

DRAFT

WORKING PAPER

APARTHEID IN SOUTH AFRICA
AND THE
UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREPARED FOR
THE INTERNATIONAL SEMINAR ON THE LEGAL STATUS
OF THE APARTHEID REGIME IN SOUTH AFRICA AND OTHER
LEGAL ASPECTS OF THE STRUGGLE AGAINST APARTHEID.

Lagos, Nigeria
August 13-16, 1984
Sponsored by
The Special Committee Against Apartheid
in cooperation with
The Government of Nigeria

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INTRODUCTION

On December 10, 1948, in Paris, three years after the defeat of fascism, the Universal Declaration of Human Rights was ratified by the General Assembly of the United Nations by a vote of forty-eight to zero. The Union of South Africa was one of the eight member states who abstained. Ironically, given the support of the Reagan regime toward Apartheid South Africa, infra, the United States actively supported the approval of the Declaration. Then Secretary of State George Marshall called for its ratification by urging the nations to approve "a new declaration of human rights for free men in a free world".

Systematic and deliberate denials of basic human rights lie at the root of most of our troubles and threaten the work of the United Nations. It is not only fundamentally wrong that millions of men and women live in daily terror of secret police, subject to seizure, imprisonment, or forced labor without just cause and without fair trial, but these wrongs have repercussions in the community of nations. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field. 1/

Secretary Marshall's words are profoundly prophetic of the danger posed by South Africa's brutal system to the peoples of Africa and to World Peace.

1/ Marshall, G. Address Dec. 10, 1948: UN General Assembly, Paris
Dept. of State Pub. 3381 (1949)

The gun has played an important part in our history. The resistance of the black man to white colonial intrusion was crushed by the gun! Our struggle to liberate ourselves from white domination is held in check by force of arms. From conquest to the present the story is the same. Successive white regimes have repeatedly massacred unarmed, defenceless Blacks.

And wherever and whenever they have pulled out their guns, the ferocity of their fire has been trained on the African people.

Apartheid is the embodiment of the racism, repression and inhumanity of all previous white supremacist regimes. To see the real face of apartheid we must look beneath the veil of constitutional formulae, deceptive phrases and playing with words.

The rattle of gunfire and the rumbling of Hippo armoured vehicles since June 1976 have once again torn aside the veil.

(Nelson Mandela, in a letter smuggled out from Robben Island and published in 1980)

... Quoted in
Apartheid The Facts
International Defence and Aid Fund
for Southern Africa
London, June 1983

The Universal Declaration has become binding as a new rule of customary International Law since 1948.^{2/} The Geneva Conventions of 1949 provides the framework of protection of the victims of apartheid. They impose an "imperious obligation of civilization" on all contracting states to "ensure respect of the present Convention in all circumstances" by obliging UN member states to ensure that the South African regime complies with the provisions of the Conventions, otherwise other contracting states are themselves in breach.

A series of United Nations Resolutions and Declarations firmly rooted in the seminal Universal Declaration have laid an ample foundation for legal analysis of the continuous crimes against humanity committed by the apartheid regime^{3/} and the creation of legal obligations upon other states to support people seeking to exercise their human rights and rights to self-determination.^{4/}

2/ For example, the United Nations conference on Human Rights at Teheran in 1968 passed a resolution proclaiming inter alia that the "Universal Declaration of Human Rights...constitutes an obligation for the members of the International Community." (Text in American Journal of International Law, 1969 at 674) See also Filartiga v. Pena-Irala; International Legal Materials, 1980 at 966 and U.S.A. v. Iran ICJ Reports, 1980 at 342. The U.S. Supreme Court also relied on the Declaration in Lincoln Union v. Northwestern Co. 335 U.S. 525 (1949)

3/ See esp. The International Covenant on Economic, Social and Cultural Rights. GA Res. 2200 A(XXI), 16 December 1966; The International Covenant on Civil and Political Rights (GA Res. 2200 A(XXI), 16 December 1966; Optional Protocol to the International Covenant on Civil and Political Rights. GA Res. 2200 A(XXI) All Annexed hereto. The historic UN Resolution 1514 of 1960 declared the Right of Colonial Peoples to Independence and Self-determination. Apartheid was declared a crime against Humanity in 1966.

4/ GA Res. 2625 (1970) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states in Accordance with the Charter of the United Nations which expressly provides that: "In their actions against and resistance to,...action in pursuit of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter."

In 1973 the International Convention on the Suppression and Punishment of the Crime of Apartheid was passed. In 1975 the General Assembly made the historic declaration that "The racist regime of South Africa is illegitimate and has no right to represent the people of South Africa." It reaffirmed the "legitimacy" of the struggle of the oppressed people of South Africa and their liberation movements, by all possible means, for the seizure of power by the people and the exercise of their inalienable rights to self-determination."^{5/} Subsumed within these resolutions is the presumption that the rights of self-determination of a people and their struggles to achieve their human rights as articulated within the Universal Declaration are protected and protectable by other States as a peremptory norm of customary International Law. In short, the nations of the world have a duty to protect and support the struggle for these rights.

It is the intention of this paper to provide an overview of the continuous crimes against the human rights of the peoples of South Africa under apartheid and to focus particularly on recent legislative and policy acts of the regime which, if not reversed, will institutionalize even further the enslavement of the majority people of the region,^{6/} and the theft of their land and resources.

This author further notes with concern and alarm that notwithstanding the abundance of evolving International Law flowing from the Universal Declaration, UN legal doctrines and universally held principles of justice and equity,^{7/} the United States, not only flouts binding resolutions and treaties in respect to the outlaw pariah state of South Africa, it is in a conspiracy to rehabilitate this lawless regime in opposition to the express condemnation of the nations of the world.

^{5/} UN Res. 3411 E (1975)

^{6/} See esp. Report - Sub-commission on Prevention of Discrimination and Protection of Minorities-Working Group on Slavery E/CN.4/Sub.2/ AC.2/1982

^{7/} See for example; International Commission of Jurists, The Rule of Law in a Free Society (1959); United Nations Yearbook on Human Rights 1948 (1950); Potts "Law as a Tool of Social Engineering: The Case of the Republic of South Africa", 5 B.C. Int'l & Comp. L.J.1 (1982)

This unchecked lawlessness has accelerated the genocide of the majority peoples of South Africa, consolidated the flagrant illegal occupation of Namibia and intensified the military invasion of the frontline states in a desperate effort to reverse the tide of liberation of Africa.

This paper will outline the legal basis for increased support of the international condemnations of the minority settler regime and its major ally in crime against humanity: the government of the United States under Ronald Reagan.

A SHORT HISTORY OF APARTHEID IN THE
CONTEXT OF THE UNIVERSAL DECLARATION
OF HUMAN RIGHTS

Although the doctrine of Apartheid (separateness) was not codified in law until the National Party came into power in 1948, the subordination of the black population to the European invaders was established immediately upon the colonial conquest of the area in the mid-seventeenth century. White settlers from the Netherlands found the Cape Peninsula where they landed inhabited by the Khoikhoi and San peoples whom they called "Hottentots" and "Bushmen" respectively. The White settlers drove the Khoi and San from the land and stole their livestock, using their superior military might to crush resistance. Those who were not killed or driven from the area were forced into laboring for the whites. Additional slaves were imported from West Africa and the East Indies.

The settler society expanded across the land. Persistent resistance by the indigenous peoples was met with superior armed might. In 1806 the British sent their armies to take over the Cape Peninsula from the Dutch. The British abolished slavery in the Cape in 1834 relying on force and economic control to compel the labor of the African and Aisan people they had transported. By the end of the nineteenth century what is now South Africa consisted of four territories under white settler (colonial) rule. The Cape and Natal were British colonies. The Orange Free State and Transvaal

Republic had been established by the Boers (Afrikaners) who had left the Cape following the abolition of slavery.

After the Anglo-Boer War of 1899-1902, in which competing colonial interests warred over the territory of black people, the British ruled all four provinces which were joined together in 1910 as provinces of the Union of South Africa. The administration of the country was handed over to the local white populations. The Constitution of the Union preserved restrictions on black political and economic rights as the status quo.

By 1940, the white minority regime had consolidated its power and had established a racially segregated society in which the white settlers had absolute domination of landownership, the legal system, the political process, the distribution of wealth and control of every phase of social relationships. Industrialization had produced a black urban working class which became increasingly militant and restive under minority rule.

As early as 1922, the white minority settler regime sought ways to maintain a non-organized migrant labor supply. The National Party, coming to power in 1948 was elected not only for its policy to perpetuate racial segregation and white dominance but also on a platform which promised to control and regulate migrant labor. The undisturbed control of the wealth of the land and the labor to work it was one of the most appealing aspects of the doctrine of Apartheid to the white settler voters that put and maintain the National Party in Power.^{8/}

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND APARTHEID

By 1968 the UN Commission on Human Rights had denounced the policies of apartheid and condemned "...The Government of South Africa for its perpetuation and intensification of the inhuman policy of Apartheid, in complete and flagrant violation of the Charter of the United Nations and Universal Declaration of Human Rights."

^{8/} For a more complete discussion of the colonial history of South Africa, See inter alia. Wilson & Thompson eds. The Oxford History of South Africa, Oxford University Press, 1971 and Levy, Norman, The Foundation of the South African Cheap Labour System, Routledge & Kegan, London 1982.

The most cursory review of the practice of apartheid indicates that it violates all the provisions of the Declaration without exception.^{9/}

VIOLATIONS OF UNIVERSALLY ACCEPTED PRINCIPLES OF HUMANITY

Articles 1 and 2 recognize the absolute equality of all human beings "...without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origins, property, birth or other status".^{10/} Apartheid as a system which divides the resident peoples of South Africa into separate groups according to color; each with a specified political and social position within the system constituting a prima facie case of illegality. These divisions resulting from colonial conquest and white minority rule are codified in law and maintained by the force of arms.

The Population Registration Act, No. 30 of 1950, S.Afr.Stat. Sec.1 established racial categories^{11/} in the population as "white", "Coloured" and "Native" (subsequently "Bantu" and then "Black"). These racial categories are the basis for the disparate access to the rights, economic social and political, which are afforded each group.

^{9/} The complete text of the Universal Declaration of Human Rights is annexed to this paper for the reader's convenience.

