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MEMORANDUM
BY THE
GOVERNMENT OF THE UNION OF SOUTH AFRICA
ON THE SUBJECT OF INDIAN LEGISLATION

1. The Indian Memorandum submitted to the Secretary-General of the United Nations on the disabilities of Indians in South Africa purports to set out objectively the successive enactments passed by the South African Parliaments which have, it is alleged, discriminated adversely against the indentured and other Indians from the time of their arrival in Natal to the present day. Such comments as are made on these enactments derive mainly from sources in India and not from South Africa. There is no recognition of the economic, social and educational advantages which the Indians in South Africa have enjoyed, which have placed them far in advance of their kind in India. Considering the conditions in which the scheduled classes are still reputed to live in India and the communal clashes which in India give rise to such turmoil, it is somewhat remarkable that the Memorandum evinces no understanding of the difficulties created by the impact of Indentured Indian labourers and their descendants, together with their camp followers, upon a highly developed Western civilization. Necessary measures introduced from time to time to meet the needs of the day, and which are mainly concerned to relieve the tensions caused by the residential juxtaposition of different races, with clashing creeds and cultural dissimilarities, are listed as repressive measures against the Indians; as, indeed, are those which were passed to condone breaches of the law and the prevention of further breaches of the law by Indians: and to this list are added other social measures which were passed in conformity with advanced legislative trends in Western civilization (which are not today applicable

in India) because the fullest social benefits were not extended to the Indian Immigrant Community.

2. The Indian Government's case is based, and rests or falls, on the assertion that the Indians were brought to South Africa on the condition that they "would be allowed to live as free men with all the rights and privileges of citizenship". Throughout the whole of the Memorandum it is assumed that an obligation rests upon South Africa to assimilate the Indian community into every aspect of European South African life, whether it is assimilable or not; that no distinction of any kind between European and Indian is permissible, though such distinctions are necessary for the maintenance of Western civilized standards which the Indian Government has agreed to respect; that any legislative separation of European and Indian interests is not only a stigma on Indians but is unjust, though, at the same time, the Indian is inclined to favour discrimination between himself and the Natives of the country. It is, therefore, necessary to examine the circumstances under which the Indians came to South Africa, the conditions under which they have been permitted to remain, and the declared policies agreed upon between the Indian and South African Governments.

3. Indentured Indians first came to the Colony of Natal in 1860. The vast bulk of them have remained in Natal and the dispute is essentially a Natal matter. The Indians in the Transvaal are a seepage from Natal, of whom Lord Milner said they were "strangers forcing themselves on a community reluctant to receive them". The Indentured Indians came for the sole purpose of completing a contract, voluntarily entered into in India with the approval of and under the supervision of the Indian Government. The contract was to work in Natal for a stated period at a given rate of wage, with food and housing provided in accordance with regulations promulgated by the Colonial Government in Natal. After a period of five years they were free to enter into new yearly indentures on their own initiative, in order to gain any advantage which freedom of choice

could give them. At the end of the period if they did not reindenture, they were to return to India. Indentured Indians are defined in law as including all their descendants, so that, although indenturedness has long ceased to exist, the vast bulk of the Indians in Natal continued to belong to the Indentured Community.

4. There was nothing repugnant to the world conscience of 1860 in establishing a system of immigrant indentured labour in Natal. It was already in operation in a number of countries when it was applied to South Africa. A similar indentured system was adopted in respect of the Chinese for the Transvaal mines as late as the early years of the present century, with the consent of the Chinese Government. Fortunately for both countries, as soon as responsible government was given to the Transvaal in 1907, one of its first acts was to repatriate all the Chinese labourers, with the assistance of the British Government and Parliament. The most pleasant relations have ever since been maintained between South Africa and China, and between the few Chinese and Europeans in South Africa. Unfortunately such assistance has never been forthcoming to achieve the repatriation of Indians from Natal.

5. In 1860 the Government of Natal was subordinate to the British Colonial Office, which was the active agent in making the arrangement. Natal was a country of great natural resources, which needed to be developed. The Natives lived indolently and peacefully under the protection of the Government and were disinclined to engage in laborious occupations. In India thousands amongst the lower classes were only too willing to exchange their age-long grinding poverty and ceaseless toil for the comparative luxury of the conditions of work and pay in Natal. The contract was, therefore, initially of mutual advantage. The Indians, who were housed and fed, transmitted the bulk of their money earnings to their kindred in India, and they were assured of a free and safe passage back to India on the completion of their indentures. The presence of a large Indian population in South Africa

today is the physical proof of their satisfaction with the conditions of Natal.

6. There is no doubt that in the early years, when the number of Indians in South Africa was comparatively small, the Colonial Government, at the behest of a few vested interests, offered inducements for immigrants to remain beyond the allotted period of ten years: and, at one period, from 1870 for a number of years, when the number of Indians in the Colony was very small, such inducement to remain was given by the Colonial Legislature, which enacted that the cost of the passage back to India could be commuted in whole or in part by the grant of a small piece of Crown land. A few such allotments of seven acres each were indeed made. While it might thus be inferred from this enactment, as the Indians allege, that the principle of ultimate repatriation was partially abandoned, the measure was, in fact, intended merely as an inducement to a few key Indians to remain at work beyond the term of indentures. The principle of ultimate repatriation was never abandoned and the matter was put beyond any doubt by the passage of Act No. 17 of 1895, Clause 2 of which read:

"From and after the date when this Act shall take effect, the indentures to be signed by Indian Immigrants shall contain a covenant by the Indian Immigrants in words as follows:

"And we further agree that, after the expiration or other determination of the contract, we shall either return to India or remain in Natal under indenture to be from time to time entered into".

The same enactment provided that any indentured Indian:

"who shall fail, neglect or refuse to return to India or to become re-indentured in Natal, shall take out year by year a pass or licence to remain, and shall pay for such pass or licence a yearly sum of three pounds".

7. The foregoing was a legislative reminder that the Indian Immigrant was a sojourner in South Africa. In 1895 Natal enjoyed Responsible Government. It was, therefore, clearly in the public mind of Natal that the rapid growth of the Indian immigrant community, which had been joined by its women folk, constituted a grave danger to the maintenance of Christian civilization.

South Africa had been colonized and settled for two centuries by Europeans of Dutch and British stock. They wrested the country from savage beasts and the depredations of even more savage men, and after almost incredible dangers and hardships they had established a civilization of which they were justly proud and which they were fiercely determined to hold inviolate. They contended that the law and order which they had created over the whole length of the land, before any Indian set foot in South Africa, was their work: and the continued existence of an Indian community, speaking four different languages and following religious and social customs entirely alien to their own, would inevitably create a state of affairs which would not only undermine their Western Civilization but would affect their trusteeship of the overwhelming Native population. Moreover, the presence of the Indian blocked the road to the industrial advance of the Natives, then beginning to understand the advantages to be derived from settled labour, by filling the positions in the developing industries which should have been their natural prerogative.

8. The issue between South Africa and India was and always has been this principle of ultimate repatriation to India, which formed the basis of the immigration scheme. On the one hand the British and Indian Governments have pressed South Africa to grant citizen rights to the Indians, while on the other the responsible Governments in South Africa have insisted on the temporary character of the Indians' stay in South Africa. The case is plainly stated in paragraphs 6 and 7 of the Indian Government's Memorandum, which shows that in the years immediately preceding 1887 "the majority of the White Colonials were strongly opposed to the presence of free Indians" and that "the Government of India agreed to a condition in the emigrant's contract that he would return to India at the end of the period of contract, unless he re-engaged on a new indenture on a similar condition".

9. The strength of this feeling in Natal is plainly indicated in paragraph 11 of the Government of India's Memorandum which states:

"The Natal Government sent a deputation to India in 1903 to propose the compulsory repatriation of labourers on the expiry of their terms of indenture or reindenture".

The Government of India hedged about their acceptance of this solution of all the difficulties with such conditions as to render repatriation impossible; and the delegation, in the words of the Indian Memorandum "returned empty-handed". Thus all through the years the struggle on the part of the people of Natal has been to ensure that the Indian should return to India on the conclusion of his indentures, while the Indian Government had endeavoured to prevent that happening.

10. The most powerful factors inhibiting the Government of Natal from following up its submission to the Indian Government in 1903 (for the compulsory repatriation of the Indian immigrants) was the use made of the South African Indian question for political purposes in India. The exploitation by the Indian Congress of the alleged ill-treatment of Indians in South Africa became a perpetual thorn in the flesh of the Indian Government and was a continuing embarrassment to the British Government. Every local enactment designed to ameliorate a social or economic condition, every attempt to tighten up a law because of illegalities discovered or evasion practised, which in any way affected the Natal Indians, was seized upon by Indian politicians and exaggerated into a predatory assault upon Indian rights and interests, and as glaring examples of the injustice of British Imperialism. The technique is well known. Yet the complete answer to all the allegations throughout the years, was that whatever disabilities the immigrants suffered under in South Africa, they were obviously never sufficiently harsh to induce them to exchange their lot for the known conditions in their mother country, notwithstanding all the bonuses and free passages offered to them. The failure of the Natal Government to adopt a more positive course after 1903 was largely due to its

natural desire to avoid creating a position which would increase the embarrassment of both the British and Indian Governments. No compulsion was therefore ever applied but the Indians remained in Natal with no reasonable grounds for belief that their residence was intended to be other than temporary.

