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THE GROSS VIOLATIONS OF HUMAN RIGHTS OF THE APARTHEID REGIME
UNDER INTERNATIONAL LAW

SUBMITTED TO THE TRUTH AND RECONCILIATION COMMISSION
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INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS
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ABOUT THE INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS (IADL)

The IADL was founded on October 24, 1946 in Paris at an international gathering of lawyers who had fought and survived the war against fascism and had participated in the Nuremberg trials. It was organized to promote the exchange of ideas and skills among lawyers and jurists throughout the world dedicated to the principles of the United Nations Charter, the defense of peace and the establishment of a democratic world order.

Committed to the principle of equality among peoples, the rights of all peoples to self-determination, the elimination of imperialism and colonialism and the peaceful settlement of international disputes, the members of IADL who share these objectives include ever-increasing numbers of individual lawyers and regional and national lawyer and jurist associations in over ninety countries with different political, religious and philosophical orientations.

The IADL is a non-governmental organization (NGO) with consultative status to ECOSOC, UNESCO, and UNICEF and is represented at the United Nations in New York, Vienna and Geneva. It is a member of the Congress of Non-Governmental Organizations (CONGO) of the United Nations.

Since its founding fifty-one years ago, IADL has participated

regularly in the UN Human Rights Commission and UN subcommissions concerned with disarmament, development, the rights of women and against apartheid and colonialism, among others. IADL has sponsored, organized and coordinated many international fact-finding missions, trial-observations and election-monitoring delegations of lawyers and jurists to such countries as Chile, Sudan, Guinea-Bissau, Zimbabwe (Rhodesia), Turkey, Northern Ireland, Haiti, El Salvador, Nicaragua, Korea, Israel, the occupied Palestinian territories, Japan, Vietnam, Namibia and South Africa. Reports of these delegations and observations have been distributed world-wide through IADL affiliates and United Nations-connected activities. IADL also sponsored the International Lawyers Campaign to Free Nelson Mandela.

In 1988, IADL sponsored legal missions to observe the implementation of United Nations Security Resolution 435 [UNSR 435 (1978)] in Namibia's electoral transition to independence. In March and April of 1994 IADL organized International Legal Observer Missions to the elections in South Africa.

In 1996, IADL observed its 50th Anniversary in Capetown under the patronage of President Mandela.

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"The international Convention that purported to declare apartheid to be a 'crime against humanity' was little more than a mobilization exercise by the ANC and its totalitarian and Third World supporters in the UN General Assembly. ... few genuine democracies ever supported the Convention." F.W. DeKlerk, Leader of the National Party, Second Submission to the Truth and Reconciliation Commission 23 March 1997, Capetown.

"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." Nelson Mandela, in a smuggled letter from Robben Island, quoted in Apartheid: The Facts, London, International Defence and Aid Fund for Southern Africa, June 1983.

PRELIMINARY STATEMENT

Close to the conclusion of the preparation of this submission for the Truth and Reconciliation Commission (TRC) documenting the gross violations of human rights committed by the apartheid regime, I had occasion to read Mr. F.W. DeKlerk's 21 August, 1996 statement and the subsequent 23 March, 1997 submission to the TRC on behalf of the National Party, setting out the "National Party's view of the historical context within which the conflicts of the past

should be considered"¹

I was shocked and dismayed to read his efforts, in the tired cliché filled language of the cold war era, to debase the cumulative and collective resolve of the vast majority of the nations of the world from every continent meeting at the United Nations, determining that, "The way in which the South African regime implements the policy of apartheid should henceforth be considered as a kind of genocide."² In addition they requested the Commission on Human Rights to call on the General Assembly to seek an advisory opinion from the International Court of Justice.

This submission will examine the crimes against humanity deliberately inflicted upon the people of South Africa by the apartheid regime both before and after 1960 and will define these criminal acts in the context of the International Convention on the Suppression and Punishment of the Crime of Apartheid,³ its antecedent, The Convention on the Prevention and Punishment of the Crime of Genocide; and the Universal Declaration of Human Rights,

¹F.W. DeKlerk, Leader of the National party, submission to the Truth and Reconciliation Commission 21 August, 1996 at 1.

²E/CN.4/1985/14. Also see the Study on Implementation and International Jurisdiction to Suppress and Punish Apartheid (ECN.41/1426) of 19 January, 1981.

³GAR 3068 (XXVIII) 1973 entered into force 18 July, 1976.

both unanimously adopted by the General Assembly on December 1948.

A fundamental assumption of this submission is that these acts of the apartheid regime constituted a continuing crime against humanity throughout the time periods discussed.

I am honored to be given an opportunity to present these views on behalf of the thousands of member lawyers and jurists of the International Association of Lawyers in over ninety nation states throughout the world who, despite differing economic, political, and social systems are united in their dedication to the principles of the United Nations Charter, the principles of justice and equity among all peoples, and their rights to self determination and dignity in their quality of life.

As a preliminary matter, we also note that although one of the specific terms of reference of the TRC in these hearings is "the role of the legal system during the apartheid years 1960 to 1994"⁴, it is another contention of this submission that an analysis of apartheid as a crime against humanity must also be examined in respect to its genesis: The conquest, pillage, and theft of the

⁴September 3, 1997 correspondence from Ms. Yasmin Sooka, Commissioner, Human Rights Violations Committee, Convenor of the Legal Working of the Group Truth and Reconciliation Commission, inviting the International Association of Democratic Lawyers to make this submission.

lands from the peoples who inhabited them which became the Republic of South Africa. Since the mission of the TRC under § 3(1)(a) of the Promotion of National Unity and Reconciliation Act of No. 34 of 1995 is to "(a) establish... as complete a picture as possible of the causes, nature and extent of the gross violations of human rights under apartheid," the examination and remembrance of the history of minority control of the people of South Africa are an essential aspect of that picture.

Even Mr. DeKlerk, in his submission on behalf of the Nationalist party, while reviewing the stages of the National party's "view and policies", identifies the previous colonial history and "the first period of rigid apartheid between 1948 and 1960...marked by the adoption of comprehensive segregation and security legislation" as the primary source of contemporary understanding. In his words, this

"Paternalistic approach to the other (sic) peoples of South Africa...was a reflection of the racial attitudes that prevailed...throughout the European Dominated world and the Southern states of the United States. By the early fifties the strict racial segregation that the National Party had inherited from the past, had been firmly institutionalized. Those in the black community - such as the ANC and the Congress Movement - who were demanding full democratic rights - were regarded as agitators and communist

revolutionaries.⁵

Mr. DeKlerk's observation that black people were oppressed by racism, codified in law and custom, elsewhere in the world, including the United States is quite accurate. Elsewhere this author has written about gross violations of human rights arising from patterns and practices of racism imposed by the de facto and de jure laws of the United States rooted in its history of chattel slavery and the conquest of North America by settlers. This author filed a Petition documenting these "gross and reliably attested violations" of human rights which was filed before the UN Commission on Human Rights under ECOSOC Resolution 1503, 27 May, 1970⁶ on behalf of organizations representing people of color of the United States.⁷

Mr. DeKlerk is also correct in observing that prior to the

⁵DeKlerk, Second Submission, supra. at 13. (Emphasis supplied)

⁶ECOSOC Resolution 1503 authorizes the subcommission on Prevention of Discrimination and Protection of Minorities to consider communications which reliably attest to violations of human rights and fundamental freedoms and to refer them to Commission for Human Rights for consideration.

⁷See e.g. Hinds, Lennox, Illusions of Justice, University of Iowa (1979); Hinds, Lennox S. ed. "Human Rights Issues in the United States: Violations of International Law," International Review of Contemporary Law (1990).

Second World War, the "European Dominated World" supported and justified de jure and de facto racism in the United States and the colonial domination and theft of land and resources of Africa and elsewhere, often under the guise of bringing civilization to the primitive natives. But as has also been thoroughly noted and documented elsewhere, most observers point to the aftermath of the second world war and the formation of the United Nations as the beginning of the modern struggle to implement international human rights. This struggle, undertaken in the wake of the horrors of the Jewish holocaust is supported by distinguished persons from throughout the globe and is not only espoused by "totalitarian and third world supporters".⁸

⁸See e.g. Richard Bilder, The Status of International Human Rights Law: An Overview, in International Human Rights Law and Practice 1, 1 (James Tuttle ed. 1978). Theodor Meron, ed. 1984, Human Rights in International Law: Legal and Policy Issues 25, 27-31 (1984). Also see Jack Greenberg, Race, Sex, and Religious Discrimination in International Law, in Meron, supra, 16, 307, 309; Karl Partsch, Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination, in 1 The International Dimensions of Human Rights 61, 70, 73, 75-81 (Karel Vasak ed. 1982). The drafters of those principles list racial discrimination as such a significant violation of human rights that it deserves proscription in the UN Charter itself. See Warwick McKean, Equality and Discrimination Under International Law 54-55 (1983); Mare Bossuyt, L'Interdiction de la Discrimination dans le Droit International des Droits de l'Homme 12-13 (1976).

These scholars affirmation of an international norm of human

It should also be noted that while the struggle in South Africa was certainly about racism, it also was a by product and repudiation of the colonialism which permitted the white minority's control of South Africa and the maintenance of the power required to keep that control.