^{10/} Article 2. Universal Declaration of Human Rights, (hereinafter UDHR)

^{11/} The "Coloured" group was initially divided into seven sub-groups-including all alleged to be offspring of interracial unions as well as "Indians", "Chinese", "other Asiatic". The term now refers to persons of mixed descent, people descended from the Malay slaves imported in the days of the Cape Colony, and descendants of the original people of the Cape--The Khoi and San. The remaining groups are referred to as Asian, almost all of Indian descent. There are also about 10,000 people classified as Chinese who have no defined status in the apartheid system.

The Reservation of Separate Amenities Act of 1953

established the segregation of public accommodation (public buildings, rooms, conveniences, bus stops, any vehicles or parts of them) for the use of people restricted by their "race or class". Such accommodations may be "substantially unequal".^{12/} It should be noted that according to the most recent statistics black people composed 85% of the population in 1980 (includes African, Indian and Coloured groups). Africans alone compose almost 75% of the total.^{13/} "The right to life, liberty, and the security of the person"^{14/} has not been granted to black people since the arrival of the white settlers and the egregious violation of this article against black people becomes increasingly notorious.

The system of apartheid has been declared "slavery" in violation of Article 4:^{15/}

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

^{12/} For a complete listing of "Laws Affecting Race Relations in South Africa 1948-1976" See this title in South African Institute of Race Relations (SAIRR), Johannesburg, 1978.

^{13/} Official S.A. Census figures: total population estimated at just under 29 million: African 72.7% (21.0 million), Colored 9.0% (2.6 million), Indian 2.8% (0.8 million), White 15.5% (4.5 million). African and coloured groups are subdivided along linguistic or other allegedly ethnic lines, whites of whatever origins are treated as a single homogenous group under the laws.

^{14/} UDHR Art.3

^{15/} "Apartheid is a collective form of Slavery". UN Commission of Human Rights Sub-Commission on the Prevention of Discrimination and Protection of Minorities - Report of the Sec. Gen. E/CN.4/Supp. 2/449 July 18, 1980.

THE USE OF CRIMINAL LAW AND CRIMINAL
PROCEDURE AS THE PRIMARY TOOL OF
POLITICAL REPRESSION

You have accused persons who have been in detention incommunicado--without access to anyone--for lengthy periods. They all make statements at one stage or another. You have witnesses in solitary confinement, incommunicado, held away from everyone. They all make statements. And what you then do is put the accused in the dock and you bring up the witness--straight out of solitary confinement--totally disoriented, not knowing what his rights are, usually not knowing what the charges are and sometimes not knowing who the accused are.

And you say to him: 'Speak, and tell us the truth' (which he may have learnt in solitary confinement). You add to that the legal structure of the crime in which the onus is very often reversed and the accused has to prove his innocence after certain things have been demonstrated. Add to that the whole structure of the trial. And then, as a token to the authenticity of the process add and mix one skilful advocate for the defence. Sometimes people are acquitted; sometimes people are convicted. But the process authenticates the repression of the opposition, gives it a stamp of authenticity.

Someone outside of Government has said: This man, this woman is a criminal.

Once you have defined the opposition as criminal you have validated the system.

(A description of trials under the Terrorism Act by Geoff Budlender, a Johannesburg lawyer in a talk to the Detainees' Parents Support Committee during 1982 (published in South Africa Outlook, September 1982)).

Articles 5, 6, 7, 8, 9, 10, 11, and 12 -- the embodiments of the universally recognized standards of due process and equal protection are violated under color of law every day the power of Apartheid is maintained.^{16/}

16/

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of an act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.

To analyze how South African law violates the fundamental rights enumerated above, one must consider the development of criminal law and criminal procedure in South Africa and how it is manipulated by the minority regime to maintain the status quo.

Before the unification of the four current provinces, there were two different systems of laws: English Criminal Law and Roman-Dutch Civil Law.^{17/} After the four provinces were united, because most judges, barristers and solicitors had been educated in the Cape Colony under English law and procedure, English Common Law served as their model^{18/} and controlled the drafting of the Uniform Code of Criminal Procedure enacted for the entire union.^{19/}

In the Common Law adversarial system, the law must be founded on certain absolute rights of individuals, the right of personal security, the right of personal property and the right to private property.^{20/} The Common Law requires that they be protected from infringement by the State as well as assaults by other individuals. To that end, the concept of due process of law is fundamental to legal systems founded in the Common Law. "(N)o man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land".^{21/} This definition seems to suggest that due process of law in

16/ (continued) Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

17/ See H. Gailey, History of Africa from 1800, (1972)

18/ Bodenstein, "English Influences on the Common Law of South Africa", 32 S. Afr. L.J. 337 (1915)

19/ Criminal Procedure and Evidence Act 31 of 1917; replaced by the Criminal Procedure Act 56 of 1955; replaced by the Criminal Procedure Act 51 of 1977.

20/ 1 W. Blackstone, Commentaries on the Law of England 129 (1783)

21/ A. Dicey, Law of the Constitution 174 (1885)

the Common Law context is satisfied by procedural safeguards such that an accused is placed on trial in open court, is given an opportunity of denying the charge, of defending himself and of being given counsel.^{22/} But legal scholars are in agreement that:

Due process of law is not simply a procedural matter. The Common Law system also demands that substantive due process be honored. This means that the laws imposing criminal liability are themselves subject to the requirements of due process. . . . Procedural fairness is important, but if criminal liability is imposed for unjust reasons, the result is injustice. Substantive due process directly tests the nature of the criminal laws the judiciary's response to them by reference to the principle of legality.^{23/}
(Emphasis supplied)

Before we examine the specific elements of the Criminal Law and Procedure of South Africa and how it markedly diverges from the basic common law by shifting its emphasis from the protection of individual rights to the maintenance of white minority domination of the peoples of South Africa,^{24/} we must examine the components of the principles of "legality."^{25/}

Principles and doctrines set out the basis for imposing criminal liability and define criminal laws severally. Scholars may differ on the precise formulation of the principles and doctrines which are inherent within the definition of the Rule of Law,^{26/} but each incorporates within the definition three elements or guidelines which fall under the maxim nulla poena sine lege: (without a legally defined crime, there can be no punishment).

^{22/} The South African government asserts that it upholds due process within the meaning of the English "Rule of Law" precisely because their adversarial system provides these elements. S.Afr. Dept. of Foreign Affairs, South Africa and the Rule of Law, 47 (1968)

^{23/} Potts, Lee W. "Criminal Liability, Public Policy, and the Principle of Legality in the Republic of South Africa" J. of Crim. Law & Criminology, 1061 Northwestern U. School of Law (1982).

^{24/} Potts, idem at 1062

^{25/} See for example, Hall, General Principles of Criminal Law (2d ed. 1960); A. Dicey The Law of the Constitution (10th ed. 1945) Pound, "Justice According to Law", 13 Colum L. Rev. 696 (1913)

^{26/} idem.

First, no conduct may be held criminal unless it is precisely defined; second, penal statutes are to be strictly construed in favor of defendants and finally, penal laws are not to be given retroactive effect.^{27/} Each group of South African Criminal Statutes will be analyzed in the context of these principles of legality, in light of the relevant provisions of the Universal Declaration of Human Rights.^{28/}

In the United States the validity of a law challenged for vagueness depends on whether citizens "must necessarily guess at its meaning".^{29/} In England, courts have held that it is their function to administer the law not to make it, but when a law is vague, it is the role of the courts to determine its scope.^{30/}

The South African National Party has enacted a long series of Criminal Statutes which provide no precise guidelines as to what constitutes illegal activity and are clearly intended to protect the regime, to eliminate political opposition and to limit the mobility of black people. The Internal Security Act^{31/} originally entitled the Suppression of Communism Act^{32/} was the earliest vague regime maintenance act.^{33/}

^{27/} J. Hall supra at 24-28

^{28/} See supra note 16

^{29/} Winters v. New York 333 U.S. 507, 518 (1948); Connally v. General Construction Co., 269 U.S. 385 (1926)

^{30/} See for example Harnett v. Fisher (1927) K.B. 402; Baylis v. Bishop of London (1913) 1 Ch. 127

^{31/} The Internal Security Amendment Act No. 79 of 1976, S.Afr.Stat. 921-23 (1980)

^{32/} Act No. 44 of 1950, S.Afr.Stat. Sec. 1 (1980)

^{33/} Potts - supra

Purporting to be directed against organizations actively engaged in activities advancing communism, the wording of the statute shows its purposes are much broader. The Act defines "a Communist" as anyone who has advocated achievement of any object of communism. Since the Communist Manifesto ^{34/} supports free education for children in public schools, the abolition of child labor and a progressive income tax, almost any political group or social welfare organization could be defined a "Communist" within the Act. In 1953 the leaders of the African National Congress (ANC) were convicted under the Act for furthering "Communism" by organizing protests against the Pass Laws^{35/} (discussed below). Furthering the objectives of communism also includes advocacy of any statement which "aims" at encouragement of hostility between the "European" and "non-European" races of the Republic.^{36/}

By a 1963 amendment the Act was extended to provide capital punishment for any South African resident, current or past, who "advocated, advised, defended or encouraged the achievement by violent or forcible means of any object directed at bringing about fundamental social, economic or political change through cooperation with "any foreign government or any foreign or international body or institution."^{37/}

The Suppression of Communism Act gave the state president power to ban any other organization, in addition to the Communist Party, which advocated "Communism" within the meaning of the Act. In 1967, the South African Defense and Aid Fund was declared a banned organization under the Act because they might provide legal aid to defendants who were communists.^{38/}

^{34/} K. Marx & F. Engels, Manifesto of the Communist Party (1948).

^{35/} Regina v. Sisulu (1953) 3. S.A. 276 (A.D.)

^{36/} Act No. 44 of 1950 S.Afr.Stat.Sec. 10 (iii) (1980)

^{37/} Idem Sec. 11(b) added by General Law Amendment Act No. 37 of 1963, S.Afr.Stat. Sec. 5(a) 1980.

^{38/} South African Defense and Aid Fund v. Minister of Justice (1967) 1 SA 263 (AD)

Under the Act all real and chattel property held by a banned organization is subject to confiscation. A "liquidator" appointed by the state may enter any premises, seize or demand production of documents at any time and without notice. Persons declared to be members of proscribed organizations are subject to special restrictions^{39/} (popularly known as the Banning Law). They can be removed from public office, and forbidden from holding future public office. They are expressly banned from the practice of law, may be prohibited from attending any gathering^{40/} and are subject to specific restrictions on personal movement up to house arrest and may be forced to relocate. Banned persons have no right to legal representation to challenge banning orders.

