of a Native or other non-European worker.

11. *Native Taxation and Development Act, No. 41 of 1925.* Under this Act every adult male Native is liable to pay pool tax of £1 and hut tax of 10 shillings per annum. He commits an offence not only when he does not pay these taxes but also if he fails to produce tax receipts on demand at any time of night or day. In addition Natives are liable to pay tribal levies. These taxes are a heavy burden on Natives and are intended to compel Natives to leave the tribal area to work for the White man at low wages to pay the taxes.

12. *Master and Servants (Transvaal and Natal) Amendment Act, No. 26 of 1926.* Each Province of South Africa has its own Masters and Servants Laws, but their provisions are substantially the same. This Act amends the respective laws of Transvaal and Natal. It has been the practice with European farmers to permit a Native to cultivate a small plot of land for his subsistence in return for his labour. Such Natives are called labour tenants. Under this Act the agreement of a labour tenant to give service is deemed to be a contract of service between master and servant. It is a criminal offence for the Native not to abide by the terms of such a written, oral or implied contract. A Native engaged on daily wages is also subject to this liability.

13. *Native Administration Act, No. 38 of 1927.* This Act provides for "control and management" of Natives' affairs. It confers very wide powers on the administration over the Natives. The Governor-General is the Supreme Chief of all Natives, and can legislate for Natives by mere issue of proclamation and without having recourse to Parliament. Recently regulations were issued according to which Natives were not permitted to hold meetings and anyone inciting them directly or indirectly to defy any law was subjected to heavy penalties.

14. *Old Age Pensions Act, No. 22 of 1928.* This Act provides for payment of old age pensions but only to the Whites and the Coloured. Natives and Indians are excluded from its benefits. There is discrimination even between the Whites and the Coloureds inasmuch as the rates of pension are lower for the Coloureds than those for the Whites.

In 1944, the benefits under the Act were extended to Indians and Natives by the Pensions Laws Amendment Act No. 48 of 1944. Differentiation in rates of pensions on a racial basis was, however, maintained.

15. *Liquor Act, No. 30 of 1928.* This Act prohibits the supply of liquor to Natives. Supply of liquor to Indians is also prohibited in all provinces except the Cape Province. The Coloureds in Transvaal and Orange Free State also cannot be supplied liquor.

16. *Women's Enfranchisement Act, No. 18 of 1930.* This Act extended the franchise to all adult European women in all the Provinces of the Union. The non-Europeans enjoyed franchise rights only in Cape Province but the franchise was not extended to non-European women even there.

17. *Franchise Laws Amendment Act, No. 41 of 1931.* This Act extended the franchise to all adult European males in all the Provinces. Similar right was not granted to non-Europeans, not even in the Cape Province.

18. *Native Service Contract Act, No. 24 of 1932.* This Act further amends the Transvaal Masters and Servants Laws. It prohibits anyone to employ a Native and any official to issue a Native a pass or any such document unless the Native concerned produces a statement from the European farmer, on whose land he or his guardians are living, that he has permission of the European farmer to enter into a service contract. Failure to comply with this provision is a criminal offence. This provision makes a Native labour tenant and members of his family more or less slaves of the European farmer.

The nature of the labour contract is well exhibited by section 5 (2) of the Act, which says "Notwithstanding anything contained in any other law, a labour tenant contract entered into for any period or at any place shall not be invalid merely by reason of the fact that it was not entered into in any particular manner or form". In fact, the word of the White farmer is the law. This Act also provides for punishment by whipping for certain offences under the Act.

19. *Blind Persons Act, No. 11 of 1936.* This Act provides for payment of pensions to blind persons but only to those who are Europeans or Coloured. The Natives and Indians were excluded from its benefits. There is discrimination even among Europeans and the Coloureds inasmuch as there are lower rates for the Coloureds than those for Europeans.

20. *Pension Laws Amendment Act, No. 48 of 1944 and Pension Laws Amendment Act No. 41 of 1948.* Pension Laws Amendment Act No. 48 of 1944 extended the benefits to Natives and Indians but differential rates of pension on the basis of race were maintained.

21. *Representation of Natives Act, No. 12 of 1936.* This Act deprived Natives in the Cape Province of their ordinary franchise rights. Instead it provided that they would be entitled to elect three Europeans to the House of Assembly. Natives of the whole Union were given the right to elect four Europeans to the Senate. A Native Representative Council was established. This Council was purely advisory but the Malan Government abolished even this Council in 1951.

22. *Native Trust and Land Act, No. 18 of 1936.* This established a body called the South African Native Trust for management of land in Native scheduled and released areas. It was authorized to acquire additional land not exceeding 7,250,000 morgens for use of Natives. It was supposed to acquire this land with funds provided by the Union Government within five years as a final settlement of division of land in South Africa between Europeans and Natives. The Natives in Cape Province who still had the right to purchase land outside the scheduled Native areas were thereafter deprived of that right.

The offer of additional land was *quid pro quo* for diminishing the franchise rights of the Natives in Cape Province under the Representation of Natives Act, No. 12 of 1936. Although so much time has passed after the passage of the Act, hardly half the promised area of the land has been transferred to the Native Trust. Even if the entire area were transferred the total

land available for Natives would come to about 14 per cent of the land while they form about 70 per cent of the population.

23. *Arms and Ammunition Act, No. 28 of 1937.* This Act prohibits issue of arms licences to non-Europeans without permission of the Minister of Justice.

24. *Native Laws Amendment Act, No. 46 of 1937.* This Act also includes prohibition on acquisition of land by Natives in urban and rural areas outside Native areas and restrictions on entry into and occupation of premises by Natives in urban areas. It also authorized the Government to close down any place of entertainment, school or institution mainly meant for benefit of Natives and situated in an urban area outside a Native location or village or hostel.

25. *Natives Taxation (Amendment) Act, No. 25 of 1939.* Tnis Act lays down that if a Native, who is charged for non-production of receipts for pool and hut taxes, is unemployed, a Native Commissioner may compel him to accept employment with any employer. If the Native loses or leaves such employment he is liable to be punished.

26. *Disability Grants Act, No. 36 of 1946.* This Act provides for payment of grants to persons suffering from physical or mental disabilities. Grants could be made to Europeans, the Coloureds, Indians and also to Natives, but in the case of Natives the Act is to apply in such cases and with effect from such date as might be declared by the Minister of Native Affairs.

The Act discriminates between the various groups by providing different rates of grants, Europeans receiving the highest.

27. *Asiatic Land Tenure Amendment Act, No. 53 of 1949.* This Act provides, *inter alia,* for the prohibition of occupation of fixed property by Indians and Asiatics in the Transvaal in succession to a person who was not an Asiatic except under Ministerial permit which was to be granted in special circumstances after report from the Land Tenure Board. The Board was charged with the duty of reporting on areas which it was prepared to assign for Asiatic occupation under certain conditions.

28. *Pension Laws Amendment Act, No. 41 of 1948.* This Act provides revised rates of various pensions retaining discrimination for pensioners of various races.

29. *Unemployment Insurance Amendment Act, No. 41, 1949.* The Unemployment Insurance Act of 1946 did not discriminate among workers of various races. But the Amendment Act of 1949 amended the definition of "contributor" to exclude Natives whose rate of earning did not exceed £180 a year. This limit did not apply to Europeans and other workers. This resulted in the virtual deprivation of all Natives from the benefits of this Act as the number of Natives who earned more than this amount was extremely limited.

30. *Railways and Harbours Amendment Act, No. 49 of 1949.* This Act provided for further discrimination in regard to reservation of railway premises, trains, docks, wharves, jetties, landing places for aircraft, etc., on the basis of race.

31. *Prohibition of Mixed Marriages Act, No. 55 of 1949.* This Act prohibits marriages between Europeans and non-Europeans. Even if a marriage takes place between a non-European domiciled in South Africa and a White South African outside the country, that marriage is void and of no effect in South Africa.

32. *Registration of Population Act, No. 30 of 1950.* This Act provides for maintenance of a register of population of the Union of South Africa and issue of identity cards. All persons are classified according to racial groups and the racial groups indicated on the identity cards.

33. *Groups Areas Act, No. 41 of 1950.* This Act provides for demarcation of group areas for different racial groups. When an area is proclaimed a "group area" for a particular group, members of that group will be able to acquire or occupy land or premises in that area only for purposes of residence or trade or profession. Members of other groups already living in the area must leave that area. This Act is meant to remove non-Europeans from the developed areas in cities and towns and the central trading and commercial areas. Non-Europeans will be allotted areas more or less outside the towns. This Act particularly affects Indians who will not only lose their houses and business premises but also be deprived of their means of livelihood.

34. *Suppression of Communism Act, No. 44 of 1950.* (*Suppression of Communism Amendment Act No. 50 of 1951.*) This Act gives a very wide definition of "communism" and confers on the Government vast powers to declare bodies unlawful and persons as communists; it also confers on the Government wide powers of detention, banishment and suppression of civil liberties. These powers are primarily aimed at suppression of political agitation on the part of non-Europeans.

35. *Native Building Workers Act, No. 27 of 1951.* This Act prohibits employment of Natives in skilled work in building industry in urban areas other than a Native area. The definition of skilled work is very wide and includes simple operations as well.

The Act empowers the Minister of Labour to prohibit anyone to employ Natives for skilled work in connexion with even ordinary repairs to buildings. These prohibitions are made in the interest of White workers.

36. *Separate Representation of Voters Act, No. 46 of 1951.* This Act is designed to remove the Coloured voters in Cape Province from the common roll of voters and thus deprive them of their right to vote in all the constituencies in that province. Instead they are put on a separate roll and given the right to elect four Europeans to the House of Assembly and two members who may be Coloured, to the Provincial Council. This Act has been declared invalid by the Appellate Division of the Supreme Court of South Africa for being *ultra vires* of the "entrenched clauses" of the South Africa Act, 1909. However, it is still the aim of South African Government to remove the Coloured voters from the Common Roll. Their plea is that the Coloured are fast becoming educated and will qualify as voters in increasing numbers and thus become a danger to White supremacy.

37. *Bantu Authorities Act, No. 68 of 1951.* This Act abolished the Native Representation Council established according to the Native Representation Act of 1936. Instead it provides for the establishment of tribal, regional and territorial authorities. The method of appointment of councillors of the tribal authority has to be laid down by the Governor-General. Members of regional authority are to be elected or selected from among chiefs, headmen and councillors of tribal authorities. Members of territorial authority are to be elected from among members of regional authorities. The Minister of Native Affairs will have the power to cancel

the appointment of any councillor or member who is found negligent of his duties or if the Minister regards it desirable in the interest of the Natives. In effect the members of these bodies will not be democratically elected by Natives and they will be practically completely under official control.

38. *Native Laws Amendment Act, No. 54 of 1952.* This Act makes it a criminal offence for a Native to neglect to perform any work given to him or for making himself unfit for proper performance of work by use of habit-forming drugs or intoxication or to refuse to obey any lawful command of his employer or of any person placed in authority over him or to use insulting or abusive language to his employer or person placed in authority over him.

This Act gives powers to Inspectors of Native Labour to perform the judicial functions of summary trial of native labourers committing the above mentioned offences and of sentencing the labourers to fines not exceeding £2 which could be deducted from their wages.

This Act also gives powers to Government to remove a tribe or portion of it from one place to another.

This Act also introduces stricter measures about entry into, stay and removal of Natives from urban areas. Natives of long standing residence in a town can be asked to leave that town. Government can also declare a Native an "idle person" and send him to a work colony or a farm colony.

39. *Criminal Sentences Amendment Act, No. 33 of 1952.* This Act provides for compulsory sentence of whipping in cases of certain offences.

The Act is aimed at Natives and has been passed on the plea that prison sentence is no hardship to a Native where he is at least sure of food and lodging.

40. *High Court of Parliament Act, No. 35 of 1952.* This Act provided for the Parliament—both houses sitting together—to act as a court of review for decisions of the Appellate Division of the Supreme Court. This Act was specifically aimed at reversing the Judgement of the Appellate Division declaring the Separate Representation of Voters Act as invalid.

41. *Natives (Abolition of passes and Co-ordination of Documents) Act, No. 67 of 1952.* According to this Act Natives are required to carry a "Reference Book" which contains identity number, full particulars, photograph, tax receipts, service contract, etc. A Native must produce it on demand at any time. Failure to do so is a criminal offence. The Act also provides for establishment of a Native Affairs Central Reference Bureau.

42. *Public Safety Act, No. 3 of 1953 and the Criminal Law Amendment Act, No. 8 of 1953.* By virtue of these two Acts the Union Government have assumed unprecedented powers to muzzle the voice of the non-Europeans. The Criminal Law Amendment Act provides for very heavy penalties for those who commit an offence by way of protest or in support of any campaign against any law or the variation or limitation of the application of or administration of any law. The Act provides even heavier penalties for those who are convicted of advising, encouraging or inciting others to take part in such a campaign and those who may get convicted for giving or arranging monetary assistance for such a campaign.

This Act is designed to suppress ruthlessly any agitation on the part of non-Europeans for the removal of their disabilities or for political rights.

Part III

Effects of the discriminatory racial policy on the life of the non-European in the Union of South Africa

This part attempts to classify the various effects of the discriminatory racial policy of the Union Government under separate heads, viz., political, economic and social disabilities. This is intended to focus attention on these disabilities which are suffered by the non-European individual in his daily life and therefore excludes references to the corresponding legislation which has already been dealt with in the preceding part.

1. *Political disabilities*

A non-European can neither become a member of the House of Assembly nor of the Senate of the Union. In fact, membership has been specifically limited to those Europeans who have acquired Union nationality. A non-European is thus incapacitated from having any say whatsoever in the political life of the country.

Voting rights to the non-European are granted on a very restricted basis only in the Cape Province which is one of the four provinces of the Union. In the other provinces the non-European cannot be registered at all on the voters roll.

Freedom to criticize the unjust policies of the Government is limited to a large extent and in fact such criticism has been declared as a criminal offence.

2. *Economic disabilities*

(a) *Employment.* Non-Europeans are generally excluded from the skilled trades. They are not always admitted to the membership or the protection of trade unions. Due to the lack of educational opportunities (see educational disabilities below) the non-European is almost precluded from being trained in the skilled trades. That field is thereby kept reserved for the European in view of the higher salary that it brings. The non-European is bound by the fixed wage rate and is thus forced to accept the lowest paid jobs.

(b) *Trade.* Avenues for trade and commerce for the non-European are very limited in view of the fact that very few trading licences are issued to them by the licensing officers and licensing boards under the terms of the licensing laws of the country. The issue of these licences is governed by an absolute discretion which is exercised against the non-European. The non-European may not, e.g., acquire a bar, a bottle store or an ammunition dealer's licence.

(c) *Acquisition and occupation of fixed property.* The policy of *apartheid* or total segregation was introduced with the adoption of the Group Areas Act of 1950. Although this Act claims to deal with the three sections of the population, viz., Whites, Natives and Coloured equitably, the practical effect of the operation of this Act is that the population of the Union of South Africa has been divided into three racial groups and a "group area" has been allotted to each one of them. One particular racial group can occupy land or premises only within the "group area" allotted to it. Outside the "group areas" occupation has been confined to members of the group to which the landlord belongs and transfers of ownership, other than between two persons of the same group, can only be permitted by the Minister of the Interior.

(d) *Immigration and inter-provincial migration.* South African nationals of Indo-Pakistan origin are denied freedom of moving from one Province to another. This obviously has a retarding effect on their social and economic progress. If one among them is unemployed he may not enter another Province even though employment may be waiting for him there. Europeans do not suffer from any such limitations.

3. *Social disabilities*

(a) *Education.* School facilities for the European and those of Indo-Pakistan origin are completely separate from each other. The latter are prohibited by law from attending government schools. These schools are meant for Europeans only. Most of the schools for the non-European children are only "government aided". They are built, equipped and maintained by private enterprise. Only the staff is provided for by the Administration. Since 1944, however, the Administration has made a grant of 50 per cent towards building costs; the land is still to be provided by private sources. In case of government schools which are meant for Europeans all the facilities are provided by the Administration.

Though there are technical colleges all over the country these are in most cases for Europeans only. A majority of the universities in the Union have resolutely refused to admit Asiatic students.

(b) *Hospitals, railway stations, libraries, transport and other social facilities.* Racial discrimination in these institutions of social life has become a regular phenomenon in the Union. Benefits of the social welfare legislation are available to the various racial groups on varying scales. The European gets more than the Indian and the Coloured who in turn gets more than the Native. Several other civic amenities are also subject to the same policy of racial discrimination.

(c) *Mixed marriages.* Marriages between members of the White and the non-White racial groups are prohibited by law. Penalties have been provided for persons performing such marriages and the marriage is considered null and void in the Union of South Africa.

Part IV

Conclusion

1. It would appear from the preceding brief account that the problem of race conflict in the Union of South Africa is not a new one. The policy of *apartheid* has been persistently followed by the Government of the Union of South Africa from its very inception. This policy has in all cases been designed to perpetuate the superiority of the White population over the non-White by denying the non-White population the opportunities of progress in spite of the fact that the great majority of the Union's population is non-White. It is evident from the facts that the continuous existence of laws discriminating against the non-White population has hampered the normal progress which they would have otherwise made. The European settlers that came to what later became the Union of South Africa were equipped with greater skill and knowledge than the Native or the Indian who was brought to the country. The initial disparity between the stages of development of these groups which were brought together has been rigorously maintained and even increased.

2. In defence of the policy of racial discrimination the Government of the Union of South Africa maintains that the problem is essentially of a domestic nature and the various measures adopted by them are meant to promote the development of the different racial groups separately. It has also been maintained that the Indians due to their alleged lower standard of living place the Europeans in a difficult position in matters of economic competition.

3. Although the initial disparity between the standards of living of the various racial groups of the Union cannot be denied there is no justification whatever for the adoption of the policy of *apartheid* designed to perpetuate this disparity. It is not impossible for different ethnic groups to lead a common life and to build a new pattern which would, by providing equal opportunities for all groups, permit them to live in peace without the fear of exploitation or domination by one master race. Examples of such multiracial societies in which various groups share the benefits of a social life organized on the basis of equality of opportunity and freedom are to be found today.

4. On the contrary the Union Government has persistently enacted laws intended to keep the Native, the Indian, and the Coloured inhabitants at the lowest possible level of civilization. These people have been denied land, forced to live in segregated areas, prevented from earning more than a specific wage and deprived of educational, trade union and political rights. Their dignity as human beings has been degraded by the discriminatory practices which refuse them access even to common public facilities and place them under complete subservience to the White population.