11. Matters continued in this confusion until the arrival of Mr. Gandhi, who quickly organized the illiterate workers into a positive resistance movement for the abolition of the £3 licence fee, which was the outward token of the temporary exemption granted to the Indians from entering into new indentures or returning to India. In the result, the licence fee was abolished by Act of Parliament in 1914. The Indians immediately hailed this as a triumph in their cause of permanent domicile. The mere repeal, however, of the £3 licence fee did not constitute an abrogation of the underlying basis of Indian emigration, which was the return of the immigrants to India. It exempted them from carrying in their pockets a constant reminder of the temporary nature of their sojourn in Natal; but it did not grant any citizenship rights in South Africa.

12. In the subsequent years the Indians flourished. Indentures came to an end. Many Indians acquired plots of land and became market gardeners. Some of them acquired sugar estates and, in one case, a sugar mill. There was no restriction on the acquisition of land. During the period 1921 to 1938, the urban Indian populations nearly trebled themselves. Their places as agricultural workers were taken by the Natives, who were now seeking employment. Indians entered into many of the urban avocations, which their quick intelligence enabled them to follow; and this denied to the Native population the opportunities that would otherwise have been theirs. The so-called "Passenger Indians", mostly Mohammendan traders, who had entered Natal under permit as camp followers of the Immigrant Community, expanded their trade in all directions and brought about the liquidation of some old-established European firms. Many of the country towns of Natal

passed almost entirely into their hands. Verulam, Tongaat and Stanger on the North Coast of Natal, became predominantly Indian; and in the small villages throughout the Province the Indian storekeeper was supreme.

There can be no doubt that the Indians lower living standards rendered it easy for him to achieve this commercial success over the European traders.

13. The urban Indian influx caused the deepest misgivings amongst the Europeans who saw their whole future menaced by an alien civilization. The existence of temples and mosques up and down the coast, together with the frequent attendant religious festivals began to be seen in the perspective of the future. The rapid increase in the Indian population convinced the Europeans beyond the shadow of a doubt that it was only a matter of time before they would be overwhelmed. The tendency to penetrate into what had previously been exclusively European residential areas created racial hostility and agitation arose for measures to be taken to prevent the city of Durban from losing its European character.

14. Nothing, it appeared, could be done to implement the law and repatriate the Indians. In 1924, in a rising tide of public anger, the Government introduced into Parliament the Class Areas Bill. The Bill contained no threatened injury to the existing interests of the immigrant Community. Indeed, throughout the years, no legislation has ever dislodged the Indian from any position he had gained, however illegally; all it has attempted to do has been to prevent further encroachment. The object of the Bill was to prevent any increase in racial hostility by preventing the Indian penetration of populous European residential areas. It did not prevent the Indians from buying land or engaging in economic enterprise anywhere in Natal outside of specified areas. While the Hindus, who comprised the vast bulk of the Indian population, had little interest in the matter, the Mohammedan trading community felt that its trading interests were threatened by a limitation of its potential field of enterprise; actually the measure did not affect existing trading sites.

15. The appearance of the Bill aroused the usual misinformed resentment in India and led to a stream of abuse and exaggeration. Before it could be enacted a change of Government occurred and the measure was somewhat altered and became The Areas Reservation Immigration and Registration (Further Provisions) Bill. The Government of India asked for a postponement of the measure, in order to propose some alternative. It was agreed between the Governments that a delegation from the Indian Government should discuss the whole Indian position in South Africa with the South African Government in Cape Town, before the Bill was proceeded with. There followed the Round Table Conference, from which emerged a declaration of policies which have come to be known as the Cape Town Agreement of 1927. This Agreement constitutes a definite stage in the long drawn out battle of Indian domicile. It is from this point that the modern Indian question in South Africa begins.

16. The 1927 Cape Town Agreement was entered into with the shadow of the "Areas Reservation Bill" hanging over it. The Agreement was designed as an experiment in methods of attaining the same ends. If the methods agreed upon succeeded, there would be no need for the Bill; if they failed, the Government of South Africa reserved the right to proceed with the Bill. That fact was not only implicit in the whole understanding but actually emphasized. Consequently a formula was devised as a preliminary to the Round Table Conference, in order that there should be no misunderstanding of what was in the minds of both Governments in entering into the discussions. This formula, published in India and South Africa, read as follows:

"The Government of the Union have impressed on the Government of India that public opinion in South Africa will not view with favour any settlement which does not hold out a reasonable prospect of safeguarding the maintenance of Western standards of life by just and legitimate means. The Government of India are prepared to assist in exploring all possible methods of settling the Asiatic question and have offered to enter into a Conference with the Union Government for that purpose".

17. The personnel of the Indian Delegation was distinguished and included some of the great leaders of Indian public opinion. The South African Delegation represented all political parties. The policies announced in the so-called Agreement were approved by the Governments and Legislatures of both countries. It began by setting in the forefront a reaffirmation of the principle that it was:

"the right of the Union of South Africa to use all just and legitimate means for the maintenance of Western standards of life".

This principle, unanimously accepted, was interpreted by the Chairman of the Conference, the Minister of the Interior, Dr. Malan, to mean that if the methods agreed upon failed to achieve their purpose, the Union would revert to the "Arcas Reservation Bill", which had been dropped, and any other measure which was necessary to maintain Western standards of life.

18. The objectives crystallized in the agreement were two in number; the first was to reduce the Indian population and the second was to apply "uplift" measures to an irreducible minimum who would remain, and who would as far as practicable have to be assimilated to Western standards of life.

19. The first objective was to be attained by the South African Government, on its part, agreeing:

"to organize a scheme of assisted immigration to India or other countries where Western standards of life are not required".

and by the Indian Government agreeing:

"to recognize the obligation to look after the Indians on their arrival in India".

To achieve this purpose, the South African Government undertook to pay a bonus of £20 to each person over the age of sixteen and £10 for each child; the money was to be paid on the arrival of the immigrant in India.

A free passage was to be given from any place in South Africa to any place in

India. The decrepit and infirm were to receive a pension. Conditions of travel and food en route to India were to be strictly supervised. The Indian Government were to receive these repatriates on arrival and help them to readjust their lives to Indian conditions and settle them in the occupations for which they were best suited by their aptitudes or their resources.

20. For the carrying out of the second objective, the Agreement set forth that:

"The Union Government recognizes that Indians domiciled in the Union who are prepared to conform to Western standards of life should be enabled to do so".

The question of who could conform to Western standards of life has never been determined. What does "Western standards of life" mean when applied to the conformability of an Indian population? It could obviously not apply to the older generation already shaped by their Eastern environment. It could only apply to the young who would form the nucleus remaining after the assisted repatriation scheme had been successfully operated. To this nucleus the Union Government undertook to apply "uplift" measures.

21. The policy announced in the Cape Town Agreement was never expressly abandoned. The policy of bringing about a diminution in the Indian population while extending uplift measures to a residue which was capable of conforming to Western standards of life continued to be agreed policy. The Agreement postulated the temporary character of Indian residence in South Africa. The Right Hon. V.S.S. Sastri, who was the leader of the Indian Delegation, and who was appointed as the first Agent-General to superintend the proper carrying out of the Agreement, speaking on behalf of the Indian Government to a South African audience, said:

"The main points of the Cape Town Agreement were by careful measures to reduce the population of Indians in South Africa and that the remainder be assimilated to the Western standards of life; points based on the highest principles of humanity".

The South African Minister for the Interior who presided over the Round Table Conference expressed his opinion about the Agreement in the following words:

"The whole object of the Agreement is to get as many Indians repatriated as possible and the energies of the Conference were bent in that direction, namely, to draw up a satisfactory plan with the help of the Government of India. All other points were subordinate to this what has been reached is a friendly basis to give the new repatriation scheme a fair chance".

In essence the plan was the plan of the Indian Government and the test for any continuance of Indians in South Africa was "assimilability" to the standards of life obtaining in the country of their new domicile, a fundamental consideration amongst all nations.

22. The conclusion of the Cape Town Agreement of 1927 was welcomed on all sides as an act of statesmanship. All controversy was silenced. The first Agent-General, Mr. Sastri, a man of great intellectual eminence, did much to render the agreement acceptable to all sections. It appeared that a firm basis had been established for all future relations between the State and the Immigrant Community. The Union's financial provisions for repatriation were considered to be adequate and were joined with the pledged co-operation of the Indian Government to absorb the repatriates back into the economic life of India. The repatriation scheme appeared to be attractive enough to ensure the anticipated reduction in the Indian population and permit of the full application of the "uplift measures" to those capable of conforming to Western standards of life.

23. This feeling of satisfaction, however, was short-lived. A raging campaign was initiated by the Indian Congress against the whole scheme as soon as the repatriation plan appeared to be succeeding, and would-be emigrants were threatened and intimidated. The comparative few who braved the insults and contumely and threats of violence and returned to India were only too glad to get back to South Africa. It is on record in a report published by Swami Bhavani Dayal, a Natal investigator, that many of those who went to India, being unable to pay their passage back to South Africa, drifted down to the slums of Madras and Calcutta to live in filth and poverty and be written about in the Indian press as an example of that British Imperialism which, after exploiting the health and labour of the Indians, sent them back to die of

starvation in the gutters of their mother country. These accounts from India of the fate awaiting any returned emigrant successfully put an end to the assisted voluntary repatriation scheme of the Cape Town Agreement. The Indian Government had apparently not succeeded in implementing its undertaking, so that one leg of the Agreement broke under the weight of Indian opposition.