National protests against the Pass Laws were organized by the ANC and other organizations leading to violent confrontation including the infamous Sharpeville Massacre in which sixty-nine peaceful protesters were massacred and hundreds injured.

As a response to the Sharpeville demonstrations and increasing popular outrage against the ever spreading institutionalization of the cancer of apartheid, the Unlawful Organizations Act was passed.^{41/}

The Unlawful Organizations Act merely requires that the State President be satisfied that the activities of an organization threaten "public order". There is no "clear and present danger" test or any other kind of standard. Any organization which "directly or indirectly" carries out the activities of the African National Congress or the Pan African Congress can be dissolved as an ipso facto threat to "public peace." Accelerated public struggle against the regime resulted in even more repressive legislation to be passed.

^{39/} Act No. 44 of 1950, S. Afr. Stat. Sec. 10 (1980).

^{40/} The Supreme Court of South Africa has defined "gathering" as "any number of persons from two upward" State v. Wood (1976)

^{41/} Unlawful Organizations Act, No. 34 of 1960, S.Afr. Stat. (1980)

In 1976, the Internal Security Amendment Act of 1976^{42/} permitted the Minister of Justice to detain any person who "engages in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order."^{43/} This Act extended the scope of the Suppression of Communism and Unlawful Organizations Act to individuals. No political or organizational link must be established.

Increasingly, as popular opposition has increased, the range of prohibited actions has been broadened and peoples' rights under the laws have become more and more limited. The powers of the regime to act and to withhold information have been increased.

Vast extensive arbitrary powers are vested in the executive and the jurisdiction of the courts is excluded. The conduct of the police and the administration of law is removed from judicial and public scrutiny.

Early in 1982 a government appointed Commission^{44/} recommended that the security laws should be made more "efficient" and "effective". In June 1982, the Internal Security Act of 1982 was passed. The new Act embodied all the powers contained in the previous existing security legislation and added even broader powers.

The Minister of Law and Order retained the power to declare certain organizations illegal, to compile lists of alleged officers, members and activists of organizations declared illegal, to ban individuals, place them under house arrest, to ban meetings and gatherings, to ban newspapers and other publications, to detain witnesses for political trials and to hold people in indefinite preventive detention.^{45/}

^{42/} Act No. 44 of 1950, S.Afr.Stat. Sec. 10 (iv) (1980) (added by Internal Security Amendment Act 79 of 1976, S. Afr. Stat. Sec. 4 (1980))

^{43/} Emphasis supplied.

^{44/} The Rabie Commission.

^{45/} Apartheid the Facts, International Defense and Aid Fund for Southern Africa, London, 1983.

The new Internal Security Act introduced the new offense of "subversion", defined broadly as including actions which are aimed amongst other things, at "causing or promoting general dislocation or disorder," prejudicing the production and distribution of commodities or the "supply and distribution of essential services" or the "free movement of traffic", causing "feelings of hostility between different population groups"; encouraging or aiding any other person to commit any of the acts listed. Anyone guilty of "subversion" is liable for imprisonment up to 25 years. For the offense of "terrorism" the penalty can include death.

The 1982 Internal Security Act broadens all summary powers of the government to repress resistance to the increasingly harsh regime. Constituting a comprehensive denial of rights, these laws create the conditions under which the torture and murder of detainees is routine and outside the review of the courts. Under the 1982 Act, preventive detention, detention for interrogation and detention for potential witnesses is legal.^{46/} No court of law has any jurisdiction to review the validity of such actions.

The powers which the South African police and military possess and laws to act against opponents of the regime have increased proportionately to the perceived threat. Political repression is ever increasing on a wider and wider scale.

Both criminal statutes including the vaguely drawn laws discussed above, have been given retroactive effect. It has long been a cornerstone of Anglo-American jurisprudence that "all laws should be made to commence in futuro".^{47/} The Universal Declaration of Human Rights Article 11 provides in part: "No one shall be held

^{46/} The Act purports to limit the period of detention to six months, but the police can give "reasons" to a Board of Review, why the person should not be released.

^{47/} 1 J. Bertham Works 326 (1843)

guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed." For example, the Terrorism Act, supra, approved in June 1967 was given retroactive effect to June, 1962. The Unlawful Organizations Act^{48/} provides that the President can declare that an organization has been banned as of a prior specified date.

The President need only to determine that the organization is a continuation of a previously banned organization or that it is "promoting objectives" similar to such an organization. Members of the newly banned organization are automatically deemed members of the previously banned organization. They are therefore made criminally liable for prior acts of the previously banned organization. Thus the regime proclaimed the South African Communist Party, organized in 1960, to be the Communist Party of South Africa which had been banned in 1950. A South African Communist Party organizer was accordingly sentenced to four years imprisonment in 1967 for furthering the aims of "communism" as defined in the Internal Security Act of 1950, which had been repealed.^{49/}

The perversion of legality which pervades the criminal laws of South Africa is a naked effort to repress resistance. No single discussion can detail its scope or its capacity to obliterate

^{48/} S.A. Act No. 34 of 1960 S.A. Afr.Stat. Sec.1(3)(c)(1980)

^{49/} State v. Arenstein (1967) 3 S.A. at 379

any democratic rights of the people to redress grievances or to secure any political power.^{50/} (See also below for full discussion of the new South African Constitution)

50/

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Torture and Death of Detainees

The power to detain without trial is characterized by secrecy and lack of accountability by the security police. Families are rarely ever told at which police station their relative is being held. No court can order the release of a detainee. No visits or legal advice are allowed. As we have seen, the current powers to detain people without trial have been established and expanded since 1960.

In that year, under the Public Safety Act, emergency powers were used to detain a recorded 11,000 people,^{51/} and 4,700 people were detained under a proclamation under the Bantu Administration Act in the Transkei area.^{52/} Since then such power has been institutionalized through the adoption of successive and increasingly summary laws as riders to the criminal control bills discussed above. In 1961 12 day detention was introduced. The next stage was 90 day detention introduced in 1963. Followed in 1965 by an 180 day detention law which also provided for the detention of "potential" state witnesses.

50/ (continued)

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

International Declaration of
Human Rights.

The reader is referred to inter alia, Violations of Human Rights in Southern Africa, Progress Reports of the Ad Hoc Working Group of Experts prepared in Accordance with Commission on Human Rights Resolutions 1983/9 and 1983/10 E/CN 41 1984/8

^{51/} S. Parry Outcasts from Justice, Center for Applied Legal Studies - University of Witwatersrand, Johannesburg, 1981

^{52/} See below for a discussion of the Bantustans and theft of citizenship of the majority people in South Africa.

In 1966, a 14 day renewable period for interrogation was introduced in the General Law Amendment Act. In 1967, the Terrorism Act, Sec. 6 allowed for indefinite detention for interrogation of suspected "terrorists". Preventive detention for up to a year at a time was authorized under the Internal Security Act as amended in 1976. Potential witnesses could be detained for 180 days.

As resistance to apartheid becomes more widespread and organized among the people, preventive detention is used on a broader and broader scale.^{53/} Torture of detainees during interrogation so severe as to lead to death is an integral part of the apartheid regime's plan to suppress resistance.^{54/} "Evidence" extracted under torture are frequently the only source for prosecution at trial. Detainees^{55/} are kept in extended solitary confinement, by definition severe torture by sensory deprivation. In addition, many other forms of abuse are applied: days of ceaseless interrogation, deprivation of sleep, forcible standing, electric shock treatment, merciless beatings, partial suffocation and drownings and sexual abuse and rape of women and girls. It should be noted that children as well as adults are subject to the same powers of detention and interrogation.

^{53/} In 1981, for example, coincident with increasing industrial workers and trade union militancy as well as two mass political campaigns against the celebration of the 20th anniversary of the white settler republic and against the elections of the South African Indian Council, thousands were detained.

^{54/} A government Commission (1982) reported that detention without trial was the most "important means" the police had to obtain information about subversive activities. Rand Daily Mail - April 2, 1982.

^{55/} Detainees who have survived have described their torture in brutal detail. See for example, Reports in Focus on Political Repression in Southern Africa - International Defence and Aid Fund, London, 1980 et seq.

ECONOMIC EXPLOITATION: THE REPRESSION
OF TRADE UNIONS UNDER APARTHEID

Since the major mine strike of 1946 and the adoption of the 1949 Programme of Action of the African National Congress, the black labor movement has been a specific target of the repressive regime. As Africans are denied the vote or any political representation in South Africa, black unions are the only institution of organized power to assert the economic and social rights of the majority people.

The minority regime is profoundly afraid of black unions organizing the overwhelming economic power of black workers against them. Without black workers, the South African economy would collapse. They constitute 82% of the South African workforce. They mine the gold, diamonds and other minerals South Africa exports. They work in the factories that supply white South Africans with consumer goods. They plant and harvest the crops that feed the country.^{56/}

The rights of workers are set forth in Articles 23, 24 and 25 of the Universal Declaration of Human Rights:

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration insuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.

^{56/} "Black Workers Under Siege" Africa Fund and District Council 37 AFSCME - The Repression of Black Trade Unions in South Africa, 1983.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

A. Working Conditions Under Apartheid

The wages for black workers are much lower than white workers. Africans as a group are paid lower wages than Coloured and Indian workers. Black African women are paid the lowest of all.^{57/} In place of the principle of "equal pay for equal work", recognized as a right by Article 23, South Africa has legislated the policy of "reserved jobs" for whites only; and cemented the practice of this policy with Allocation of Occupation Agreements and Closed Shop Agreements. Thus, in the mining industry, the Mines and Works Act No. 27 of 1956 requires that only a "scheduled person", holding a government certificate, not available to Africans, be permitted to hold skilled jobs. The Allocation of Occupation Agreement determines that the white union is to be the sole representative of certain mining occupations, while the closed shop guarantees the whites control over the skilled jobs.^{58/} Meanwhile, job title restrictions do not prevent Africans from performing the skilled work, but only from being compensated fairly for doing it. Thus, Black miners are reported to do much of the blasting in South African mines, although they are legally barred from obtaining the certificate that would allow them to be paid for this work.^{59/}

^{57/} Apartheid The Facts, supra.