It was this kind of group-based oppression that the General Assembly addressed when in 1960, it adopted Resolution 1514 (XV); on the granting of independence to colonial countries and peoples.⁹ "Recognizing the passionate yearning for freedom in all dependent peoples...in the attainment of their independence" and "[b]elieving that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith," the General Assembly declared that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation."

rights law prohibiting racial discrimination is, also an obvious rebuttal of Mr. DeKlerk's dismissive and inaccurate remarks concerning the opposition to apartheid.

⁹G.A. Res. 1514 (XV), 15 U.N. GAOR Supp (No. 16) at 66-67, U.N. Doc. A/4684 (1961).

In the final section of this submission, the role of the United States,¹⁰ the Commonwealth Countries, Germany, France and

¹⁰Whatever the Government of the United States had advocated as being the assurance of human rights for all people when it supported the UN Charter and the Universal Declaration of Human Rights, these commitments were certainly not evident in its voting practices concerning the disenfranchised people of the world.

In the early stages of the United Nations, when the number of Third World countries was very small, the United Nations voted on a request that India and the Union of South Africa report at the next session on treatment of Indians in South Africa, which had impaired relations between the two countries: the United States voted NO.

The United Nations proposed that negotiations take place between India, Pakistan and South Africa with respect to the treatment of Indian peoples in South Africa. The South African delegation voted NO, as was expected and the U.S. voted NO with them.

On the same day during the General Assembly plenary meeting, Resolution 616(VII) A was passed to establish a United Nations Commission to study the government of South Africa and the system of apartheid. U.S. abstained.

Resolution 637VII, 16 December 1952.

...The right to self-determination is a prerequisite among all people. U.S. voted NO.

...all means possible should be used to ensure self-determination among all people. U.S. voted NO.

...native peoples should be part of the government of their territories. U.S. voted NO.

Draft Resolution a/4502, Session XV, 14 December 1960

Calls for the elimination of Colonialism, and to enter into

other First World Countries, will be explored further. However, these nations' inability to transcend the economic and political interests that caused them to support the racist regime will also be considered in the context of the popular democratic struggles in these countries which protested their national foreign policies supporting apartheid and ultimately forced them to reverse their public policies.

I would like to respectfully submit to the TRC when they consider Mr. DeKlerk's remarks about racism elsewhere that a well

negotiations with representatives of colonial territories. U.S. voted NO.

Affirms importance of the universal realization of the right of all people to self-determination and of speedily granting independence to colonial countries and peoples for the effective guarantee and observance of human rights. U.S. voted NO.

...Notes with appreciation the report of the Committee on the Elimination of Racial Discrimination. U.S. voted No.

...Reaffirms Apartheid as a crime against humanity. U.S. abstained while 97 countries voted YES to pass the resolution.

Resolution 3103XXVII, 1 December 1973.

Use of mercenaries by the colonial or racist regimes in these conflicts is considered a criminal act. U.S. voted NO. Other resolutions concerning Portugal and declaring the legitimacy of the struggle of the peoples 1809 XVIII, 14 December 1963. U.S. voted NO.

known principle of common law be considered: that is that proof of those who escape punishment and retribution for certain transgressions will not exonerate other wrongdoers who have committed similar illegal acts. Thus, the fact that chattel slavery was justified by the Constitution of the United States; that after emancipation, de jure, and de facto racism continued to stain the history of the United States, that these crimes against humanity were approved and condoned by law and that they continue to perpetuate economic, political, and social discrimination in the United States does not exonerate, justify or mitigate against the determination that the laws of South Africa which controlled all its institutions from the colonial beginnings of conquest until 1994, constituted gross violations of human rights under the norms of international law.

This submission will also briefly consider the colonial racist history as well as the codified apartheid laws of South Africa in support of its assertions that all peoples of color of South Africa, whether defined by racist law as "Africans"¹¹, "Indians", or Coloureds¹² were the victims of gross human rights violations under peremptory norms (jus cogens) of international law.

¹¹Bantu Trust and Land 18 No. 18 of 1936.

¹²Group Areas Act of 1966; Population Registration Act No. 39 of 1950 inter alia.

Since these gross human rights violations, discussed and documented elsewhere in this submission were legally sanctioned, as we say in the United States, "under color of State law", the South African legal system prior to 1994 and the lawyers and judges who were the servile minions to the gross violations of human rights discussed here and brought to horrible and vivid life in the individual testimony taken by the TRC, did not merely commit the aberrant acts of individual criminals. Rather these deliberate and premeditated patterns and practices constitute the minority government's organized efforts by deprivation of their human rights to control and limit the economic, social, political and civil activities of the majority peoples of South Africa. These laws not only sanctioned the gross and pervasive violations of individual human rights which are the subject matter of the TRC's mandate and this submission but are also the catalyst for the legally permissible torture and murder, and other abuses of power undertaken by law enforcement officers and other representatives of the apartheid government about which the TRC has taken such grisly testimony.

THE CONVENTION OF THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Convention on Genocide was unanimously adopted by the

United Nations General Assembly on 9 December 1948 in Paris, one day before the Universal Declaration of Human Rights. (Discussed below) It is singularly appropriate that we examine apartheid in the context of these legal manifestation of the collective will of the nations of the world as the 50th Anniversary of their adoption is being planned.

"Genocide" is a new term for an old crime¹³. It means the deliberate destruction of national, racial, religious or ethnic groups. It has been practiced throughout recorded history. The systematic annihilation of millions in the 20th century because of their religious or ethnic origin, so shocked the world that it collectively rejected the traditional contention that such crimes were the exclusive concern of the state that perpetrated them under domestic laws adopted for the purpose of the destruction of the groups deemed inferior.

The Charter of the International Military Tribunal at Nuremberg, approved by the Allies in 1945 recognized that war

¹³The word "genocide" is attributed to the Polish jurist Raphael Lemkin from the Greek word "demos" (race, nation or tribe) and the Latin root "cide" (killing), Axis Rule in Occupied Europe (Washington, DC., Carnegie Endowment for International Peace, 1944); Also see the Newsletters of the Institute of the International Conference on the Holocaust and Genocide, Jerusalem.

criminals were not only those who had committed crimes against peace, and violations of the laws or customs of war, but those who had carried out "crimes against humanity whether or not such crimes violated the domestic law of the country in which it took place".¹⁴

In its first session, in 1946, the UN General Assembly affirmed the charter of the Nuremberg Tribunal, in the second session, it affirmed the basic resolution that genocide was a crime under international law and that those guilty of it were punishable. It asked for international cooperation in preventing and punishing genocide. These unanimous agreements were the origin of the Convention on the Prevention and Punishment of the Crime of genocide, unanimously adopted on 9 December 1948.¹⁵

It has been applied to the infamous extermination of groups like the Jews and Gypsies in the Second World War, the 2 million victims of Pol Pot's Khmer Rouge government, in Democratic Kampuchea, and to less well known abominations, like the German massacre of the Hereros people in 1904 under the command of General

¹⁴Irving Horowitz, Taking Lives: Genocide and State Power (New Brunswick, NJ, Transaction Books 1980).

¹⁵The convention's preamble notes that at all periods of history genocide has inflicted great losses on humanity, and being convinced, that, in order to liberate mankind from such an odious scourge, international cooperation is required.

Von Trotha who issued an extermination order, ordered water holes to be poisoned and African peace emissaries to be shot resulting in the killing by the Germans of three quarters of the Herero Africans in the course of the colonization of present day Namibia. The Hereros people were reduced from 80,000 to some 15,000 starving refugees.¹⁶ These acts among many others¹⁷ are particularly shocking to the conscience when the body responsible for the genocidal acts is -or is in complicity - with the state itself, so that the victims seeking protection must turn collectively and individually away from their purported governments.¹⁸

Arnold Toynbee, the noted British historian observed that the distinguishing characteristics of the 20th century as it evolved a definition of genocide "are that it is committed in cold blood by the deliberate fiat of holders of despotic political power and that the perpetrators of genocide employ all the resources of present

¹⁶P. Fraenk, The Namibians, (London Minority Rights Group 1985).

¹⁷An unfortunately long and terrible bibliography of some of the documented genocidal acts of the twentieth century apart from the Nazis and Pol Pot is available from this author.

¹⁸L. J. Macfarland, The Theory and Practice of Human Rights (London, Temple Smith, 1985); Leo Kuper, Genocide (London, Penguin Books, 1981), J.N. Porter, Genocide and Human Rights (Washington, University Press of America, 1982); Leo Kuper, The Prevention of Genocide (New Haven, Yale University Press, 1985).

day technology and organization to make their planned massacres systematic and complete.¹⁹ Prof. Toynbee's comments are particularly apt as we consider the acts of the apartheid regime.

THE ELEMENTS OF THE CRIME OF GENOCIDE UNDER INTERNATIONAL LAW

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by those human groups, and is contrary to moral law and the spirit and aims of the United Nations - UNGA Resolution 96(1) 11 December, 1946).

In the present convention, under Article II, genocide, whether committed in time of war or time of peace is a crime under international law and includes the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such

- (a) killing members of the group,
- (b) causing serious bodily mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to

¹⁹Arnold Toynbee, Experiences (London, Oxford University Press 1969).

another group.²⁰

It is the element of intent to destroy a designated group wholly or in part which raises crimes of mass murder to qualify as the special crime of genocide. An essential condition is provided by the words "as such" in Article II which stipulates that, in order to rise to genocide, crimes against a number of individuals must be directed at them collectively or in their collective character or capacity. Motive is not mentioned as being relevant.²¹

Genocide is today recognized by the world community as an international crime under customary international law even when committed in territories of states that are not parties to the convention.²² Furthermore the prohibition of genocide has the status of jus cogens, a rule that states cannot derogate from even by treaty.