24. Meanwhile the Union Government was carrying out measures of uplift to the assumed residue, which, in fact included the whole population. The Provincial Council of Natal appointed a Commission on Indian Education, the result of which is today apparent in the rapid educational advantage which has been made in Natal, where the number of Indian pupils today bears roughly the same proportion to the Indian population as the number of European pupils bears to the European population; where a greater percentage of children of schoolgoing age are attending school than is the case in India; and where there are five training colleges for Indians and access to the Universities. The articulation of the Indians of Natal is the measure of the education facilities which have been placed at their disposal. Attached is a statement of Indian educational statistics as they stand in Natal today. In other social legislation there have been great advances all along the line. Indians belong to European trade unions or they have joined trade unions of their own. They have obtained the advantages of wage determination by the Wages Board. In all the public health developments they have enjoyed the benefits: hospitalization has been freely accorded to them and they are represented in person on hospital boards. They receive old age and invalidity pensions: they obtain in Natal the major share of all child welfare grants made by the State: their children obtain a free meal every day in the schools: and the cost of all teachers' salaries and equipment is paid by the State.

25. The Indian Memorandum under reply ignores all these facts. The world is asked to believe that South Africa has completely failed to carry out its policies announced in the Cape Town Agreement, whereas the true position is the reverse. Between 1927 and 1932 the Indian part of the Agreement completely collapsed, while the South African part has been faithfully applied to very much

more than the anticipated irreducible minimum.

26. In January 1932, representatives of the Indian Government again consulted with representatives of the Union Government in Cape Town, in accordance with the understanding originally arrived at to review the working of the policies agreed upon at the expiration of five years. Mr. Sastri was again a member of the Indian delegation under Sir Fazli Hussein as leader. The other members of the Indian delegation consisted of Shrimati Sarojini Naidu, Sir Geoffrey Corbett, Sir d'Arcy Lindsay, Sir Kurma Reddi and Mr. G.S. Bajpai (Secretary). The Union delegation was again led by the Minister for the Interior, Dr. Malan, and was representative of all political parties. The objective of the Conference was stated by Sir Sazli Hussein at a public gathering in the following words:

"Both my Government and yours have agreed that none of my people should permanently settle in this country and having agreed on this and with good will on both sides, we hope to reach a satisfactory agreement".

27. The first work of the Conference was devoted to an examination of the working of the assisted repatriation scheme upon which the five-year-old Agreement was based. It was unanimously agreed that so far from having effected a reduction in the Indian population to the "irreducible minimum" mentioned by the Minister of the Interior the census figures showed an alarming increase. The population had grown from an estimated 170,000 in 1927, to 200,000 in 1931, eighty percent of whom were concentrated in Natal. It now equalled that of the European population of Natal. It was obvious that if Western standards were to be maintained and the right conceded by the Indian Government in 1927 to adopt all just and legitimate means to ensure their maintenance was to be exercised, some other agreed settlement had become necessary.

28. The Union delegation held that experience had proved that a solution of the local conditions could not be brought about by agreement between the two Governments. While a part of the Indian Community which supported the South African Indian Congress was continually calling in the aid of the Congress in India to influence the Indian Government to intervene in South African affairs there were others, belonging to a much larger section of Indians, who desired

only to be considered South Africans and who objected to being used for Indian political purposes. The fact had to be faced that the Indian population in Natal would soon outnumber the European population. The trade of the Province was already passing into Indian hands since they held the majority of the issued trading licences. When these vital facts were considered against the background of two clashing civilizations, with primitive Africa looking on at the conflict, there was no room for any further compromises of the character of the 1927 Agreement. The Bantu outnumbers both Indian and European by nearly five to one in Natal.

29. The Union found itself applying a policy of uplift not to the small residue of those who could conform to Western standards, but to an ever-swelling Indian population whose whole tendency was to establish more securely Eastern ways of life in South Africa. The Indian schools of Natal, supported by the Union taxpayers, had to adopt a platoon system whereby the children could attend the European curriculum part of the day, in order to permit them to attend the mosque and temple schools at some other part of the day. There could be no satisfactory assimilation of Western standards when there were such fundamental differences in community and family life. In the face of these facts, if the permanence of Indian domicile in South Africa had to be recognized, then the Union must insist upon the introduction of legislation to ensure the harmonious development of the various sections and prevent in advance, as far as that was possible, the rise of any further conditions which would create racial hostility. The Government was determined to maintain its Christian civilizing mission in South Africa and would not allow the work of centuries to be undone. The delegation therefore intimated its intention of abandoning the policy set forth in the Cape Town Agreement on the grounds that it had completely failed in its intention and, with the ending of that policy, there would be no further use for the Agent-General, whose functions would disappear. The South African Indians would cease to look to India and would be fitted into the general pattern of South African life.

30. At this juncture the Conference suspended its talks. All that remained was to report the position. After some days the Indian Delegation came forward with a new proposal. Mr. Sastri pointed out that clause (3) of the Cape Town Agreement contained the words:

"The Union Government has agreed to organize a scheme of assisted immigration to India or other countries where Western standards are not required."

So far all attention, he stated, had been concentrated on "assisted immigration to India". No attention had been given to the second part of the sentence: "or other countries where Western standards are not required". This possibility of bringing about a reduction in the Indian population in South Africa by this avenue should now be explored.

31. The arguments put forward in support of the Indian Delegation's proposal were shortly as follows: India's teeming population needed an outlet. It had become nationally recognized that the pressure of population on food supplies in India had to be relieved, and this could only be done by immigration to some Colony, the possession of which by India would also increase India's status in the eyes of the world. South Africa could assist in obtaining such a Colony by co-operating with her. There were rich, sparsely inhabited, undeveloped regions where Western standards were not required, which experience had shown could best be developed by Indian labour. The Natal Indians who had been trained in all the work of Colonization could become the pioneers of a great Indian immigration movement as soon as a promising Colony could be obtained. It was therefore proposed that the 1927 Agreement should continue while an exploration of the possibilities of obtaining an Indian Colony took place. For that purpose a Commission consisting equally of members appointed by the South African and Indian Governments should examine the position by consultation with the British and other Governments.

32. The Union Delegation expressed its scepticism of the proposals. South African Indians would never go, whatever inducements were offered, they said. The Indian Delegation replied that they would themselves come to South Africa and persuade them to go. They would be told that not only would they be work

in their own interests by creating greater economic opportunities for themselves, but by becoming the leaders in a great Indian Colonization movement, they would become the ultimate rulers of the new land to be opened up and thus remove from Mother India the stigma of indenturedness which they and their fathers had placed upon her by coming to South Africa. The South African Delegation with the experience of all their past efforts at repatriation behind them listened dubiously to these arguments. Their consent was not easily won; but they finally agreed to try this suggested solution after learning that the Indians of Natal associated themselves with the proposal and the consent of the Indian Government had been obtained. The consent of the Viceroy to the proposals appeared to lend strength to the statement that there was a widespread national movement for colonization at work in India into which the South African Indians could fit themselves.

33. The Agreement arrived at, which was published simultaneously in April 1932, in India and South Africa, read as follows:

"(1) In accordance with paragraph 7 of the Cape Town Agreement of 1927, the delegates of the Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to February 4th, 1932, to consider the working of the agreement and to exchange views as to any modifications that experience might suggest. The delegates had a full and frank discussion in the conference, which was throughout marked by a spirit of cordiality and mutual goodwill.

"(2) Both the Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they should continue to cooperate in the common objects of harmonizing their respective interests in regard to Indians resident in the Union.

"(3) It was recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to economic and climatic conditions of India, as well as to the fact that 80 per cent of the Indian population of the Union are now South African-born. As a consequence the possibilities of land settlement outside India, as already contemplated in paragraph 3 of the agreement, have been further considered. The Government of India will cooperate with the Government of the Union in exploring the possibilities of a colonization scheme for settling Indians both from India and from South Africa in other countries. In this investigation, which should take place during the course of the present year, a representative of the Indian community in South Africa will, if they so desire, be associated. As soon as the investigation has been completed the two Governments will consider the results of the inquiry.

"(4) No other modification of the agreement is, for the present, considered necessary."

34. It will be noted that there was to be no modification of the existing agreement for the present. The original suggestion was that the Conference should stand adjourned for twelve months in order to ensure that the joint investigation would be completed during the course of the year and future action determined upon. It was, however, represented by the Indian Delegation that such an adjournment would be misunderstood in India: an ad hoc Conference could be called as soon as the enquiry was completed. This course was eventually adopted, which resulted in the 1927 Agreement being continued on an indefinite basis although it had actually broken down. The expectation was that a Joint Commission would be appointed immediately and a further Conference would be called at the end of the year to consider the report of the Joint Commission. The Joint Commission never met and no further Conference was ever called.

35. It is important to note that "a representative of the Indian community in South Africa" was to be associated if they so desired. The Indian Delegation was at much pains to obtain the consent of the South African Indian Congress, and eventually obtained the following guarded declaration which was signed by sixteen of their representatives:

"The Congress agrees to cooperate with the Governments of India and the Union of South Africa in the former's mission to explore the outlets for colonization in regard to her increasing population, provided that such cooperation on the part of the Congress is taken as inspired by patriotic motives and to ascertain whether there exist any good opportunities for South African Indians in the countries explored, and not on the score of Indians being deemed undesirables in the Union or that the Indian population is to be reduced; provided also that the assisted emigration scheme which formed part of the last agreement is eliminated and that the Congress will be free to oppose it as its policy.