^{58/} Violations of Human Rights in Southern Africa, supra.

^{59/} Progress Report, supra: Violations of Human Rights in South Africa, supra.

Article 23 declares that workers are to be protected against unemployment, but in South Africa, unemployment among African workers has been estimated at up to 25%, while unemployment insurance is not available to many Black workers.^{60/} Until 1979, Black mine workers were not protected by the Unemployment Insurance Act, and most Black workers continue to be deprived of any form of unemployment compensation.^{61/}

Dreadful working conditions to which Black laborers are subjected are intensified by the horrendous living conditions of migrant workers who are barracked in single-sex hostels or in company owned compounds.^{62/} For African women employed as domestic workers, the largest category of employment for African women, wages are even more disparate than for men. The average monthly wage for non-farm labor African men of 220 Rand is less than one-fourth the average wage for white workers. One survey indicates that more than one third of domestic workers receive a monthly wage of under 75 Rand.^{63/}

As bad as the conditions are for Black workers in urban areas, the conditions of agricultural workers are even worse. Article 4 of the Universal Declaration of Human Rights states "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". In this, the penultimate decade of the twentieth century, the system of agricultural labor in South Africa has no closer analogy than the system of chattel slavery legal until 1865 in the United States.

^{60/} Progress Report, supra.

^{61/} Violations of Human Rights in Southern Africa, supra.

^{62/} Apartheid the Facts, supra.

^{63/} idem

Farm wages for African workers are as low as 10 to 20 Rand per month, with a national average of 25 to 35 Rand per month. This pittance is supplemented by payment in kind in the form of a ration of mealie meal, and meat which has begun to spoil. As a result, malnutrition is common among the children. Child labor is widely exploited at wages of 8 Rand per month. Farm workers are told that they are "provided" with "free" housing, but are in fact required to build their own homes. Their work in the fields can be up to 54 hours a week.^{64/} The government accomodates this treatment by excluding agricultural workers from minimum wage provisions^{65/} while specifically prohibiting the formation of unions by agricultural workers.^{66/} Moreover, the label of "farm labourer" in an African's pass book makes one an agricultural worker for life, unless the farmer agrees that there is no shortage of farm labor elsewhere.^{67/}

According to testimony given to the Ad Hoc Working Group of Experts, it is commonplace for farmers to beat workers in their employ at the farmer's discretion without fear of prosecution. Witnesses have testified that "South Africa is the only country except Chile where agricultural productivity is dependent on violence towards the labourer", and widespread incidents of torture, sexual mutilation, and even homicide have been reported.^{68/}

The factors which identify the South African agricultural system as a slave system include (a) starvation wages and payment in kind, (b) extremely long hours, and miserable working conditions uncontrolled by the state, (c) widespread use of child labor, (d) no rights of workers to change their status, (e) government

^{64/} Violations of Human Rights in Southern Africa, supra

^{65/} Wage Act No. 5 of 1957

^{66/} Industrial Conciliation Act No. 28 of 1956

^{67/} Apartheid the Facts, supra

^{68/} Testimony of Eugene Roelofse, reported in "Progress Report", supra

enforcement of the status, and (f) violence toward workers as an integral element of the system. Except that in the South African version, since there is such an over abundance of workers, the farmer has no duty to support the laborer who is too old to be productive, or to guarantee employment to the laborer.

B. History of the Labor Movement in South Africa

There is a long history of trade unionism among black workers attempting to secure their economic rights. The history of the repression of black labor in South Africa is precisely as long as the history of colonial occupation. By the 1920's there were as many as 100,000 members in the Industrial and Commercial Workers Union. By 1945, the Council of Non-European Trade Unions had 119 trade union affiliates with a combined membership of 158,000 workers.^{69/} Following a surge of labor militancy, including a major mine workers strike in 1946 severe repression of black and non-racial unions became an express government policy. A concerted campaign to prevent Black and white workers from organizing together continues to this day. In 1953, racial segregation became a condition of union registration; by 1963 only 13 African trade unions with a membership of slightly more than 16,000 were known to be in existence.^{70/}

The South African Congress of Trade Unions (SACTU) was established in 1955. From its inception it has endured severe repression. While the organization has not been banned, its activities have been banned and harassed in a number of ways, forcing SACTU to operate underground since the 1960's.

In the 1970's there was a resurgence of sustained industrial militancy by black workers. By the end of 1981 there were approximately 200,000 members of "independent" unions.^{71/}

^{69/} D. Davis, African Workers and Apartheid, IDAF, London, 1978.

^{70/} Idem at 111

^{71/} Mainly non-racial with a predominantly black membership.

In 1979, the government attempted to bring independent unions under its control. Unions with black members were ordered to register and become involved in the official negotiating machinery. In 1981 new legislation extended controls to non-registered unions and added further restrictions on union activity. During 1981 over 300 trade unionists and workers were detained under various security laws and at least 1,200 people appeared in court as a result of participation in labor disputes or trade union action.^{72/}

Although it is technically legal to strike at this time, the "right" is so restrictive as to be a nullity. From 1953 to 1973 strikes by black workers were outlawed. From 1973 to 1981 only three out of over 1,400 recorded strikes by black workers had been declared "legal". All strikes in "essential" services are illegal.^{73/} In addition, the criminal laws are used against strikers. Picketing and "incitement" to strike are illegal gatherings under the Riotous Assembly Act,^{74/} a law passed in 1982. The Intimidation Act contains similar provisions and was applied to striking workers within weeks of its adoption by Parliament.^{75/} Under the Labor Relations Amendment Act of 1981 No. 51 it is illegal to give financial assistance to workers engaged in an "illegal strike."

Perhaps the most ferocious weapon in the regime's arsenal against an effective right to strike by black workers is the power the state has over migrant workers, since, at law, black workers become unemployed if they strike and can be forcibly evicted from urban areas and sent to the Bantustans.^{76/}

^{72/} South African Labour Bulletin, September 1981.

^{73/} They include the production of light, power, water, sanitation, all transportation, processing, distribution and delivery of perishable foodstuffs, supply and distribution of gas and other fuels. In addition, the government can declare any service "essential" D. Davis, supra, at 31.

^{74/} Act No. 17 of 1956, S.Afr. Stat. ec.3 (1980).

^{75/} Focus No. 42 Sept-Oct 1982.

^{76/} The right of black people to remain in urban areas in South Africa is largely linked to their employment. With the

As but one example, during a wave of work stoppage by miners in 1982, over 3,000 strikers were sent to the bantustans.^{77/} The treatment of just a few well known labor activists within the past few years is most instructive on the illusory right in South Africa of black workers to organize.

In 1980, the South African government arrested Oscar Mpetha, then 72 years old, a founder of SACTU and, at the time of his arrest, a national organizer of the African Food and Cannery Workers Union with an international reputation for his forty years of trade union work. He had been Cape Chairman of the African National Congress until the ANC had been outlawed. Mpetha and his 18 co-defendants, (State v. Oscar Mpetha and 18 others) almost all of whom were young workers under 21 at the time of the arrest, were charged under the Terrorism Act for sabotage against the state because of his leadership role in organizing and participating in a bus boycott in Nyonga Township against increased fares. In the course of the two year trial, the state tried to prove its claims

^{76/} (continued) exception of those few Blacks who were born in urban areas, provisions of the Black (Urban Areas) Consolidation Act restrict the right of the vast majority of Blacks to remain in urban areas for more than 72 hours unless they are employed there, or have worked for one employer continuously for 10 years, or are the spouse of someone with such rights. That Blacks are welcome in urban areas only as long as their labor is required is emphasized by Section 28 of the Act, which authorizes the "removal of redundant Blacks from urban areas," and Section 29, which in effect establishes that an "idle" Black has committed an offense punishable by detention for a period not exceeding two years in a farm colony or by deportation, inter alia, to "any rural village". These influx control laws and the ever present threat of losing residential rights by breaking the period of continuous employment act as an effective deterrent to participation in any industrial action which may result in dismissal. "South Africa, 1983, Reorganizing Apartheid" Lawyers Committee for Civil Rights Under Law, Washington D.C., (1983 Annual Report). See also the discussion on Bantustans below.

^{77/} Focus, No. 43. Nov-Dec 1982

of a plot to randomly murder whites. The defendants had been held incommunicado under Section 6 of the Terrorism Act, for four months after arrest. The trial was attended by the distortions of due process which typify South African political trials, including the introduction of "confessions" obtained from defendants and statements of state witnesses made under torture and other duress. Mpetha, a diabetic whose health deteriorated seriously during the trial, was denied bail and was required to sit through parts of the trial shackled in leg irons, though a peripheral vascular disease prevented him from walking. Ultimately, Mpetha was found guilty of "terrorism" but acquitted of murder in June 1983 and sentenced to five years imprisonment after one of the longest trials in South African history. Nine of the other young workers were convicted of "terrorism" and murder, and eight were acquitted or had the charges dismissed.^{78/} Mr. Mpetha's health continues to deteriorate while international efforts are being made to mitigate his sentence.

Another notorious case involves the death in detention in 1982 of labor activist Dr. Neil Aggett, who was allegedly found hanged in his cell after being tortured in confinement. Aggett, the first white to die in detention, was an official of the South African Food and Cannery Workers Union. He had been held under the Terrorism Act for five months. At the inquest held after Dr. Aggett's death, several witnesses testified that he had been repeatedly tortured by sleep deprivation, electric shocks and beatings while in detention.^{79/} Over fifteen hundred persons attended his memorial service called by the Food and Cannery Workers Union.

^{78/} Violations of Human Rights in Southern Africa, supra

^{79/} Violations of Human Rights in Southern Africa, E/CN4/1485
(1982)

Two other SACTU activists, Petru and Jabu Nzima had been forced to flee South Africa but had continued their work in support of the Trade Union Movement outside South Africa. The two were murdered by a bomb planted in their car in June, 1982. Other incidents have been reported in which white civilians have committed murders of black strikers and have not been arrested, even when witnesses were available.^{80/}

One incident during 1981, involved the shooting of Khona Mahlangu, a striker at Sigma, the motor manufacturing plant owned by Anglo-American Corporation and Chrysler Corporation. Mr. Mahlangu was shot by a white woman in a car after he and other striking workers were dismissed and forced off the plant. No charges were brought against his murderer, despite the presence of witnesses. In another incident in 1980, Samson Owele, a shop steward for the National Union of Textile Workers, had been charged criminally with inciting workers to strike. While awaiting trial, he was fatally shot by "a masked gunman" who was not apprehended.