By 1981, eighty six nations were parties to the convention

²⁰Resolution 260A(III) of the Convention of the Prevention and Punishment of the Crime of Genocide 9 December, 1948)unaminiously approved.

²¹B. Whitaker, Revised and Updated Report on the Question of the Prevention and Punishment of the Crime Genocide E/CN 4/Sub. 2/ 1985/6 2 July 1985 at 19.

²²Richard U Edwards, Jr. "Contribution of the Genocide Convention to the Development of International Law," 8 Ohio Northern University Law Review (1981 300-314).

including three of the permanent members of the Security Council (France, the UK and the USSR). Two permanent members (China and the United States) were not signatories.

APARTHEID IN RELATION TO THE GENOCIDE CONVENTION

Apartheid was examined in relation to the Genocide convention by an Ad Hoc working group of experts established by Resolution 2 (XXIII) of the Commission on Human Rights. They produced the study concerning the question of apartheid from the point of view of International Penal Law.²³ The following practices under the laws of apartheid were identified as instances of genocide.

(a) The institution of group areas (Bantustan Policies) which affected the African population by banning them to areas which were totally lacking the preconditions of their traditional professions.

(b) The regulation concerning the movement of Africans in urban areas and especially the forcible separation of African's from their wives during long periods, thereby preventing African births ;

(c) The policies in general, which were said to include deliberate malnutrition of large population sectors and birth control of the non-white sector in order to reduce their numbers, while it was the official policy to favour white immigration;

(d) The imprisonment and ill treatment of non-white political (group) leaders and of non-white prisoners in

²³E/CN 4/1985/14; E/CN 4/1075, Chapter VI b.

general;

(e) The killing of the non-white population through a system of slave or tied labour, especially in so called transit camps.

The study also stated in pertinent part that "(i)n various documents, the Ad Hoc working group has described how politicians in South Africa, Southern Rhodesia and Namibia commit the crime of genocide directly or indirectly and incite such crimes directly and publicly. Many examples of attempted genocide and of complicity in the crime have been described at length in documents E/CN 4/950; E/CN 4/984 Add. 18; E/CN 4/1020; E/CN 4/1020/Add. 2. referring to Article IV of the Convention."²⁴ The study further observed that "persons committing the crime of genocide in South Africa, Southern Rhodesia, and Namibia are Heads of State, members of various government, public officials, official agents and all other persons responsible for giving effect to the policies of apartheid."

At its 28th Session, the General Assembly by resolution 3068 (XXVIII) of 30 November, 1973, adopted and opened for signature and ratification the International Convention on the Suppression and

²⁴"Persons committing genocide or any of the other acts enumerated in Article III (supra) shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

institutionalization of the cancer of apartheid, the Unlawful Organizations Act was passed.¹⁰³

The Unlawful Organizations Act required that once the president of the apartheid State was satisfied that the activities of an organization threatened "public order", that organization could be declared "unlawful". There was no "clear and present danger" test or other express standard. Any organization which "directly or indirectly" carried out the activities of the African National Congress or the Pan African Congress could be dissolved as an ipso facto threat to "public peace." Increased popular resistance to these oppressive laws were followed by even more repressive legislation.

In 1976, the Internal Security Amendment Act of 1976¹⁰⁴ extended the scope of the Suppression of Communism Act and Unlawful Organizations Act to individuals and permitted the Minister of Justice to detain any person who "engages (d) in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order." (Emphasis supplied) No political

¹⁰³Unlawful Organizations Act, No. 34 of 1960 S. Afr. Stat. (1980).

¹⁰⁴Act No. 44 of 1950, S. Afr. Stat. Sec 10(iv) (1980), (added by Internal Security Amendment Act No. 79 of 1976, S. Afr. Stat. Sec 4 (1980).

or organizational link had to be established.

As popular resistance to apartheid increased, the range of legally prohibited actions were broadened and, under these laws the democratic rights of the opponents of apartheid became more limited while the powers of the regime to control and to withhold information expanded.

Extensive arbitrary powers were vested in the executive while the jurisdiction of the courts was excluded. Ultimately the conduct of the police and the administration of law were removed from judicial and public scrutiny.¹⁰⁵

Early in 1982 a government-appointed Commission recommended that the security laws should be made more "efficient" and "effective."¹⁰⁶ These proposals lead to the passage of the Internal Security Act of 1982. The 1982 Act subsumed all powers contained in the previous existing security legislation and added others.

¹⁰⁵See e.g. Sec. 28(7) Internal Security Act 1982: "No court of law shall have jurisdiction to pronounce upon the validity of any regulation made under subsection (2)" (Indefinite Preventative Detention). Sec. 29(6) Internal Security Act 1982: "No court of law shall have jurisdiction to pronounce upon the validity of any action taken in terms of this section, or to order the replacement of any persons detained in terms of the provisions of this section" (detention for interrogation). Similar provisions exist for detention of witnesses [(Sec. 31(7))].

¹⁰⁶The Rabie Commission.

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.¹⁰⁷

The 1982 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"; the "free movement of traffic;" causing "feelings of hostility between different population groups;" or "encouraging or aiding any other person to commit" any of the acts listed. (Emphasis supplied). Anyone guilty of "subversion" was liable for imprisonment up to 25 years. For the offense of "terrorism" the penalty included death.

The 1982 Internal Security Act also broadened all summary powers of the government to repress resistance to the increasingly

¹⁰⁷Apartheid: The Facts, International Defence and Aid Fund for Souther Africa, London, 1983.

harsh and desperate regime.

Constituting a comprehensive denial of rights, these laws established the legal conditions under which torture and murder of detainees were routine and, outside the review of the courts. The 1982 Act made preventive detention, detention for interrogation, and detention for potential witnesses legal.¹⁰⁸ No court of law had any jurisdiction to review the validity of such actions.¹⁰⁹

The legal powers of the South African police and military to act in any way necessary against those resisting the apartheid regime increased proportionately to the perceived threat. Political repression increased on a broader and wider scale gathering up those resisting as well as inactive bystanders of all ages.

All these vaguely drawn criminal statutes were given retroactive effect.¹¹⁰ It is a primary cornerstone of Anglo-American jurisprudence that all laws should be made to commence in

¹⁰⁸The Act purported to limit the period of detention to six months, but the police could give "reasons" to a Board of Review as to why the person should not be released.

¹⁰⁹Internal Security Act 1982, Secs. 28(7); 29(6) and 31(7).

¹¹⁰See Potts, Lee W.; "Criminal Liability, Public Policy and the Principle of Legality in the Republic of South Africa." Journal of Criminal Law & Criminology, N.W. School of Law (1982), 1061, 1099,. "South African Ex Post Facto Laws", at 1099.

futuro."¹¹¹ Article 11 of the Universal Declaration of Human Rights also provides in pertinent part that: "(n)o one shall be held 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 or shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed. The Terrorism Act, approved in June 1967, was given retroactive effect to June 1962.

Thereafter, the Unlawful Organizations Act¹¹² provided that the President could declare that an organization could be banned without notice to the organization concerned. The President needed only to determine that the organization was a continuation of a previously banned organization or that it was "promoting objectives" similar to such an organization. Members of the newly banned organization were automatically deemed members of the previously banned organization. They were 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

¹¹¹J. Bentham, 1 Works 326 (1843).

¹¹²S. A. Act No. 37 of 1960 S. A. Afr. Stat. Sec. 1[(3c(1980))].

South Africa, which had been banned in 1950. A South African party organizer was accordingly sentenced to four year imprisonment in 1967 for furthering the aims of "communism" as defined in the Internal Security Act of 1950 which had been repealed.¹¹³

These perversions of legality which pervaded the criminal laws of South Africa were a clearly naked effort to repress resistance. No individual analysis can provide sufficient detail of the scope of that illegality under international law of the apartheid legal systems efforts to obliterate the democratic rights of the majority of those seeking to redress their grievances or to secure democratic rights and political power.¹¹⁴

¹¹³State v. Arenstein (1967) 3 S.A. at 379.

¹¹⁴International Declaration of Human Rights:

Article 18: Everyone has the right to freedom of thoughts, 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 opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers..

Article 20: 1. Everyone shall have 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

THE TORTURE AND DEATH OF DETAINEES UNDER COLOR OF STATE LAW

As the Truth and Reconciliation Commission hearings have substantiated, the apartheid regime's power to detain without trial was characterized by secrecy and lack of accountability by the security police. Families were rarely told at which police station their relatives were being held. No court could order the release of a detainee. No visits or legal advice were allowed. These powers to detain people without trial were established and expanded by law from 1960 until 1994.¹¹⁵

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.

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.

For further evidence of the legally sanctioned abuse of the people of South Africa one is also referred to, inter alia, Violations of Human Rights in South 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 until 1994.

¹¹⁵Amnesty International Annual Report 1983: "In November, 1982 the government issued new guidelines for security police treatment of detainees stipulating that they must not be tortured

In 1960, under the Public Safety Act, emergency powers were employed to detain a recorded 11,000 people.¹¹⁶ An additional 4,700 people were detained through a proclamation under the Bantu Administration Act in the Transkei area.¹¹⁷ From 1960 these powers were institutionalized through the adoption of successive and increasingly summary laws as riders to the criminal control bills discussed above. 90-day detention was introduced in 1963, followed by a 180-day detention law in 1965 which also provided for the detention of "potential" state witnesses.