"The Congress also reserves the right to reject the agreement and to withdraw its cooperation in the above scheme should any points in the agreement or other subjects dealt with by the round-table conference not meet with the approval of the Congress."

36. It will be seen that while the Indian Government accepted the position, that no Indian should permanently settle in South Africa, as stated by the leader of the delegation, Sir Fazli Hussein, the South African Indian Congress associated themselves with the Colonization scheme by guarding themselves from

any such commitment. In this attitude they were consistent. As however, the South African Government was dealing direct with the Indian Government, whose aid the South African Indian Congress had invoked, the Agreement between the Indian Delegation and Congress did not fall within the cognizance of the South African Government.

37. The Indian Delegation returned to India. South Africa expected, since the proposal had come from the Indian Delegation, and had been supported at the time by the Indian Government, that a move would be made immediately by India to appoint the Indian Members of the Joint Commission of Enquiry, with which a South African Indian would be associated. No such action was, however, taken. When later on, the Union Government asked the Indian Government to appoint its representatives it was met with the reply that the time was inopportune. The reply appeared to indicate that the Indian Government failed to appreciate that the conception of the Indian Colonization scheme lay with the Indian Delegation and not with South Africa, for it suggested that instead of attempting to solve the South African Indian problem by exploring the world for a colony for India, to which South African Indians could go, a better purpose would be served by applying the "uplift" clauses of the 1927 Cape Town Agreement. This has been the attitude adopted throughout both by the Indian Government and the Indians in South Africa. There has been a continual claim to the benefit of the "uplift" clause with a complete ignoring of the obligation of repatriation.

38. As an incentive to the Indian Government to carry out its new policy of colonization, an exploratory Committee was appointed by the Union Government to make what preliminary investigation was possible in South Africa, and to suggest how best the Joint Commission could function. This was known as the Indian Colonization Committee. The Indian Government agreed to its appointment and to its composition, which included a representative of the South African Indian Congress. Its report was published in July 1934. The Committee disclosed all the available information concerning the existing British Colonies and their opportunities for Indian settlement. The data obtained by the Committee and the

recommendations made were intended to aid the Joint Commission when it was appointed in its search for an Indian Colony. As the knowledge of how the idea of Indian colonization arose was known only to the delegation and to the Government, the work of the Committee was not appreciated by the general public. The report had a bad press, both in South Africa and in India.

39. The Report dealt with several regions where the possibility of Indian colonization on a great scale were found to be good. One part of the world which was rich in national resources and very sparsely populated was the island of New Guinea, including the Territory of Papua, and the Mandated Territory of New Guinea in the East, both under the administration of Australia, and the Western half of New Guinea, under the sovereignty of the Netherlands. With its very small population, only recently emerged from the stone age, no great economic development of that huge territory could be undertaken without the introduction of a new population, which could not come from Australia, nor could there be any marked advance of its indigenous people toward civilization without an increase in its wealth production by an effective exploitation of its natural resources. It was capable of taking millions of Indians who would not only change the whole character of this primitive country and be a source of trade to Australia, but would form a bulwark against the Southward advance of the Japanese. This proposal was discussed with the Australian Delegation at the time of the Imperial Conference in London, in 1935, but got no further. The Report of the Colonization Committee was submitted to the Indian Government, but its recommendations were ignored. Alone amongst the Indian Statesmen Mr. Sastri, who had made the original proposal in Cape Town, spoke in its favour, and asked the British Government "why was not India given a territory as an outlet for her surplus population, although she had contributed splendidly to the defense of the Empire and civilization"?

40. The whole question of the domicile of Indians in South Africa was thus left by the Indian Government at this uncertain stage. No final refusal to implement the 1932 Agreement was made: instead it was suggested that in the political conditions prevailing in India and likely to prevail in future, the obligation

to investigate the scheme could not be undertaken. The two Round Table Conferences had come to nothing. South Africa, as in all the years before, took no firm line. The Union Government informed the Indian Government that it appreciated its difficulties and intimated that it would not press the matter. There the matter has remained ever since.

41. Prior to the outbreak of war in 1939 there had been a considerable influx of Indians into the urban areas of Natal. The 1936 census showed that forty per cent of the total Indian population of the Union was concentrated in the one town of Durban. This sudden increase had caused much anxiety to the Durban City Council and thrown upon it the responsibility of providing civic amenities for a population whose sanitary habits endangered public health. Since the new influx was concentrated in the peri-urban area of Durban, on land which had been acquired by Indians, the city boundaries had to be extended to embrace the new Indian-occupied areas at considerable expense to the municipality. By 1936 fifty per cent of all the Indians in the Union derived their livelihood from trade and industry, and the majority of those working in agriculture were farming land on their own account or for other Indians, within a few miles of the towns. The whole character of the Indian immigrant community had changed. They had become urbanized. This change brought wealth to many, particularly of the commercial class, amongst which the Mohammedan traders predominated. This increased wealth, insofar as it was utilized to expand the productive enterprises of the Indians, which expansion was, in fact, taking place on a large scale, was of value to the whole community; but when the accumulated wealth was used to acquire residential sites in the midst of the old settled European areas in Durban and to threaten the European character of those areas, public agitation in favour of some restriction upon this acquisition immediately grew. The Durban City Council, which was suddenly the focus of all the agitation, found itself in difficulties and appealed for aid to the Central Government.

42. The Union Government was not anxious to introduce legislation to settle matters in dispute between the City Council of Durban and the Natal Indian.

Indians in predominantly European districts might be prevented by persuasion rather than by legislation, and for this purpose a joint Committee of Europeans and Indians, known as the Lawrence Committee, was formed in October 1939. It was presided over by the Mayor of Durban with six European - drawn from the City Council - and six Indian members. Its object was to limit changes in property between the races which were likely to cause racial friction, and also to discuss Indian housing needs and the provision of civic amenities and related problems, which had become acute as a result of the increase in population. By December 1941, it was agreed that the efforts of the Committee were abortive and the public commented adversely on its operations. The Europeans alleged that penetration of European residential areas continued despite all the Committee could do, while the Indians denied all allegations of penetration. In the absence of accurate knowledge concerning changes both in Natal and in the Transvaal, the Minister of the Interior appointed a Judicial Commission with the following terms of reference:

"To enquire into and report whether, and if so to what extent, Indians have, since 1st January, 1927, commenced occupation of or acquired sites for trading or for residential purposes in predominantly European areas in the Province of Natal and the Transvaal and the reasons for such occupation and acquisition."

Mr. Justice Broome, Judge of the Natal Supreme Court, was appointed chairman and the Commission became known as the Broome Commission.

43. The manner in which the appointment of this judicial fact-finding commission was met by the Indian Community may be judged by the following resolution, among others, passed at a mass meeting demanding non-co-operation.

"The Union Government, although it has plunged the country into the cauldron of war, on the pretext that it has done so in the defence of democracy and freedom, has not been deterred by the state of war from pursuing its policy of further oppressing certain sections of the Union's population.

"The appointment of the Commission violates the very spirit of the Cape Town Agreement, in that it does not aim at the upliftment of the Indian people, but evidently contemplates their degradation.

"This meeting, therefore, hereby resolves that the Indian Community should boycott this Commission and calls upon the Indian people not to cooperate with it in any shape or form."

Further resolutions called upon the Indian Government to instruct the Agency in South Africa to pursue a policy of non-co-operation.

44. Following this campaign against any enquiry into the facts, which were in dispute, the Indian organization sought to stir up trouble amongst the other non-European groups, by campaigning against the prosecution of the war. The Supreme Court in confirming the judgment of the lower court of a fine of £25 or one month's imprisonment on Dr. Dadoo, an Indian leader, declared:

"To play upon the emotions of a person in time of war is a dangerous thing. The pamphlet" (which called upon its readers not to support the war) "is as inflammatory as a drum of petrol and its publication, undoubtedly, is calculated to incite otherwise passive individuals into active resistance and opposition to the measures in question."

45. The findings of the Judicial Commission were inconclusive. Taken as a whole, Indian penetration in Natal and the Transvaal was not extensive: it was greater in the Transvaal, in proportion to the small Indian population, than in Natal, and was largely confined to trading sites. In Durban, however, which with its surroundings contained the bulk of the Indian population, the changes were chiefly confined to residential sites, and over seventy per cent of the sites acquired were not occupied. They had been bought for speculative purposes

46. The reasons subsequently given for this invasion of the European residential areas were two. First, that "choice sites" were obtainable only in European residential areas, and secondly, that the religion of the buyers forbade their engaging in any form of usury. They could not therefore invest their savings in Government loans or stocks and shares, but only in business and land. To Europeans, later on, it seemed most peculiar that Indians who were making money out of the war should find religious difficulties in supporting Government loans for the prosecution of the war, and should see no harm in creating racial hostility by acquiring "choice sites" in the long established European residential areas in the city of Durban. Indians had open to them the whole of Natal to purchase land in, but they choose the comparatively limited area of the old Durban township.