Repression taken to these extremes violates not only the right to organize trade unions, guaranteed by Article 23 of the Declaration but also the right to "life, liberty and security of the person" guaranteed by Article 3.

The wages and working conditions of Black workers under apartheid are themselves so horrendous as to constitute human rights violations in their own right. Under Article 23 of the Declaration, "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment", "the right to equal pay for equal work", and "the right to just and favourable remuneration insuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."

According to official South African government statistics,^{81/} African workers' wages are less than one fourth of the wages paid white workers in mining, manufacturing and construction.

^{80/} Testimony of Ms. Ilva Mackay reported in "Progress Report" Prepared by the Ad Hoc Working Group of Experts. E/CN.4/1485(1982)

^{81/} Bulletin of Statistics, Department of Statistics, Pretoria (1981)

VIOLATIONS OF THE RIGHTS TO LIFE

A. Prisoners of the War Against Apartheid

The continuous, flagrant, and knowing violations of Articles 28, 29 and 30 of the Universal Declaration of Human Rights,^{82/} by the minority regime against the peoples of Southern Africa has unified world opinion in support of the liberation of its people.

In 1961, the United Nations rejected the apartheid regime's assertion that apartheid was a "domestic matter" outside the international community's purview and jurisdiction and by resolutions declared apartheid as a danger to international peace and security.^{83/}

82/

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Universal Declaration of Human Rights

83/ G.A.Res. 1598 (XV), 13 April 1961, and G.A.Res. 1663 (XVI) 28 November 1961. Annexed hereto is a complete Chronology of United Nations Action Against Apartheid (to 1983)

After repeated requests by the General Assembly of the Security Council to adopt mandatory sanctions against South Africa in 1966, the General Assembly condemned apartheid as "a crime against humanity".^{84/} In 1968 the General Assembly declared that freedom fighters against apartheid should be treated, following arrest, as prisoners-of-war in line with the 1949 Geneva Convention.^{85/}

In 1969, the General Assembly recognized the struggles of the majority peoples of Southern Africa as struggles for self-determination and majority rule as well as for human rights and fundamental freedoms.^{86/}

By 1974, South Africa was suspended from the General Assembly as an international pariah.^{87/} In October 1976, the African National Congress (ANC) and the Pan-Africanist Congress (PAC) (both banned in the apartheid state) were invited to participate in the debate on apartheid in its plenary meetings where they enjoy permanent observer status along with the South West Africa Peoples' Organization (SWAPO of Namibia).

In 1977 the international community took formal steps to safeguard the rights of belligerents under conditions of civil war, by adopting Additional Protocol 1 & 2 to the Geneva Convention of 1949 on the Treatment of Prisoners of War, requiring that liberation forces be accorded Prisoners of War treatment.^{88/} South Africa has refused to sign this accord, but the widespread acceptance of its terms by the international community has demonstrated that this accord reflects customary international law as the expectation of the world community.

^{83/} (continued) compiled by the International Defense and Aid Fund for South Africa in Cooperation with the United Nations Center Against Apartheid, London (June 1983).

^{84/} G.A. Resolution 2202 A(XXI) 6 December 1966

^{85/} G.A. Resolution 2396 (XXII) 2 December 1968

^{86/} G.A. Resolution 2506 (XXIV) 21 November 1969

^{87/} A draft resolution in the Security Council to expel South Africa from the United Nations was defeated on 30 October 1974 by a triple veto from Britain, France and the USA

^{88/} Official Reports, Diplomatic Conference on the

South Africa, in its treatment of captured combatants has refused to recognize the existence of political prisoners in South Africa or to accept the Geneva Convention governing Prisoners-of-War.^{89/}

There is, however, ample objective evidence that the apartheid regime singles out captured combatants of the liberation movements for particularly barbarous treatment. Testimony at one trial after another indicates that ANC combatants are treated with particular ferocity: exceptionally prolonged solitary confinement, severe torture followed by trials heavily weighted in the state's favor.^{90/} In addition, the apartheid state is increasingly using the death sentence against ANC prisoners-of-war.

In 1979, one of these, Solomon Mahlangu was hanged, the first freedom fighter executed since the early 1960's. Since 1979, at least ten more members of Umkhonto we Sizwe, the armed wing of ANC, have been sentenced to death, in each case for high treason.

Anthony Tstotsobe, Johannes Shabangu and David Moise sentenced to death for treason following the 1980 explosions at the Sasol II Synthetic Fuel Production Installations were pardoned after an international campaign for clemency. Their conviction was based, in part, on the court's ruling that membership in the ANC alone is sufficient grounds for conviction of high treason.

^{88/} (continued) Reaffirmation and Development of International Humanitarian Law Applicable to Armed Conflicts.

^{89/} The African National Congress, recognizing that a state of war exists between itself and the illegal state, has formally accepted the rules of the Geneva Convention governing P.O.W.s taken during the war of liberation.

^{90/} Violations of Human Rights in Southern Africa (1984) supra, Amnesty International - Report of Malcolm M. Smart - before the Ad Hoc Working Group of Experts.

In 1982 ANC freedom fighters, Telle Simon Mogoerane, Jerry Semano Mosololi and Thabo Marcus Motaung, were found guilty and sentenced to death. They were executed on June 9, 1983 despite the many appeals for clemency made by the General Assembly, the Security Council and other United Nations bodies and international humanitarian organizations.^{91/}

Notwithstanding the apartheid regime's refusal to recognize the existence of political prisoners or prisoners-of-war in South Africa, it does give periodic reports on prisoners convicted in the courts for "serious offenses against the security of the State"^{92/}. In 1982 the South African Department of Prisons reported at the end of 1981 that close to 500 black men, including Namibian prisoners, were serving prison sentences at Robben Island. The other main center for political prisoners as of 1982 was Pretoria Central Prison where white political prisoners are held and some black women. Additional political prisoners are held in other prisons including Barberton.

The brutality of the conditions in which political prisoners are held is described in particular in the following report by the Ad Hoc Working Group of Experts^{93/} of the South African inquiry into a riot at Barberton (Transvaal) maximum security prison. Eight prison guards were tried for the murder of three prisoners. Two of the eight were acquitted and six others were found guilty of assault and ill treatment of prisoners. They had not been charged with murder or manslaughter despite the circumstances described below:

According to information available the State alleged that the accused, who were armed with rubber truncheons, repeatedly beat the prisoners as they pushed wheelbarrow

^{91/} Correspondence - Chairman Special Committee Against Apartheid to the Secretary General (A/38/110 - S/15634)

^{92/} See Section on Political Uses of the Criminal Law, supra

^{93/} The Commission on Human Rights. Reported in Violations of Human Rights in Southern Africa E/CN.4/1984/8

loads of gravel up a steep incline and that three of them died because of the beatings administered while they were doing arduous manual labour on a hot day - the Weather Bureau had given the temperatures at Barberton on that day as 35°C. Dr. W. Pretorius, the Barberton District Surgeon was the first witness called to give evidence. He told the court that he was called to the hospital section of the Barberton Prison on 30 December 1982. He found three dead men and a room full of people lying there in conditions of shock. He said that after ordering that the dead men be taken to the mortuary he had examined the 34 others. In his evidence Dr. Pretorius said that the bruises, cuts, swellings and abrasions he found on the prisoners appeared to be the result of "rather serious assaults" which could have been administered by a rubber truncheon applied with great force. (A rubber truncheon 60 cm long and 10 cm in diameter, was handed in as an exhibit) Dr. Pretorius said the effects of the strikes could be traumatic shock which he described "as the circulation system giving up, which could result in heart failure." He said that he had diagnosed the prisoners as having symptoms of heat stroke. He described heat stroke as "the worst form of sun stroke". Chief State Pathologist, Professor J.D. Loubler, on the other hand, stated in a report, after an examination of the dead bodies, that no anatomical cause of death could be ascertained, "in considering the pathological changes in the context of what transpired during life, we believe that, on probability, heat stroke was the major contributory fact of death."

Rand Daily Mail, 19 August 1983
The Citizen, 20 August 1983

94/

At least twelve other black prisoners are known to have been killed by prison guards at Barberton since 1982.^{95/}

^{94/} Paragraph 153 - Violations of Human Rights in South Africa A/CN.4/1984/8

^{95/} Idem 152, 154

B. Police Violence

In addition to the at least 57 political detainees who have died while in the custody of the security police between 1963-1982,^{96/} many others not accused of political crimes have died in custody: 128 in 1977, 161 in 1978.^{97/}

Every year an even larger number of people are killed by the police in "the course of their duties". The South African Institute of Race Relations reports that between 1974-1979, 946 people were killed by the police^{98/} (excluding people who died while in detention or in protests) and 2,558 were wounded.^{99/}

As discussed earlier, the severe restrictions in South Africa on the freedom of assembly means that most gatherings and demonstrations are illegal or can be declared illegal. The police have legal license to disperse and disrupt meetings by force. During the protests of 1976-77 and 1982, for example, police used a variety of weapons; batons, teargas, whips, dogs and guns. At least 50 people were killed during demonstrations in 1980 and estimates of those killed in 1976-1977 are as high as 1,000.^{100/}

^{96/} The causes of death are officially reported as "suicide" "falling out of a window", falling down a stairwell" "brain injury". Focus on Political Repression in Southern Africa, No. 43, 1982 IDAF London.

^{97/} Idem.

^{98/} 793 Black people and 140 Coloured people.

^{99/} 2024 Black people and 478 Coloured people.

^{100/} Seidman, J. Facelift Apartheid, IDAF London (1981)

THE BANTUSTAN POLICY: VIOLATIONS OF THE
PEOPLES OF SOUTH AFRICA'S RIGHTS TO SELF-
DETERMINATION, NATIONALITY, PROPERTY
AND FAMILY

101/

The policy of "separate development" for blacks and whites became the express intention of the settler regime upon the election of the National Party under Prime Minister Voerwoerd in the 1950's^{102/}.

101/

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.

Article 16

1. Men and women of full age, and without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouse.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

See also, G.A. Res. 2775, 26 UNGAOR Supp. (No. 29) 39 UN DOCA/ 8429 (1971) and G.A. Res. 30 UNGAOR Supp. (No. 34) 35, UN DOC A/10034 (1975) Condemning the Bantustan Policy and declaring it in violation of the UN Charter as a denial of self-determination to black South Africans.