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

or ill-treated, but these constituted little more than a restatement of earlier guidelines which had proved ineffective." See generally, Amnesty International Annual Reports 1982 and until 1992.

¹¹⁶S. Parry, *Outcasts from Justice*, Center for Applied Legal Studies, University of Witwatersrand, Johannesburg, 1981.

¹¹⁷A discussion of the Bantustans and theft of citizenship of the majority of the people of South Africa is discussed later in this submission.

180 days.¹¹⁸

As active resistance to apartheid became more widespread and organized among the people, preventive detention was employed more and more frequently.¹¹⁹ As the record before the TRC makes clear torture of detainees during interrogation so severe as to lead to death was an integral part of the apartheid regime's plan to suppress resistance.¹²⁰ "Evidence" extracted under torture was frequently the only source for prosecution at trial. Detainees¹²¹

¹¹⁸Section 31 of the Internal Security Act No. 74 of 1982, provided for detention of potential state witnesses until the final disposition of the trial or at the discretion of the Attorney General.

¹¹⁹In 1981, for example, coincident with increasing industrial worker 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 election of the South African Indian Council, many hundreds were detained: Progress Report, U.N. Ad Hoc Group of Experts C/CN. 4/1485. Sec. 45.

¹²⁰Amnesty International reported that "All the evidence indicates that torture is extensively inflicted on political detainees and that the government sanctions its use. The unsurprising result of allowing the security police to proceed unchecked is that from time to time they appear to have got out of control and to have been responsible for the deaths of detainees in their custody." Amnesty International Political Imprisonment in South Africa (1978) at 56-57. See also Report of U.N. Special Committee Against Apartheid, Torture and Ill-Treatment of Detainees by the Racist Regime of South Africa in 1982. U.N. Doc. A/AC 115/L. 586 (17 Jan. 1983) at 4.

¹²¹Before the end of apartheid, detainees who survived, described their torture in brutal detail. See for example,

were kept in extended solitary confinement, which by definition, is severe torture by sensory deprivation. In addition, as the record before the TRC shows, many other forms of abuse were 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. As has also been documented, children as well as adults were subject to the same powers of detention and interrogation and were beaten and tortured.¹²² All these abuses were conducted under the guise of legality.

The state of emergency declared in 1986 became indefinite. According to Amnesty International, thousands of people including Prisoners of Conscience were detained without trial for alleged political offenses.¹²³ In 1987 Amnesty International reported that,

There are new reports of torture and ill treatment of uncharged detainees, and there were further deaths in detention in suspicious circumstances. Administrative

contemporaneous reports in Focus on Political Repression in Southern Africa, International Defence and Aid Fund, London, 1980, et seq.

¹²²Gary J. Sugarman, "The Universal Declaration of Rights and the Policy of Apartheid in the Republic of South Africa", Journal of Legislation 17:65 (1990).

¹²³Amnesty International, Amnesty International Report, at 99 (1987).

banning orders were effectively invalidated by an Appeals Court ruling but the Government used its emergency power to restrict critics. The death penalty remained a major concern: there were 121 executions in Pretoria Central Prison and others were carried out in nominally independent homelands. *Idem*.

Although ostensibly adopted to combat terrorism and other subversive acts, the Terrorism Act itself became an instrument of subjugation, domination, and repression. "Both in its form and in its implementation it must be seen as a statute that creates a new species of cruel and unusual punishment, one that is counter to western traditions in the field of criminal justice".¹²⁴

Beatings, lashings and whipping with sticks, canes and sjamboks (wooden and leather sticks) in detention were common. Lashings with a cane was still an accepted form of punishment, de facto and de jure. During the 1950s and 1960s lashing was a compulsory punishment for certain crimes. Under the Criminal Procedure Amendment, Compulsory beatings as punishment was annulled but remained as a discretionary form of punishment.¹²⁵ During the state of emergency, beatings during interrogation and demonstrations were commonplace. According to an Apartheid South African spokesman,

¹²⁴J. Dugard, Human Rights and the South African Legal Order (1978) at 136.

¹²⁵Sugarman, supra at 89.

beatings had a "special efficacy especially in a country largely populated by a people the majority of whom have not yet emerged from an uncivilized state."¹²⁶

All of these horrors were imposed, condoned and tolerated by the judicial system and most of the legal profession.¹²⁷

ECONOMIC EXPLOITATION: THE LEGALLY AUTHORIZED REPRESSION OF TRADE UNIONS UNDER APARTHEID

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

The minority regime was profoundly concerned that black unions might organize the overwhelming economic power of black workers against them because without black workers, the South African economy would have collapsed. They constituted 82% of the South

¹²⁶A. Sachs Justice in South Africa (1973) at 196.

¹²⁷Other submissions to the TRC, no doubt will analyze the complicity of the legal profession and the judiciary in these crimes against humanity.

African work force. They mined the gold, diamonds, and other export minerals. They worked in the factories that supplied white South Africans with consumer goods. They planted and harvested the crops that fed the country.¹²⁸

The Rights of workers are guaranteed in Articles 23, 24, and 25 of the Universal Declaration of Human Rights:¹²⁹

WORKING CONDITIONS UNDER APARTHEID LAW

The wages for black workers were much lower than for white

¹²⁸ "Black Workers Under Siege," Africa Fund and District Council 37 AFSCME, *The Repression of Black Trade Unions in South Africa*, 1983.

¹²⁹ Article 23: 1. Everyone has the right to work, to free choice of employment, to just and favorable 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 favorable remuneration insuring for himself and his family and existence worthy of human dignity and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests.

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.

workers, Black South Africans as a group were paid even lower wages than Coloured and Indian workers and Black African women were paid the lowest of all.¹³⁰ In place of the principle of "equal pay for equal work" recognized as a right by Article 23, apartheid legislation established the legal 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 required that only a "scheduled person," holding a government certificate, not available to Africans, would be permitted to hold skilled jobs. The Allocation of Occupation Agreement further determined that the white union was to be the sole representative of certain mining occupations, while the closed shop guaranteed white control over skilled jobs.¹³¹ Meanwhile, job title restrictions did not prevent Africans from being required to perform the skilled work, only from being compensated fairly for doing it. Thus, black miners did much of the blasting in South

¹³⁰Apartheid: The Facts, supra.

¹³¹Violations of Human Rights in Southern Africa. Report of the Ad Hoc Working Group of Experts prepared in accordance with commission on Human Rights Resolution 5 (XXXVII) and Economic and Social Council Resolutions 1982/40. U. N. Doc. E/CN 4/1983/10 at 68.

African mines, although they were legally barred from obtaining the certificate that would allow them to be paid for this work.¹³²

Article 23 provides that workers are to be protected against unemployment, but in apartheid South Africa, unemployment among African workers was estimated at more than 25%, while unemployment insurance was not available to most black workers.¹³³ Until 1979, black mine workers were not protected by the Unemployment Insurance Act, and most black workers continued to be deprived of any form of unemployment compensation throughout the apartheid years.¹³⁴

The unprotected and hazardous working conditions to which black laborers were subjected were intensified by the horrendous living conditions of the migrant workers who were barracked in single-sex hostels and in company owned compounds.¹³⁵ For African women employed as domestic workers, the largest category of employment for African women, wages were even more disparate than for men. The average monthly wage of 22 Rand for non-farm-labor African men was less than one fourth the average wage for white workers. One survey indicated that more than one third of domestic

¹³²Violations of Human Rights in Southern Africa, supra.

¹³³Progress Report, supra.

¹³⁴Violations of Human Rights in Southern Africa, supra.

¹³⁵Apartheid: The Facts, supra.

workers received a monthly wage of under 75 Rand.¹³⁶

As bad as the documented conditions for black workers in urban areas the conditions of agricultural workers were even worse. Article 4 of the Universal Declaration of Human Rights states that: "(n)o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." The system of agricultural labor in apartheid South Africa was consistent with the system of chattel slavery, legal until 1865, in the United States.

Farm wages for African worker were as low as 10 to 20 Rand per month, with a national average of 25 to 35 Rand per month. This pittance was supplemented by payment in kind by a ration of mealie meal and meat which was often spoiled. As a result, malnutrition was common among the children. Child labor was exploited at wages of 8 Rand per month. Farm workers were told that they were "provided" with "free" housing but were in fact required to build their own housing. They could be legally required to work in the fields up to 54 hours a week.¹³⁷ The government accommodated this treatment by legally excluding agricultural workers from minimum

¹³⁶Idem.

¹³⁷Violations of Human Rights in Southern Africa, U.N. Doc. E/CN 4/1983/10 at 64.

wage provisions¹³⁸ while specifically prohibiting the formation of unions by agricultural workers.¹³⁹ Moreover, the label of "farm laborer" in an African's pass book made one an agricultural worker for life, unless the farmer who employed him agreed that there was no shortage of farm labor.¹⁴⁰

According to testimony given to the Ad Hoc Working Group of Experts, it was commonplace for farmers to beat workers in their employ at the farmer's discretion without fear of prosecution. One witness testified that "South Africa is the only country except Chile where agricultural productivity is dependent on violence towards the laborer," and widespread incidents of torture, sexual mutilation, and even homicide were reported.¹⁴¹

Characteristics which brand the apartheid agricultural system as a slave system under international law included proofs of (a) starvation wages and payment in kind; (b) extremely long hours, and miserable working conditions, legally outside the control of the state; (c) widespread use of child labor; (d) no right of workers

¹³⁸Wage Act, No. 5 of 1957.

¹³⁹Industrial Conciliation Act, No. 28 of 1956.