47. As a result of the accumulating evidence of further penetration in Durban, a Second Indian Penetration Commission was appointed to enquire into the changes in the old Borough of Durban from 30 September 1940 to February 1943. This enquiry disclosed that penetration was taking place at so rapid a rate and on so large a scale as to endanger the European character of the city. The Commission found that the number of sites acquired in 1942 in predominantly European areas was two and a half times greater than the previous year's total. On the establishment of these facts, which were beyond dispute, the Government was compelled to take the action it had tried to avoid by the appointment of the Lawrence Committee in 1939. Legislation was immediately introduced to "peg" the existing position for three years.

48. The passing of the "Pegging Act" - Trading and Occupation of Land (Transvaal and Natal) Restriction Act - in 1943, which provided that transfers of property from members of one race to members of the other should only take place with the consent of the Minister, eased the tension amongst the Europeans, though it did not lessen the acrimony of the Indians. It was applied only to Durban. In the passage of the measure through Parliament, severe criticisms were levelled against the Durban Municipality for its alleged failure to provide adequate housing for Indians. Such criticisms did not take sufficient account of the increase in the city's Indian population by 50,000 within the past few years, nor was allowance made for a measure of uncertainty arising from the fact that the principle of assisted repatriation had never been officially abandoned and that the 1932 Conference Agreement on colonization was still in existence.

49. The conditions in Durban were becoming yearly more difficult for the local authority. As the largest African port on the Indian Ocean - during the war a naval as well as a commercial port - its industries had grown with the development of the harbour, and Durban had become the most congested area in the Union. The city is almost surrounded by Native Reserves, where the land, by statute, cannot be alienated from the Native tribes, who hold it under communal tenure. In 1936, with a population of 259,000 Durban had a density

of all races of 2,650.2 per square mile. It is sub-tropical, and therefore demands a high standard of sanitary efficiency. The multilateral character of its inhabitants, the unbridgeable differences in outlook, in civilization, in social and religious habits, and in the duration of their urbanization, made uniformity in a civic administration impossible and racial conflicts almost certain. The Europeans who had established Durban long before the Indians arrived had their residential sites on the hills overlooking the bay, while the later arrivals of all races lived in the city's peri-urban area. As before noted, Public Health requirements had compelled the City Council to incorporate much of the suburban area into the borough, at considerable cost to the city. It was the acquisition by Indians of sites in the residential areas of the Europeans, and the spreading economic and social deterioration caused by this penetration, which made it imperative for Parliament to intervene by passing the "Pegging Act" as a temporary expedient until the whole position could be re-examined.

50. During the war, any lingering expectations that there would be some diminution in the size of the Indian population began to vanish. The City Council was faced with the fact that the bulk of the Indians were within its borders and proper housing and sanitary schemes would have to be planned if disaster was to be avoided. The existing water supply, previously considered adequate for many years, was already failing to meet the demand. Something had already been done to ease the situation, but it was obvious that a very long view would have to be taken in solving the problem of town planning. At this juncture the Provincial Administration appointed the Post-War Works and Reconstruction Commission to consider plans for the future economic development of the Province. Plans were submitted to the Commission by the City Council, based upon the "radial zoning" of Durban. Radial zoning means the division of the town into segments by drawing lines from a given point at the centre, so as to include within each segment a preponderance of a given race: the lines were drawn with due regard to existing racial ownership. It was the fairest form of separation

which could be devised. It gave each race some part of the city and, as the lines diverged, provided space for further expansion with the least disturbance of existing interests. It commended itself to all town planners as being just and scientific in method.

51. Unlike other South African towns it was not possible for Durban to extend in all directions. The inalienability of the Native Reserves prevented any expansion of the city in their direction. Such expansion as was possible could only proceed in directions where land was in either European or Indian ownership where industries were already established, and where the voluntary segregation of the races had taken place. Past natural developments had determined these directions. There were whole districts exclusively in the hands of Indians, and others in the hands of Europeans. The Durban City Council after very careful surveys of the whole problem, submitted to the Commission their town planning proposals, based upon the principle of radial zoning. The proposals included Indian housing schemes for the building of 17,000 houses, of which 14,000 would have to be erected on a sub-economic basis within the Indian zone. To all concerned with the future planning of Durban, these proposals appeared eminently sensible. The new housing schemes were designed not only to provide all up-to-date civic amenities in a sub-tropical climate where sanitation must always be a primary consideration, but they were also designed to secure easy access to places of work with due regard to the cost of transport. In the consideration of their plans the Indians of all classes had been invited to take a part. All sections of the community had tendered evidence, not the least of which was that of the trade unions. It should be appreciated that the number of Indians who were able to purchase the "choice residences" on the Berea of Durban, which the dispute was mostly concerned about, were very few. The mass of the Indian population who belonged to the Immigrant Class were uninterested in the clamour of their rich compatriots for the withdrawal of the "Pegging Act". They wanted the houses and amenities which the City Council was endeavouring to provide, and the opportunities for work in the new factories which were

being established on the sites being developed by the extensive reclamative works of the State Railways and Harbours Administration on the Durban foreshore.

52. While the Provincial Post-War Works and Reconstruction Commission was busy with its investigation into these things an unexpected event occurred in 1944, which appeared to offer an acceptable alternative to the Pegging Act.

Representatives of the Natal Indian Congress went to Cape Town to see the Prime Minister. They expressed the opinion that all the trouble between Indians and Europeans was due to the "residential juxtaposition" of the races, and if a way could be found satisfactory to both to prevent such residential intermingling, the passions to which it had given rise would rapidly cool and future racial co-operation could be assured. They therefore proposed that in Durban no changes in residence between the races should be permitted except under licence to be issued by a special licencing board, which should consist of two Europeans, two Indians and a Judge or Advocate as chairman. The suggested Board would have to be created by statute. This would permit the Government to suspend the operations of the "Pegging Act" immediately, which could be allowed to expire with the effluxion of time. At the time of the Indian visit to Cape Town, it was much too late in the session for new legislation to be introduced into Parliament, consequently, and as it was essentially a Natal concern, the Prime Minister referred the matter to the Administrator of the Province for his consideration. The Administrator, realizing that the new Indian proposal opened the way to effective town planning in Durban, asked the Indian Delegation to discuss the proposals with the Post-War Works and Reconstruction Commission. The Indians met the Commission and from the discussions which followed there emerged the outlines of a scheme which could be fitted into the "radial zoning" plan of Durban, with which the Commission was occupied. It was considered that if all changes in residential sites between the races were properly regulated by means of a licencing board, it would be only a matter of time before the problem would settle itself and the various racial assimilabilities could be voluntarily confined within their various zones in the utmost harmony.

53. With the approval of the Post-War Works and Reconstruction Commission and the support of the Indian representatives, the Administrator and Executive Committee undertook to introduce the required legislation into the Provincial Council. At this stage, when there was already agreement in principle between the Post-War Works and Reconstruction Commission and the leaders of the Indian Congress, the Prime Minister, General Smuts, who was en route to Europe, called a meeting of the parties in Pretoria to learn what progress had been made.

There were present at the meeting the Prime Minister, the Administrator of Natal, the Minister of the Interior, the Chairman of the Post-War Works and Reconstruction Commission and the Representatives of the Indian Congress led by Senator Shepstone. Before the meeting with the Prime Minister, the Administrator took the opportunity on behalf of the Province to tell the Indian Delegation that he would introduce the proposed legislation into the Provincial Council: that it would provide for a joint board of both races to licence changes in racial residence: that the measure would apply to all municipalities and that on its passing, the Pegging Act would be withdrawn. He made it clear he could not guarantee that the measure would pass unscathed through the Provincial Council. They understood the working of Parliamentary institutions and that the Ordinance might have to go to a Select Committee. They would have to take that risk if they wished the Provincial Council to legislate.

54. At the outset of the meeting with the Prime Minister a document was handed to him by the Minister of the Interior, which he hurriedly glanced through. The contents of this document were not referred to during the meeting, nor were they known to the Administrator until afterwards. This is a very important point since the document has figured ever since as the Pretoria Agreement. The Indian representatives appeared to think that the Prime Minister alone was concerned and that he had power to delegate authority to the Provincial Council to legislate in conformity with any agreement he entered into with them. That is not the case. The Provincial Council derives its authority from the Constitution and its powers are not delegated by Parliament. In this matter the Indians had sought for and obtained legal advice as to the competency of the

Provincial Council to legislate and that advice coincided with the advice given to the Provincial Administration by the Provincial Legal Adviser. The Provincial Authorities present at Pretoria were therefore principals in the Pretoria Agreement and they were very much concerned not only with its negotiation but in knowing precisely what it was. They knew nothing of the Indian Memorandum at the time. Had they known what it contained, their undertaking to legislate might not have been so readily forthcoming. The Prime Minister explained to the meeting what the Province was prepared to do. There was some discussion over whether "all municipalities in Natal" should include semi-rural areas, which were under local government, and areas where Indians were carrying on market gardening. These questions were settled amicably, and the Administrator was asked to draw up the terms of the understanding. This he did and the result was handed to the Indian Delegation for their approval; after some slight alteration by them it was given to the Press for publication. The Prime Minister drew up a telegram to the Viceroy of India couched in similar terms. The agreed statement, which constituted the Pretoria Agreement read as follows:

"The Prime Minister and the Minister of the Interior met the Administrator of Natal (Mr. G. Heaton Nicholls) Mr. D. E. Mitchell (M.E.C.), Senator D. G. Shepstone and representatives of the Natal Indian Congress in connection with matters arising out of the application of the Pegging Act in Natal. Discussions took place as a result of representations made by the Indian Congress to find an alternative method of controlling the occupation of dwellings in the towns and boroughs of Natal to that adopted under the Act mentioned. It was agreed that the situation can best be met by the introduction of an ordinance into the Natal Provincial Council. This measure would provide for the creation of a Board consisting of two European and two Indian members under the Chairmanship of a third European, who would be a man with legal training. The object of this legislation was to be to create machinery for the Board to control the occupation, by licensing, of dwellings in certain areas. The application of the Pegging Act in Durban was to be withdrawn by proclamation on the passing of the Ordinance".