5. The Government of Pakistan consider that as a result of the policy of *apartheid* pursued by the Union Government a grave situation has been created which constitutes both a threat to international peace and a flagrant violation of the basic principles of human rights and fundamental freedoms enshrined in the Charter of the United Nations. They believe that the solution of South Africa's racial problem lies not in any domination of one race by another but in a partnership of races on a basis of equality and freedom. The harmonious development of social, economic and political aspects of the country's life will not be possible if the non-European section of the population is continuously kept in backwardness and servitude. Non-participation of such a vast majority of the country's population in the common endeavour for the country's development is bound to have disastrous effects. The moral right of the non-European section of the population to fight against the limitations imposed on them cannot be denied. In this fight to free themselves of the White domination and to create tolerable conditions for a progressive and productive life these people may resort to desperate remedies.

6. On the other hand a policy designed to accomodate various racial groups and their requirements in a special pattern would lead to the birth of a progressive society in which each race would advance in accordance with its legitimate aspirations. Instead of building up a social, political, and economic structure based on the doctrines of *apartheid* the Government of the Union of South Africa should, therefore, face the realities of the world today and bring their policies in accordance with the principles of the United Nations Charter, the trends of international opinion and the dictates of time.

ANNEX IV

Distribution of the Native population in various areas, by sex, 1936 and 1946 (in thousands)

Type of area (as defined in 1946)[a]	*Population, 1936*		*Population, 1946*	
	Males	*Females*	*Males*	*Females*
Municipal location[b]	166	190	369	379
Other urban areas[c]	234	156	339	243
Rural suburb	7	5	12	10
Rural township	19	16	18	12
Rural native township[d]	15	17	17	18
Total, urban residential areas	440	384	755	661
Farms occupied by Europeans[e]	999	1,055	1,107	1,080
Farms occupied by Asiatics or Coloureds[f]	13	14	18	18
Farms not occupied by Europeans, Asiatics or Coloureds[g]	43	58	73	95
Government areas[h]	8	6	40	28
Total, farm areas	1,063	1,133	1,238	1,220
Trust land locations and reserves[i]	1,006	1,414	1,080	1,516
Other trust-vested land[i]	—	—	15	22
Trust-purchased land[i]	—	—	54	72
Mission stations[j]	50	65	31	39
Tribally-owned farms	56	68	81	108
Native privately-owned farms[k]	61	82	76	102
Crown lands	63	67	31	40
Total, Native Areas	1,236	1,726	1,369	1,898
Alluvial diggings	15	10	8	5
Construction gangs	41	2	42	3
Mine compounds	371	16	417	21
Industrial compounds	103	11	106	16
Municipal compounds	34	2	39	1
Other areas (including railways and shipping)[l]	9	1	23	10
Total, industrial and other areas	573	41	633	56
TOTAL, all areas	3,309	3,282	3,997	3,835

[a] Definitions in 1936 differed somewhat. Areas are not necessarily the same in 1936 and 1946. The following footnotes state those of the 1936 definitions, which differ from those of 1946.
[b] 1936: urban locations.
[c] 1936: urban (residential area, townlands).
[d] 1936: native townships.
[e] 1936: farms owned or occupied by Europeans.
[f] 1936: farms owned or occupied by Asiatics or Coloureds.
[g] 1936: farms owned or occupied by companies.
[h] 1936: farms owned or occupied by Government.
[i] 1936: Crown reserves or locations; one category only, instead of the three given at the 1946 census.
[j] 1936: mission reserves or stations.
[k] 1936: native-owned farms.
[l] 1936: other areas.

ANNEX V

Extracts from the statements mentioned in chapter V — *Apartheid*

(i) Extracts from the pamphlet published by the National Party on 29 March 1948, entitled: "The National Party's Colour Policy".

There are two sections of thought in South Africa in regard to the policy affecting the non-European community. On the one hand there is the policy of equality, which advocates equal rights within the same political structure for all civilized and educated persons, irrespective of race or colour, and the gradual granting of the franchise to non-Europeans as they become qualified to make use of democratic rights.

On the other hand there is the policy of separation (*apartheid*) which has grown from the experience of established European population of the country, and

which is based on the Christian principles of justice and reasonableness.

Its aim is the maintenance and protection of the European population of the country as a pure White race, the maintenance and protection of the indigenous racial groups as separate communities, with prospects of developing into self-supporting communities within their own areas, and the stimulation of national pride, self-respect, and mutual respect among the various races of the country.

We can act in only one of two directions. Either we must follow the course of equality, which must eventually mean national suicide for the White race, or we must take the course of separation (*apartheid*) through which the character and the future of every race will be protected and safeguarded with full opportunities for development and self-maintenance in their own ideas, without the interests of one clashing with the interests of the other, and without one regarding the development of the other as undermining or a threat to himself.

The party therefore undertakes to protect the White race properly and effectively against any policy, doctrine or attack which might undermine or threaten its continued existence. At the same time the party rejects any policy of oppression and exploitation of the non-Europeans by the Europeans as being in conflict with the Christian basis of our national life and irreconcilable with our policy.

The party believes that a definite policy of separation (*apartheid*) between the White races and the non-White racial groups, and the application of the policy of separation also in the case of the non-White racial groups, is the only basis on which the character and future of each race can be protected and safeguarded and on which each race can be guided so as to develop his own national character, aptitude and calling.

All marriages between Europeans and non-Europeans will be prohibited.

In their areas the non-European racial groups will have full opportunities for development in every sphere and will be able to develop their own institutions and social services whereby the forces of the progressive non-Europeans can be harnessed for their own national development (*volkeepbou*). The policy of the country must be so planned that it will eventually promote the ideal of complete separation (*algehele apartheid*) in a national way.

A permanent advisory body of experts on non-European affairs will be established.

The State will exercise complete supervision over the moulding of the youth. The party will not tolerate interference from without or destructive propaganda from the outside world in regard to the racial problems of South Africa.

The party wishes all non-Europeans to be strongly encouraged to make the Christian religion the basis of their lives and will assist churches in this task in every possible way. Churches and societies which undermine the policy of *apartheid* and propagate doctrines foreign to the nation will be checked.

The Coloured community takes a middle position between the European and the Natives. A policy of separation (*apartheid*) between the Europeans and Coloureds and between Natives and Coloureds will be applied in the social, residential, industrial and political spheres. No marriage between Europeans and Coloureds will be permitted. The Coloureds will be protected against unfair competition from the Natives in so far as where they are already established.

The Coloured community will be represented in the Senate by a European representative to be appointed by the Government by reason of his knowledge of Coloured affairs.

The present unhealthy system which allows Coloureds in the Cape to be registered on the same voters' roll as Europeans and to vote for the same candidate as Europeans will be abolished and the Coloureds will be represented in the House of Assembly by three European representatives.

These Coloured representatives will be elected by a Coloured representative council. They will not vote on:

(1) Votes on confidence in the Government.

(2) A declaration of war, and

(3) A change in the political rights of non-Europeans.

A State Department of Coloured Affairs will be established.

The Coloured community will be represented in the Cape Provincial Council by three Europeans elected by the Coloured representative council.

A Coloured representative council will be established in the Cape Province consisting of representatives elected by the Coloured community, divided into constituencies with the present franchise qualifications, the head of the Department of Coloured Affairs and representatives nominated by the Government. In their own areas the Coloured community will have their own councils with their own public services which will be managed by themselves within the framework of the existing councils with higher authority.

Attention will be given to the provision of social, medical and welfare services in which the efforts of the Coloured themselves can be harnessed, and in which they will be taught as far as possible to be self-supporting.

(ii) Extracts from the speech delivered in Parliament by the Prime Minister, Dr. D. Malan, on 12 April 1950

If one could attain total territorial *apartheid,* if it were practicable, everybody would admit that it would be an ideal state of affairs. It would be an ideal State, but that is not the policy of our party . . . it is nowhere to be found in our official declarations of policy. On the contrary, when I was asked in this House on previous occasions whether that was what we were aiming at, when we were accused of aiming at total territorial segregation, I clearly stated, and I said it clearly on platforms, that total territorial separation was impracticable under present circumstances in South Africa, where our whole economic structure is to a large extent based on Native labour. It is not practicable and it does not pay any party to endeavour to achieve the impossible. One must found one's policy on what is possible of achievement.

What, then, is our policy on this matter? What is our policy, then, assuming that the Natives and the Europeans in the European areas will continue to live together, at least to a certain extent?

In the first place, we should seriously take into account the influx of Natives into European areas . . . We

are taking measures and have already taken measures to ensure that this harmful flow of Natives . . . to the European areas is checked as far as possible, without doing harm to the demand for labour in the European areas. That is our policy. For all I know, progress can be made along the lines of the resolutions taken at the Church Congress.[1] In course of time we shall progress in that direction, but much work has to be done before that can be achieved; the first and most important problem in this connexion is that there are many Natives who have never lived in the Reserves, but who have always lived in the European areas, and if one tried to return them to their tribal homes, the Native Reserves would have to be extended considerably and much more land would have to be given to them, otherwise there would be a tremendous congestion in the existing Reserves . . . There is no statement nor any official document of our party in which it has ever been stated that that (total separation) is our policy.

(iii) Extracts from the message to the nation broadcast by the Prime Minister, Dr. D. Malan, on 31 December 1952

There are "five beacons which indicate to us the way towards that peace and happiness which we desire for each other and our country".

1. Living as we do in a multiracial country, we must recognize each other's right of existence unreservedly. South Africa is our common heritage and belongs to all of us.

2. We must create and maintain conditions in which every population group will feel secure in the maintenance and development of what is particularly its own. South Africa must not consist of camps in which one section must find it necessary to entrench and defend itself against another.

3. We must all, in the first place and above all, consider ourselves as children of South Africa to which we owe our undivided loyalty and devotion.

4. South Africa as a whole must maintain undefiled her character as a partner in the West Christian civilization and must consider it as her calling to protect it against attacks from outside and subversion from within.

5. We must, in addition to our mutual interest in and our assistance to each other, realistically recognize the natural differences as well as the gap in the level of civilization existing between various sections. Their existence no one will deny, nor the fact that they will still continue for generations to come. It may be safe to jump over a ditch. To attempt to jump over a gorge or a valley is fatal. Our first duty is to maintain and protect the highest and best we possess in the interest not only of ourselves but also of all.

For the rest, the solution of South Africa's racial problems will require all the tactfulness, firmness and patience we can command. Political differences there will always be as in every other democratic community. In itself this is no evil. The decision must always rest with the people. And where such a decision is again due during the year we are entering now, let us all together resolve to carry on the ensuing campaign on a high level, in accordance with the demands of sincerity, honesty and chivalry as it behoves a civilized and Christian nation.

[1] Statement issued by the Church Congress of the Dutch Reformed Churches, 4-6 April 1950.

(iv) Extracts from the speech delivered by the Prime Minister, Dr. D. Malan, at Stellenbosch on 5 March 1953

. . . Because of the new and dangerous situation that had arisen the Government would ask the electorate for a renewed mandate for its *apartheid* policy. By that the Government would stand or fall.

The most important and urgent issue was undoubtedly the colour question. There were only two alternatives—equality or *apartheid*. Neither in conception nor in application was *apartheid* a specifically South African product, and far less was it something created by the Nationalists for party political purposes. It was practised almost the world over, including Europe, the cradle of Western civilization.

. . . The Europeans had at least the same right as the non-Europeans to South Africa. Both had come from without and at about the same time, and the Europeans had prevented the Natives from annihilating one another as they, already to some extent, had been doing.

What was more was that the Europeans had developed their own South African nationhood and had ceased to be merely settlers. They were now a nation of their own, with their own and only fatherland.

Apartheid was accepted even in Europe and throughout the world as being natural, obvious and right. Why must it then in South Africa be regarded and condemned as a mortal sin?

It is true that every Christian will readily accept the doctrine that all men are equal before God, and therefore must be regarded and treated as human beings with human rights. But, apart from the fact that it is difficult to see how that can be applied to equal franchise, the matter can certainly not end there.

Apartheid was based also on another divine creative need—the natural differences between race and race, colour and colour, comprising, as a rule, also difference in nationhoods, languages, and culture.

Lack of appreciation of this last fact was, as a rule, as fatal as lack of application of the first. It usually caused friction where *apartheid* created friendship and co-operation.

It often also meant the suppression of the natural capacity of evolution and resources of the more backward section, with the result that injustice was done to them under the cloak of equality.

Apartheid was no policy of oppression, neither in principle nor in its historical background.

On the contrary, like a wire fence between two neighbouring farms, it indicated a separation without eliminating necessarily legitimate and desirable contacts in both directions and, although it placed reciprocal restrictions on both sides, it, at the same time, served as an effective protection against violation of one another's rights. It was also the best guarantee of friendship and reciprocal helpfulness.

The Opposition, which was harnessing all its forces to bring about the fall of the Government, on its *apartheid* policy, had no colour policy, and there was sufficient evidence that it could not have one.

I have been a member of Parliament for thirty-four years, and should know how the word *"apartheid"*

arose, and why. There was no difference in meaning whatever between "segregation" and *"apartheid"*.

Segregation was originally the term generally used and General Hertzog had been the great champion of it. General Smuts had been no enthusiastic champion of segregation, but originally had not opposed it.

Slowly, however, a change had come over General Smuts and supported by his Secretary for Native Affairs, he declared in a speech that segregation was impracticable.

Then, in order to prevent a misunderstanding, the Nationalists felt the need for a new name. So the word *"apartheid"* which could even mean equality, but each in his own sphere, came into circulation.

The colour question was by far the greatest and most serious of all the problems of the country. Therefore it was right that, in the general election, it should overshadow all others . . .

(From: *South Africa,* No. 3343, 5th Year, 14 March 1953).

(v) Extracts from the speech delivered by the Prime Minister, Dr. D. Malan, on the eve of the legislative elections on 15 April 1953

In an appeal for national unity in terms of *apartheid,* Dr. Malan said that the election would be the most effective means ever attempted to establish a firm and lasting national unity in the country. He said that *apartheid* was the expression of the sincere convictions of thousands of people who were not members of the Nationalist Party. It might show the way that all White communities, from Table Mountain to Kenya, would have to take.

He reiterated what he has often said before—that *apartheid,* whilst it was intended to safeguard the purity and guardianship of the White race, did not imply neglect or suppression of the non-European. He also intimated that the Nationalist Party was not opposed to a joint solution of the colour question, but he added that it was not prepared to do so except on the basis of *apartheid.* "Liberalists and leftist elements" the Nationalists would never negotiate with or consult, he added.

Developing this attack on liberal elements, Dr. Malan said: "From outside, the United Nations, Communist Russia, semi-Communist India and the British Labour Party, as well as a hostile Press, combine—trying to force upon us equality which must inevitably mean to White South Africa nothing less than national suicide.

"From within, we witness a favourable reaction to this external attack on the part of growing and audacious liberalism, largely underground but very active communism, and an open defiance campaign against all discriminatory laws, even the oldest and most traditional, and all this passing on violence and barbaric atrocities.

"Additionally, as a result of the recent Appeal Court decision, a situation has arisen where colour separation on railways and railway premises has juridically and practically been abolished throughout the Union and South West Africa. This impossible position can be rectified by a strong Government unhampered internally by irreconcilable viewpoints."

(vi) Extracts from a speech delivered in Parliament by Mr. Strydom on 31 January 1949

Here we have 2,500,000 Europeans, as against approximately 9 million non-Europeans, and the serious nature of the problem is so obvious that there is no need to argue that point. The question arises whether we can maintain our position. We on this side of the House say "Yes, definitely, provided certain conditions are complied with". I want to mention two of these conditions. The first is that there must be no miscegenation. We as a Government and as a nation must prevent miscegenation as it has taken place in other countries where Europeans and non-Europeans live in the same areas. The second is that in any case we must not be dominated. If the European loses his colour sense he cannot remain a White man. The European population in this country, which is in the minority, can only remain White if it retains its sense of colour. On the basis of unity you cannot retain your sense of colour if there is no *apartheid* in everyday social life, in the political sphere or whatever sphere it may be, and if there is no residential separation. In that case it is absolutely impossible for the European race to retain its colour sense. Other members on that side who subscribe to those views say we are a nation consisting of 12 million people. Well, let them do so if that is their nation. I can tell the honourable members it is not our nation. South Africa can only remain a White country if we continue to see that the Europeans remain the dominant nation; and we only remain the dominant nation if we have the power to govern the country and if the Europeans, by means of their efforts, remain the dominant section.

(vii) Extracts from the speech delivered by Dr. E. G. Jansen, Minister of Native Affairs, at the annual meeting of the Council of the Institute of Race Relations on 18 January 1950 (Cape Town)

If the Institute of Race Relations succeeds in avoiding the many pitfalls that beset the path of the conscientious inquirer into race relations in South Africa there is no reason why you should not largely contribute towards finding a reasonable *modus vivendi* for the various racial groups in our country.

. . . Broadly speaking there have emerged only two trends of thought worth considering . . . the one is assimilation and the other can perhaps be described as differentiation. There were those who advocated equal rights in all respects, including miscegenation, and those who merely wanted political rights for the non-whites to be exercised. It was difficult to see, however, how equal political rights could be granted without eventually condoning equality in all other respects.

The protagonists of this policy generally call themselves liberalists. They have been especially vocal, more particularly overseas where their theories fit in with current thoughts and conditions. It is for that reason that we often find that people having the least knowledge of conditions in South Africa pose as authorities on South African problems. It is this policy that has for generations had the upper hand in official circles in South Africa. To a large extent it is an inheritance from the days when South African policy was prescribed from overseas and largely based on distorted and prejudiced information. It was based on the ideas

about equality current in Europe and did not take into account the fact that conditions in South Africa were totally different. But even where it was officially prescribed it was found in practice not capable of being applied.

To my mind the great mistake made in the past was the attempt to Europeanize the natives and to break down their tribal system with its discipline and regard for tribal customs and traditions. In recent years that process has been accelerated by the tremendous drift to the urban areas and the consequent loosening of tribal affiliations. The policy of the past is to a large extent responsible for that process and for the undesirable state of affairs that obtains today, coupled with the process of Europeanization which I have just mentioned, and perhaps because of that process there has come into being a class of Natives highly educated on European lines who are incapable of being taken up in the European community and at the same time they evince little desire to be closely associated with their own people.