¹⁴⁰Apartheid: The Facts, supra.

¹⁴¹Testimony of Eugene Roelofse, reported in "Progress Report" supra.

to change their status; (e) government enforcement of workers' status: and (f) violence toward workers as an integral element of the control system. South Africa's version of slavery differed from chattel slavery in the US, to the extent that, since there was an overabundance of workers, the farmer had no motivation to support the laborer who was too old to be productive, or to guarantee employment to the laborer. The apartheid labor law supported employers control of their work force while failing to protect employees from unbridled abuse.

HISTORY OF ATTACKS ON THE LABOR MOVEMENT SANCTIONED BY LAW DURING THE APARTHEID ERA

The history of the repression of black labor which had organized into trade unions to secure their economic rights in South Africa is precisely as long as the history of colonial occupation. By the 1920s 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.¹⁴² Following a surge of labor militancy, including a major mine workers strike in 1946,

¹⁴²D. Davis, African Workers and Apartheid, IDAF, London, 1978.

severe repression of black and nonracial unions became an express government policy. A legally sanctioned campaign to prevent black and white workers from organizing together continued throughout the apartheid era.¹⁴³ 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.¹⁴⁴

The South African Congress of Trade Unions (SACTU) was established in 1955. From its inception its activities were banned and harassed in a number of ways, forcing SACTU to operate underground from the 1960s until 1994.

In the 1970s there was a resurgence of sustained industrial militancy by black workers. By the end of 1981, there were over one million organized independent trade union members.¹⁴⁵ In 1979, the government attempted to bring independent unions under its control. Unions with black members were ordered to register and to

¹⁴³Evidence to Commission on Human Rights Ad Hoc Group of Experts, at 289. "M. Sipho Pityana, the former President of the Port Elizabeth Students Council stated that segregation in unions was still enforced as the government wished to retain the pay differentials between the races." Report E/CN 4/1984/8, 1984.

¹⁴⁴Idem. at 111.

¹⁴⁵In mainly nonracial unions with a predominantly black membership.

become involved in the official negotiating machinery. In 1982, legislation extended controls to nonregistered unions and added further restrictions on union activity.¹⁴⁶ 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.¹⁴⁷

Although it was technically legal to strike, during certain periods, the "right" was so restrictive as to be a nullity. From 1953 to 1973, strikes by black workers were outlawed. From 1973 to 1983 only one out of 2,212 recorded strikes were declared "legal."¹⁴⁸ Furthermore, all strikes in "essential" services were illegal.¹⁴⁹ In addition, criminal laws were used against strikers. Picketing and "incitement" to strike were illegal gatherings under the Riotous Assembly Act,¹⁵⁰ passed in 1982. The Intimidation Act

¹⁴⁶Labor Relations Amendment Act 1982.

¹⁴⁷South African Labour Bulletin, September 1981.

¹⁴⁸Evidence of the International Confederation of Free Trade Unions to the U.N. Commission on Human Rights Ad Hoc Group of Experts Sec. 347. Report E/CN 4/1983/10.

¹⁴⁹Essential services included 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 could declare any service "essential." D. Davis, supra. at 31.

¹⁵⁰Act No. 17 of 1956. S. Afr. Stat. Sec. 3 (1980).

contains similar provisions and was applied to striking workers within weeks of its adoption by Parliament.¹⁵¹ Under the Labor Relations Amendment Act of 1981 No. 51, it was illegal to give financial assistance to workers engaged in an "illegal strike."

The most effective legal weapon against the effective right to strike by black workers was the power the state had over migrant workers, since under law, black workers became unemployed if they went on strike. They then could be forcibly and legally evicted from urban areas and sent to the Bantustans.¹⁵² As but one example, during a wave of work stoppage by miners in 1982, over 3,000 strikers were sent to the Bantustans.¹⁵³

The treatment of just a few well-known labor activists under

¹⁵¹Focus No. 42 Sept.- Oct. 1982.

¹⁵²The legal right of black people to remain in urban areas in South Africa was largely linked to their employment. With the exception of those few blacks who were born in urban areas, provisions of the Black Urban Areas Consolidation Act, No. 25 of 1945 restricted the right of the vast majority of blacks to remain in urban areas for more than 72 hours unless they were employed there, or had worked for one employer continuously for 19 years, or were the spouse of someone with such rights. These influx control laws and the threat of losing residential rights by breaking the period of continuous employment effectively deterred participation in any industrial action which may result in dismissal, "South Africa, 1983, Reorganizing Apartheid", Lawyers Committee for Civil Rights Under Law, Washington, DC (1983 Annual Report).

¹⁵³Focus No. 43, Nov.-Dec. 1982.

apartheid is most instructive on the purported legal rights of black workers under apartheid 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 enjoying an international reputation for his 40 years of trade-union work. He had been Cape Chairman of the African National Congress until the ANC was 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 their leadership role in organizing and participating in a bus boycott against increased fares in Nyonga Township. In the course of the two-year trial, the state tried to prove its claims of a plot to murder whites at random. 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 typified apartheid era 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 had sharply deteriorated 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, in June 1983 Mpepha was found guilty of "terrorism" but acquitted of murder 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.¹⁵⁴

Another notorious case involved 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.¹⁵⁵ Over 1,500 persons attended his memorial service held by the Food and Cannery Workers Union.

Two other SACTU activists, Petru and Jabu Nzima were forced to

¹⁵⁴See South Africa, 1983: Reorganizing Apartheid, Lawyers Committee for Civil rights Under law, Washington, DC (1983 Annual Report, Southern Africa Project).

¹⁵⁵Violations of Human Rights in Southern Africa, E/CN 4/1485 (1982).

flee South Africa but continued their work in support of the trade-union movement outside South Africa. They were murdered by a bomb planted in their car in June 1982.

Long before the establishment of the TRC, incidents were reported in which white civilians murdered black strikers and were not arrested, even when witnesses were available.¹⁵⁶

In 1981 Khona Mahlangu, a striker at Sigma, the motor manufacturing plant owned by Anglo-American Corporation and Chrysler Corporation was shot and killed 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.¹⁵⁷ In 1980, Samson Owele, a shop steward for the National Union of Textile workers was charged criminally with inciting workers to strike. While awaiting trial, he was fatally shot by "a masked gunman" who was not apprehended.¹⁵⁸

Repression of this kind, violates not only the right to organize trade unions, guaranteed by Article 23 of the Declaration,

¹⁵⁶Testimony of Ms. Ova MacKay reported in "Progress Report," prepared by the Ad Hoc Working Group of Experts, E/CN.4/1485(1982) para 35.

¹⁵⁷Id.

¹⁵⁸Id.

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 were in themselves so horrendous as to constitute human rights violations. Under Article 23 of the Declaration, "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment;" "the right to equal pay for equal work;" and "the right to just and favorable 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 contemporary apartheid government statistics, African workers' wages were less than one fourth of the wages paid white workers in mining, manufacturing, and construction.¹⁵⁹

THE WORLD COMMUNITY'S RECOGNITION OF APARTHEID AS A CRIME AGAINST HUMANITY

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

¹⁵⁹Bulletin of Statistics, Department of Statistics, Pretoria (1981).

resolutions declared apartheid to be a danger to international peace and security.¹⁶⁰ After repeated requests to the Security Council by the General Assembly to adopt mandatory sanctions against South Africa in 1966, the General Assembly condemned apartheid as "a crime against humanity."¹⁶¹ In 1968 the General Assembly declared that freedom fighters against apartheid should be treated, following arrest, as prisoners of war in keeping with the 1949 Geneva Convention.¹⁶² 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.¹⁶³

By 1974, South Africa was suspended from the General Assembly as an international pariah.¹⁶⁴ In every year between 1976 and 1994, the General Assembly invited the African National Congress (ANC) and the Pan Africanist Congress (PAC), both banned in the apartheid

¹⁶⁰G.A. Res. 1598 (XV), 13 April 1961, and G.A. Res. 1664 (XVI) 28 November 1961.

¹⁶¹G.A. Resolution 2202 A(XXI) 6 December 1966.

¹⁶²G.A. Resolution 2396 A(XXII) 2 December 1968.

¹⁶³G.A. Resolution 2506 A(XXIV) 21 November 1969.

¹⁶⁴A draft resolution in the Security council to expel South Africa from the United Nations was defeated on October 30, 1974, by a triple veto from Britain, France, and the U.S.

state to participate in the debate on apartheid in its plenary meetings along with the South West Africa Peoples' Organization (SWAPO) of Namibia.¹⁶⁵

In 1977, the international community took formal steps to safeguard the right of belligerents under conditions of civil war, by adopting Additional Protocols 1 and 2 to the Geneva Convention of 1949 on the Treatment of Prisoners of War, requiring that liberation forces be accorded prisoners of war treatment.¹⁶⁶ The apartheid regime refused to sign this accord, but the widespread acceptance of its terms by the international community demonstrated that the accord reflected a norm of customary international law.¹⁶⁷

The apartheid government refused to recognize the existence of political prisoners in South Africa or to apply the Geneva

¹⁶⁵International Defence & Aid Fund for Southern Africa *Apartheid: The Facts*, London, June, 1983.

¹⁶⁶The text of both protocols is reprinted in document A/32/144 of August 1977, "Respect for Human Rights in Armed Conflicts" Fourth Session of the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. Report of the Secretary-General.

¹⁶⁷Asmal, K. The Status of Combatants of the Liberation Movements of South Africa Under the Geneva Convention of 1949 and Protocol 1 of 1977, Centre against Apartheid, Notes and Documents, June 1980.