55. Notwithstanding the acceptance by the Indian Delegation of the above official statement, which was communicated at once to the Press and transmitted to the Government of India, the undiscussed and unconsidered Memorandum so casually introduced, was published by the Indian Congress as the authentic

text of the Pretoria Agreement, and has ever since formed the basis of the charges of bad faith made against the Province. A comparison of the text of the official statement with that of the Indian Memorandum reveals the nature of the dispute. The statement speaks of "controlling the occupation of dwellings in the towns and boroughs of Natal". The Indian Memorandum reads: "The control of juxtapositional residential occupation between Indians and Europeans in Durban". This attempt by the Indians to limit the operation of the measure to Durban alone, contrary to the Pretoria Agreement, constituted the first check to an agreed measure. Again, the statement was drawn so as to admit of town planning by radial zoning. It was broad in its conception and though it was an agreement to control the occupation, by licencing, it did not, in the view of the Provincial authorities at any rate, completely rule out the control of acquisition by licence, if that were necessary to secure the desired control of occupation. The Memorandum, however, is emphatic: "Ownership and acquisition of property being purely an economic issue. The principles of economics forbid any restrictions as have been imposed by the Pegging Act".

56. The legislation, intended for introduction into the Provincial Council, was drafted to accord more with the terms of the Memorandum than with the understanding which had been reached in consultation with the Post-War Works and Reconstruction Commission, whose concern was with the future town planning of Durban. The draft was submitted to the Indian Congress. An immediate objection was taken to its wording, and without waiting for any consultation with the Provincial authorities, Congress representatives again went to Cape Town to induce the Acting Prime Minister, Mr. Hofmeyr, to intervene. Mr. Hofmeyr asked the Administrator not to make public the Draft Ordinance until the approval of the Indians had been won, to which course the Administrator, anxious to secure agreement, assented. Meanwhile the meeting of the Provincial Council, which had been called to deal with the projected legislation, had to be adjourned. Two valuable months were thus lost before agreement could be obtained on some trivial points and the Draft Ordinance finally placed before the Provincial Council.

57. There is no doubt that the Congress delay in accepting the draft lost the Indians a measure written in their own terms. If the Provincial Council had been able to deal with the Draft Ordinance when it was first summoned for the purpose, before European public opposition had become organized, the legislation would have passed with a substantial majority. The truth was that the Indian Congress was itself sharply divided. The negotiators of the Pretoria Agreement, who represented the Indian purchasers of property, were accused of betraying the interests of the whole Indian Community for the right to buy a few properties. In the face of these charges they were in danger of losing control of the Congress - which actually happened - and they sought to disown their own Pretoria proposals. It was, therefore, not impolitic to abuse the Province for breach of faith. The atmosphere thus created by the rival forces in Congress, acerbated by the accounts appearing in the Press of India, was, as the Indian Judicial Commission subsequently stated, responsible for the development of a thoroughly bad situation. The Commission considered that the intransigent attitude of the Natal Indians was largely due to the influence of politicians in India. South Africa had always been a valuable stick to beat the British Government with.

58. The Draft Ordinance was sent to a Select Committee. The Committee heard all the expert and representative witnesses from both sides. The City of Durban and the Indian Congress were both represented by Counsel. The Ordinance returned from the Select Committee amended in certain important respects as the Residential Property Regulation Ordinance. As a necessary incident in the control of occupation, provisions dealing with the control of the acquisition of property, had been inserted. It passed its third reading. The reaction in India was immediate. The most violent speeches were made against South Africa. The provision of the Reciprocity Act came into force. South Africans in India were to be treated on the same plane as Indians were said to be treated in South Africa. Charges that the "Nationals of India" in Natal were kept in a state of slavery, segregated in locations, bazaars, concentration camps or ghettos and subjected to forms of physical ill-treatment were wildly made and

widely believed. (How violent the Indian Press can be may be judged by the intervention of the Premier of Bengal in connection with the Communal riots in Calcutta. On 1 October 1946, in blaming the Press for fomenting the reign of terror in the streets, he said "The Government could not stand aside and watch passions being inflamed by irresponsible publication." The irresponsible publication of imaginary evil in South Africa has inflamed passion in both countries and caused the suspension of trade relations.)

59. As indicated above, the Administrator introduced into the Provincial Council a measure to which the Indians had agreed. The Provincial Council, in the plenitude of its power, amended this draft by including provisions for the control of the acquisition of property, this being regarded as ancillary to and indispensable for the attainment of the main object, the control of juxtapositional occupation. This was done in the bona fide belief that the Amended Draft Ordinance was in substantial conformity with the spirit if not the letter of the Pretoria Agreement. It had all along been understood, of course, that there were two parties concerned, the Indian Congress and the Provincial Council, whose undisputed constitutional right it was to amend any draft legislation placed before it. This the Indians well knew, and they had no reason to complain that the Provincial Council refused to accept every word of the draft legislation agreed to by them. The Provincial Council had to approach the matter from the point of view of the best interests of Natal as a whole.

60. It must be assumed that had the Pretoria Agreement been implemented according to the Indian interpretation by the passing of the Draft Ordinance, as it was first introduced into the Provincial Council, the passing of an Act of Parliament would have been unnecessary, and the appeal to United Nations would have been avoided. It is therefore necessary to examine closely the difference between the Draft Ordinance to which the Indians agreed and the measure brought up by the Select Committee which has been the cause of all the disturbance.

61. The only substantial departure made by the Provincial Ordinance from the Pretoria Agreement was in dealing with the acquisition and purchase of property instead of restricting the licencing to occupation alone. It was, however, not quite so simple as that. For the Indian speculator it was, no doubt, a serious matter, since only thirty per cent of the properties purchased in European residential areas were actually occupied by Indians: but to the mass of the Indian population it could not possibly be of much interest whether or not a rich Indian merchant was permitted to buy a European house on the Berea of Durban. What was of paramount interest - an interest which the Indian Congress, when it first made its approaches to the Province professed to have much at heart - was the prevention of racial hostility. In an atmosphere of racial hostility, the Indians had everything to lose. If racial harmony could be maintained, then everything was opened to them. Racial harmony was the grand objective of the Provincial Government responsible for the administration of the towns of the Province, as it was the keynote of the Pretoria Agreement.

62. The Amended Draft Ordinance emerging from the Select Committee did not entirely prevent the purchase of property by one race from another. (Incidentally the restrictions applied equally to both races. A European had no more rights in an Indian area than an Indian had in a European area. The legislation was fifty-fifty). What the new proposal did was to deal with a case where there was every reason to believe that a purchase, if accomplished, would give rise to racial friction. The measure proposed that before any purchase was effected by a member of either race from a member of the other race in a defined area, an opportunity should be given to the State to lift the probable cause of racial friction out of the market by authorizing the Natal Housing Board to purchase it. If the Board did not choose to acquire the property, then the purchaser, whether Indian or European was free to purchase. The governing factor in the case was the public interest by the maintenance of racial harmony. This was in conformity with the plans being worked out for the development of Durban.

63. The housing situation of Durban, as a result of its recent swollen population, had become acute. The Provincial Administration endeavoured

valiantly to grapple with the position which constitutionally lay within the Provincial sphere. After an extensive study of the existing Union legislation and the methods of financing housing schemes, it was decided that the position could best be met by giving power to the Executive to compel the proper provision of housing by Municipalities for all classes of the population. A Draft Ordinance, called the Natal Housing Ordinance, was introduced to meet this need. To render the power effective opportunity was taken to amend the old Natal law relating to the expropriation of land needed by the City of Durban for housing purposes. The old law was very cumbersome, and entailed such delay in the acquisition of land that building schemes which were eminently desirable in the public interests and which had been approved by the City Council and by the Central Housing Board, were subject to interminable delay in buying the necessary land from numerous owners. The new proposals, while assuring that fair compensation would be paid, permitted the City Council to proceed with the housing schemes. These two measures, since they affected Indians equally with Europeans, were considered by the South African Indian Congress to be another assault upon their rights and privileges.

64. There was another Draft Ordinance which emanated from the Post-War Works and Reconstruction Commission at the same time, which dealt with the supply of water to local authorities. Provision was made for the establishment of a Water Board, charged with the duty of assisting all urban authorities to meet their water needs, and with the development of schemes by amalgamating the individual water supply of a number of municipalities. This also was one of the measures to which the Indians took exception.