^{102/} Richardson, Henry J. "Self-Determination International Law and the South African Bantustan Policy", 17 Col.J. Transnat Law 185, (1978)

But prior to the ascension to power of the Afrikaners, the intention of the settlers was to control the land and its resources as the main power base of apartheid.

Together the Native Land Act of 1913 and the Native Trust and Land Act of 1936 set aside a maximum of 13.7 percent of the land of South Africa for Africans. Scattered throughout the country these fragments were subdivided under the terms of the Promotion of Self-Government Act of 1959, into ten groups of land areas called "Bantustans"^{103/}.

The most arid, unproductive land was allocated to this relocation scheme.^{104/} This 1936 legislation prohibited blacks from buying land outside these allocated areas. Since then African ownership outside the Bantustan area has been eliminated by a combination of restrictions on the transfer and inheritance of property and forced removal and relocation.^{105/} Legislation adopted in 1956 outlawed African tenancy on white farms. As a result between 1960 and 1974 about a million and a half tenants and their families were forcibly removed from agricultural land owned by whites and sent to Bantustans.^{106/}

103/ Apartheid the Facts, supra

104/ When minerals were discovered in the "Native lands", these areas were excised from the Bantustans and returned to white status.

105/ IDAF Briefing Paper No. 5, "Removals and Apartheid, the Enforced Relocation of Black People in South Africa", July 1982

106/ Blacks are excluded from ownership of 86.3% of all South African land. Of that area, agricultural land was divided as follows: 97.53% reserved for whites; 0.79% for Coloured, 0.08% Indians (1976 Government Statistics).

Most of the residents of Bantustans are there involuntarily, having been deported from urban areas or barred from entering white enclaves.

Since 1960 the South African government has forcibly relocated 3.5 million blacks and intends to relocate another 2 million in the near future. Some of the displaced came from cities after arrests for violations of the Pass Laws. (In 1982 alone 206,000 were arrested for such violations).^{107/} Others forcibly resettled in the homelands came from "black spots" (variously estimated as between 400,000 and 500,000 between 1948 and 1979)^{108/}.

The ultimate goal is to sever the bantustans, politically, from the remaining 86% of South Africa which has been reserved for whites and to declare the bantustans "independent states" in which dispossessed blacks will hold citizenship, stripping blacks of South African citizenship.

1. It is accepted Government policy that the Bantu are only temporarily resident in the European areas of the Republic, for as long as they offer their labour there. As soon as they become for some reason or another, no longer fit for work or superfluous in the labour market, they are expected to return to their country of origin or the territory of the national unit where they fit in ethnically if they were not born and bred in the homeland.

2. The Bantu in the European areas who are normally regarded a non-productive and as such have to be resettled in the homelands, are conveniently classified as follows:

- (i) the aged, the unfit, widows with dependent children and also families who do not qualify under the provisions of the Bantu (Urban Areas) Act No. 25, of 1945 for family accommodations in the European urban areas; (ii) Bantu on European farms who become superfluous

^{107/} South Africa , 1983: Reorganizing Apartheid

^{108/} Black spots are land areas that had been developed by blacks but had then been reallocated to another group, usually white, by the apartheid regime. See inter alia, Richardson, supra, South Africa 1983, supra.

as a result of age, disability or the application of Chapter IV of the Bantu Trust and Land Act, No. 18 of 1936, or Bantu squatters from mission stations and black spots which are being cleared up;

(iii) Professional Bantu, such as doctors, attorneys, agents, traders, industrialists, etc. Also such persons are not regarded as essential for the European labour market, and as such they must also be settled in the homelands in so far as they are not essential for serving their compatriots in the European areas.

(The Secretary for Bantu Administration and Development, General Circular No. 25 1967, quoted in 'African Population Relocation in South Africa', G. Mare, South African Institute of Race Relations (1980))

In 1978, the Minister for Bantu Affairs, stated that "if our policy is taken to its logical conclusion as far as the Black people are concerned, there will not be one black person with South African citizenship"^{109/}. To date, nearly 8 million Africans have been denationalized through the implementation of the Bantustan Policy. They are considered "guest workers" in the white areas.^{110/}

In 1971 the South African government announced that it intended to grant "self-determination" or "sovereign independence" to the ten tribal reserves it had designated as tribal homelands within the national boundaries of South Africa.^{111/}

^{109/} Quoted in South Africa 1983: Reorganizing Apartheid, supra

^{110/} Idem at 5

^{111/} UN Unit on Apartheid, UN DOC 20/74 (1974); UN DOC 36/75 (1975) Bantu Homelands Constitution Sec. 36(a) (1971) S.A.

The apartheid regime is attempting to transfer by legislative fiat African citizenship to the bantustan of their government-designated tribal affiliations. Thus, in May 1976, legislation was issued under which an estimated 1.3 million members of the Xhosa tribal group "living outside their Transkei homeland" would lose South African citizenship when the Transkei became independent.^{112/} In addition, the right to own or expand a business in black townships and the right to take a thirty year leasehold - the only real property rights remaining to blacks - is predicated on homeland citizenship.^{113/}

The homelands are densely populated, but lack even subsistence agricultural potential. In 1976 over 70% of the Gross National Product in the homelands came from commuters and migrant workers.^{114/}

The minimal economic activity within the bantustans is a reflection of their role in the economy as suppliers of labor for white enclaves and depositories for the unemployed, aged, children and the sick and a high proportion of women.^{115/} Nearly one third of African workers in "white" South Africa are migrant workers. They work on contracts of up to a year in areas away from where their families live. In 1980 about a quarter of a million came from neighboring countries. Over one million are South Africans who are considered "citizens" of the bantustans and not of the areas in which they work.^{116/} Close to another million workers commute daily to work outside the bantustans.

^{112/} Cited in McDougall, supra, "Status of the Transkei Act" 15 Int'l Legal Materials (1976)

^{113/} Richardson, supra

^{114/} South African Labour and Development Research Unit, C. Simkins, "The Economic Implications of African Resettlement", Working Paper No. 43, September 1981

^{115/} 1980 Census figures cited in Apartheid the Facts, supra

^{116/} 1980 Census figures cited in Apartheid the Facts, supra

Migrant workers may not take their families with them. They are housed in mining or industrial compounds, in single sex hostels in the townships, or in servant quarters if they are domestic workers.^{117/} Few women are recruited as contract or migrant workers. Commuters travel up to 140 miles daily between white areas and the bantustans. This migrant and commuter labor system is enforced and controlled by a plethora of complex laws and administrative policies especially the Pass Laws.^{118/}

All men of working age (15-65) in the bantustans who are not self-employed (commercial farmers, traders or professionals), must register as workseekers. Women who wish to work must also register. Upon registration, a worker's future is determined. The Labor Bureau classifies the person into categories of employment. Once classified workers cannot choose to change except to mine or farm work. The worker has little choice. People born in rural

^{117/} Apartheid the Facts, supra.

^{118/} PASS LAWS

The Pass Laws are one of the primary instruments of apartheid and economic exploitation. Africans over 16 outside a bantustan area must carry pass-books at all times to identify their holders to any official upon demand; indicating their right to be in any particular area, where and if employed and their worker status, "ethnic classification" fingerprints and other vital statistics. The Pass books of women must contain the consent of the Commissioner of the area defined as her "home" and the consent of parent, guardian or husband to work or live in another district. Pass Laws are used to control the movement, residence and employment of Africans by the constant harassment of South African Security Forces. Between 1948 and 1981 at least 12.5 million people were arrested or prosecuted for violations of the Pass Laws. People convicted under the Pass Laws constituted one third of all sentenced prisoners in 1979.

Davis, D. African Workers & Apartheid IDAF London, 1978; and Apartheid the Facts

communities outside a bantustan will be classified as "Farm Labour" without regard to educational qualifications. Boys whose fathers are mine workers are themselves classified as mine workers. Work seekers in a bantustan can only work outside it if employed on a contract registered at a labor bureau for no more than twelve months. After a year they must return to the bantustan to renew their work contracts or find other jobs.^{119/}

Almost half the African population still lives outside the boundaries of the bantustans which the apartheid regime declares to be their homelands. By the end of 1983, four bantustans had been declared "independent": The Ciskei, Transkei, Venda and Bophuthatswana.^{120/} It is anticipated that the KwaNdebele "homeland" will be the next to be granted "independence".^{121/}

In addition to the total economic dependence of the bantustans upon the minority owned economy of South Africa, political control is also vested in Pretoria. For example, The Ciskei National Security Act adopted in August 1982 is based on South Africa's Internal Security Act allowing for indefinite detention without trial and without appeal.^{122/} Ample evidence has also been collected by Amnesty International that the bantustan security police and the South African police work in close collaboration.^{123/}

^{119/} Apartheid the Facts, supra

^{120/} On December 15, 1981 the Security Council of the U.N. condemned "the purported proclamation of the independence of the Ciskei" and declared it invalid. Violations of Human Rights in South Africa, supra

^{121/} Violations of Human Rights in South Africa (1983)
supra

^{122/} Idem

^{123/} Amnesty International Index: AFR 53/19/93, 8
August 1983

The Bantustan policy continues in blatant violation of the rights of the African people who have continued to protest vigorously in opposition to their loss of South African citizenship, their right to freely choose employment and other economic development, the disruption of their families and the quiet enjoyment of their ancestral homes. The apartheid regime continues this theft of land, resources and the rights of citizenship without regard to international condemnation, strengthened by U.S. State Department support and encouragement.

DENIAL OF THE RIGHTS TO MEDICAL
CARE AND EDUCATION UNDER APARTHEID

Among the economic rights guaranteed by Articles 25 and 26 of the Universal Declaration of Human Rights as part of the right to an adequate standard of living are the rights to medical care and education. ^{124/}

124/

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Medical care, like all other aspects of life in South Africa, is by legislative fiat, segregated and so administered that whites have decent care, while Blacks are given inferior care in overcrowded facilities. Hospitals for Blacks may be so short of beds that patients are required to share a single bed, or even to sleep under beds.^{125/} But, whites-only hospitals cannot ease this overcrowding as a matter of law, because the maintenance of segregation is paramount over the delivery of health care.^{126/}

The impoverished living conditions of the Black population and poor sanitation, especially in the homelands, have permitted virulent diseases, such as cholera, tuberculosis, polio, hepatitis, and malaria to become epidemic.^{127/} Malnutrition is rampant among black children, and infant mortality rates are reported at 134 per thousand for blacks, as compared to 20 per thousand among whites.^{128/}

124/ (continued)

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious group, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

125/ Violations of Human Rights in Southern Africa, supra, para. 434.