The result was obvious. They became dissatisfied and claimed rights which the Europeans were not prepared to grant them. Consequently many of them became ill-disposed towards Europeans. It was all a result of upbringing and the policy of the past. At the present time we have Natives ranging from men possessing the highest cultural and other European qualifications to the hut-dweller still in his primitive state. We have succeeded in separating from their own people a large number of Natives who find that notwithstanding all their European accomplishments, they are not taken up by the European community. This we have done instead of raising the Native races as a whole. That brings me to the other trend of thought, namely that of differentiation.

. . . In the time of the *Voortrekkers* the bulk of Europeans in South Africa felt that they were different from the aboriginal peoples of the country. For them equality between Europeans and Natives was unthinkable. Those non-Europeans who were in their employ were treated in a patriarchal manner by their European employers but the relationship of master and servant was strictly observed.

That relationship was thoroughly understood by both the master and the servant and it was very seldom that it developed into that familiarity that could lead to a feeling of equality and miscegenation. The terms on which the Native and his family lived on the farmer's land were well known. For the privilege of having a place to erect a home or huts for himself and his family, land for cultivation, and land for the grazing of his stock, the Native was bound to give the labour of the inmates of his kraal for a few months in the year. For some generations that system worked well for it fitted in with the ideas both of the farmer and of the Natives residing on his land. For many years past, however, the system has been breaking down under modern conditions and in many instances as a result of court decisions. . . . The time is fast approaching when it can no longer be continued. The change is accompanied by the relaxation of tribal affiliations, customs, and discipline, which as a rule were recognized and observed by the *Voortrekkers* and their descendants.

Apartheid, or separation between European and non-European, is based on the view of the older population that there is an essential difference between the two and that if miscegenation is to be avoided they must keep apart or separate in their development. Even where non-Europeans are in the service of Europeans the *apartheid* or separateness in their development should be maintained. There are people who advocate a loaded franchise for non-Europeans so as to safeguard the supremacy of the Europeans. That is the position at present with the coloured people at the Cape. I think that it can safely be said that as a result of changed conditions the so-called protection afforded the European electorate by the loaded franchise is fast disappearing.

In the meantime it would be of value to have a really unbiased discussion on the question as to what would be in the best interests of the coloured people themselves. I notice that the condition of the Native Reserves figures on your agenda. A long term policy will have to be evolved with regard to the reclamation and conservation of the Reserves. I trust that your discussions will lead to practical suggestions.

(From: *South Africa Reports*, 26 January 1950).

(viii) Extracts from the speech delivered in Parliament by Dr. E. G. Jansen, Minister of Native Affairs, on 20 April 1950

It is not sufficiently being realized that the Department of Native Affairs has to deal with a population of more than 8 million. The Department itself actually forms a government with its various sub-departments, each dealing with a specific aspect of Native life. One of the most important of these sub-departments is the Division of Lands, which deals with the buying and conservation of land. The agricultural and engineering sections fall under that Division. There is also a Division of Urban Areas which may shortly have to be allocated a far more important position than in the past.

We shall gradually have to introduce an efficient organization for all the aspects of Native life. It is true that every Minister has to deal with Natives in his own department and is responsible for the implementation of this Government's policy, but the handling of Native problems, which have increased so tremendously in recent years, rests with the Department of Native Affairs.

I need not dwell on all the factors which contributed to the present unsatisfactory state of affairs, as far as our Native population is concerned. There are a few, however, which I want to mention, of which one of the most important is the lack of a definite Native policy in the past, while a second factor is the systematic undermining of tribal discipline. The influx of Natives in the urban areas as a result of the tremendous industrial development which has taken place and the lack of proper housing in those urban areas has been another very important factor. As far as this factor is concerned, I do not think that it would have had such a disintegrating effect on the Native population if we had taken care that tribal connections and tribal discipline were maintained.

Unfortunately, strong influences have been at work in the effort to destroy everything connected with the national character of the Natives. That already the background of his tribal consciousness and of his tribal links is gradually disappearing and the Native is, as it were, suspended in mid-air; he has a feeling of instability which is nourished by people who are only too

eager that he should be torn away from all his anchors, so that he can become an easy prey to their propaganda. The irresponsible preaching of equality and all kinds of ideas which are foreign to the Natives and which many of them picked up when they were on military service abroad, are also factors which contribute to the present situation. It was the late General Hertzog's ideal to lay down a definite Native policy, and after many years' labour the Acts of 1936 were placed on the Statute Book. Those Acts did not, however, take the exact form which he eventually considered to be the best. Apart from the political representation of Natives in legislative bodies, with which we are not now concerned the legislation of 1936 mainly dealt with land and the occupation of land. An important section was chapter IV of the Native Trust and Land Act, which has never yet been applied except in the Lydenburg district, where it was subsequently withdrawn, because it became clear that the application of that chapter in isolated areas does not produce any desired results. In 1936 the problem of Natives in urban areas had not yet assumed the enormous proportions of recent years.

Before that legislation was introduced in 1936, we had legislation in connexion with Natives in urban areas, which was later consolidated in the Act of 1945. Then there was the Native Administration Act of 1927, as amended from time to time, the Native Affairs Act of 1920, the Regulation of Native Labour Act of 1911, and numerous other Acts affecting the interests of Natives. It is very desirable that all the Acts affecting Natives should be consolidated in a general Act, containing chapters dealing with every aspect which is at the moment covered by the various Acts. It will, in the nature of things, take a considerable time before such a consolidation can be completed, but steps are being taken in that direction.

Several commissions have reported on different aspects of Native affairs, but no definite policy was laid down until the *apartheid* (separation) policy of the Nationalist Party was published in 1948, before the general election. It is in the nature of things, impossible to explain that policy in all its detail. The broad principles, as explained in that published policy, must, as far as possible, serve as a guide to our intentions.

Shortly before the election in 1948, the Fagan Report was published. That report contains valuable data and suggestions which will be considered by the Government in determining its future line of conduct. The Fagan Commission only dealt with the Natives in the urban areas and, although its report contains references to other aspects of the problem, we should keep in mind that its terms of reference were limited.

At this stage it is not necessary for me to go into the question of political representation. It is the definite intention of the Nationalist Party that the representation of Natives in this House should be abolished. Under circumstances known to honourable members, the Government will not, however, proceed with that part of its policy during the present session.

Future plans

I want to explain, as far as possible, what the plans are for the future, so that honourable members can form a better idea of our policy. There have been so many misrepresentations in connexion with this matter, that I trust that my explanation will remove the erroneous ideas which have been formed in the minds of Europeans, and particularly in the minds of Natives, as a result of wrong propaganda.

Honourable members will remember that it was postulated in the declaration of policy by the Nationalist Party that the principle of territorial *apartheid* between Europeans and Natives was generally accepted. I think that there is a large measure of agreement on this question, also as far as the opposite side of the House is concerned. That means that land has to be made available to the Natives, and it is our declared policy that that land, which forms the Reserves, should be the true home or fatherland of the Natives, where they can gradually acquire control of their own affairs.

The Act of 1936 provides for the allocation to the Natives of 7.25 million morgen of land, apart from land formerly reserved for Native use.* Up to the present 4,224,533 morgen from that total have been allocated as follows:

Transvaal	3,392,444
Cape Province	620,866
Natal	131,276
Free State	79,947
TOTAL	4,224,533

During the period June 1948 to 31 December 1949, 374,176 morgen were acquired, and we are negotiating in connexion with a further 112,448 morgen of land. These figures do not include the land used by Natives on the farms of Europeans. The total area now occupied by Natives or acquired for the Natives by the Native Trust is in the region of 15 million morgen. Some of that land is situated in the most fertile parts of the country, which also have the biggest rainfall. Unfortunately a large part of the land made available to the Natives has been destroyed by exhaustion and overstocking. Honourable members will note that an amount of £850,000 has been provided in the Budget for reclamation and conservation of land. That is the amount which has been made available for the present financial year; it is the biggest amount thus far provided during any financial year.

There is a large staff of technicians and others engaged in this essential work in all parts of the country. The reclamation work is being carried on with energy and I trust that the staff will be adequately reinforced to enable the Department to do still more than in the past. In various parts the Natives are co-operating wonderfully. But the reduction of superfluous livestock, which is essential, presents many difficulties. We recently had that case at Witzieshoek which has not yet been solved.

Land purchase

In the Orange Free State the quota provided for by the Act of 1936 has already been acquired, and in each of the other provinces the quota which has to be acquired exceeds the areas where land can be acquired without restrictions.

Farmers whose land borders the Native Reserves complain that they have to contend with all sorts of difficulties. They say that their wire fences are being destroyed by the Natives, who use their grazing without permission, and that stock theft is rife, and that all these things are causing them endless trouble. I have reason to believe that these complaints are not without foundation, and we shall have to see in what way matters can be improved, i.e., by applying the

*A morgen is equivalent to 2.117 acres.

principle of joint responsibility. As a result of these conditions, such landowners are only too glad to be able to sell their land to the Native Trust. But then the new border farmers have the same trouble.

Farmers in general are also strongly opposed to the idea that more land, outside the proclaimed areas, should be made available for Natives. Where land is offered for sale outside the proclaimed areas the Department generally consults the local farmers and farmers' associations before buying such land.

In accordance with the declared policy of the Nationalist Party, it is the policy of the Government judicially to purchase more land for Native occupation in terms of the Act of 1936, and the present estimates include an amount of £300,000 for that purpose. We shall, however, devote our energies more to the reclamation of land which has already been made available and which has suffered deterioration. As regards the land which we do purchase, I can say that immediate steps are being taken to ensure that it does not suffer the same process of destruction, and to ensure proper control.

There is a certain aspect to the question of the acquisition of land which will have to receive serious attention at some time or another. In no country in the world is it possible for every inhabitant to possess a piece of land on which he can make a living. The same applies to the Natives in our country. It should also be remembered that the Natives practically have the free use of land. No country in the world can extend its borders in accordance with the increase of its population. The extent of the additional land to be acquired for Natives is laid down in the Act of 1936. Gradually the full quotas as laid down in that Act will be reached, but the land hunger will never be appeased. Since 1936 other factors have come into the picture. The State and other authorities have spent millions of pounds on housing for Natives in urban areas, and additional millions will probably have to be spent on housing for Natives who originally came into towns from the Reserves and from the farms. If the shifting of the Native population continues, the question arises as to whether these changed conditions should not be taken into consideration in connexion with the extent of land which still has to be purchased for the Natives in terms of the Act of 1936. This question goes hand in hand with the question of the production of food.

If Natives leave the reserves and the farms in increasing numbers and, therefore, also stop assisting in the production of food, can the State afford to purchase more and more land which at present belongs to Europeans and to allocate such land to Natives who will presumably be less productive? These questions are asked by many people. As far as my Department is concerned, I want to emphasize the fact that we are going to insist on the profitable occupation of land by Natives. Nobody can say at this stage whether these efforts will be successful. But it is clear that our policy, in connexion with the purchase of additional land, will be influenced by the success or failure of this undertaking, and I therefore do not want to enlarge on it today. It is sufficient that I draw attention to this state of affairs, which is not often pointed out to the public.

Tribal organization

It has already been announced that the Government intends to appoint a commission of experts to inquire into and to make recommendations in connexion with the best ways of reclaiming and developing the Native areas, and to determine what can be done to restore tribal life as far as possible by seeing to it that the chiefs and the whole tribal government adapt themselves to the exigencies of our times and thereby automatically regain the position of authority which they forfeited to a large extent through their backwardness. Honourable members know that the Natives of this country do not all belong to the same tribe or race. They have different languages and customs. We are of the opinion that the solidarity of the tribes should be preserved and that they should develop along the lines of their own national character and tradition. For that purpose we want to rehabilitate the deserving tribal chiefs as far as possible, and we would like to see their authority maintained over the members of their tribes. Suitable steps will be taken in that direction. Naturally, abuse of that authority by any other chief will be guarded against.

Where a tribal chief has shown that he is competent, he will be granted certain powers. He will be assisted by a council, the members of which will have to be approved. It will only be a continuation of what has already been enforced in many respects. The tribal chief, with his council, will then in many respects be performing the same function as the local councils in the Transkei and the Ciskei. If a sufficient number of such councils have been appointed in certain areas, where each tribal chief can be represented, a general council can be called into being for such an area. The idea is that in each area headed by a Chief Native Commissioner, with the exception of the Witwatersrand, local councils and a general council should as far as possible be established on ethnic lines. As far as the Transkei and the Ciskei are concerned, it is not the idea to effect any change.

It will then mean that every general council will represent a section of the Native population who are more or less related to each other. That is the position in the Transkei and the Ciskei at the moment. Natal will be predominantly Zulu. In the Transvaal general councils will be established for Northern Sotho and Tswana respectively. Whether such groups as the Venda and the Tsonga will be incorporated in these groups is something on which I would not like to express an opinion today.

When these Councils have been adequately developed, the desirability of establishing a central body consisting of representatives of all the general councils can be considered. The idea is that local and general councils should gradually be given the power eventually to control their own affairs as far as possible, with the retention of White trusteeship. That is the intention as far as Native areas are concerned. That is where the eventual home of the Natives will be and there they will have to learn to govern themselves and to live up to their own national ideas.

Questions such as the establishment of Native towns, the introduction of individual proprietary rights and the possibility of the development of industries in the Reserves will be gone into by the commission which I have just mentioned.

The constructive policy in respect of the economic development of the Native areas which is envisaged in this party's declared policy will, to a large extent, be determined by the recommendations of this commission: but at this stage already I want to state that the Government will tackle this problem vigorously.

I fully realize that the most effective way to arrest the influx of the Natives in the cities is to see to it that life within the Reserves becomes more versatile. The idea is that we should see to it that the tribal chiefs in the Reserves have contact with and exercise discipline over their fellow-tribesmen in the urban areas. I believe that it is in the interests of the Natives themselves that tribal discipline be maintained as far as possible.

It is fairly generally acknowledged that the urban Native who no longer feels himself bound by his tribal control becomes a social danger, because there is nothing else to replace that form of control. It will definitely be worth one's while to consider whether this type of Native cannot again become part of a progressively orientated tribal relationship to the advantage of all concerned.

Urban life

The biggest problem in connexion with Native administration today is the situation in the urban areas. One of the misrepresentations of the Nationalist Party policy is the allegation that we intend removing in a reckless manner all Natives from the urban areas and placing them in the Reserves. In the declared policy of the Nationalist Party it is very clearly stated that the number of detribalized Natives in the urban areas should be determined and that the influx should be placed under swift control. It is admitted that Natives should remain in urban areas, but it is explicitly stated that they should have no political or equal social or other rights with Europeans. They may live in European areas, where they cannot have such rights and cannot be regarded as permanent inhabitants. In their own separate residential areas, however, the intention is that they should gradually be given the opportunity of serving their own people. Everything will naturally take place under proper supervision and the local authorities will naturally remain in control.

Ultimately, it is intended that for every location or Native township there should be a council or councils of Natives, under the guidance of the local authorities or the Department of Native Affairs, who can manage the affairs of the location or of such a Native township. I can foresee the time when the inhabitants of those locations or Native townships will, in many respects, be served by Natives. They will also, as far as possible, have to be responsible for the maintenance of law and order. The proposed councils will replace the present advisory councils. In their inception and composition the natural system of the Native should be followed as far as possible.

I think that in classifying the inhabitants of the locations or Native townships, we should take into consideration the various Native races or tribes. As far as possible members of the same race or tribe should be housed together, so that the tribal relationship can be restored and maintained. The composition of the councils should also be in accordance with the Native systems. But before such a classification can take place, it has to be established whether Natives are entitled to live in the urban areas concerned. For this purpose and with a view to exercising proper control in such an area, the Native community has to be divided into three groups:

(1) Those who work and have a home
(2) Those who have work but have no home
(3) Those without work or home.

There should not be any difficulty in gradually giving those of the first category a certain measure of control over their own affairs in the locations. As far as the second category is concerned, plans will have to be formulated to provide homes for them, and when that has been accomplished, they will come into the first category. To provide proper housing for the thousands of Natives who have work but no homes is a task that will take many long years to accomplish. At present they are living with other Natives, with the result that the houses are hopelessly congested and that we get the most undesirable conditions. In the first place, they must be removed to controlled squatters' camps, where they should be allowed to build their own homes to prescribed designs. The squatters' camps and houses will have to be of a temporary nature, because as proper housing is provided, the inhabitants of the squatters' camps will have to be removed to those homes.

Housing plans

The Department has for some time been investigating the type and quality of Native houses in urban areas. Numerous plans were submitted, and I am convinced that a type of house can be designed that will be both satisfactory and economical. The law places the responsibility for Native housing in the urban areas on the local authorities, but, especially in larger cities, the local authorities have arrived at a stage where they say that they can no longer afford the losses on Native housing. Some years ago an agreement was entered into with the previous Government whereby the losses on sub-economic houses were shared by the Government on the basis of a fixed formula. It resulted in big losses to both the local authorities and the Government. It is obvious that there was a tendency to build Native houses on too large a scale, and to execute plans for services which were not really essential. It was largely due to the directions of the technical officials, on whose advice the local authorities had to act. Another factor was that skilled European labour had to be used for the building of those houses.

We must realize that the housing question is urgent and serious and that provision must be made, without considering too carefully the demands which may be desirable in different circumstances. Our first duty is to see that the Natives who are entitled to be in urban areas have a proper roof over their heads. The provision of facilities which are not immediately required can be attended to later on.

In my opinion it is a wrong notion that the Native who has barely left his primitive conditions should be provided with a house which, to him, resembles a palace, and with conveniences which he cannot appreciate and which he will not require for years to come. When I think that many of our parents started their married life in a rondavel, or a small mud house with a thatched roof and mud floor, and that they managed very well in spite of that, I am convinced that we are not doing the Natives any favour by providing them with all kinds of conveniences, which they do not appreciate and, in many cases do not even use. I do not doubt that Native housing can be an economical proposition, without the tremendous losses which have been incurred in the past.

That is one of the objections which commerce and industry made against the proposal that they should contribute towards the losses on sub-economic housing for Natives in their employ. They are of the opinion that Native houses can be provided on an economic

basis and they object to contributing to the cost of houses when they have no say in the plans that are carried out. I can appreciate their attitude and I intend appointing, where necessary, a board or committee for Native housing, on which both commerce and industry will be represented. The function of such a board will be to give advice on any proposed scheme for Native housing.