65. It is true that the four measures, the Residential Property Regulation Ordinance, the Housing Ordinance, the Expropriation Ordinance and the Natal Water Ordinances were linked together, but they were linked together in the Indians' interests as much as in the interests of other inhabitants of the Province. They were required to achieve "radial zoning" which constituted the scientific town planning of the future. Without it there could be no proper provision of all the civic amenities necessary to Europeans and non-Europeans

alike in the towns of Natal. It is equally true that the more advanced and liberal-minded members of the Natal Indian Congress recognized that this was a conscientious approach to the very difficult problem: and it was being made by the Provincial Administration in the face of much European public opinion concerned with potential increase in their rates which all these developments would entail; but it was a wise solution of the increasing urban difficulties which would arise in the post-war period. The rank and file of the Congress, however, were not to be appeased. In the manner with which South Africa is all too familiar, the organs of propaganda got to work and represented that this praiseworthy attempt (initiated by the Indian Congress leaders themselves) to grapple with the pressing problems presented by racial juxtaposition, was being designed solely to suppress the Indian Community and exploit their defencelessness. In the end, the Residential Property Regulation Ordinance was declared by the Union Law Advisers 'ultra vires' the South Africa Act, and the matter passed out of the Provincial legislative sphere.

66. On the declaration that the Provincial legislation was 'ultra vires', it was obvious that something else would have to be done. The Pegging Act was still in force. Its provisions had either to be extended beyond the three-year limit or some other provisions would have to take their place. The Indian Judicial Commission which was appointed to enquire into the wider aspects of the Indian position and suggest some alternative to the Pegging Act was still in session; though, as a result of the controversy which raged over the Residential Property Regulation Ordinance, the two Indian members resigned from the Commission and it was left to the remaining four European members to write the report. Their solution was another Round Table Conference between the Union and Indian Governments on the grounds that the driving force of all the agitation came from India. The Report declares:

"The Commission believes that the attitude of Indian politicians in India is largely based upon a misapprehension of conditions in South Africa. The bare facts of South African population statistics may be known in India: they are certainly not understood and appreciated. It is not understood in India that the South African Indian problem is not merely a quarter of a million Indians as against $2\frac{1}{2}$ million Europeans; the problem is largely conditioned

by the presence in South Africa of 7 1/4 million Natives. Moreover, if the propaganda emanating from India represents the honest belief of those who put it out, then the prevailing ignorance in India of the material conditions of South African Indians is truly amazing, for the picture painted by this propaganda is one of enslavement, cruelty and ruthless segregation An educated Indian witness freely admitted to the Commission that Natal Indians have made a greater material advance during the last 50 years than have their compatriots in India during the last 500 years."

The solution of holding another Round Table Conference in the face of the failures already experienced and which were directly responsible for the existing impasse, offered little promise of success for the future. Moreover, it was time that the question of the permanence of Indian domicile should be squarely faced once and for all. That could only be done by Union legislation.

67. The matter was now transferred from the Provincial to the Union legislative sphere. A Bill was introduced (the Asiatic Land Tenure and Indian Representation Act) to replace the expiring Pegging Act. The whole problem was tackled on the lines originally suggested by the Indians, but in a much bolder and more permanent way than was possible to the Provinces. What had previously been an experimental measure, which had been agreed between the Indians and the Provincial Council, but which had developed into a dispute on interpretation, now became the implementation of national policy. The prohibition of all racial changes in occupation without a permit from the Land Tenure Board of Europeans and Indians was extended to include acquisition and purchase and applied to the whole of Natal. It was made the same for both races - a statement of fact which never appears in Indian drawn indictments. If an Indian cannot buy from a European without a permit, neither can a European buy from an Indian. The whole of Natal became subject to control equally for both races, and with an impartial board to permit desirable changes there is no reason whatever to anticipate any injustice being done. Many Indians are rich. They collectively own a not inconsiderable portion of Durban and the surrounding country. The fruit and vegetable trade of Natal is almost entirely in their hands, and the Municipality of Durban has provided markets for their sole use. They are obtaining the monopoly of certain skilled trades:

and they are industrially organized into trade unions and politically organized by the Natal Indian Congress. Their press is entirely free, notwithstanding the fact that during the war it was largely subversive. The Indian monied class could have continued their speculative land operations without much comment if they had not acquired 326 sites in the European area of the old Borough of Durban between 1940 and 1943, while the Union was at war and nine per cent of its European population was in the armed forces.

68. The penetration of the European residential areas of Durban led first to the Pegging Act, a temporary device to peg the existing position pending an enquiry by a Judicial Commission; then, at the original request of the Natal Indian Congress, to the development of the Occupation Control Ordinance; and, when this failed, to the Asiatic Land Tenure Act passed by the Union Parliament, which is the immediate cause of the appeal to United Nations. Meanwhile in India non-Indian South African nationals have been denied the right to acquire any property anywhere, or to obtain any vested interests of any kind. This treatment of South African nationals in India is labelled "Reciprocity".

69. The sole object of the Land Tenure Act - an objective admitted to be necessary by both sides - is to prevent the residential juxtaposition of the races in order to avoid the growth of racial hostility. Where intermingling has already taken place to such an extent as to make the sorting out difficult or unnecessary, the area is declared exempt: elsewhere changes are to be made under permit. Fifteen exempted areas were declared by the Act in Durban and district alone which, in the aggregate comprise a considerable and major proportion of the whole. In these areas there are no restrictions of any kind: changes in occupation or acquisition between members of the two races are unaffected by the Act. There are also areas scheduled in other towns: and it is left to the joint-board to establish exempted areas in any part of the Province, with the exception of Zululand and the old part of the Transvaal.

70. All these provisions are in line with South Africa's continual efforts to develop its multi-racial community in harmony with the highest precepts of

Western civilization. The natural tendency of all races is to segregate themselves in their living areas. Under ordinary circumstances, in Natal, that tendency, which has been going on for years, would have gone on unhindered: but the exceptional circumstances created by the war broke across the tendency. A section of the Indian Community found itself with surplus wealth for investment, and since it claimed its religious scruples prevented the investment of its money in anything but landed estate, the penetration of European living areas took place. It took place on a wholesale scale, while the war was raging, and in consequence there arose an agitation which compelled the intervention of the State in order to maintain the peace. The issue of segregation raised by the Indians is the desire of the Europeans to segregate themselves. The image created by the word "ghetto" is a figment of the imagination.

71. With the initial introduction of the legislation into the Provincial Council consequent upon the Pretoria Agreement, a new factor had come into view. The Pretoria Agreement marked a change in outlook from that adopted in the Cape Town Agreement which regarded the Indian population as temporary residents. At Cape Town in 1927 and 1932 the South African Government conferred with the Indian Government concerning the "Indian in South Africa" while some Indians themselves were unrepresented. At the discussions with the Provincial Authorities in Natal in 1944, the Indians were dealt with and recognized as "South African Nationals". During the course of the second reading debate on the Draft Ordinance the Administrator said that the measure meant the demise of the Immigrant Community: the idea of repatriation was dead: and henceforth the people of Natal must realize that the Indians had become an integral and permanent part of the people of the Province. This was, in fact, a tremendous gain to the Indian population. It postulated a new approach to all questions of uplift which had previously been held to apply only to the residue when repatriation had proceeded far enough to ascertain how many were prepared to conform to Western standards of life. The significance of the new approach

was emphasized by the Prime Minister when he addressed the Indian Delegation at Pretoria. Field Marshal Smuts spoke to them as South Africans. He was happy that they had come forward with their suggestions. As South Africans they understood the circumstances of South African life and in approaching him they had done so as Union Nationals.

72. The question of the Indian status in South Africa was put beyond doubt when the Asiatic Land Tenure Act was extended to include an Indian Representation Act. For the first time in South African history legislation was passed to give an Indian political representation in the Union Parliament and the Natal Provincial Council.

73. It is passing strange that instead of the Indian Community recognizing the beneficent change which had taken place in their status in South Africa they should immediately have set to work to condemn, by distortion and exaggeration, a measure which the Government of the day was able to carry through Parliament only in the face of the greatest opposition - based not upon any objection to the Land Tenure sections of the Bill, but to the grant of Parliamentary representation to the Indians.

74. The adoption of this new principle of Indian parliamentary representation registers a complete change in the status of the Indians in South Africa. The Immigrant descendants of the scheduled classes of India have achieved on South African soil a standard of freedom from want and fear that their compatriots in India have never attained. There is nothing in the economic or educational or religious spheres open to Europeans which in Natal is not open to the Indians. They have complete freedom, within the limitations regarding occupation and acquisition established by the Act, to trade, to carry on any industry, to enter any profession, to establish any form of economic activity, equally with the Europeans of Natal. For the purposes of determining the grant of a permit for the occupation or acquisition of property outside the exempted areas, the board is to be guided by the general principles of harmonious planning which are so necessary to avoid the creation of racial hostility. In terms of the Act the board would consider "the relative needs of any races or racial group

concerned, in regard to housing, the amenities of life and educational and recreational facilities." The whole emphasis is upon social uplift, each section in South Africa, according to the stage of evolution reached, advancing in echelon within its group until the cultural and economic standards of the whole population approximate. The racial policies of South Africa are based on the principle - "unity in diversity". While maintaining complete freedom within the racial group to express its individual ethos (to follow its own religion and culture and maintain its own language) it permits it to progress always towards a national consciousness of which all will be proud. There is no other way in which the multi-racial people of South Africa, barbarian and civilized alike, can march together without conflict. It is in this scientific setting that the purpose of this and similar legislation in South Africa must be judged.