Convention governing prisoners of war to these prisoners.¹⁶⁸ There was however, ample objective evidence that the apartheid regime had singled out captured combatants of the liberation movements for particularly barbarous treatment. Testimony at one trial after another indicated that ANC combatants were treated with particular ferocity: exceptionally prolonged solitary confinement, severe torture followed by trials heavily weighted in the state's favor.¹⁶⁹ In addition, the apartheid state increasingly imposed the death sentence against ANC prisoners of war.

One of these, Solomon Mahlangu, was hanged in 1979, the first freedom fighter executed since early 1960.¹⁷⁰ Between 1979 and 1983 at least 10 other members of Umkhonto we Sizwe, the armed wing of

¹⁶⁸Asmal, K. (1980), The African National Congress recognizing that a state of wars exists between itself and the illegal state, has formally accepted the rules of the Geneva Convention governing POWs taken during the war of liberation. (U.N. Ad Hoc Group of Experts Progress Report E/CN 4, 1685 Sec. 19).

¹⁶⁹Violations of Human Rights in Southern Africa (1984) supra, Amnesty International, Report of Malcom M. Smart before the Ad Hoc Working Group of Experts. See also Treatment of Political Prisoners, Detainees and Captured Freedom Fighters reported in the Ad Hoc Working Group of Experts Report. E/CN4/1983/10 at 22-40.

¹⁷⁰Sagam, L.E., "State Terrorism in South Africa", Paper submitted to Seminar on the Legal Status of the Apartheid Regime in South Africa and Other Legal Aspects of the Struggle Against Apartheid, July 1984.

ANC, were sentenced to death, in each case for high treason.¹⁷¹

Anthony Tstotsobe, Johannes Shabangu, and David Moise, each sentenced to death for treason following the 1980 explosions at the Sasol II Synthetic Fuel Production Installations, had their sentences commuted to life imprisonment after an international campaign for clemency. Their convictions were based, in part, on the court's ruling that mere membership in the ANC was sufficient grounds for conviction of high treason.¹⁷²

In 1982, ANC freedom fighters Telle Simon Mogerane, Jerry Semano Mosololi, and Thabo Marcus Motaung were found guilty of treason and were sentenced to death. They were executed on June 9, 1983, despite many appeals for clemency made from the General Assembly, the Security Council and other United Nations bodies and international humanitarian organizations.¹⁷³

The apartheid regime refused to recognize the existence of political prisoners or prisoners of war in South Africa. It did however give periodic reports on prisoners convicted in the courts

¹⁷¹Sagam, L.E., *id.*

¹⁷²Lawyers Committee for Civil Rights Under Law, Southern Africa Project, Annual Report; South Africa 1983: Reorganizing Apartheid, p. 17.

¹⁷³Correspondence, Chairman Special Committee Against Apartheid to the Secretary General (A/38/110-S/15634).

Mail, 1983; The Citizen, August 20, 1983).¹⁷⁷

At least 12 other black prisoners are known to have been killed by prison guards at Barberton after 1982.¹⁷⁸

In addition to at least 45 political detainees who died while in custody of the security-police between 1963 and 1982,¹⁷⁹ many others not accused of political crimes died in custody: 128 in 1977, 161 in 1978.¹⁸⁰

Every year an even larger number of people were killed by the police in "the course of their duties." The South African Institute of Race Relations reported that between 1974 and 1979, 946 people were killed by the police¹⁸¹ (excluding people who died while in detention or in protests), and 2,588 were wounded.¹⁸²

¹⁷⁷Quoted in Paragraph 153--Violations of Human Rights in South Africa A/CN 4/1984/8.

¹⁷⁸Id. 152, 154.

¹⁷⁹The 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.

¹⁸⁰Id.

¹⁸¹Including 793 black people and 140 Coloured people.

¹⁸²Including 2,024 black people and 478 "Coloured people. A parliamentary question revealed that 353 persons were killed by the South African police "in the execution of their duties" in 1980 and 1981. (House of Assembly Debates, May 12, 1982. In 1980, 2 whites, 31 Coloureds, 145 black; in 1981, 2 whites, 32

As discussed earlier, between 1960-1994, the severe restrictions in South Africa on the freedom of assembly meant that most gatherings and demonstrations were illegal or could be declared illegal. The police had 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 1,000.¹⁸³ The number of wounded is incalculable.

"THE BANTUSTAN POLICY: VIOLATION OF THE RIGHTS TO SELF-DETERMINATION, NATIONALITY, PROPERTY AND FAMILY"

The policy of "separate development" for black and whites became the express intention of the settler regime upon the election of the National Party under Prime Minister Voerwoerd in the 1950s.¹⁸⁴ But even before the ascension to power of the Afrikaners, the intention of the settlers was to control the land

Coloureds, 141 blacks).

¹⁸³Seidman, J. Face-lift Apartheid, IDAF London (1981).

¹⁸⁴Richardson, Henry J. "Self-Determination, International Law and the South African Bantustan Policy," 17 Col. J. Transnat. Law 185, (1978).

and its resources as the main power base of apartheid. This so-called Bantustan policy was a violation of the rights of the peoples of South Africa to self-determination, nationality, property, and family.¹⁸⁵

The Native Land Act of 1913 and the Native Trust and Land Act of 1936 together set aside a maximum of 13.7% of the land of South Africa for Africans.¹⁸⁶ Scattered throughout the country, these fragments were subdivided under the terms of the Promotion of Self-Government Act of 1959 into 10 groups of land areas called

¹⁸⁵Article 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 its 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. (N. 29) 39 U.N. DOC A/8429 (1971) and G.A. Res. 30 UNGAOR Supp. (No. 34) 35 U.N. DOC A/10034 (1975) condemning the Bantustan Policy and declaring it in violation of the Charter as a denial of self-determination to black South Africans.

¹⁸⁶Also see, Forced Removals in South Africa Vol., I (1983).

"Bantustans." The most arid, unproductive land was allocated to this relocation scheme.¹⁸⁷ The 1936 legislation prohibited blacks from buying land outside these allocated areas. African ownership outside the Bantustan area was eliminated by a combination of restrictions on the transfer and inheritance of property and forced removal and relocation.¹⁸⁸ Legislation adopted in 1950 outlawed African tenancy on white farms.¹⁸⁹ As a result, between 1960 and 1974 about one and a half million tenants and their families were forcibly removed from agricultural land owned by whites and sent to Bantustans.¹⁹⁰ Most of the residents of Bantustans were there involuntarily, having been deported from urban areas or barred from entering white enclaves.

Beginning in 1960, the South African government forcibly relocated over 5 million blacks. Some of the displaced came from cities after arrests for violations of the Pass Laws, repealed only

¹⁸⁷When minerals were discovered in the "Native lands," these areas were excised from the Bantustans and returned to white status.

¹⁸⁸IDAF Briefing Paper No. 5, "Removals and Apartheid, the Enforced Relocation of Black People in South Africa," July 1982.

¹⁸⁹Group Areas Act, No. 41 of 1950, rev. 1966.

¹⁹⁰Blacks were 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).

in 1986.¹⁹¹ Others forcibly resettled in the homelands came from "black spots" (variously estimated at between 400,000 and 500,000 between 1948 and 1979).¹⁹²

The ultimate goal was to sever the Bantustans politically from the remaining 86% of South Africa, which was reserved for whites, and to declare the Bantustans "independent states" in which dispossessed blacks would hold citizenship, stripping them of South African citizenship.

It was accepted apartheid government policy that black people (Bantu) were only temporary residents in the European areas of the republic for as long as they offered their labor there. As soon as they became, for whatever reason, no longer fit for work or superfluous in the labor market, they were expected to return to their alleged country of origin or the territory of the national unit where they were supposed to belong "ethnically" even if they

¹⁹¹South Africa, 1983: Reorganizing Apartheid, Lawyers Committee for Civil Rights Under Law, Washington, D.C., (1983 Annual Report, Southern Africa Project); Asmal, K. Reconciliation Through Truth, at 80.

¹⁹²"Black spots" are land areas that had been developed by blacks but reallocated to other another group, usually white, by the apartheid regime. See, inter alia, Richardson, supra, South Africa 1983, supra., Surplus People Project, Forced Removals in South Africa Vol. I (1983) at 5.

had not been born or bred in that so-called homeland.¹⁹³

Black people in the European areas, who were regarded as nonproductive and as such had to be resettled in the homelands, were 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 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...being cleared up;

(iii) Professional Bantu, such as doctors, attorneys, agents, traders, industrialists etc. Also such persons not regarded as essential for the European labor market, and as such they must also be settled in the homeland 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 with approval 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."¹⁹⁴ By 1984, nearly 8 million

¹⁹³Black Homeland Citizenship Act 26 of 1970.

¹⁹⁴Quoted in South Africa 1983: Reorganizing Apartheid, supra.

Africans had been denationalized through the implementation of the Bantustan Policy. They were considered "guest workers" in the white areas.¹⁹⁵

In 1971, the South African government announced that it intended to grant "self-determination" or "sovereign independence" to the 10 tribal reserves it had designated as tribal homelands within the national boundaries of South Africa.¹⁹⁶

Thereafter the apartheid regime, attempted to transfer African citizenship to the Bantustan of their government-designated tribal affiliations by fiat. 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.¹⁹⁷ In addition, the right to own or expand a business in black townships and the right to take a 30-year leasehold--the only real property rights remaining to blacks--were predicated on homeland citizenship.¹⁹⁸

¹⁹⁵Idem at 5.