I am also considering a scheme to establish a subdepartment for urban areas which can devote its full attention to Native housing. Plans in connexion with conditions in the urban area of Johannesburg, which aim at economic housing for Natives, have already been submitted and are at the moment being considered. One thing is certain and that is that if we want to catch up with the backlog and if we want to build economically, the Natives themselves must be given the opportunity, where circumstances demand it, to build their own houses. It will naturally have to be done strictly to prescribed designs, and it stands to reason that all the plans will have to be carried out in consultation with the local authorities.

Mixed areas

There are parts in and around urban areas where all races and colours are to be found. Such areas must be cleaned up. There are, however, all kinds of difficulties under the Act. In many places Europeans, Natives, Asiatics and other non-Europeans are the landowners in such areas, and there will probably have to be expropriation, and compensation will have to be paid. There is also the question of finding other homes for those people who are expropriated. It stands to reason that it will take time to make all the necessary arrangements. The Land Tenure Bill (Group Areas Act, 1950) to be introduced by the Minister of the Interior will probably help here. In the future planning of Native residential areas in urban areas, care will have to be taken that Natives belonging to the same race or tribe are housed together.

Before changing the subject of housing I want to point out that, although in the nature of things employers have a responsibility towards the Natives in their employ, the local authorities also carry a responsibility, apart from their obligations under the law. In most cases local authorities went out of their way to attract industries. They competed with one another in attracting industries, without giving any attention to the Natives who would inevitably be drawn to those industries which they so badly wanted in their localities. They themselves are largely responsible for the conditions which have arisen especially where they have not always used the powers vested in them by the law to prevent the influx of Natives and to prevent overpopulation. While we therefore talk about the responsibility of the employers, we should not lose sight of the responsibility of the local authorities.

I also again want to issue a warning against the unlimited expansion of industries in our large urban areas, particularly in cases where a great number of Natives have to be employed. Local authorities that are already overburdened with an excessive Native population should give no encouragement to the establishment in their localities of more industries, that will increase the Native population in such areas. On the other hand, people who want to establish new industries should give more attention to centres where problems do not really exist in connexion with Native housing and where it will be easier to make provision for the housing of Native employees. In those cases where the employees will be largely Natives, industries should, as far as possible, be established in or in the immediate vicinity of Native reserves.

The question of transport is closely connected with the question of housing. Transport should be considered in conjunction with any plans for the housing of Natives, and in future it will very definitely be taken into consideration when schemes are submitted for approval.

Everything that I have said about housing naturally only applies to the Natives who are entitled to live in urban areas. One cannot expect the local authorities to provide housing for Natives who have no right to be in their areas. I trust that the amendments to the Natives (Urban Areas) Act, which I intend introducing, will ensure more effective control of Natives in urban areas.

Protectorate Natives

There is a certain aspect in connexion with Natives in urban areas, which I want to bring to the notice of the House. The Natives from the Protectorates are not regarded as foreign Natives and, as far as the Urban Areas Act is concerned, they are treated as Union Natives. They make the fullest use of this privilege, even to the extent of remaining in the Union as permanent residents, which many of them do, although theoretically they are only temporary residents. They enjoy the same privileges and benefits as our own Union Natives. It is estimated that a large percentage of the Natives who have to be provided with housing in Johannesburg are Natives from the Protectorates, and that a still bigger percentage of the superfluous Natives in the areas where the recent riots occurred are also Natives from the Protectorates. I am also informed that many of the Native women who are engaged in the illicit liquor trade are Native women from Basutoland.

Honourable members will appreciate that the presence of these Natives, who are not Union Natives, aggravates the position, and plans are being formulated to improve the position. The present accommodating attitude towards the Natives from Basutoland and other Protectorates is undoubtedly due to the expectation that the Proectorates would eventually be incorporated in the Union. While our problems are meanwhile, however, aggravated by this state of affairs, the question arises as to whether steps should not be taken to make better arrangements. It is a peculiar phenomenon that, whereas the Union is often accused of ill-treating its Natives and whereas the most unfavourable picture of conditions in the Union is often painted abroad, tens of thousands of Natives from the Protectorates, and even from as far as Nyasaland prefer to go to much trouble to come to the Union and live here. It is a striking commentary on the often repeated allegation that the White people in the Union are oppressors of the Native population.

It is the Government's intention to take all possible steps to expedite and to encourage the provision of housing for Natives who work in urban areas, but who have no houses there. If the Bill of the Minister of Labour is passed and Native labour can be employed for the building of Native houses, it will also assist in the right direction.

Then I come to the unemployed Natives who have no accommodation. Those who come from the farms or the Reserves can be sent back when possible. A plan is

being considered to organize into disciplined groups, who can work in places where their labour is required, those Natives who may not have homes to which they can be sent. The labour bureaux can perform a useful function in this respect. The plan is still being formulated and I trust that we shall find a way to employ usefully many of the vagrant Natives in our cities.

The labour bureaux will have the task of canalizing the available Native labour. A central bureau is being organized in Pretoria, while regional bureaux are being established in the offices of all the Native commissioners. In addition, local bureaux will be established where it is deemed necessary in the offices of the Native commissioners or at such other places which may be considered the most suitable. We expect that when the bureaux are in full operation, the distribution of available Native labour will be much better arranged than in the past.

Farm labour

From all parts of the country I receive letters from people who complain about the lack of Native farm labour. This problem has already caused many headaches. It seems to me that the old practice which has been in use for generations can no longer be pursued. That is, namely, the practice where the farmer enters into an agreement with a Native for the services of all the inhabitants of his kraal or village for a number of months, in exchange for a place to live, for grazing for his cattle and for a piece of land to cultivate. The period of service varies from three to six months. In most cases such Native labourers also receive a small wage.

In the earlier days when the tribal and kraal discipline was still being maintained and the Natives were not so greatly attracted by the cities, all was well and the farmer could rely on the labour which he had been promised. Today the complaint is general that the young Natives do not heed the wishes of their parents, and that they disregard the obligations entered into. They simply disappear from the farm and the farmer then has to put up with the old Natives, who are no longer able to work and who often have to be taken care of by him. The farmers are today more and more compelled to engage casual labourers, when they can obtain them. They cannot, however, afford to pay the high wages which are paid in the cities. The value of what they pay those labourers in kind, together with the cash wages which they receive, often equals, if it does not exceed, the cash wage paid in the cities, but the Natives prefer the cash wage paid in the cities and it seems as if they are averse to farm work.

The high wage determinations in and the attractions of the city have caused the disruption of farm labour throughout the country: this disruption has already attained serious proportions, and it will undoubtedly still affect the production of food.

From time to time officials of my Department hold conferences with the Liaison Committee of the S.A. Agricultural Union, which was created for that purpose. I have attended a number of those conferences and I can bear witness of their usefulness. So far, however, no effective solution of that problem has been found. The creation of labour bureaux will undoubtedly help, but it should be realized that there cannot be any compulsion.

An unhealthy aspect of the matter is the fact that many farmers, especially on the high veld of the Transvaal, recruit a large proportion of their farm labour from among foreign Natives who enter the country illegally. They are Natives who come to the Union from Rhodesia, Nyasaland and other countries to look for work. It has been found impossible to prevent them from entering the Union, because it is impossible to guard the whole of the border. A system was then introduced whereby such an illegal immigrant can go to the nearest Native commissioner to obtain a temporary permit, allowing him to remain in the Union for a temporary period of six months. He pays a fee of 5s. for that permit, which can be renewed. Such a Native may not work in urban areas and it is an offence to employ such a Native in an urban area. In spite of the ban, however, numerous foreign Natives are employed in cities. There are also many of them in Cape Town, where they appear to be popular as domestic servants. It is, however, an offence to employ them in the cities, and any person employing such a Native without permission can be prosecuted.

Some years ago a depot was established in Johannesburg, where all foreign Natives caught in that area could await deportation. There they were given the option of working in the country districts or of being deported. Out of several thousands of them only a few preferred to work in the platteland. The rest of them were sent to Louis Trichardt where there was also a depot. There they were again given the choice with the same results. Those who preferred to be deported were put over the border and they probably returned to the Union within a few days. They simply do not want to stay away from the Union. We have had correspondence with the Government of Southern Rhodesia in connexion with the matter and it is possible that we shall have discussions on the whole matter.

We are considering applying chapter IV of the Native Trust and Land Act of 1936 to the whole of the Union. That will mean that machinery will be created to prevent any farmer from having more Natives on his farm than are actually required for his work. There are, however, certain difficulties in connexion with this matter, which still have to be overcome. It is expected that, when chapter IV comes into operation, there will be a better and fairer distribution of Native labour on the farms. It is difficult to say whether it will have that effect. The system under which Natives work on the farms for only a few months while they are allowed to work in cities for the rest of the period is, in my opinion, wrong and a system should be introduced which will cause the Natives to prefer working on the farms where they can earn sufficient money, without having to find employment in the cities. That, however, is a matter for the farmers themselves. Any reasonable assistance which the Department can render in that direction is available to them.

Apartheid

There are many misrepresentations and wrong notions in connexion with the policy of *apartheid* on this side of the House. Permit me to express a few thoughts here in connexion with this matter. When we talk about the "separate development" of two groups it means that the two groups are separated from each other in their development. When we speak of "separate residential areas" for Europeans and non-Europeans, then it means that the residental areas of the two groups must be separated from each other.

Apartheid, as far as Europeans and non-Europeans are concerned, therefore, means the separation between the two, and is the opposite of a jumble. The idea of apartheid has been recognized in the past under the term "segregation". The creation of Native Reserves in the platteland and Native locations in urban areas was an implementation of that idea. The word "segregation" fell into disfavour, and reminded one more of territorial segregation, without drawing attention to other aspects of *apartheid.*

The Government's policy includes territorial *apartheid,* but it goes much further than that. Under the present circumstances we do have Native Reserves and in the urban areas we do have Native locations. But apart from that, there is a jumble in certain urban and other areas which has to be cleared away. The conditions in the slums of most of our big cities, where there is a mixture of races and colour, are appalling. The Government is determined to put an end to those conditions. While the Government, therefore, is in favour of territorial *apartheid,* it wants to ensure that it is consistently and effectively applied.

In urban areas Natives who are entitled to live there will, with certain exceptions, have to be housed in their own locations and, where they are at the moment living among the Europeans, steps will be taken to remove them. As I have already indicated, however, it is a difficult task and it will take time to carry out, and it will cost a lot of money.

In its declared policy the Nationalist Party confined itself to what is practicable. The presence of Natives in European areas and also the fact that their presence there as labourers is essential, at any rate for the present, has been recognized. That is why it is laid down, as I have already said, that the number of detribalized Natives in the urban areas should be frozen; in other words, the number of detribalized Native families should be determined, to prevent further detribalization of families which can lead to an increase in the number in the urban areas. As far as this aspect of the matter is concerned, the object is to prevent the further accumulation of Native families in urban areas. Simultaneously, steps must be taken to ensure that Natives, who are not required for work there, should be excluded or removed from urban areas.

All these steps are necessary in order to place matters, as far as the Natives in urban areas are concerned, on a healthy basis, and so that both the Natives and the Europeans can be assured of a safe and peaceful life.

It is an object which peace-loving Natives in urban areas should strive after themselves, and, if it is explained to them in the right way, I do not doubt that we shall obtain their co-operation, because it is in their own interests that this policy be carried out.

I am also relying on the co-operation of employers. My impression is that they realize that they do have a responsibility towards their Native employees. The question of housing in separate residential areas, which I have already dealt with, is closely connected with this part of the Government's policy. When we have achieved our first object, namely, to establish a healthy basis, and if we succeed in creating order out of the present chaos, we can turn to the question of gradually reducing the existing number of Natives in the urban areas, without unnecessary dislocation.

If it does happen in the future that the Europeans can do without the services of the Natives, and other reasonable provision is made for Natives, the ideal of total *apartheid,* which is preached in some circles, may become practical politics. Until such time we shall have to confine ourselves to what is practicable.

Practicable steps

The rehabilitation of the Reserves and the provision of land and the proper development of the Reserves would naturally be very important factors in any such development. As I have already said, the Government must confine itself to what is practicable. I have already indicated the steps which the Government intends taking, and the fear that the Government is going to take steps which will disrupt the economic life of the country is unfounded.

The fear which is sometimes displayed, that our policy of *apartheid* means that all Natives will have to be removed from the farms and that no Natives will be allowed to live or work on farms, is also unfounded. I think it must be clear from what I have already said. At any rate, the conditions on farms are totally different from those in the cities. Natives who live or work on farms are employed by the farms. On the farms there is no question of equality. The relationship of master and servant is maintained on the farms, and there is no danger that conditions on the farms will develop in the same way as in the cities, where they are working with the Europeans on an equal footing—which gives rise to all kinds of undesirable conditions.

For generations that relationship between the farmer and the Native, who lives and works on the farm, has been respected. Both the farmer and the Native have well understood it and have accepted it, and the acknowledged relationship has been maintained. But, apart from that aspect of the matter, there is nothing in the pronounced policy of the Nationalist Party which can be interpreted as meaning that the Nationalist Party is opposed to Natives living and working on farms.

I have already pointed out that the old system of Natives who live on the farms apparently no longer fulfils its purpose and, if the declared policy is carefully studied, it will be observed that it was aimed at the employment of Natives even in cities, even though they are not established and detribalized; but if they are employed, they regularly have to return to their homes in order to maintain the tribal connexion. The same can be applied to Natives who work on the farms. As far as the Natives who live on the farms are concerned, the owners should see to it that they enter into a more satisfactory agreement than the usual one.

The Government's *apartheid* policy is not aimed at suppressing the Native. It seeks the development of the European and non-European side by side, and not intermingled. In the European areas the interests of the Europeans must be the dominating factor. In the Native areas the interests of the Natives must predominate. The intermingling of European and non-European can only lead to retardation, friction, injustice and difficulties. The separate development of the two sections will mean that those things will be eliminated; and as far as the Native is concerned, he can develop himself as far as possible. It must also not be forgotten that our policy also contemplates separation of the Coloured people from the Natives. That will be in the interests of both. Once we have established that effective basis, which I referred to just now, it will also be easier to give proper effect to this part of our policy.

It stands to reason that I have only touched on a few aspects of Native affairs. I assume that many other points will be raised in this debate; we can deal with those points when they are raised. But I deemed it necessary to give an indication, right at the outset, of the actual policy of the Government in connexion with Natives, both on the platteland and in the cities, and I trust it will be of some value in the debate which follows on this statement.

(From: *Native Policy of the Union of South Africa.* Pamphlet issued by the State Information Office of the Union of South Africa.)

(ix) Extracts from the speech delivered by Dr. H. F. Verwoerd, Minister of Native Affairs, at the opening of the eleventh session of the Native Representative Council (Pretoria, 5 December 1950)

. . . Within the compass of an address I have, naturally, to confine myself to the fundamentals of the *apartheid* policy and to the main steps following logically from the policy. Further details and a fuller description of the reasons and value of what is being planned will have to remain in abeyance today. Properly understood, however, these main features will elucidate what will be done and how this will be as much in the interests of the Bantu as in those of the European.

As a premise, the question may be put: Must Bantu and European in future develop as intermixed communities, or as communities separated from one another in so far as this is practically possible?

If the reply is "intermingled communities", then the following must be understood. There will be competition and conflict everywhere. So long as the points of contact are still comparatively few, as is the case now, friction and conflict will be few and less evident. The more this intermixing develops, however, the stronger the conflict will become. In such conflict, the Europeans will, at least for a long time, hold the stronger position, and the Bantu be the defeated party in every phase of the struggle. This must cause to rise in him an increasing sense of resentment and revenge. Neither for the European, nor for the Bantu, can this, namely increasing tension and conflict, be an ideal future because the intermixed development involves disadvantage to both.

Perhaps, in such an eventuality, it is best frankly to face the situation which must arise in the political sphere. In the event of an intermixed development, the Bantu will undoubtedly desire a share in the government of the intermixed country. He will, in due course, not be satisfied with a limited share in the form of communal representation, but will desire full participation in the country's government on the basis of an equal franchise.

For the sake of simplicity, I shall not enlarge here on the fact that, simultaneously with the development of this demand, he will desire the same in the social, economic and other spheres of life, involving in due course, intermixed residence, intermixed labour, intermixed living, and, eventually, a miscegenated population—in spite of the well-known pride of both the Bantu and the European in their respective purity of descent. It follows logically, therefore, that, in an intermixed country, the Bantu must, in the political sphere, have as their object equal franchise with the European.

European viewpoint

Now examine the same question from the European's point of view. A section of the Europeans, consisting of both Afrikaans and English-speaking peoples, says equally clearly that, in regard to the above standpoint, the European must continue to dominate what will be the European part of South Africa. It should be noted that, notwithstanding false representations, these Europeans do not demand domination over the whole of South Africa, that is to say, over the Native territories according as the Bantu outgrow the need for their trusteeship. Because that section of the European population states its case very clearly, it must not be accepted, however, that the other section of the European population will support the above possible future demand of the Bantu.

That section of the European population (English as well as Afrikaans) which is prepared to grant representation to the Bantu in the country's government does not wish to grant anything beyond communal representation, and that on a strictly limited basis. They do not yet realize that a balance of power may thereby be given to the non-European with which an attempt may later be made to secure full and equal franchise on the same voter's roll.

The moment they realize that, or the moment when the attempt is made, this latter section of the European population will also throw in its weight with the first section in the interests of European supremacy in the European portion of the country. This appears clearly from its proposition that, in its belief on the basis of an inherent superiority, or greater knowledge, or whatever it may be, the European must remain master and leader. The section is, therefore, also a protagonist of separate residential areas, and of what it calls separation.

My point is this: if mixed development is to be the policy of the future in South Africa, it will lead to the most terrific clash of interests imaginable. The endeavours and desires of the Bantu and the endeavours and objectives of all Europeans will be antagonistic. Such a clash can only bring unhappiness and misery to both. Both Bantu and European must, therefore, consider in good time how this misery can be averted from themselves and from their descendants. They must find a plan to provide the two population groups with opportunities for the full development of their respective powers and ambitions without coming into conflict.

The only possible way out is the second alternative, namely, that both adopt a development divorced from each other. That is all that the word *apartheid* means.