75. It has now become a grievance with the Indian Government that the Indians in South Africa have been accorded representation on a communal basis instead of on the common roll with Europeans. This attempt to give them a political status in the Union they never had before, is repudiated, because the Union Parliament has reproduced in South Africa the communal pattern which already exists in India. There is, however, a very valid reason why nothing more than communal representation can be granted. The Europeans of South Africa are responsible for seven and one-quarter million Bantu for whose welfare they have made themselves the trustees; that is a responsibility they are not yet prepared to share with the Indians. The efforts of European South Africa for nearly three hundred years have been to establish amongst the Native population the Christian way of life: and, though it is slow, it is none the less sure. All Native schools throughout the land began as mission schools. The Native colleges have everywhere a Christian foundation. All the Native leaders are Christians who were educated in these institutions. The development of Native life is towards the Christian West. Incidentally the 250,000 Indians have been given almost as great a representation in Parliament as the seven and one-quarter millions of Native people.

76. It may not be inopportune here to recall the following statement made by Mr. Sastri at the 1926-27 conference, with reference to Indians in the Union: "Please understand that we are not claiming on their behalf any political privileges. The time may come in the ultimate will of Providence when they may not be excluded from anything that is open to any citizen in South Africa, but political privileges we are not at present contemplating". This echoed the earlier statement made by Mr. Gandhi in his letter forming part of the Smuts-Gandhi agreement: "my countrymen do not aspire to any political rights." As late as the 1932 conference, Mr. Sastri stated: "if amongst you who seek seats in Parliament there are a few who represent these people, who habitually stand up for them and consider it their duty to represent their wishes and wants and fight for them, then that will be the end of the time that the Government of India will stand sponsors for them". The 1946 Act seeks to establish what Mr. Sastri envisaged here. It is nevertheless designated by the Government of India as a source of grievous dissatisfaction.

77. The issue now raised by the Indian Government is the future status of Indians in South Africa. Are they in practice to be regarded as Indian Nationals, as repeatedly asserted that they are during the controversy in India, and as shown by the Indian Memorandum that they are still considered to be by the Indian Government; or are they South African Nationals, as they are recognized to be by the law which is objected to? Are they to revert to the status they held at the time of the first Round Table Conference, when their repatriation was the accepted policy of the Indian and Union Governments; or are they to be fitted into the framework of South African society as Union Nationals for whom alone the Government and Parliament of South Africa are responsible? The choice must be made. The Union of South Africa is a Sovereign State and cannot acquiesce in any interference in its domestic concerns by any other State, a proposition which the present Government of India would clearly assert in regard to India. If it be acknowledged that the Indians in South Africa are Union Nationals, then they must be prepared to be loyal to those conditions of Government which the experience of generations has shown to be wisest and most

effective for the progressive growth and happiness of the whole. The South African State is today, and has been for many years, one of the most peaceful and law-abiding areas in the world, despite the fact that its police force is very small, and it has no security or secret police, yet it is a microcosm of races and creeds and tongues and cultures in various stages of evolution; hostility between them might easily degenerate into those orgies of civil strife and bloodshed with which the world is familiar in so many places. The peace has been maintained under the existing Parliamentary Government and political representation, which is broad-based on a European electorate. It is governed by considerations which it alone is in a position to appreciate - that its whole existence depends upon the harmonious development of all the people. Nowhere else in Africa has such a striking advance been made in human welfare in so short a time as in the Union and no section of the population has benefited more from this general advance than the Indians. The choice now lies with them to continue it or discard it. If they insist upon appeals to the Government of India, and if the Government of India continues, notwithstanding the parliamentary and provincial representation granted to them, to exercise a right of intercession and interference, on their behalf, as if they were India nationals, owing allegiance to the Government of India and not to the Government of the Union, an impossible position will be perpetuated, and the result can only be that the relations between all the parties concerned will continue to deteriorate to the detriment of all.

EDUCATION OF INDIANS IN NATAL
GOVERNMENT AND GOVERNMENT AIDED SCHOOLS

This statement is confined to Indian education in English.

(a) Literacy

No statistics are available to determine the percentage of literacy in the European language amongst Indians. According to the table 2 given in paragraph (d) it will be seen that - sixty per cent of all Indian pupils (sixty-eight per cent boys and forty-two per cent girls) reach Standard IV, which is usually accepted as the minimum school standard for purposes of determining literacy.

(b) Number of Pupils

It is estimated that there are approximately 59,000 Indian children of school-going age (six years to fourteen years). Of this number approximately 35,500 are at present enrolled in Government and Government Aided Schools. At least sixty per cent of Indian pupils of school-going age are actually attending school. This percentage for the years 1921 and 1936 are twenty-one and forty-four respectively. School enrolment has therefore increased from twenty-one per cent in 1921 to sixty per cent in 1946. No statistics are available in respect of Indian pupils in private schools. There are Mosque and Temple schools where the pupils are instructed in the various Indian languages and in the Indian religion.

(c) Cost per Pupil

The annual cost per pupil taken at intervals of five years is as follows:

1934/35	:	£4.19.11	for 16821 pupils
1939/40	:	£5. 2. 8	for 22788 pupils
1944/45	:	£10. 6. 7	for 29964 pupils

(d) Pupil Wastage

The enrolment in Classes 1 and 2 (the two lowest classes) cannot be taken as reliable for purposes of determining pupil wastage, because many Indian children when they first come to school cannot understand English,

the medium of instruction. Consequently very many of them have to spend from eighteen months to two years in Class 1 to acquire a working knowledge of the language which is to be the medium of their instruction throughout their school life. The percentage of retardation in Class 2 is also high, for the same reason. The enrolment of Standard I is therefore considered to be a fair figure to use as a starting point when studying pupil wastage.

Pupils who were in Standard VI in 1945 were in Standard I in 1940 and the wastage can therefore be seen in the following tables:

<u>Table 1.</u>				
<u>Year</u>	<u>Standard</u>	<u>No. of Boys</u>	<u>No. of Girls</u>	<u>Total</u>
1940	I	2564	1232	3796
1941	II	2394	1029	3423
1942	III	2065	733	2798
1943	IV	1743	520	2263
1944	V	1424	342	1766
1945	VI	1278	265	1543

On a percentage basis the figures work out as follows and should read:

(For every 100 pupils in Standard I only forty-one reach Standard VI).

<u>Table 2.</u>				
<u>Year</u>	<u>Standard</u>	<u>No. of Boys</u>	<u>No. of Girls</u>	<u>Total</u>
1940	I	100	100	100
1941	II	93	84	90
1942	III	81	60	74
1943	IV	68	42	60
1944	V	56	28	47
1945	VI	50	22	41

The following table gives the enrolment in all standards in 1945:

<u>Table 3.</u>				
		<u>Boys</u>	<u>Girls</u>	<u>Total</u>
Class	1	4796	3487	8283
Class	2	3430	2176	5606
Standard	I	2878	1863	4741
Standard	II	2627	1584	4211
Standard	III	2787	1135	3922
Standard	IV	2147	644	2791
Standard	V	1676	382	2058
Standard	VI	1278	265	1543
Standard	VII	316	52	368
Standard	VIII	283	39	322
Standard	IX	87	13	100
Standard	X	74	12	86
Totals		22379	11652	34031

(e) Government expenditure on Indian education given at intervals of five years are as follows:

Table 4.

<u>Year</u>	<u>Indian Education Costs</u>
1934/35	87,333
1939/40	121,552
1944/45	315,580

(f) The salaries paid to teachers and the minimum qualifications required are as follows:

Table 5.

<u>Assistants</u>	<u>Professional Certificate Equated to:</u>	<u>Men</u>	<u>Women</u>
Grade Ib)	Matric plus four	£240x15-420	£180x10-300
a)	years study	£435x15-465	£310x10-330
Grade IIb)	Matric plus three	£210x15-390	£160x10-380
a)	years study	£405x15-435	£290x10-310
Grade IIIb)	Matric plus two	£180x15-360	£140x10-260
a)	years study	£375x15-405	£270x10-290
Grade IVb)	Matric	£150x10-180	£120x10-220
a)		x15-300	
		£315x15-345	£230x10-250
Grade Vb	Junior Certificate	£120x10-180	£100x10-180
		x15-240	

Qualified Temporary Assistants are paid on a daily basis according to the b-scales of the respective grades given above.

Unqualified Assistants are paid according to the following fixed rates:

	<u>Men</u>	<u>Women</u>
Degree	£165	£130
2nd Year towards Degree	150	120
1st Year towards Degree	135	110
Matriculation	120	100
Junior Certificate	110	90
Lower than Junior Certificate	100	80

Principals' scales range from £480x15-15 (men) and £380x10-470 (women) to £255x15-390 (men) and £230x10-320 (women) for the six grades of secondary schools and from £360x15-495 (men) and £300x10-390 (women) to Assistant's salary plus an allowance of £30 per annum (men) and £20 per annum (women) for the six grades of primary schools.

The minimum qualifications for a principal of a secondary school are Degree plus Fourth Class Teacher's Certificate (T.4) and for a primary school the Fourth Class Teacher's Certificate (T.4).

A principal with a Degree and a Third Class Teacher's Certificate (T.3) gets a slightly higher salary for the same grade of school than one with a Degree and a T.4 Certificate. Similarly a principal with a T.3B Certificate gets a better salary for the same grade of school than one with a T.4 Certificate.

No statistics are available for the cost of training Indian teachers which takes place at Sastri College and the Durban Indian Girls' High School, where the number of student-teachers is only a very small percentage of the whole school.