126/ Id., para. 429.

127/ Id., paras. 435-37

128/ Id., para. 438.

Only 2% of South Africa's doctors are Black.^{129/} These doctors are not permitted to treat Black patients in provincial hospitals or in their specialties in large hospitals, if this will involve placing them in authority over white medical personnel.^{130/}

The education of youth and children in South Africa under apartheid fulfills none of the enumerated criteria. To begin with, education for the Black majority is, as a matter of law, segregated, inferior, and not free.^{131/} Parents are required to pay for school fees, books, and uniforms. Africans are also required to pay directly the cost of building schools.^{132/} Although all white children go to school until the age of 15, a much smaller proportion of African children attend school. Teacher-pupil ratios are 1:18 in white schools, as compared with 1:24 in Indian schools, 1:27 in Coloured schools, and 1:48 in African schools. Per pupil expenditures are reported to be over 1,000 Rand for white students, as against less than 100 Rand for African students, with expenditures per capita for Indian and Coloured students reported respectively at about 500 Rand and 300 Rand.^{133/}

African children may be refused registration at schools, if they do not possess a card showing that their names are registered on house permits. The Bantu Education Department, now renamed the Department of Education and Training, establishes curriculum for the schools attended by Africans that attempts to indoctrinate students in the ideology of apartheid.^{134/} For most African students, it is impossible to remain in school for more than a few years.

^{129/} Violations of Human Rights in Southern Africa, supra, para. 439.

^{130/} Apartheid the Facts, supra, pg. 25

^{131/} Violations of Human Rights in Southern Africa, supra, para. 364

^{132/} Joyce Sikakane, "Window on Soweto", p. 39, London, 1980.

^{133/} Apartheid the Facts, supra, pgs. 27-28

^{134/} Id, pg. 40.

African students are not permitted to attend white technical colleges or universities except by special permission of the Minister of Education.^{135/} The Black universities, like the educational system for Blacks at the lower levels of schooling, suffers from overcrowding, lack of textbooks, and lack of facilities.^{136/}

DENIAL OF THE RIGHT OF ACCESS
TO PUBLIC ACCOMODATIONS AND
CULTURAL LIFE

Article 27 of the Universal Declaration of Human Rights guarantees the right to free participation in the cultural life of the community.^{137/} In South Africa, there are a host of laws that require racial segregation of public accomodations, public premises and public facilities of all kinds.^{138/} These include restaurants, theatres, clubs, sporting events and other forms of public entertainment,^{139/} buses and taxis,^{140/} and libraries, museums, zoos and public gardens.^{141/}

This network of laws denying equal access to public accomodations in addition to violating Article 27, violates the provisions of Article 7 which declares that "All are equal before the law and are entitled without any discrimination to equal protection of the law", and that "All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitements of such discrimination."

^{135/} Apartheid the Facts, supra, pg. 28

^{136/} Violations of Human Rights in Southern Africa, supra, para 374

^{137/}

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share the scientific advancement and its benefits.

2. Everyone has the right to the protection of moral and material interest resulting from the scientific, literary or artistic production of which he is an author....

^{138/} Reservation of Separate Amenities Act of 1953

^{139/} Group Areas Act of 1950

^{140/} Motor Transport Act of 1930

^{141/} State Aided Institutions Act of 1931

DEPRIVATION OF THE RIGHT
TO INTERNATIONAL TRAVEL

The right to leave any country including one's own, and to return to one's own country, is guaranteed by Article 13 of the Declaration.^{142/} But South Africa continues to deprive opponents of the regime of their passports, in retaliation for frank statements about apartheid while abroad.

Bishop Desmond Tuto had his passport confiscated by security police after he returned from speaking in Europe and North America. Trade unionist and church leaders have been deprived of their passports because of their associations with unions or church denominations associated with opposition to apartheid.^{143/}

Many resisters to apartheid, including ANC fighters, can never legally return to their country or travel on the passports of the land of their birth because of the brutal retaliation that would certainly be visited upon them.

^{142/}

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

^{143/} Progress Report, supra

DENIAL OF FREE PRESS RIGHTS AND
OF FREE EXCHANGE OF INFORMATION

The right to seek, receive and impart information and ideas through any media is guaranteed by Article 19 of the Declaration.^{144/} However, South African law restricts the flow of information by prohibiting publication of "untrue" statements relating to an action of the police.^{145/} The law provides that the police can decide what information is "untrue" and arrest a journalist who does not conform to the police's definition of the official "truth." Another section of the Police Act prohibits publication of information about detainees held under the Terrorism Act.^{146/}

The South African Defense Force has also warned journalists not to report on the operations or casualties of the South African Defense Force, or to even mention the South African Defense Force.^{147/}

144/

Article 19

1. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

145/ Police Act, Section 27 (b)

146/ Police Amendment Act, Section 29(c), No. 1306
of 1930

147/ Progress Report, supra, para. 232.

The "Boss Law" prohibits publishing any information concerning the operations of the Bureau of State Security.^{148/} Moreover, in 1981 alone, six journalists were subjected to 3 year banning orders under the Internal Security Act, restricting them to their homes during evening hours, preventing them from entering any newspaper office, and forbidding them from receiving visitors other than their parents and parents-in-laws. Five of the six were leading figures in the Media Workers Association, which had conducted a long strike following the government's suspension of four newspapers.^{149/}

^{148/} General Law Amendment Act of 1969 Sections 10 and 29.

^{149/} Progress Report, supra.

REPUBLIC OF SOUTH AFRICA
CONSTITUTION ACT, 1983

150/

Continuing Violation of Article 21^{151/}

The new constitution of the apartheid state which government officials have hailed as evidence of "evolutionary reform" is a sophisticated strategem by the Nationalist government to institutionalize the political and territorial exclusion of black Africans and to isolate them from other blacks: the Coloreds and Asians.

In the thirty-five years since the Nationalist Party has taken power, there has been significant political change in the region. The liberated countries of Angola and Mozambique have replaced Portuguese colonies; the white minority no longer rules Zimbabwe; South Africa is no longer surrounded by allies. The liberation struggles led by the African National Congress (ANC) and the South West Africa People's Organization (SWAPO) are a constant threat to the apartheid regime's hegemony.

Prime Minister Botha, in consultation with its prime financial investment interests and with the United States has developed a "total strategy" of which the new constitution is a part.

150/ S.A. No. 110 of 1983, September 28, 1983.

151/ Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service of his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The new constitution serves a number of apartheid goals. By providing some kind of representation in the national government, it provides the basis by which Coloured and Indian men can be drafted into the South African Defense Force (SADF), instead of only white males.^{152/}

It advances the Reagan Administration's policy of "Constructive Engagement" by seeming to promote reform of the racist regime by gradual inclusion of non-whites in the political process, providing Reagan with a concrete result for his policies.

It is an inducement to foreign investment that change is taking place in South Africa and, therefore, their investments there will be safe from armed struggle against the regime.^{153/}

It attempts to give Coloured and Asian South African's a stake in the apartheid regime which presumably they would defend against what Foreign Minister Pik Botha has defined as the "total onslaught" against the apartheid way of life."

The parliamentary plan will provide condonation of existing apartheid law, institutionalizing racial divisions under a democratic guise. Since all current South African law will continue unless expressly repealed by the new tri-cameral legislature which, as can be seen below, will be impossible without the white House of Assembly's vote.

^{152/} S.A. Special Report on the Military, 1982.

^{153/} Financial Mail (South Africa, 1983) "Any reform, however small, will be reviewed positively by public opinion abroad...A rejection of the Constitution will lead to dis-investment and a hardening of attitudes in South Africa." quoted in Hovey, Gail "Apartheid's New Clothes", in Christianity and Crisis, Nov. 14, 1983.

This new constitution grants the illusion of political representation in the Parliament to the 2.5 million "Coloureds" and 750,000 Asians while totally barring blacks from participation. Henceforth, according to the apartheid regime, the political rights of black people will be restricted to the bantustans ("homelands").

Spokesman for the Nationalist Party in support of their efforts to sway world opinion to view the new constitution as a reform, note that it calls for a multi-racial parliament: One separate chamber each for whites, Coloureds, and Asians. All three groups will participate on the President's Council and the Electoral College. The Electoral College has the power to elect (and impeach) the State President.

The Executive President, alone will decide which chamber of Parliament will consider a specific bill depending on his decision as to which community is affected by it. (Education, culture, etc.) All three chambers will receive only bills the President deems to be of "general" interest, i.e., defense, foreign affairs, justice or internal state security. To resolve legislative disputes among the chambers, the President's Council will make decisions binding on Parliament and on the President. The new office of "Executive State President" includes wide ranging powers which combine the functions of the present prime minister and the previously ceremonial post of president. Whites retain parliamentary power and cannot be outvoted by the two other chambers.

The composition of the three new chambers will be as follows:

(a) The House of Assembly - elected by whites - will consist of 178 members (166 elected directly, 8 elected indirectly and 4 nominated). Number of electoral divisions per province (current figures):

Cape Province: 56;
Natal: 20;
Orange Free State: 14;
Transvaal: 76.

(b) The House of Representatives - elected by "Coloureds", will consist of 85 members (80 elected directly, 3 elected indirectly and 2 nominated). Number of electoral divisions proposed for each province:

Cape Province: 60;
Natal: 5;
Orange Free State: 5;
Transvaal: 10.

(c) The House of Deputies - elected by Asians - will consist of 45 members (40 elected directly, 3 elected indirectly and 2 nominated). Number of electoral divisions proposed for each province:

Cape Province: 3;
Natal: 27;
Orange Free State: 5;
Transvaal: 10. 154/

The constitution establishes a president's council dominated by whites to settle any disputes among the three chambers regarding bills of a general nature affecting the nation as a whole. The president's council will consist of 20 members elected by a majority of the House of Assembly (whites), 10 members elected by a majority of the House of Representatives (Coloureds), 5 members elected by a majority of the House of Deputies (Asians) and 25 persons appointed by the president. However, if one or two houses withdraw, "Parliament" can still conduct business. Therefore, a Coloured or Asian boycott would be useless.