Any word can be poisoned by attaching a false meaning to it. That has happened to this word. The Bantu have been made to believe that it means oppression, or even that the Native territories are to be taken away from them. In reality, however, exactly the opposite is intended with the policy of *apartheid.*

Government attitude

To avoid the above-mentioned unpleasant and dangerous future for both sections of the population, the present Government adopts the attitude that it concedes and wishes to give to others precisely what it demands for itself. It believes in the supremacy (baasskap) of the European in his sphere, but, then, it also believes equally in the supremacy (baasskap) of the Bantu in his own sphere. For the European child it

wishes to create all the possible opportunities for its own development, prosperity and national service in its own sphere; but for the Bantu it also wishes to create all the opportunities for the realization of ambitions and the rendering of service to *their* own people.

There is thus no policy of oppression here, but one of creating a situation which has never existed for the Bantu; namely, that, taking into consideration their languages, traditions, history and different national communities, they may pass through a development of their own. That opportunity arises for them as soon as such a division is brought into being between them and the Europeans that they need not be the imitators and henchmen of the latter.

The next question, then, is how the division is to be brought about so as to allow the European and the Bantu to pass through a development of their own, in accordance with their own traditions, under their own leaders in every sphere of life.

It is perfectly clear that it would have been the easiest—an ideal condition for each of the two groups—if the course of history had been different. Suppose there had arisen in Southern Africa a State in which only Bantu lived and worked, and another in which only Europeans lived and worked. Each could then have worked out its own destiny in its own way. This is not the situation today, however, and planning must in practice take present day actualities of life in the Union into account.

We cannot escape from that which history has brought in its train. However, this easiest situation for peaceful association, self-government and development, each according to its own nature and completely apart from one another, may, in fact, be taken as a yardstick whereby to test plans for getting out of the present confusion and difficulties. One may, so far as is practicable, try to approach this objective in the future.

Today's position

The realities of today are that a little over one-third of the Bantu resides, or still has its roots, in what are unambiguously termed Native territories. A little over a third lives in the countryside and on the farms of Europeans. A little less than a third lives and works in the cities, of whom a section have been detribalized and urbanized. The *apartheid* policy takes this reality into account.

Obviously, in order to grant equal opportunities to the Bantu, both in their interests as well as those of the European, its starting-point is the Native territories. For the present, these territories cannot provide the desired opportunities for living and development to their inhabitants and their children, let alone to more people. Due to neglect of their soil and overpopulation by man and cattle, large numbers are even now being continually forced to go and seek a living under the protection of the European and his industries.

In these circumstances it cannot be expected that the Bantu community will so provide for itself and so progress as to allow ambitious and developed young people to be taken up by their own people in their own national service out of their own funds. According as a flourishing community arises in such territories, however, the need will develop for teachers, dealers, clerks, artisans, agricultural experts, leaders of local and general governing bodies of their own. In other words, the whole superstructure of administrative and professional people arising in every prosperous community will then become necessary.

Our first aim as a Government is, therefore, to lay the foundation of a prosperous producing community through soil reclamation and conservation methods and through the systematic establishment in the Native territories of Bantu farming on an economic basis.

The limited territories are, however, as little able to carry the whole of the Bantu population of the reserves of the present and the future—if all were to be farmers—as the European area would be able to carry all the Europeans if they were all to be farmers, or as England would be able to carry its whole population if all of them had to be landowners, farmers and cattle breeders.

Consequently, the systematic building up of the Native territories aims at a development precisely as in all prosperous countries. Side by side with agricultural development must also come an urban development founded on industrial growth. The future Bantu towns and cities in the reserves may arise partly in conjunction with Bantu industries of their own in those reserves. In their establishment Europeans must be prepared to help with money and knowledge, in the consciousness that such industries must, as soon as is possible, wholly pass over into the hands of the Bantu.

European help

On account of the backlog, it is conceivable, however, that such industries may not develop sufficiently rapidly to meet adequately the needs of the Bantu requiring work. The European industrialist will, therefore, have to be encouraged to establish industries within the European areas near such towns and cities. Bantus working in those industries will then be able to live within their own territories, where they have their own schools, their own traders, and where they govern themselves. Indeed, the kernel of the *apartheid* policy is that, as the Bantu no longer need the European, the latter must wholly withdraw from the Native territories.

What length of time it will take the Bantu in the reserves to advance to that stage of self-sufficiency and self-government will depend on his own industry and preparedness to grasp this opportunity offered by the *apartheid* policy for self-development and service to his own nation.

This development of the Reserves will not, however, mean that all Natives from the cities or European countryside will be able, or wish, to trek to them. In the countryside there has, up to the present, not been a clash of social interests. The endeavour, at any rate for the time being, must be to grant the Bantu in town locations as much self-government as is practicable under the guardianship of the town councils, and to let tribal control of farm Natives function effectively. There the residential and working conditions will also have to enjoy special attention so that the Bantu community finding a livelihood as farm labourers may also be prosperous and happy.

Here the problem is rather how to create better relationships, greater stability, correct training and good working conditions. Apart from the removal of black spots (like the removal of White spots in the Native areas), the policy of *apartheid* is for the time being, not so much an issue at this juncture, except if mechanization of farming should later cause a decrease in non-European labourers.

Finally, there are the implications of the *apartheid* policy in respect of European cities. The primary requirement of this policy is well-known, namely, that not only must there be separation between European and non-European residential areas, but also that the different non-European groups, such as the Bantu, the Coloured, and the Indian, shall live in their own residential areas.

Although considerable numbers of Bantu who are still rooted in the Reserves may conceivably return thither—particularly according as urban and industrial development takes place, or even many urbanized Bantu may proceed thence because of the opportunities to exercise their talents as artisans, traders, clerks or professionals, or to realize their political ambitions—large numbers will undoubtedly still remain behind in the big cities. For a long time to come, this will probably continue to be the case.

Separate communities

For these Bantu also the *apartheid* policy and separate residential areas have great significance. The objective is, namely, to give them the greatest possible measure of self-government in such areas according to the degree in which local authorities, who construct these towns, can fall into line. In due course, too, depending on the ability of the Bantu community, all the work there will have to be done by their own people, as was described in connexion with the reserves.

Even within a European area, therefore, the Bantu communities would not be separated for the former to oppress them, but to form their own communities within which they may pursue a full life of work and service.

In view of all this, it will be appreciated why the *apartheid* policy also takes an interest in suitable education for the Bantu. This, in fact, brings in its train the need for sufficiently competent Bantu in many spheres. The only and obvious reservation is that the Bantu will have to place his development and his knowledge exclusively at the service of his own people.

Co-operation in implementing the *apartheid* policy as described here is one of the greatest services the present leader of the Bantu population can render his people. Instead of striving after vague chimeras and trying to equal the European in an intermingled community with confused ideals and inevitable conflict, he can be a national figure helping to lead his own people along the road of peace and prosperity. He can help to give the children and educated men and women of his people an opportunity to find employment or fully to realize their ambitions within their own sphere or, where this is not possible, as within the European's sphere, employment and service within segregated areas of their own.

I trust that every Bantu will forget the misunderstandings of the past and choose not the road leading to conflict, but that which leads to peace and happiness for both the separate communities. Are the present leaders of the Bantu, under the influence of communist agitators, going to seek a form of equality which they will not get? For in the long run they will come up against the whole of the European community, as well as the large section of their own compatriots who prefer the many advantages of self-government within a community of their own.

I cannot believe that they will. Nobody can reject a form of independence, obtainable with everybody's co-operation, in favour of a futile striving after that which promises to be not freedom but downfall.

. . .

(x) Extracts from the speech delivered in the Senate by Dr. H. F. Verwoerd, Minister of Native Affairs, on 1 May 1951

. . . Perhaps I should now in the first place deal with [. . . the objection] that I praised the ideal of *apartheid* in my maiden speech but that I have now abandoned it. I then said very clearly, and I have consistently done so since . . . that in life a person, when he has to apply a policy and move in a multiplicity of fields, must have standards by which he can continually test his actions. I stated it like this:

> "We now have this enormous Native problem. If the Whites and the Natives had never lived in the same country, if South Africa had so developed in in the course of history as to be a purely White country, if things had so developed that in some other place—Central Africa, East Africa or wherever it might be—there had been a purely Native territory, then, I said, we should not have had this problem. If it could happen in practice that we should again get this total isolation—for it is isolation—then the problem that exists today would as a result of that disappear. That is why, I said, one could say that it was a good measure for the purpose of testing the question of how far one could approach to a solution."

That is the ideal of *apartheid,* that is, a complete separation. But although you have such an ideal as your measure, we are all at the same time practical people. Everyone knows that we do not have that state of affairs in South Africa. You know that in South Africa history has involved the building up of the cities and the industries with Native labour as the labour basis. Everybody knows that agriculture exists in the country with Native labour as a factor that has become inherent in it. You know these as facts. In other words, for anybody to have said or believed at any time that if the Nationalists got into power they would just like that or within a few years shove out all the Natives as a crowd—somewhere—and make the rest of South Africa a White country, is nonsensical.

I have stated that repeatedly, to the point of boredom, and I have quoted from the pamphlets which we circulated during the elections of 1948 and 1949, to show what our true *apartheid* policy is. Nobody can deny the fact that our ideal and our practical plans are clearly set out in those pamphlets. Yet the United Party simply does not want to take our word for it and on that basis face up to the problem together with us and try to solve it. If we differ—and there are many points on which we differ—then let us differ honestly.

So, for example, it is known that we differ about political representation. There you have a clear point. Let us try to understand and admit one another's point of view, but why should it continually be alleged that we stated in any one of our elections that we were going to bring a condition of total *apartheid,* whether immediately or within an appreciable time? And why should it continually be stated that we have departed from our attitude, whereas we believe and prove that the attitude which we take up today is the same as that which we proclaimed then? It seems to me that one

gets no further in that way. I must honestly say that I think today will be the last occasion on which I shall be prepared to talk on this matter. I think one simply wastes one's time. There are so much more important matters with which we have to deal, problems on which I should like to meet the Opposition in debate.

Therefore I want now in the first place again to say clearly that we are aiming at territorial *apartheid* as far as possible, and, for the rest, *apartheid* in their own spheres where the facts of life have brought the races together in the same areas and still keep them there. That is the attitude of the Church as well, and when one talks with bodies such as the South Africa Bureau of Racial Affairs, then it appears that it is their attitude as well. I have met Church leaders who have come to interview me on this question. Their attitude and our attitude, and the attitude of the South Africa Bureau of Racial Affairs people, with whom I have also spoken, are the same. Do not try to drive in wedges. All of them say: Look here, here we have the fact of the condition of the country, with the Natives in and about the towns, Natives in the country, Natives in the Reserves, Whites in the cities, Whites in the rural areas and Whites in the Reserves. When you go into the fact as to how you should plan for the future and how you should direct the development, then you simply have to use the standard which you have, and that is to try to separate the racial groups—to separate them to the maximum which is possible for you in every stage of the country's development.

If you have to provide answers to new questions or have to foresee the developments of the future, as when the problem arises of what is going to happen to the traders in the Native areas and to the white spots in those areas, or how anyone is to deal with the black spots, then that standard helps to clarify the matter. The same thing applies to the question of where the racial groups may acquire ownership and where they may not have it, there too the standard helps to supply the answer. Those are all matters with which the Minister has to deal in the daily work of his Department. He can model his decisions on his principles, taking due regard of the realities of every situation. That is not an unreasonable attitude. That is not an illogical attitude to adopt. Your ideal is a guide to your actions. That is what we said we aimed at for the sake of the peace and happiness of both sections of the population.

According to the extent to which one can separate the parts of the population, one will have more readiness, less fear, and a greater willingness to give money from the funds of the Whites as well to improve the conditions of the Natives. The Whites will for example, be more ready to look after the education of the Natives if they know that the Natives are going to use that education not to try to become the equals of the Whites and to mix with the Whites, but to serve their own people. The White man does not want to spend money on that when he fears that he is educating that Native to come into competition with him. If the Whites know that they are dipping into their pockets to educate Natives so that 8 million may later try to dominate the 2,500,000, then they will refuse to give money for that purpose. As soon as the Whites know, however, that there will be such a measure of separation that there will be no danger to White civilization, their generosity and their readiness to help educate them will be very much greater. So the standard, the ideal which one has, helps to aim at a situation without clashes. This country, in spite of what it is today, can be made more and more like that, it can go on developing without clashes. That is what the ideal of *apartheid* has in view . . .

. . .

Nevertheless I must embark upon my last point . . . That was the question on our policy of *apartheid.*

. . .

. . . I am very clearly aware of the fact that you have the Native areas spread about over the whole of the country. I think it would be sheer stupidity to start their organization from the top. That is the mistake that was made when that Natives' Representative Council was founded. The Native Representative Council represented an effort to create a sort of general management body for Natives in the whole of South Africa, in that case advisory. Instead of that the development to self-government should have started from the bottom with the tribal unit. Then constitutional developments would have taken their natural course to what might be achieved. That is what I am doing. I am trying to start with the good organization of local self-government, among other things the tribal system of government. Further developments will then take place . . . My attitude is therefore just that the development of self-government within each area which the Natives have, each separate area, will give them within such an area mastership . . . they should be able to get full self-government, a full opportunity of development as leaders of their own people—not just with advisory rights—there, even in the long run involving the exclusion of the Europeans.

. . .

Now a Senator wants to know whether the series of self-governing areas would be sovereign. The answer is obvious. There are Native areas all over the place in South Africa as in Pietersburg, for example. There is Zululand. There are other areas everywhere in the heart of South Africa. It stands to reason that White South Africa must remain their guardian. We are spending all the money on those developments. We are leaving the Natives to develop. How could small, scattered States arise? The areas will be economically and otherwise dependent on the Union. It stands to reason that when we say that the Protectorates should be incorporated in South Africa and at the same time talk about the Natives' rights of self-government in those areas, we cannot mean that we intend by that to cut large slices out of South Africa and turn them into independent States.

We shall in any event not make the mistake which the British Government can make with the Gold Coast, to release unripe people from their traditional system of government. Surely that speaks for itself. It also speaks for itself that South Africa will in her international relationships have to leave the control in the hands of White South Africa. We have never yet tried to conceal that sort of idea. I do not understand why Hon. Senators and why the Leader of the United Party go through the country and make out that we wish to bring about here a sort of splitting up of the country into clashing neighbouring States, when, if they would only look at a map of the country, they would be able to see that it is a completely impossible and impracticable interpretation of self-government in their own areas. Self-government within one's own area is

something entirely different from saying that South Africa is to be divided into a series of States.

. . .

And now I come to the following point which I first want to mention. The various areas can—it is going to take years—develop from their ordinary tribal government to co-ordinated self-government of the entire area. . . I cannot determine history too far in advance. What is going to happen in the future, that is when the highest measure of self-government has developed in each of the Native areas, I shall have to leave to the future to show. But of one thing I am satisfied, and that is that it is only in this way that we shall be able to achieve peace and order in this country. It is only in that way that you give the Native a chance and a hope and an ideal, even if it is within his own areas. There are only two alternatives . . . for this country.

. . .

. . . There are not three courses open for South Africa. Let us look the facts in the face. In the future, after the next fifty years—I have said that more than once—the number of Whites according to all reasonable calculations will be about 6 million people. The Natives will increase to about 19 million. If you take up the attitude, as the United Party does, that industrial development should continue as in the past, that is, that it should be a development largely around the towns, then the Native labour must be used there . . . Then such industrial development according to the United Party pattern will mean further that the 19 million, less the 3 million who now live in the Reserves, and a few more who can agriculturally stay there, and less the 3 million who live in the rural areas (for if the squatters are scattered, agriculture will more or less be able to be provided with labour out of this number, especially as there is more mechanization), there will be 13 million of those 19 million who will be living round about our urban areas.

In the course of the next fifty years (if we take into account the education and the development of the past and the policy of the United Party, which says that the State should give every one of them development and education), the Natives will mostly be developed Natives. Those Natives will have to be given the vote, according to the United Party policy, and also the Indians. The United Party says it must be on a separate roll, naturally on a communal basis. Then the Indian vote, which the United Party wants to give them, the Native vote—both on a communal basis—and the Coloured vote, especially if they have had it together with the Whites, which the United Party also want, are going to form a strong block which as their numbers grow, will insist on more and more representation. First more representation on the communal basis will be demanded, and when they have become strong enough to be the tail that wags the dog, they will demand full equality on common voters' rolls. And that the Hon. Senators on the other side do not want any more than we want it, but they will not be able to avoid the consequences of their policy.

If industrial integration continues, and as that large future influx of Native labour consequently enters the Union, which will represent an overwhelming majority as against your future White population, then inexorably and inevitably the Government of the country will come into the hands of that majority. That is one course. The United Party do not want those results, but the so-called middle course at which they are aiming is just the one that is going to lead to that . . . The Hon. United Party and Labour Senators here just want integration in the industrial sphere, but the other consequences—social and political—follow inexorably on the policy which they state. There is no third course. Independently of what they want or do not want, the Ballinger policy and the United Party (Fagan Report) policy will eventually amount to the same thing, the rule of that type of majority in South Africa. It will mean not a small Bantustan in South Africa, not the smaller danger which they unjustly represent to be my policy, but the whole of the Union of South Africa will be a Bantustan.

. . .

. . . The only alternative is deliberately to see to it that the whole of South Africa does not become a country occupied by Natives and therefore run by Natives. That is what I am striving for, and if the Nationalist Government does not succeed, then the United Party will also be in the disaster into which it would blandly lead us. If we succeed, and especially if Hon. Senators would assist me, so that we could have the proper cooperation which has been so strongly advocated, then we might yet save South Africa. It must be on the basis of *apartheid*. If we could succeed just to this extent in keeping the Native population in the Reserves—and getting them to live there, even if they do work in the White area in industries which are scattered about near to their areas—if we could achieve that measure of separation, then even if the 2 million or so who are now there remain behind in our towns, and the 3 million approximately who are in the rural areas remain there, White South Africa will be saved. Then that 5 million will in comparison with the 6 million Europeans of the future be a reasonable ratio. Even if those 5 million do increase against my will and desire, the danger under uncompleted or imperfect *apartheid* will be as nothing to what the integration policy involves.

. . .

. . . Even if the number did increase beyond my will and desire and work out at 8 million or so, even then the bad ratio between the 6 million Whites and the 8 million Natives would not be one which would be fatal to the Whites. The ratio would be better than now and much better than the consequences of the United Party policy. . .