¹⁹⁶Bantu Homelands Constitution Sec. 36(a) (1971) S.A.

¹⁹⁷Cited in McDougall, supra, "Statutes of the Transkei Act" 15 Int'l Legal Materials (1976).

¹⁹⁸Richardson, supra.

The homelands were densely populated, but lacked even subsistence agricultural potential. In 1976, over 70% of the Gross National Product in the homeland came from commuters and migrant workers.¹⁹⁹ The minimal economic activity within the Bantustans was a reflection of their designated role in the economy as suppliers of labor for white enclaves and depositories for the unemployed, the sick, the aged, children, and a high proportion of women.

Nearly one third of African workers in "white" South Africa were migrant workers. They worked on contracts of up to a year in areas away from where their families lived.²⁰⁰ In 1980 about a quarter of a million came from neighboring countries. Over one million were South Africans considered "citizens" of the Bantustans and not of the areas in which they worked.²⁰¹ Close to another million workers commuted daily to work outside Bantustans.

Migrant workers were not allowed to take their families with them. They were housed in mining or industrial compounds, in single-sex hostels in the townships, or in servant quarters if they

¹⁹⁹South African Labour and Development Research Unit, C. Simkins. "The Economic Implications of African Resettlement." Working Paper No. 43, September 1981.

²⁰⁰1980 Census figures cited in Apartheid: The Facts, supra.

²⁰¹1980 Census figures cited in Apartheid: The Facts, supra.

Security Act adopted in August 1982 based on South Africa's Internal Security Act, allowed for indefinite detention without trial and without appeal.²⁰⁷ Ample evidence was also collected by the Commission on Human Rights that repressive powers had been transferred by the South African government to the "homeland" authorities.²⁰⁸

The Bantustan policy validated by judicial review²⁰⁹ continued in blatant violation of the rights of the African people, who continued to vigorously protest their loss of South African citizenship, the loss of their right to freely choose employment and other economic development, and the disruption of their

²⁰⁷Proclamation R. 252 and other South African security legislation remained in force in Ciskei after it was declared "independent" in December 1981. These laws were repealed when the Ciskei Administration introduced the National Security Act of 1982, modified after the South African Internal Security Act of 1982. These sections of the National Security Act provided for the use of indefinite detention without trial. Section 27 constituted the legal basis for preventive detention for an unlimited period; and Section 28 empowered the Attorney General of Ciskei to authorize the incommunicado detention of potential state witnesses in political trials.

²⁰⁸See Violations of Human Rights in South Africa (1983) E/CN.4/1983/10 at 61.

²⁰⁹Violations of Human Rights in South Africa, *supra*. para. 364.

families and the quiet enjoyment of their ancestral homes.²¹⁰ The apartheid regime, strengthened by U.S. State Department support and encouragement continued this theft of land, resources, and the rights of citizenship without regard to international condemnation until continued legal enforcement was made virtually impossible by the number of violations.

²¹⁰Article 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 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. 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 and religious groups, 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.

Between 1960 and 1982, under the various laws, an estimated 3.5 million South Africans were subjected to violent forced removals including the destruction of their homes and possessions and relocation in squalid camps without the possibility of employment. Surplus People Project, Forced Removals, supra.

LEGAL 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.²¹¹ Medical care, like all other aspects of life in apartheid South Africa was, as a matter of law, segregated and administered so that whites had decent care, while blacks were given inferior care in overcrowded facilities. Hospitals for black people were often so short of beds that patients were required to share a single bed, or even to sleep under beds.²¹² As a matter of law, whites-only hospitals could not ease this overcrowding, because the maintenance of segregation was paramount to the delivery of health care.²¹³

The impoverished living conditions of the black population and poor sanitation, especially in the homelands, permitted such virulent diseases as cholera, tuberculosis, polio, hepatitis, and

²¹¹Violations of Human Rights in South Africa (1983); Report of the Ad Hoc Working Group of Experts E/CN 4/1983/10: 21 January, 1983, para. 464.

²¹²Id. para. 429.

²¹³Id. paras. 435-37.

malaria to become epidemic.²¹⁴ Malnutrition was rampant among black children, and infant mortality rates were reported at 134 per thousand for blacks, as compared to 20 per thousand among whites.²¹⁵

Only 2% of South Africa's doctors were black. Black doctors were not permitted to treat black patients in provincial hospitals or in their specialties in large hospitals if this would involve placing them in authority over white medical personnel.²¹⁶

Education for the black majority was as a matter of law, segregated, inferior, and not free.²¹⁷ Parents were required to pay school fees, for books, and uniforms. Africans were also required to pay directly for the cost of building schools.²¹⁸ Although all white children went to school until the age of 15, a much smaller proportion of African children attended school. Average teacher-pupil ratios were 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 were reported to be over 1,000

²¹⁴Id. para. 438.

²¹⁵Apartheid: The Facts, supra. P. 25.

²¹⁶Violations of Human Rights in South Africa, supra. para. 364.

²¹⁷Joyce Siakane, Window on Soweto, p. 39, London, 1980.

²¹⁸Apartheid: The Facts, supra. pp. 27-28.

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.²¹⁹

African children could be refused registration at schools if they did not possess a card showing that their names were registered on house permits. The Bantu Education Department renamed the Department of Education and Training, established curricula for the schools attended by Africans that attempted to indoctrinate students in the ideology of apartheid.²²⁰ For most African students, it was impossible to remain in school for more than a few years.

African students were not permitted to attend white technical colleges or universities except by special permission of the Minister of Education. The black universities, like the education systems for blacks at the lower levels of schooling, suffered from overcrowding, lack of text books, and research and other facilities.²²¹

²¹⁹Id. P. 40.

²²⁰Apartheid: The Facts, supra. p. 28.

²²¹Violations of Human Rights in South Africa, supra. Para. 374.

LEGAL DENIAL OF THE RIGHT OF ACCESS TO PUBLIC ACCOMMODATIONS 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.²²² In apartheid South Africa, a host of laws required racial segregation of public accommodations²²³, public premises, and public facilities of all kinds.²²⁴ These included restaurants, theaters, clubs, sporting events, and other forms of public entertainment, buses and taxis,²²⁵ and libraries, museums, zoos, and public gardens.²²⁶

This network of laws denying equal access, in addition to violating Article 27, violated the provision of Article 7, which declared that "(a)ll are equal before the law and are entitled to equal protection against any discrimination in violation of this Declaration and against any incitements of such discrimination."

²²²Article 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.

²²³Reservation of Separate Amenities Act of 1953.

²²⁴Group Areas Act of 1950.

²²⁵Motor Transport Act of 1930.

²²⁶State Aided Institutions Act of 1931.

DENIAL 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.²²⁷ But apartheid South Africa continued to deprive opponents of the regime of their passports, in retaliation for public statements condemning apartheid while abroad.

Then Bishop Desmond Tutu had his passport confiscated by security police after he returned from speaking in Europe and South America in 1983.²²⁸ Trade-union and church leaders were deprived of their passports because of their associations with unions or church denominations associated with opposition to apartheid.²²⁹

Many opponents of apartheid, including ANC combatants could not legally return to their country or travel on the passports of the land of their birth because of the brutal retaliation that

²²⁷Article 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.

²²⁸In 1984, then Bishop Tutu was awarded the Nobel Price for Peace and was again permitted to travel to Europe and North America. But this time he was issued a travel document, instead of a normal passport. He informed President Ronald Reagan that his travel document stated that his nationality was listed as "not determinable" as a result of the regime's "Bantustan" policy.

²²⁹Progress Report, *supra*.

would certainly have been visited upon them, if they had returned from exile before the election in 1994.

DENIAL OF FREE PRESS RIGHTS AND OF FREE EXCHANGE OF INFORMATION

The right to seek, receive, and impart information and ideas through any medium is guaranteed by Article 19 of the Declaration.²³⁰ The law of Apartheid South Africa law restricted the flow of information by prohibiting publication of "untrue" statements relating to actions of the police.²³¹ The law provided that the police could decide what information was "untrue" and could arrest a journalist who did not conform to the police's "definition" of the official "truth." Another section of the Police Act prohibited publication of information about detainees held under the Terrorism Act.²³²

Two further Acts broadened the definition of "information" which could not be published²³³, and gave the government the power

²³⁰See note 86.

²³¹Police Amendments Act of 1979: The Minister of The Interior's approval was required for re-registration.

²³²Police Amendments Act of 1979, Sec. 27(b).

²³³Protection of Information Act, No. 84 of 1982.

to cancel the registration of any newspaper.²³⁴ The Second Police Amendment Act was used to prevent publication of information concerning the detention of journalists. David Bleagard, president of the South African Society of Journalists, said: "The horrifying implication of such actions is that people can be made to disappear without trace at the whim of the police."²³⁵ The South African Defense Force also warned journalists not to report on its operations or casualties, or to even mention them.²³⁶

The so-called "Boss Law" prohibited publishing any information concerning the operations of the Bureau of State Security (Boss).²³⁷ In 1981 alone, six journalists were subjected to three-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-law. Five of the six were leading figures in the Media Workers Association, which had conducted a long strike following the government's suspension of

²³⁴Registration of Newspapers Amendment Act, No. 98 of 1982: The Ministers of the Interior's approval was required for re-registration.

²³⁵Progress Report, supra., para. 232.

²³⁶Progress Report, supra.