Thus, crucial decisions will be taken by the president and it will be for him to determine which matters are common to all three chambers and which are of concern to only one of them.

154/ These numbers are determined by current population statistics and there is no provision for future proportional representation.

Once the President has decided whether a matter is of exclusive or joint concern, neither his decision nor the issues he has taken into consideration can be questioned in any court of law.

The President may, under the powers that will be conferred upon him:

- (a) Determine sessions of parliament;
- (b) Dissolve parliament;
- (c) Appoint ministers;
- (d) Proclaim or terminate martial law;
- (e) Declare war or make peace;
- (f) Appoint and remove civil servants.

"The only real obstacle standing between Mr. Botha and the implementation of his executive presidency is the possible prospect of losing the white referendum...the implementation of the Government's constitutional plan could go down in history as the point where South Africa abandoned any pretence of democracy and began a slide into the twilight world of authoritarian rule."^{155/}

On November 2, 1983 South Africa's white minority endorsed by almost 2 to 1 the government-backed constitution granting limited preliminary representation to Indians and people of mixed race but excluding the black majority. Results of the vote "which was only the second referendum in white-ruled South Africa's history showed 33.7 per cent against."^{156/}

The constitutional proposal confining the political rights of the African majority to the impotent political structures of the bantustans also makes them "aliens" in South Africa.

^{155/} Rand Daily Mail 21 May 1983

^{156/} Rand Daily Mail 4 November 1983

Major mass political campaigns have been mounted by the African majority against the constitution. A number of Coloured and Asian leaders have also rejected the constitution as a stratagem to divide black people in their common struggle against apartheid.^{157/}

In January 1983, after the Botha government conducted 175 meetings in the Coloured and Indian communities to sell the constitution, the Coloured Labor Party agreed to participate in the plan. Several leading Labour Party members and a wide range of Coloured organizations voiced prompt opposition.

Indian ("Asian") opposition has been even more unified; no representative Indian organization has agreed to participate. Although the apartheid regime created the South African Indian Council, they, notwithstanding, have demanded a referendum among Indians on the new constitution. Some collaborative Coloured leaders also demanded a referendum. Botha agreed, saying "I can't believe that reasonable Coloured and Indian people where they have no political rights at the present will say no if they are given the chance to get them now."^{158/}

Opposition to the constitution became so intensified after the white referendum that plans for Asian and Coloured referenda on the constitution were cancelled. Plans have now been announced to hold elections on August 22, 1984 for the segregated parliament under the new constitution.

The Special Committee Against Apartheid observed on February 14, 1984 that "The elections will no doubt be boycotted by the majority of the people. But from past experience, one can be sure that the regime will ignore the opinion of the people even if the great majority boycott the elections."

^{157/} Ad Hoc Group of Experts: E/CN.4/1984/8

^{158/} Quoted in Hovey, supra

The independent black trade unions have condemned the constitution's efforts to divide the black, Coloured and Asian community by emphasizing economic divisions. The Council of Unions of South Africa (CUSA) and the Federation of South Africa Trade Unions (FOSATU) denounced "these racially divided puppet parliaments."

Bishop Desmond Tutu, General Secretary of the South African Council of Churches urged all member churches to reject the constitution. The Roman Catholic Church of South Africa issued a pastoral letter to every congregation urging white Catholics to vote no as an "...affront to the people..."and "ensuring that racial discrimination will continue." The Methodist Church of South Africa also rejected the constitution.

A non-racial coalition representing 400 groups, called the United Democratic Front (UDF) launched strong opposition to the constitution, inviting whites to join. The UDF includes among its leaders, Nelson Mandela and Walter Sisulu, imprisoned leaders of the African National Congress; Helen Joseph, former Secretary General of the Federation of South African Women; Hassan Howa, head of the non-racial South African Cricket Board; The Rev. Beyers Naude, the banned leader of the banned Christian Institute; Dr. Allan Boesak, President of the World Alliance of Reform Churches and Minister of the Dutch Reformed Church.

The UDF selected three national presidents of whom only one was able to attend the opening meeting on August 20, 1983: Archie Gumede. Trade union leader Oscar Mpetha (see above) was in the hospital as a result of his three years in prison; and Albertina Sisulu had been redetained by the police at the time of the rally.

The 2.8 million Afrikaners, who have been the traditional base of power for the Nationalist Party, were sharply divided in respect to the tri-cameral legislature plan and many opposed it also.

A new Conservative Party was formed in opposition to the constitution which they defined as "Indians and Coloureds...ruling over whites". The even further right wing Herstigte Nasionale Party declared: "We are fighting for the retention of the idea of a white South Africa, the retention of our links with our history, and the maintenance of the Christian foundation of our state."^{159/}

Those who respect the norms of international law must join with the United Democratic Front in rejecting the new South African constitution and supporting them in their struggle for a democratic society.

We stand for the creation of a true democracy in which all South Africans will participate in the government of our country. We stand for a single, nonracial, unfragmented South Africa, a South Africa free of "Bantustans" and Group Areas...We say no to the Republic of South Africa Constitution Bill--a bill which will create yet another undemocratic constitution in the country of our birth.

160/

^{159/} Quoted in Hovey, supra

^{160/} Declaration of Purpose, United Democratic Front-S.A., August 1984.

A SPECIAL NOTE ON THE ROLE OF
THE UNITED STATES IN SUPPORT
OF THE APARTHEID REGIME

The apartheid regime's wholesale and increasingly ruthless disregard for the human rights of the majority people of South Africa is not a domestic matter. South Africa has also been waging an undeclared war against the frontline states, especially Angola, Lesotho, Mozambique and Zimbabwe.

For the past four years, South Africa has wreaked havoc and devastation on much of the civilian population of these countries of Southern Africa, using troops, bombs, tanks, economic sabotage, subversion and assassination. Normal life in the region has been disrupted. Many thousands are homeless and millions more are being affected by famine resulting from the drought and the destruction and diversion of resources needed to defend these sovereign states from South Africa's assaults. South Africa has gone to war to protect the apartheid system by what they describe as "stabilizing the region". "Stabilizing the region" means that Pretoria must continue the illegal occupation of Namibia, the destabilization of the frontline governments, and the destruction of the support base of the African National Congress (ANC) and the South West Africa People's Organization (SWAPO).

"Stabilization" of Southern Africa means the destabilization of the entire region in a fruitless effort to reverse the tide of liberation. As discussed above, Pretoria is very anxious to implement the new constitution while Ronald Reagan is still President of the United States, because the Reagan administration is the staunchest ally the apartheid regime has ever had.

The U.S. and S.A. are full partners in the war to change the political balance in the region and to preserve and insulate the apartheid system. Since Reagan took power, his administration has made clear its aversion to governments which have chosen socialist paths of development not only in South Africa but in Latin and Central America as well.

The Reagan State Department and foreign policy advisors were aware in 1981 that South Africa was on the edge of losing control of the rich resources of the country. The entire balance of power of the region had been radically changed. Angola, Mozambique and Zimbabwe were independent African states. The United Nations which has legal jurisdiction over Namibia had called for immediate South African withdrawal and free elections to permit its peaceful decolonization. In South Africa itself, the exploited and oppressed majority people were increasingly restless, enraged and committed to their own liberation.

The Reagan administration, therefore, having determined that "vital western interests" would be threatened by the elimination of the Pretoria government, resolved "to forestall mass revolutionary violence" in South Africa.^{161/} Chester Crocker, Assistant Secretary of State for African Affairs, observed that the United States had to become actively involved in the region to ensure that any changes would be in the best interests of the United States.

The policy of "Constructive Engagement" was then born of two presumptions: Change in the region had to be controlled by the U.S. and the region had to be made stable to ensure the survival of the Pretoria government.

"Stability" meant that the white minority government had to stay in power and that the Afrikaner ruling party would have to appear to the international community to be beginning the process of power sharing with the African population.

"Stability" was necessary because the now free countries of Zimbabwe, Angola and Mozambique could increase their support of the increasingly strong ANC and SWAPO in their struggle for liberation (South Africa had of course sent troops to help the colonial Smith regime stay in power).

^{161/} Crocker, Chester "South Africa: Strategy for Change" Foreign Affairs, Winter 1980-81.

By early 1981, President Reagan ordered a review of U.S. policy towards Southern Africa, which was conducted in the National Security Council including representatives of the Central Intelligence Agency, and Departments of State and Defense.

By the summer of 1981, Ronald Reagan had covertly selected a policy option in the National Security proposal which carried the United States into the alliance with South Africa to wage war on the frontline states and to rehabilitate the international reputation of the apartheid regime.^{162/}

There is no room in this paper, whose major thrust is apartheid and the Universal Declaration of Human Rights, to enumerate the full extent of the Reagan administration's involvements in Southern Africa in aid of apartheid South Africa. But no paper concerned with human rights in South Africa can ignore the implications of the policy of "Constructive Engagement" on the human and legal rights of the peoples of the region.

The Reagan administration, ignoring the international resolve to isolate the apartheid regime, defends South Africa as it bombs and razes civilian populations in neighboring states, flouts international law by its continuing illegal occupation of Namibia and maintains a police state for the purposes of exploiting the majority peoples and their land by the creation of a reign of terror.

^{162/} See inter alia "Regional Strategy for Southern Africa", August 29, 1981. Current Policy No. 308, Dept. of State Washington, "Communist Influence in Southern Africa". Congressional Testimony reprinted in the Department of State Bulletin, June, 1982. "Challenge to Regional Security in Southern Africa: The U.S. Response" October 28, 1982, Current Policy No. 431, Dept. of State, Washington.

"Constructive Engagement" has also permitted Pretoria to develop a nuclear capacity with the collaboration of Israel and some western states^{163/} which threatens the peace and security of the planet.

^{163/} See especially: - Walters, Ronald, Report on Nuclear Capability of South Africa, Special Committee Against Apartheid, 1984.

APPENDIX 1

THE INTERNATIONAL BILL
OF HUMAN RIGHTS

1- UNIVERSAL DECLARATION OF HUMAN RIGHTS.....1

2-INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS.....3

3-INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS.....8

4-OPTIONAL PROTOCOL TO THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS.....16