But we should also expand the European population by immigration to the extent that the carrying capacity of the country allows it. In that 6 million Whites . . . we have taken account of immigration to South Africa on as large a scale as South Africa has ever yet had it. The Natives' possible total of 19 million has been calculated on the basis that their natural increase will be on the basis of a civilized community, not on that of a barbarous community. That is to say, a very much smaller number of children has been counted on.

. . .

. . . What are we doing in terms of the ideal of *apartheid* to try to keep the Natives in the Reserves? We are not using force to prevent anybody from coming out. We are, however, seeking to establish control of their leaving to the extent of preventing people from wandering around to places where they cannot be used. But in particular we are trying to create conditions for

the Natives in and around the Native areas which will enable them to remain living and working and making a living there, very much better than in the past. That is why I want to encourage the number and type of industries which can be established in the Reserves as Native property, and to help create them. All possible measures are needed to keep those people there, them and their descendants in the future. . .

. . .

. . . My point is, if the Natives remained living here all mixed up with us, then we would everywhere try to compete with them and to remain on top and so clash in ever-increasing numbers. Apart, in his area, he can fulfil himself. . . . Naturally they are. For that reason we prefer that the Bantu should not seek their homes and their self-government among us, but in their own areas, where we should as far as possible, keep them. There they can develop to the highest degree of opportunity for self-government and fulfil themselves within their own areas, which is possible so that they can satisfy their ambitions undisturbed. If the Hon. Senator says that they will not even then be completely at ease I myself would say: Yes, it is possible that there will still be trouble, but at least our policy gives the Natives a chance to achieve a position which might possibly satisfy them, whereas the policy of the Hon. Senators on the other side will without any doubt plunge our country into devastation.

. . .

. . . Our task at this stage is at least to do what we propose, which promises us a great degree of security for a long time, even if it is not perfect security for all time. In South Africa with her problem of 19 million Natives in fifty years' time, wherever they may live, as against the 6 million Whites, the fate of European civilization remains in danger.

. . .

ANNEX VI

Exchange of correspondence* between the African National Congress, the South African Indian Congress, and the Prime Minister of the Union of South Africa, between 21 January and 20 February 1952

AFRICAN NATIONAL CONGRESS

P.O. Box 9207, Johannesburg,
21st January 1952

The Prime Minister of the
Union of South Africa,
House of Assembly,
Cape Town.

Sir,

In terms of the resolution adopted by the 39th session of the African National Congress held at Bloemfontein we have been instructed to address you as follows:

The African National Congress was established in 1912 to protect and advance the interests of the African people in all matters affecting them, and to attain their freedom from all discriminatory laws whatsoever. To this end the African National Congress has, since its establishment, endeavoured by every constitutional method to bring to the notice of the Government the legitimate demands of the African people and repeatedly pressed, in particular, their inherent right to be directly represented in Parliament, Provincial and Municipal Councils and in all Councils of State.

This attitude was a demonstration not only of the willingness and readiness of the African people to co-operate with the Government but also evidence of their sincere desire for peace, harmony and friendship amongst all sections of our population. As is well-known the Government through its repressive policy of trusteeship, segregation and *apartheid* and through legislation that continues to insult and degrade the African people by depriving them of fundamental human rights enjoyed in all democratic communities, have categorically rejected our offer of co-operation. The consequence has been the gradual worsening of the social, economic and political position of the African people and a rising tide of racial bitterness and tension. The position has been aggravated in recent times by the Pass Laws, Stock Limitation, the Suppression of Communism Act of 1950, the Group Areas Act of 1950, the Bantu Authorities Act of 1951 and the Voters' Act of 1951.

The cumulative effect of this legislation is to crush the National Organizations of the oppressed people; to destroy the economic position of the people and to create a reservoir of cheap labour for the farms and the gold mines; to prevent the unity and development of the African people towards full nationhood and to humiliate them in a host of other manners.

The African National Congress as the National Organization of the African people cannot remain quiet on an issue that is a matter of life and death to the people; to do so would be a betrayal of the trust and confidence placed upon it by the African people.

At the recent Annual Conference of the African National Congress held in Bloemfontein from the 15th to 17th December 1951, the whole policy of the Government was reviewed and after serious and careful consideration of the matter, Conference unanimously resolved to call upon your Government, as we hereby do, to repeal the aforementioned Acts by not later than the 29th day of February 1952, failing which the African National Congress will hold protest meetings and demonstrations on the 6th day of April 1952, as a prelude to the implementation of the plan for the defiance of unjust laws.

In the light of the conference resolution we also considered the statement made by the Prime Minister at Ohrigstad on the 5th instant in which he appealed to all sections of our population, irrespective of colour

* This correspondence was included as an annex to the letter from Professor Z. K. Matthews, reproduced as document A/AC.61/L.14 on the request of the delegation of Haiti.

and creed, to participate fully in the forthcoming Jan Van Riebeeck celebrations. It is our considered opinion that the African people cannot participate in any shape or form in such celebrations, unless the afore-mentioned Acts which constitute an insult and humiliation to them are removed from the Statute Book.

We firmly believe that the freedom of the African people, the elimination of the exploitation of man by man and the restitution of democracy, liberty and harmony in South Africa are such vital and fundamental matters that the Government and the public must know that we are fully resolved to achieve them in our lifetime.

The struggle which our people are about to begin is not directed against any race or national group but against the unjust laws which keep in perpetual subjection and misery vast sections of the population. In this connexion, it is a source of supreme satisfaction to us to know we have the full support and sympathy of all enlightened and honest men and women, black and white in our country and across the seas and that the present tension and crises have been brought about not by the African leaders but by the Government themselves.

We are instructed to point out that we have taken this decision in full appreciation of the consequences it entails and we must emphasize that whatever reaction is provoked from certain circles in this country, posterity will judge that this action we are about to begin was in the interest of all in our country, and will inspire our people for long ages to come.

We decide to place on record that for our part, we have endeavoured over the last forty years to bring about conditions for genuine progress and true democracy.

(Signed) Dr. J. S. Moroka
President-General

W. M. Sisulu
Secretary-General

Prime Minister's Office

Cape Town, 29th January 1952

Dear Sir,

I am directed to acknowledge the receipt of your undated letter addressed to the Prime Minister and to reply as follows:

It is noted that your submission is framed in terms of a resolution adopted at its recent session in Bloemfontein of the "African National Congress". Resolutions adopted by the African National Congress at its annual meetings were, in the past, sent to and dealt with by the Minister of Native Affairs and his Department. On this occasion, however, there has been a definite departure from the traditional procedure in as much as you have addressed yourself directly to the Prime Minister in order to present him with an ultimatum. This new approach is probably accounted for by the recent rift or purge in Congress circles, after which it is doubtful whether you can claim to speak authoritatively on behalf of the body known to the Government as the African National Congress.

The Prime Minister is, however, prepared to waive this point and to reply to various points raised by you and also to your ultimatum as he feels that the Government's attitude in the matter should be clearly stated.

The first point which stands out clearly in your letter is that your organization maintains that since 1912, although no Government in the past has even been able to consider this, the objective has been the abolition of all differentiating laws. It now demands such abolition as well as consequential direct representation in Parliament, provincial and municipal councils in all Provinces, and in all councils of state as an inherent right.

You will realize, I think, that it is self-contradictory to claim as an inherent right of the Bantu who differ in many ways from the Europeans that they should be regarded as not different, especially when it is borne in mind that these differences are permanent and not man-made. If this is a matter of indifference to you and if you do not value your racial characteristics, you cannot in any case dispute the European's right, which in this case is definitely an inherent right, to take the opposite view and to adopt the necessary measures to preserve their identity as a separate community.

It should be understood clearly that the Government will under no circumstances entertain the idea of giving administrative or executive or legislative powers over Europeans, or within a European community, to Bantu men and women, or to other smaller Non-European groups. The Government therefore, has no intention of repealing the long existing laws differentiating between European and Bantu.

You demand that the Union should no longer remain a State controlled by the Europeans who developed it to the advantage of all groups of the population. You demand that it should be placed under the jurisdiction of the Bantu, Indian and other non-European groups together with Europeans without any distinction whatsoever, and with no restriction on the possible gradual development of a completely mixed community. Nevertheless you apparently wish to create the impression that such demands should be regarded as a generous gesture of goodwill towards the European community of this country. It is quite clear that the very opposite is true. This is not a genuine offer of co-operation, but an attempt to embark on the first steps towards supplanting European rule in the course of time.

Racial harmony cannot be attained in this manner. Compliance with such demands must inevitably lead to disaster for all population groups. Not only temporary racial tension, due to misunderstanding, but worse would follow, and the Bantu would suffer first and most. For instance, if the latter were to be exposed to full competition, without their present protection, they would soon lose the land now safeguarded and being increased for them. The masses would suffer misery indeed, if they lost the many privileges which the Union of South Africa—in contrast to other countries—provides for them. They would pay the price in order to satisfy the political ambitions of the few who are prepared to tear loose from the background of their own nation. The road to peace and goodwill lies in the acceptance of the fact that separate population groups exist, and in giving each group the opportunity of developing its ambitions and capacities in its

own area, or within its own community on its own lines, in the service of its own people.

Your third point is that the differentiating laws are of an oppressive and degrading nature. This again is a totally incorrect statement. The laws are largely of a protective nature. Even those laws which are regarded as particularly irksome by the Bantu people, have not been made in order to persecute them, but for the purpose of training them in the performance of those duties which must be fully observed by all who wish to claim rights. The fact that you refer to a betterment law (Stock Limitation) as being one of the oppressive laws, is a clear indication of your failure to understand that the function of such laws is to protect the interests and the land of the Bantu Community, both present and in future.

It is even more significant that you should condemn the Bantu Authorities Act, which was designed to give the Bantu people the opportunity for enlightened administration of their own affairs in accordance with their own heritage and institutions, adapted to modern conditions. It should be clearly understood that while the Government is not prepared to grant the Bantu political equality within the European community, it is only too willing to encourage Bantu initiative, Bantu service and Bantu administration within the Bantu community, and there to allow the Bantu full scope for all his potentialities.

I must, now, refer to your ultimatum. Notwithstanding your statement that your Congress has taken the decision to present its ultimatum to the Government in full appreciation of the consequences it entails, the Prime Minister wishes to call your attention to the extreme gravity of pursuing the course indicated by you. In the interests of the Bantu he advises you to reconsider your decision. Should you adhere to your expressed intention of embarking on a campaign of defiance and disobedience to the Government, and should you in the implementation thereof incite the Bantu population to defy law and order the Government will make full use of the machinery at its disposal to quell any disturbances and, thereafter, deal adequately with those responsible for inciting subversive activities of any nature whatsoever.

The Prime Minister has instructed me to urge you to let wiser counsels prevail and to devote your energies to constructive programmes of development for the Bantu people. This can be done by the opportunities offered by the Government for building up local Bantu government and administration within all spheres of Bantu life.

This could be co-operation in the real sense of the word. Your organization could render a lasting service to the Bantu population of South Africa, by helping the Government to carry out this programme of goodwill. The Prime Minister trusts that you will take these words to heart, and that you will decide to work for the welfare of your people in a constructive way.

(*Signed*) M. AUCAMP
Private Secretary

The Secretary,
The African National Congress,
P. O. Box 9207,
Johannesburg.

AFRICAN NATIONAL CONGRESS

P. O. Box 9207, Johannesburg
11th February 1952

The Honourable the Prime Minister of the
Union of South Africa,
House of Assembly,
Cape Town.

Sir,

We, the undersigned, have the honour to acknowledge receipt of your letter of the 29th January 1952.

The National Executive of the African National Congress, at a special conference convened for the purpose, has given careful consideration to the contents of your letter, and has instructed us to address you as follows:

It is noted that exception is taken in your letter to the fact that the resolution adopted by the African National Congress at its 1951 Conference was directed to the Prime Minister instead of the Minister of Native Affairs and his Department. The African National Congress has at no time accepted the position that the Native Affairs Department is the channel of communication between the African people and the State. In any event, the subject of our communication to you was not a Departmental matter but one of such general importance and gravity affecting the fundamental principles of the policy practised by the Union Government, and its effect on the relations between Black and White, that it was considered appropriate to bring these matters directly to the notice of the Prime Minister. The suggestion that we were actuated by a so-called "recent rift or purge in Congress circles" is without foundation and entirely beside the point in so far as the substance of our case is concerned.

In reply to our demand for the abolition of differentiating laws, it is suggested in your letter that there are "permanent and not man-made" differences between Africans and Europeans which justify the maintenance of these laws. The question at issue is not one of biological differences, but one of citizenship rights which are granted in full measure to one section of the population, and completely denied to the other by means of man-made laws artificially imposed, not to preserve the identity of Europeans as a separate community, but to perpetuate the systematic exploitation of the African people.

The African people yield to no-one as far as pride of race is concerned, and it is precisely for this reason that they are striving for the attainment of fundamental human rights in the land of their birth.

It is observed that your Government rejects out of hand our claim for direct representation in Parliament and other Councils of State. This is the kernel of the policy of *apartheid* which is condemned not only by the African, Indian and Coloured people, but also by a large section of White South Africa. It is precisely because of this policy that South Africa is losing caste in international circles.

Your letter suggests that the policy of your Government is motivated by a desire to protect the interests of the African people in various spheres of life, e.g., land rights, and unspecified privileges not enjoyed by them in other countries. The Reserve land policy has always been designed to protect European rather than African land rights, and even within the so-called Reserves, Africans hold only occupancy privileges at

the discretion of the Government. These Reserves are notoriously congested and overcrowded, and the so-called rehabilitation scheme, notwithstanding the protestations of just intentions with which it is camouflaged, has aggravated the misery of the people and rendered thousands destitute and homeless, and has exposed them to vexatious regimentation by Native Commissioners and petty Trust officials. In this connexion we note that even the Native Laws Amendment Bill, which is now before Parliament, in spite of all its harsh and draconian provisions has been described as a "protective" measure. There can be no doubt that, like similar measures passed hitherto, this Bill is intended to protect and advance the interests of Europeans and not those of Africans. It is those discriminatory laws that are preventing the African people from developing their ambitions and capacities, and along lines satisfactory to themselves.

As far as the Bantu Authorities Act is concerned, it is clear that this Act is part of the policy to which we are opposed, namely, that "the Government is not prepared to grant the Africans political equality", and is not, as you suggest, "designed to give the Africans the opportunity of enlightened administration of their own affairs". Nothing contained in the Bantu Authorities Act can be a substitute for direct representation in the Councils of State.

With reference to the campaign of mass action which the African National Congress intends to launch, we would point out that as a defenceless and voteless people, we have explored other channels without success. The African people are left with no alternative but to embark upon the campaign referred to above. We desire to state emphatically that it is our intention to conduct this campaign in a peaceful manner, and that any disturbances, if they should occur, will not be of our making.

In reiterating our claim for direct representation, we desire to place on record our firm determination to redouble our efforts for the attainment of full citizenship rights. In conclusion we regret that the Prime Minister has seen fit to reject our genuine offer of co-operation on the basis of full equality, and express the hope that in the interest of all concerned the Government may yet reconsider its attitude.

(*Signed*) Dr. J. S. Moroka
President-General

W. M. Sisulu
Secretary-General

South African Indian Congress

P.O. Box 2948, Johannesburg
20th February 1952

The Honourable the Prime Minister of the
Union of South Africa
House of Assembly,
Cape Town.

Sir,

We, the undersigned, in terms of the resolution adopted at the 20th Conference of the South African Indian Congress held at Johannesburg on the 25th, 26th and 27th January 1952, are enjoined to address you as follows:

The South African Indian Congress as the representative organization and mouthpiece of the South African Indian community, has at all times striven to protect and safeguard the interests of the Indlian people against discriminatory legislation and to ensure their honourable and legitimate share in the development and progress of the land of their birth and adoption, in common with all sections of the population, both White and non-White. In spite of all its attempts, however, the position of the Indians together with the rest of the Non-European people has been rendered intolerable by the discriminatory laws of the country. Indeed, their position had become so precarious by the passing of the Asiatic Land Tenure Act of 1946 that the South African Indian Congress had no alternative but to embark on a Passive Resistance struggle as a protest, and to request the Government of India to raise this question at the United Nations Assembly.

It is to be noted that when a change of government took place as a result of the general elections of 1948 and your government assumed office, the Passive Resistance struggle was suspended and an approach was made to you in your capacity as the Prime Minister for a statement of government policy.

This offer, as you may well recollect, was rejected and the Congress was informed through the Honourable the Minister of the Interior, Dr. Dönges, that the Government was not prepared to grant the requested interview. This attitude was no doubt the outcome of the policy of your party as formulated in its election manifesto which laid the main stress on *apartheid* which meant the compulsory segregation of all non-European national groups into separate compartments of ghettoes, and which specifically stated: "The Party holds the view that Indians are a foreign and outlandish element which is unassimilable. They can never become part of the country and must therefore be treated as an immigrant community. The Party accepts as a basis of its policy the repatriation of as many Indians as possible and proposes a proper investigation into the practicability of such a policy on a large scale in co-operation with India and other countries."

The Group Areas Act which the Prime Minister has claimed to be the "*kernel*" of *apartheid*, is a law which runs contrary to all the fundamental principles of democracy and of human rights. The enforcement of this Act will cause mass uprooting of the non-European people from areas and homes which they have acquired and built through the toil and sweat of many generations. The setting aside of Group Areas will mean to the non-European an end to all progress in every sphere of life. It will bring about economic retrogression and impoverishment with all its concomitant evils of crime and degradation. In so far as the Indian people are concerned, the Act is intended as a means of expelling them from this country, (*vide* the Joint-Departmental Committee's report on which the Group Areas Act is based). It is to be noted that even at this early stage of its enforcement untold damage has been done to the interests of the people. Their material and economic progress is coming to a halt and immovable properties and homes running into hundreds of thousands of pounds are in the process of being confiscated by the State in terms of the Act. The Minister of the Interior is using dictatorial powers

by serving notices on many companies to sell their properties within a specified time failing which the listed properties would be liable to forced sale by the State. Not only are privately owned properties affected but religious and public institutions communally acquired for the welfare of the community have also been served with such notices.

The Bantu *Authorities Act* is aimed at denying the African people their rightful role in the affairs of the country and rendering them ineffective as a political force. The purpose of the Act in granting controlled powers to the chiefs is to split up the African people into tribal groups which could be effectively brought under rigid State control.

The purpose of the Suppression of Communism Act is to suppress the fundamental rights of the South African people to organize, to criticize and to express by written or spoken word, their opposition to any aspect of Government policy which they consider repugnant and anti-democratic. The way in which the arbitrary powers vested in the Minister of Justice have been used to attack the freedom of speech and of the Press is already evident by the attempt to unseat a Member of Parliament and a Member of the Cape Provincial Council who were constitutionally elected to their offices, and by the Minister's threat to suppress *The Guardian* newspaper. It is apparent that this Act is intended to crush the activities of all democratic organizations and trade unions which are opposed to the *apartheid* and anti-democratic policies of your Government.

The Separate Representation of Voters' Act is yet another *apartheid* measure which is depriving the Coloured voters of whatever limited franchise rights and effectiveness they possessed.

This brief summary of some of the main *apartheid* measures placed on the Statute Book by our Government will suffice to show that *apartheid* is primarily intended for the complete suppression of the non-European people so as to procure an unlimited supply of cheap labour. With this purpose in mind the Government is endeavouring to divide forcibly the population of our country into separate racial groups and tribes. The policy of *apartheid* is anti-democratic, reactionary and contrary to the laws of natural development of history and can only be imposed by means of Fascist tyranny and unrestrained dictatorship. Indeed, not only have the non-European people become the victims of this policy but it has also encroached upon the rights and liberties of the European people as evidenced by State interference with the freedom of individuals to travel abroad, with the freedom of the right of parents regarding their children's education, with the freedom of the Press and with the freedom of trade unions to conduct their own affairs.

It is a fact of history that since your Government came into power it has attempted to impose its *apartheid* policy with callous disregard for the feelings of the people and disastrous consequences to the country as a whole. Race relations have reached the most critical stage in our country's history. There has been unbridled incitement of race animosity and prejudice between the different population groups and unremitting race propaganda. There has been a steady increase in the use of violence and intimidation by the police and the occurrence of race riots hitherto unknown. There has been a constant tendency to place unlimited and arbitrary powers in the hands of the Ministers, powers which under the provisions of the various laws enacted by your Government are being used to crush the rights and liberties, particularly of the non-European people. There has been continuous impoverishment of the people, with a steep and steady rise in the cost of living, with the brutal enforcement of the Pass Laws, the forcible deprivations of the African peasants of their only wealth, their cattle, and the further enslavement of the urban African population through the Native Laws Amendment Bill.

It was in this rapidly deteriorating situation that the Conference of the African National Congress resolved to adopt a plan of action to obtain the repeal of the Group Areas Act, the Bantu Authorities Act, the Suppression of Communism Act, the Separate Representation of Voters' Act, the Pass Laws and regulations for the culling of cattle as an immediate step to lessen the burden of oppression of the non-European people and to save our country from the catastrophe of national chaos and ever-widening conflicts. This plan of action was endorsed by the Conference of the South African Indian Congress which met in Johannesburg on 25th, 26th and 27th January 1952. In terms of this decision we have been instructed to convey to you the full support of the South African Indian Congress to the call made upon your Government by the African National Congress for the repeal of the above-mentioned Acts, failing which the South African Indian Congress will participate with the African National Congress in holding protest meetings and demonstrations on the 6th day of April 1952 as a prelude to the implementation of the Plan for the Defiance of Unjust Laws.

It is with abiding faith and calm confidence in the truth and justice of our cause and firm conviction in democratic ideals and principles that we made this supporting call notwithstanding the contents of your reply to the letter of the African National Congress.

We solemnly affirm that the Indian community of South Africa is South African and that it shall live and work for the progress and prosperity of the country on the principles of equality of rights and opportunities for all sections of our population, irrespective of race, sex, colour or creed, and that it shall continue its firm alliance with the national organizations of the non-European people and all democracy-loving Europeans in the struggle for a Free and Democratic South Africa.

We unhesitatingly and emphatically state that our struggle is not directed against any national group, that we bear malice or ill-will to none and that our struggle is solely against unjust laws.

The Indian people in South Africa bear the proud inheritance of the precepts and example of Mahatma Gandhi, devotion to the cause of righteousness and truth, courage and determination in the prosecution of peaceful struggles against injustice and oppression.

The non-European peoples cannot allow their own destruction by accepting *apartheid*—it would be a crime against man. Our ideal is clear, our duty defined, our efforts peaceful and our resolve not to succumb to the evils of *apartheid* unfaltering. In this historic era of greater democracy and of independence of peoples both large and small, we in South Africa too, are

giving expression to the natural freedom urge and democratic rights of the people—for therein lies the true Pad van Suid Afrika.

In the interest of peace, humanity and the future well-being of our country and of our peoples, we expect that unbiased justice will prevail and that laws which offend the dignity of man and retard the progress of South Africa will be repealed.

(*Signed*) Y. M. DADOO
President
Y. A. CACHALIA,
Joint Hon. Secretaries

ANNEX VII

List of Acts of the Union of South Africa considered by the Commission

(This list was prepared on the basis of the memoranda submitted to the Commission by the Governments of India and Pakistan and has been supplemented by the Commission's Secretariat.)

No. of Act	*Date of commencement and short and long title*
	1909
—	—South Africa Act An Act to constitute the Union of South Africa
	1911
12	1 Dec. 1911. Mines and Works Act Act to consolidate and amend the laws in force in the Union relating to the operating of mines, works and machinery, and to certificates
15	1 Jan. 1912. Native Labour Regulation Act Act to regulate the recruiting and employment of Native labour and to provide for compensation to Native labourers in certain cases
	1913
22	1 Aug. 1913. Immigrants Regulation Act Act to consolidate and amend the laws in force in the various Provinces of the Union relating to prohibited immigrants, to provide for the establishment of a Union Immigration Department, to regulate immigration into the Union or any province thereof, and to provide for the removal therefrom of undesirable persons
27	19 June 1913. Natives Land Act Act to make further provision as to the purchase and leasing of land by Natives and other persons in the several parts of the Union and for other purposes in connexion with the ownership and occupation of land by Natives and other persons
	1914
27	20 July 1914. Riotous Assemblies Act Act to amend the law as to riotous assemblies and the disposal thereof; to amend the criminal law in certain respects; to provide for the constitution of a special criminal court for the trial of certain offences; and to provide for the removal from the Union of persons convicted of certain offences
	1916
22	1 August 1916. Railways and Harbour Regulation, Control and Management Act Act to provide for the regulation, control, and management, of railways, ports and harbours in the Union, and to declare the powers, jurisdiction, duties and obligations of the Railways and Harbours Administration and for matters incidental thereto
	1921
18	8 June 1921. Natives Advances Regulation Act Act to regulate the amounts of advances which may be made to Natives in respect of contracts of employment
	1923
21	1 Jan. 1924. Natives (Urban Areas) Act Act to provide for improved conditions of residence for Natives in or near urban areas and the better administration of Native affairs in such areas; for the registration and better control of contracts of service with Natives in certain areas and the regulation of the ingress of Natives into and their residence in such areas; for the exemption of Coloured persons from the operation of pass laws; for the restriction and regulation of the possession and use of kaffir beer and other intoxicating liquor by Natives in certain areas and for other incidental purposes
26	1 Jan. 1924. Stock Theft Act Act to consolidate and amend the laws in force in the several Provinces of the Union relating to the theft of stock and produce
	1924
11	8 April 1924* Industrial Conciliation Act, 1924 Act to make provision for the prevention and settlement of disputes between employers and employees by conciliation; for the registration and regulation of trade unions and private registry offices and for other incidental purposes
	1925
27	* Wage Act, 1925 Act to provide for the determination of conditions of labour and of wages and other payments for labour, the appointment of a wage board and investigations as to wages and conditions of labour
41	1 January 1926. Native Taxation and Development Act Act to consolidate and amend the law relating to the taxation of Natives and to provide additional funds for the development, education and local government of Natives
	1926
25	Mines and Works Act, 1911, Amendment Act, 1926 Act to amend section four of the Mines and Works Act, 1911 (Act No. 12 of 1911)
26	1 June 1926. Masters and Servants Law (Transvaal and Natal) Amendment Act, 1926 Act to amend the law in force in the Provinces of the Transvaal and Natal relating to masters and servants
28	1 Jan. 1926. Natives Taxation and Development Act, 1925, Amendment Act, 1926

* (*Vide* Proclamation No. 60, date 4th Apr. 1924.)

* This Act shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

Act to amend the Natives Taxation and Development Act, 1925, and to provide for the recovery of rents, fees or other charges in respect of the occupation of land by Natives

1927

5 30 Sept. 1927. Immorality Act, 1927
Act to prohibit illicit carnal intercourse between Europeans and Natives and other acts in relation thereto

38 1 Sept. 1927. Native Administration Act
Act to provide for the better control and management of Native affairs

1928

22 1 Jan. 1929. Old Age Pensions Act
Act to provide for old age pensions

30 1 Oct. 1928. Liquor Act
Act to consolidate and amend the laws for the control of the supply of intoxicating liquor

1929

9 3 Apr. 1929. Native Administration Act, 1927, Amendment Act, 1929
Act to amend the Native Administration Act, 1927

1930

18 21 May 1930. Women's Enfranchisement Act
Act to provide for the registration of women as voters and for their voting in the election of members of the House of Assembly, and Provincial Councils, and for their capacity to be nominated, elected and to sit and vote as Senators, Members of the House of Assembly or of Provincial Councils

19 21 May 1930. Riotous Assemblies (Amendment) Act, 1930
Act to amplify the Riotous Assemblies and Criminal Law Amendment

23 [b] Wage Act, 1925, Amendment Act, 1930
Act to amend the Wage Act, 1925

24 14 June 1930.[c] Industrial Conciliation (Amendment) Act, 1930
Act to amend the Industrial Conciliation Act, 1924

25 30 May 1930. Natives (Urban Areas) Act, 1923, Amendment Act, 1930
Act to amend the law relating to Natives in urban areas

1931

37 10 June 1931. Natives Taxation and Development (Amendment) Act, 1931
Act to further amend the Natives Taxation and Development Act, 1925

41 10 June 1931. Franchise Laws Amendment Act, 1931
Act to amend the law relating to the franchise

1932

24 [d] Native Service Contract Act, 1932
Act to amend the Transvaal and Natal law relating to masters and servants, to amplify the Natives Land Act, 1913, and to impose a tax on certain owners of land and to provide for other matters incidental thereto

[b] This Act shall come into force on a date to be fixed by the Governor-General by proclamation in the *Gazette*.
(14 June 1930) See Proclamation No. 116, published in the *Gazette Extraordinary*, No. 1881 of 13 June 1930.

[c] See Proclamation No. 117 published in *Gazette Extraordinary*, No. 1881 of 12 June 1930.

[d] This Act was first published in *Gazette Extraordinary*, No. 2040, of 30 May 1932.

No. of Act | Date of commencement and short and long title

1936

11 [e] Blind Persons Act, 1936
Act to provide for the payment of pensions to blind persons, and of grants-in-aid for the promotion of the welfare of such persons and for matters incidental thereto

12 10 July 1936. Representation of Natives Act, 1936
Act to make special provision for the representation of Natives in Parliament and in the provincial council of the Province of the Cape of Good Hope and to that end to amend the law in force in that Province relating to the registration of Natives as voters for Parliament or a provincial council; to establish a Natives Representative Council for the Union; and to provide for other incidental matters

18 31 Aug. 1936. Native Trust and Land Act, 1936
Act to provide for the establishment of a South African Native Trust and to define its purpose; to make further provision as to the acquisition and occupation of land by Natives and other persons; to amend Act No. 27 of 1913; and to provide for other incidental matters

1937

1 1 Feb. 1937. Aliens Act, 1937
Act to restrict and regulate the entry of certain aliens into the Union and their residence on temporary sojourn therein, and to restrict and regulate the right of any person to assume a surname

25 [a] Unemployment Benefit Act, 1937
Act to provide for the payment of benefits to workers in certain industries who are capable of and available for work but are unemployed, and for matters incidental thereto

28 1 July 1937. Arms and Ammunition Act, 1937
Act to consolidate and amend the laws in force in the various provinces of the Union relating to arms and ammunition

36 [a] Industrial Conciliation Act, 1937
Act to make provision for the registration and regulation of trade unions and employers' organizations, for the prevention and settlement of disputes between employers and employees, for the regulation of conditions of employment by agreement and arbitration, for the control of private registry offices, and for other incidental matters

44 [a] Wage Act, 1937
Act to establish a wage board and to provide for the determination of conditions of employment and other incidental matters

46 [a] Native Laws Amendment Act, 1937
Act to amend the laws relating to Natives in urban areas, to the regulation of the recruiting and employment of Native labourers and to the acquisition of land by Natives

1938

23 30 Sept. 1938. Representation of Natives (Amendment) Act, 1938
Act to amend the Representation of Natives Act, 1936

1939

17 [a] Native Trust and Land Amendment Act, 1939
Act to amend the Native Trust and Land Act, 1936

25 — Natives Taxation (Amendment) Act, 1939
Act to amend the law relating to the taxation of Natives and the recovery of rents, fees or other charges in respect of the occupation of land by Natives

26 [a] Aliens Registration Act, 1939
Act to provide for the registration and control of

[e] This Act was first published in *Gazette Extraordinary*, No. 2344, of 7 April 1936.

aliens and for matters incidental thereto and for the punishment, detention and deportation of aliens who have contravened certain laws relating to aliens

Application of this Act: This Act and the regulations made thereunder shall apply also in the Mandated Territory of South West Africa and the port and settlement of Walvis Bay.

1941

22 [a] Factories, Machinery and Building Work Act, 1941
Act to provide for the registration and control of factories, regulation of hours, and conditions of work in factories, supervision of the use of machinery, precautions against accident to persons employed on building or excavation work, and for matters incidental thereto

30 [f] Workmen's Compensation Act, 1941
Act to amend and consolidate the laws relating to compensation for disablement caused by accidents to or industrial diseases contracted by workmen in the course of their employment, or for death resulting from such accidents and diseases

45 — War Pensions Act, 1941
Act to amend the War Special Pensions Act, 1919, the War Special Pensions Amendment Act, 1920, and the Defence Special Pensions and Moratorium Act, 1940; to provide for the payment of pensions to certain persons who served in the Anglo-Boer War 1899-1902, or the Great War 1914-1920; and to provide for the payment of certain allowances in addition to certain pensions

1942

16 — Stock Theft Amendment Act, 1942
Act to amend the Stock Theft Act, 1923

17 — Unemployment Benefit Amendment Act, 1942
Act to amend the Unemployment Benefit Act, 1937

22 — Wage Amendment Act, 1942
Act to amend the Wage Act, 1937

42 — Native Administration Amendment Act, 1942
Act to amend the laws relating to Native administration

44 — War Pensions Act, 1942
Act to amend and consolidate the law relating to War Pensions

1943

21 —Native Administration (Amendment) Act, 1943
Act to amend the Native Administration Act, 1927, and Law No. 46 of 1887 of Natal

35 — Trading and Occupation of Land Restrictions Act (Transvaal and Natal)
Act to make further provisions with regard to the restrictions imposed upon trading by Asiatics in the Province of Transvaal and the occupation by them of land in the Province and to impose restrictions with regard to the acquisition and occupation of land in the Province of Natal

1944

36 — Native Laws Amendment Act, 1944
Act to amend the Natives (Urban Areas) Act, 1923, the Natives Taxation and Development Act, 1925, the Native Administration Act, 1927, the Native Service Contract Act, 1932, and the Private Locations Act, 1909 (Cape of Good Hope); to control the sale of supply of certain grain to, and the purchase, acquisition and possession thereof by, Natives in areas near urban areas, and to make provision for the designation of certain local government bodies and urban local authorities for the purposes of certain provisions of Act No. 21 of 1923

37 [a] Apprenticeship Act, 1944
Act to regulate the training and employment of apprentices and minors in certain trades, and to provide for matters incidental thereto

48 [g] Pension Laws Amendment Act, 1944
Act to amend the War Special Pension Act, 1919, the Old Age Pensions Act, 1928, the Blind Persons Act, 1936, the War Pensions Act, 1941, and the War Pensions Act, 1942

1945

25 — Natives (Urban Areas) Consolidation Act, 1945
Act to consolidate the laws in force in the Union which provide for improved conditions of residence for Natives in or near urban areas and the better administration of Native affairs in such areas; for the registration and better control of contracts of service with Natives in certain areas and the regulation of the ingress of Natives into, and their residence in such areas; for the exemption of coloured persons from the operation of pass laws; for the restriction and regulation of the possession and use of kaffir beer and other intoxicating liquor by Natives in certain areas and for other incidental matters

27 — Workmen's Compensation Amendment Act, 1945
Act to amend the Workmen's Compensation Act, 1941

29 1 Apr. 1945. Native Education Finance Act, 1945
Act to provide for the financing of Native education, for the establishment of a Union Advisory Board on Native Education, and for matters incidental thereto; and for the amendment of Acts Nos. 41 of 1925, 46 of 1925 and 12 of 1936

34 [a] Registration for Employment Act, 1945
Act to provide for the registration of unemployed persons; the establishment of juvenile affairs boards; and for matters incidental thereto

43 — Natives (Urban Areas) Amendment Act, 1945
Act to amend the Natives (Urban Areas) Consolidation Act, 1945

1946

7 — Coloured Persons Settlement Act, 1946
Act to provide for the establishment of coloured persons settlement areas, for the allotment to coloured persons of land situated within such areas, and for matters incidental thereto

24 [a] Blind Persons Amendment Act, 1946
Act to amend the Blind Persons Act, 1936, and the War Pensions Act, 1941

28 — Asiatic Land Tenure and Indian Representation Act, 1946
Act to impose restrictions with regard to the acquisition and occupation of fixed property in the Province of Natal; to amend the law relating to the ownership and occupation of fixed property in the Province of Transvaal; to make special provision for the representation in Parliament of Indians in the Provinces of Natal and Transvaal, and for the representation in the Provincial Council of Natal, of Indians in that Province; and to provide for other incidental matters

36 [a] Disability Grants Act, 1946
Act to provide for the payment of grants to persons who, owing to physical or mental disabilities, are unable to provide for their own maintenance, and for matters incidental thereto

42 — Natives (Urban Areas) Amendment Act, 1946
Act to amend the Natives (Urban Areas) Consolidation Act, 1945

[f] This Act shall commence on a date to be fixed by the Governor-General by proclamation in the *Gazette*: Provided that the provisions of this Act relating to the right to compensation shall not come into operation until a date to be fixed in like manner.

[g] There are different commencement dates re: certain provisions of this Act.

No. of Act	Date of commencement and short and long title
47	[a] Silicosis Act, 1946 Act to amend, consolidate and extend the law relating to miners' phthisis
53	[a] Unemployment Insurance Act, 1946 Act to provide for the establishment of an Unemployment Insurance Fund and for the payment of benefits to certain unemployed persons; to repeal the Unemployment Benefit Act, 1937; to provide for the transfer of the officials of unemployment benefit funds established under the said Act to the service of the Union Government, and for matters incidental thereto
	1947
45	— Native Laws Amendment Act, 1947 Act to amend the Representation of Natives Act, 1936, the Natives (Urban Areas) Consolidation Act, 1945, the Natives (Urban Areas) Amendment Act, 1945, and the Private Locations Act, 1909 (Cape of Good Hope)
	1948
41	— Pension Laws Amendment Act, 1948 Act to amend the War Special Pensions Act, 1919, the Old Age Pensions Act, 1928, the Blind Persons Act, 1936, the Government Service Pensions Act, 1936, the War Pensions Act, 1941, the War Pensions Act, 1942, and the Pensions Laws Amendment Act, 1943; and to make provision for the increase of the pensions of European war veterans
47	— Asiatic Laws Amendment Act, 1948 Act to amend the Asiatic Land Tenure and Indian Representation Act, 1946
	1949
36	[a] Workmen's Compensation Amendment Act, 1949 Act to amend the Workmen's Compensation Act, 1941
41	[b] Unemployment Insurance Amendment Act, 1949 Act to amend the Unemployment Act, 1946
44	[i] South African Citizenship Act, 1949 Act to make provision for South African citizenship and for matters incidental thereto
49	[a] Railways and Harbours Acts Amendment Act, 1949 Act to amend the Railways and Harbours Service Act, 1912, the Railways and Harbours Regulation, Control and Management Act, 1916, the Railways and Harbours Service Act, 1925, and the Railways and Harbours Superannuation Fund Act, 1925; to authorize the issue of certificates of permanent employment to certain persons; and to provide for other incidental matters
53	— Asiatic Land Tenure Amendment Act, 1949 Act to amend the law relating to the ownership and occupation of fixed property in the Provinces of the Transvaal and Natal
55	— Prohibition of Mixed Marriages Act, 1949 Act to prohibit marriages between Europeans and non-Europeans, and to provide for matters incidental thereto
56	— Native Laws Amendment Act, 1949 Act to amend the Native Labour Regulation Act, 1911, the Native Affairs Act, 1920, the Natives Taxation and Development Act, 1925, the Native Administration Act, 1927, Amendment Act, 1929, and the Native Trust and Land Act, 1936; to exempt certain land held by the South African Native Trust from the provisions of the laws governing the establishment of townships or relating to town planning; to authorize the granting of exemption in respect of land whereon Natives employed in mining or industrial undertakings are housed from the provisions of certain laws; and to repeal certain provisions of British Bechuanaland Proclamation No. 2 of 1885 and Act 7 of 1924
	1950
15	— Asiatic Land Tenure Amendment Act, 1950 Act to amend the law relating to the ownership and occupation of fixed property in the provinces of the Transvaal and Natal
21	— Immorality Amendment Act, 1950 Act to amend the Immorality Act, 1927, so as to prohibit illicit carnal intercourse between Europeans and non-Europeans,* and to provide for matters incidental thereto
30	— Population Registration Act, 1950 Act to make provision for the compilation of a Register of the Population of the Union; for the issue of identity cards to persons whose names are included in the Register; and for matters incidental thereto
41	[j] Group Areas Act, 1950 Act to provide for the establishment of group areas, for the control of the acquisition of immovable property and for the occupation of land and premises, and for matters incidental thereto
44	— Suppression of Communism Act, 1950 Act to declare the Communist Party of South Africa to be an unlawful organization; to make provision for declaring other organizations promoting communistic activities to be unlawful and for prohibiting certain periodical or other publications; to prohibit certain communistic activities; and to make provision for other incidental matters
	1951
27	[a] Native Building Workers Act, 1951 Act to provide for the training and registration of Native building workers, for the regulation of their employment and conditions of employment, and for other incidental matters
46	— Separate Representation of Voters Act, 1951 Act to make provision for the separate representation in Parliament and in the provincial council of the Province of the Cape of Good Hope of Europeans and non-Europeans in that Province, and to that end to amend the law relating to the registration of Europeans and non-Europeans as voters for Parliament and for the said provincial council; to amend the law relating to the registration of non-Europeans and Natives in the Province of Natal as voters for Parliament and for the provincial council of Natal; to establish a Board for Coloured Affairs; and to provide for matters incidental thereto
47	[k] Pension Laws Amendment Act, 1951 Act to amend the Old Age Pensions Act, 1928, the Blind Persons Act, 1936, the Government Service Pensions Act, 1936, the War Pensions Act, 1942, the Disability Grants Act, 1946, the Finance Act, 1950; to provide for the removal of the limitations imposed by the second proviso to section sixty-three of Act No. 32 of 1895 (Cape) in respect of pensions payable from the public service section of the Cape Widows' Pension Fund; to provide for the closing of the fund established under section forty-one of Act No. 19 of 1908 (Transvaal); to provide for the payment of bonuses to persons in receipt of certain pensions, grants and allowances; and to apply the provisions of the War Pensions Act, 1942, to certain members of the South African Permanent Force

[a] Re: Date of commencement see paragraph 19 of said Act.
[i] Re: Date of commencement see paragraph 38 of said Act.

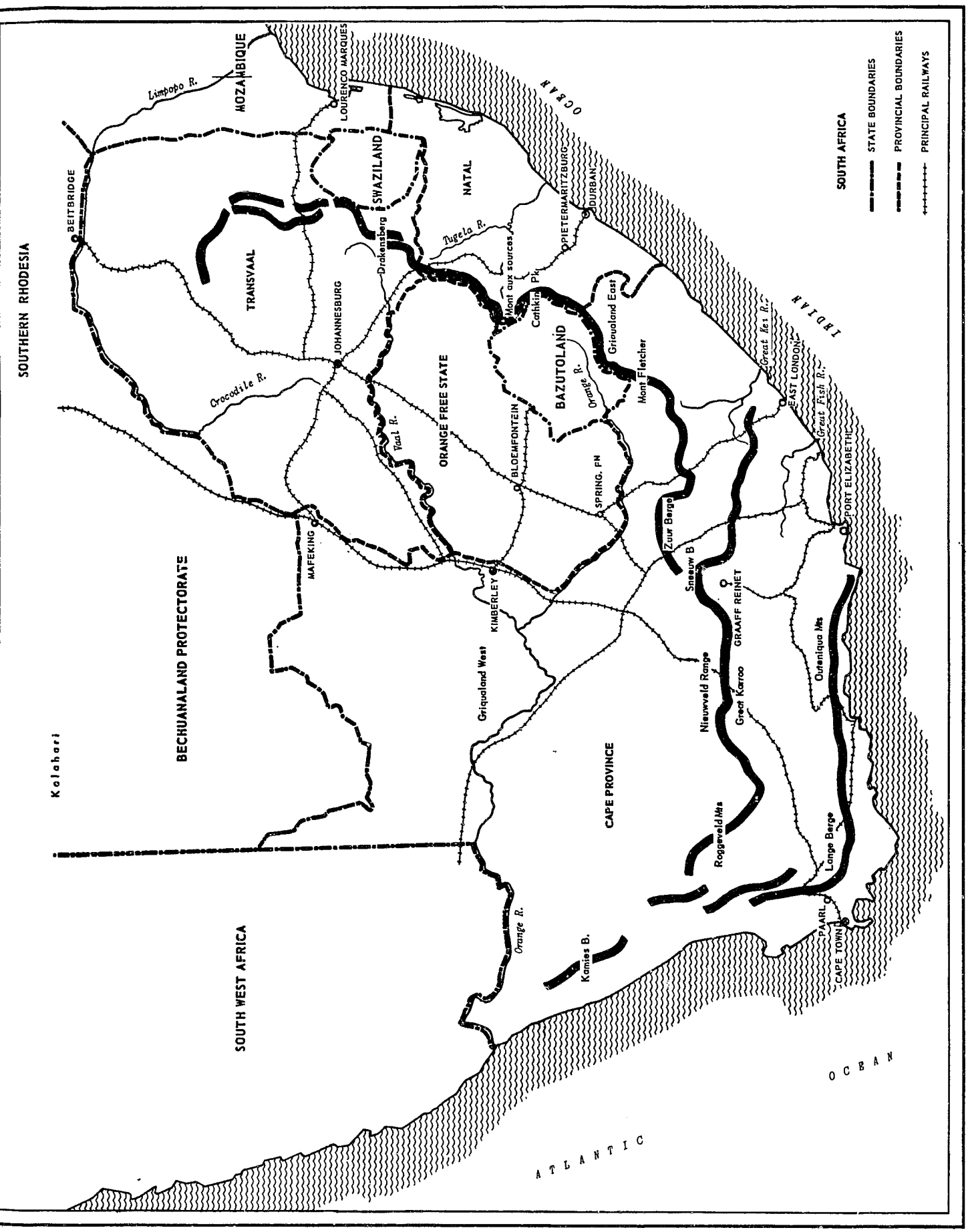
* The long title of the principal Act is hereby amended by the substitution for the word "Natives" of the word "non-Europeans". (Act No. 5 of 1927).

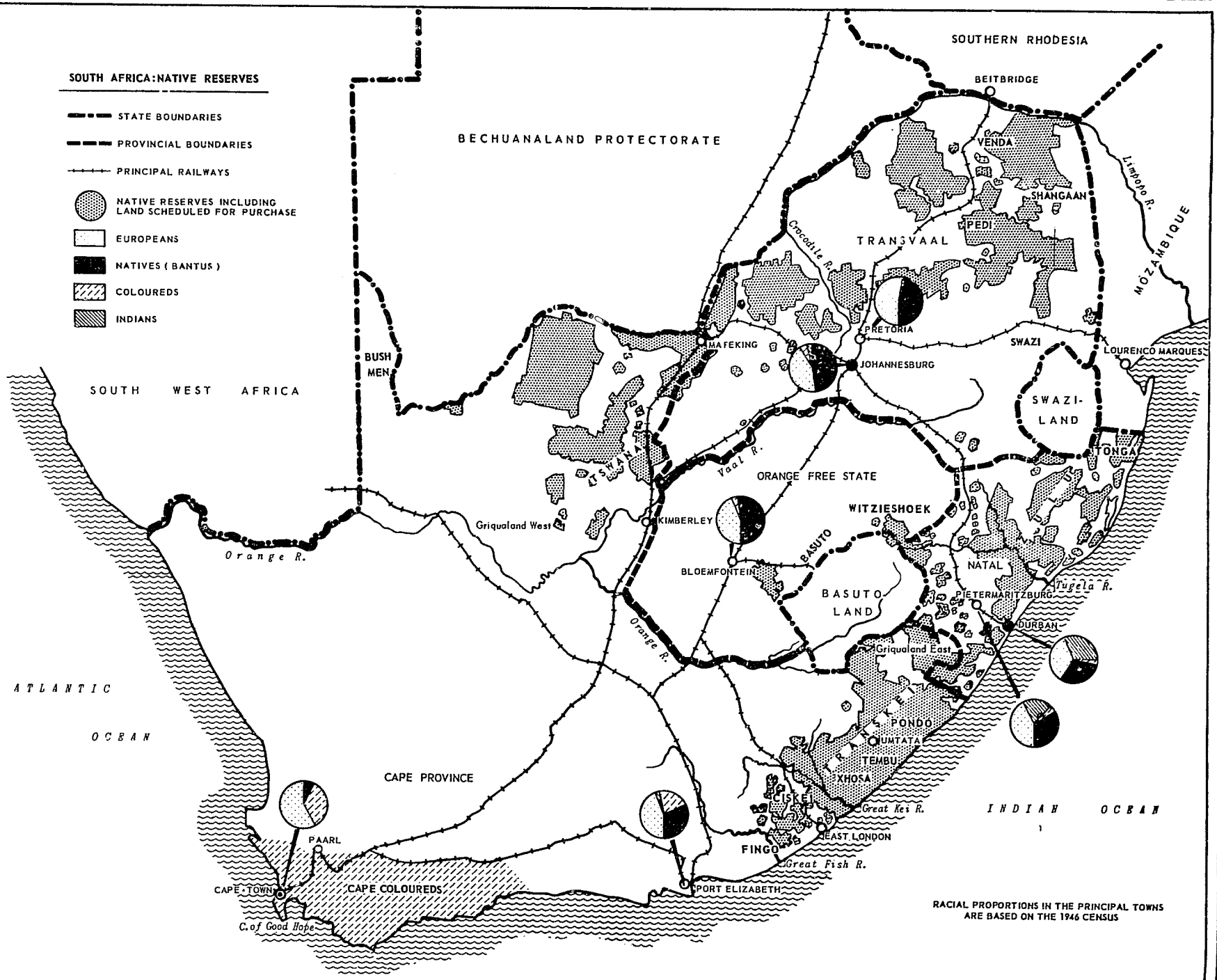
[j] See paragraph 37 of said Act re: date of commencement.
[k] *Vide* paragraph 15.

No. of Act	Date of commencement and short and long title
50	17 July 1951. Suppression of Communism Amendment Act
52	[1] Prevention of Illegal Squatting Act, 1951 Act to provide for the prevention and control of illegal squatting on public or private land
68	— Bantu Authorities Act, 1951 Act to provide for the establishment of certain Bantu authorities and to define their functions, to abolish the Natives Representative Council, to amend the Native Affairs Act, 1920, and the Representation of Natives Act, 1936, and to provide for other incidental matters
	1952
24	— Illegal Squatting Amendment Act, 1952 Act to amend the Prevention of Illegal Squatting Act, 1951
33	— Criminal Sentences Amendment Act, 1952 Act to amend the Criminal Procedure and Evidence Act, 1917, so as to provide for special penalties in respect of certain offences
35	— High Court of Parliament Act, 1952 Act to establish a High Court of Parliament and to define its jurisdiction and to provide for matters incidental thereto
54	— Native Laws Amendment Act, 1952 Act to amend the Native Labour Regulation Act, 1911, the Natives Land Act, 1913, the Native Administration Act, 1927, Amendment Act, 1929, and the Natives (Urban Areas) Consolidation Act, 1945; to repeal certain provisions of British Bechuanaland Proclamation No. 2 of 1885 and to repeal the Natives (Urban Areas) Amendment Act, 1945
65	— Group Areas Amendment Act, 1952 Act to amend the Group Areas Act, 1950
67	— Natives (Abolition of Passes and Co-ordination of Documents) Act, 1952 Act to repeal the laws relating to the carrying of passes by Natives; to provide for the issue of reference books to Natives; to amend the Native Administration Act, 1927, the Native Service Contract Act, 1932, and the Natives (Urban Areas) Consolidation Act, 1945, and to provide for incidental matters
	1953
3	— Public Safety Act, 1953 Act to make provision for the safety of the public and the maintenance of public order in cases of emergency and for matters incidental thereto
8	— Criminal Law Amendment Act, 1953 Act to provide for increased penalties for offences committed under certain circumstances; to prohibit the offer or acceptance of financial or other assistance for any organized resistance against the laws of the Union; and to provide for matters incidental thereto

[1] Re: Operation of Act, see paragraph 10.

Maps


SOUTHERN RHODESIA
MOZAMBIQUE
Limpopo R.
LOURENCO MARQUES
OCEAN
BEITBRIDGE
SWAZILAND
NATAL
PIETERMARITZBURG
DURBAN
TRANSVAAL
JOHANNESBURG
Drakensberg
Tugela R.
Mont aux sources
Cathkin Pk
BAZUTOLAND
Orange R.
Griqualand East
Mont Fletcher
Great Kei R.
INDIAN
EAST LONDON
Great Fish R.
Crocodile R.
Vaal R.
ORANGE FREE STATE
BLOEMFONTEIN
SPRING. FN
PORT ELIZABETH
Zuur Berge
Sneeuw B
MAFEKING
KIMBERLEY
GRAAFF REINET
Griqualand West
Nieuwveld Range
Great Karroo
Outeniqua Mts
BECHUANALAND PROTECTORATE
Kalahari
CAPE PROVINCE
Roggeveld Mts
Langeberg
PAARL
CAPE TOWN
SOUTH WEST AFRICA
Orange R.
Kamies B.
OCEAN
ATLANTIC
SOUTH AFRICA
STATE BOUNDARIES
PROVINCIAL BOUNDARIES
PRINCIPAL RAILWAYS


SOUTH AFRICA: NATIVE RESERVES
STATE BOUNDARIES
PROVINCIAL BOUNDARIES
PRINCIPAL RAILWAYS
NATIVE RESERVES INCLUDING LAND SCHEDULED FOR PURCHASE
EUROPEANS
NATIVES (BANTUS)
COLOUREDS
INDIANS
SOUTHERN RHODESIA
BECHUANALAND PROTECTORATE
BEITBRIDGE
VENDA
SHANGAAN
PEDI
TRANSVAAL
Limpopo R.
MOZAMBIQUE
Crocodile R.
PRETORIA
MAFEKING
JOHANNESBURG
SWAZI
LOURENCO MARQUES
BUSH MEN
SOUTH WEST AFRICA
SWAZI-LAND
TONGA
Vaal R.
ORANGE FREE STATE
WITZIESHOEK
KIMBERLEY
Griqualand West
Orange R.
BLOEMFONTEIN
BASUTO
NATAL
Tugela R.
PIETERMARITZBURG
BASUTO LAND
DURBAN
Griqualand East
ATLANTIC
OCEAN
PONDO
QUNTATA
TEMBU
XHOSA
CAPE PROVINCE
ISKEI
Great Kei R.
INDIAN OCEAN
PAARL
EAST LONDON
FINGO
Great Fish R.
CAPE TOWN
CAPE COLOUREDS
PORT ELIZABETH
C. of Good Hope
RACIAL PROPORTIONS IN THE PRINCIPAL TOWNS ARE BASED ON THE 1946 CENSUS