²³⁷General Law Amendment Act of 1969, Section 10 and 29.

four newspapers.²³⁸

REPUBLIC OF SOUTH AFRICA CONSTITUTION ACT, 1983: A POLITICAL RUSE

The 1983 constitution²³⁹ of the apartheid state, which government officials hailed as evidence of "evolutionary reform" was a sophisticated stratagem by the Nationalist government to institutionalize the political-territorial exclusion of black Africans and to isolate them from other people of color, the so-called Coloureds and Asians. It constituted a continuing violation of Article 21 of the Declaration.²⁴⁰

In the 37 years since the Nationalist Party had taken power, by 1983, there were significant political changes in the region. The liberated countries of Angola and Mozambique had replaced Portuguese colonies; the white minority no longer ruled Zimbabwe. Its continued occupation of Namibia had been declared illegal²⁴¹.

²³⁸Progress Report, *supra*.

²³⁹S.A. No. 110 of 1983, September 28, 1983.

²⁴⁰See Note 86.

²⁴¹In 1971 the International Court of Justice had declared South Africa's presence in Namibia to be illegal. Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa). Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 15 (Advisory Opinion of June 21). In 1966 the UN General Assembly had terminated South Africa's mandate over Southwest Africa for failing to implement

South Africa was no longer surrounded by allies. The liberation struggles led by the African National Congress (ANC) and the South West Africa People's Organization (SWAPO) were constant threats to the apartheid regime's absolute control of the region.

Prime Minister Botha, in consultation with the regime's prime financial investment interests and with the United States, had developed a "total strategy" of which the new constitution was an element. The new constitution served a number of apartheid goals. By providing token representation in the national government, it provided the basis by which Coloured and Indian men could be drafted into the South African Defence Force (SADF)²⁴², instead of only white males. It also advanced the Reagan administration's policy of "constructive engagement" by seeming to promote reform of the racist regime by the apparent gradual inclusion of nonwhites in the political process, seeking to induce foreign investment by indicating that change was taking place in South Africa and, therefore, that their investments would be safe from armed struggle

its obligations under the UN Charter and placed the territory under the direct supervision of the United Nations. (Council for Namibia) pursuant to Resolution 2248 (G.A. Res. 2248 (S-V), SUNGAOR Special Session Supp. (No. 1) at 1 U.N. Doc. A/6657 (1967).

²⁴²S.A. Special Report on the Military, 1982.

against the regime.²⁴³ It also attempted to give Coloured and Asian South Africans a stake in the apartheid regime, which presumably they would defend against what Foreign Minister Pik Botha had defined as the "total onslaught against the apartheid way of life."²⁴⁴

The parliamentary plan condoned existing apartheid law, by institutionalizing racial divisions under a democratic guise, since all existing apartheid law continued unless expressly repealed by the new tri-cameral legislature²⁴⁵--which, would be impossible without the minority white House of Assembly's vote.

The new constitution appeared to grant the illusion of political representation in the Parliament to the 2.5 million "Coloureds" and 750,000 Asians while totally barring majority black people from participation. Henceforth, according to the apartheid regime, the political rights of black people could be exercised in

²⁴³Financial Mail (South Africa, 1983) "Any reform, however small, will be reviewed positively by public opinion abroad. A rejection of the Constitution will lead to disinvestment and a hardening of attitudes in South Africa" quoted in Hovey, Gail, "Apartheid's New Clothes," The African Fund, Nov. 14, 1983.

²⁴⁴Idem.

²⁴⁵Number of electoral divisions proposed for each province: Cape of Good Hope, 60; Natal, 5; Orange Free State, 5; Transvaal, 10 Constitution Act of 1983, Sec. 42(2).

the Bantustans ("homelands").

In an effort to sway world opinion to view the new constitution as reform, spokesmen for the Nationalist party noted that it called for a multi-racial Parliament: one separate chamber each for whites, Coloureds, and Asians. All three groups would participate on the President's Council and the Electoral College which had the power to elect (and impeach) the state President.

The Executive President alone decided which chamber of Parliament could consider a specific bill depending on his decision as to which community was affected by it (education, culture, etc.) All three chambers would receive bills the President deemed 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 was to make decisions binding on Parliament and on the President. The new office of "Executive State President" included wide-ranging powers which combined the functions of the Prime Minister and the previously ceremonial post of President. Whites retained parliamentary power and could not be outvoted by the two other chambers.

The three new chambers consisted of: a) *The House of Assembly*, elected by whites, with 178 members (166 elected directly, 8

elected indirectly and 4 nominated).²⁴⁶ b) The House of Representatives, elected by "Coloureds," with 85 members (80 elected indirectly and 2 nominated).²⁴⁷

The constitution established 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 consisted 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 withdrew, "Parliament" could still conduct business. Therefore, a Coloured or Asian boycott was useless.²⁴⁸

Thus, crucial decisions could be taken by the President, who had the absolute power to determine which matters were common to all three chambers and which of concern to one of them. Once the President had decided whether a matter was of exclusive or joint

²⁴⁶Number of electoral divisions per province: Cape of Good Hope, 56; Natal, 20; Orange Free State, 14; Transvaal, 76.
Republic of South Africa Constitution Act, No. 110 of 1983, Sec. 41(2).

²⁴⁷Rand Daily Mail May 21, 1983.

²⁴⁸Rand Daily Mail November 4, 1983.

concern, neither his decision nor the issues he has taken into consideration could be questioned in any court of law. Under the powers that were conferred upon him: the President could a) determine sessions of Parliament; b) dissolve Parliament; c) appoint ministers; d) proclaim or terminate marital law; e) declare war or make peace: and f) appoint and remove civil servants.

The only real obstacle standing between Mr. Botha and the implementation of his executive presidency was 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 pretense of democracy and began a slide into the twilight world of authoritarian rule.²⁴⁹

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 percent against".²⁵⁰

The constitutional proposal confining the political rights of the African majority to the impotent political structures of the

²⁴⁹ Idem.

²⁵⁰ Idem.

Bantustans also made them "aliens" in South Africa. Major mass political campaigns were mounted by the African majority against the constitution in opposition to this obvious strategem to divide the majority of the people in their common struggle against apartheid.²⁵¹

Opposition to the constitution became so intensified after the white referendum that plans for Asians and Coloured referenda on the constitution were canceled. The independent black trade unions condemned the constitution's efforts to divide the black, Coloured and Asian community by emphasizing economic division. The Council of Unions of South Africa (CUSA) and the Federation of South Africa Trade Unions (FOSATU) denounced "these racially divided puppet parliaments."²⁵²

Then 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 against the constitution as an "...affront to the people"

²⁵¹Ad Hoc Group of Experts; E/CN 4/198/8.

²⁵²Quoted in Hovey, *supra*.

that would ensure "that racial discrimination will continue,"²⁵³
The Methodist Church of South Africa also rejected the
constitution.²⁵⁴

A nonracial coalition representing 400 groups, called the
United Democratic Front (UDF), launched strong opposition to the
constitution, inviting whites to join. The UDF included among its
leaders Nelson Mandela and Walter Sisulu, the still imprisoned
leaders of the African National Congress; Helen Joseph, former
Secretary General of the Federation of South African Women; Hassan
Howa, head of the nonracial South African Cricket Board; the Rev.
Beyers Naude; the banned leader of the banned Christian Institute;
and Dr. Allen 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, Archie
Gumede, was able to attend the opening meeting on August 20, 1983.
Trade union leader Oscar Mpetha discussed earlier 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 had been the traditional base

²⁵³ *Id.*

²⁵⁴ *Id.*

of power for the Nationalist Party, were sharply divided in respect to the tri-cameral legislature plan and many opposed it. A new Conservative Party was formed in opposition to the constitution, which it defined as "Indians and coloureds...rul(ing) over whites." The even further rightwing Herstigte Nasionale Party declared: "We are fighting for the retention of the ideal of a white South Africa, the retention of our links with our history, and the maintenance of the Christian foundation of our state."²⁵⁵

Those who respected the norms of international law joined with the United Democratic Front in rejecting the new South African constitution and supported them in their struggle for a democratic society.

We stand for the creating 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.²⁵⁶

Elections to the segregated parliament were held in August 1984. A mass boycott in support of the UDF's opposition to the

²⁵⁵Quoted in Hovey, *supra*.

²⁵⁶Declaration of Purpose, United Democratic Front S.A., August 1984.

constitution resulted in over 80% of eligible voters staying away from the polls.²⁵⁷

Throughout the apartheid era, regime's wholesale and increasingly ruthless disregard for the human rights of the majority people of South Africa became of international concern not only because it violated the international norms of human rights but also because South Africa threatened world peace by waging an undeclared war against the frontline states, especially Angola, Lesotho, Mozambique, and Zimbabwe.

A FINAL NOTE ON INTERNATIONAL OPPOSITION TO APARTHEID AND THE ROLE OF THE WESTERN STATES

As thoroughly documented elsewhere in this submission, the General Assembly of the United Nations and other UN bodies took repeated action against apartheid South Africa. But not only "Third World Supporters in the UN General Assembly" as Mr. DeKlerk dismissively suggests, decried apartheid. As early as 1960 the Security Council considered the question of South Africa's lawlessness prompted by the ruthless killing of unarmed and peaceful demonstrators. In Resolution 134, the Security Council

²⁵⁷Africa Now, September 10, 1984.

called upon South Africa to abandon apartheid.²⁵⁸ In 1963, the Security Council called upon South Africa to stop killing anti-apartheid leaders and upon member states to observe a non-mandatory arms embargo.²⁵⁹ That same year, the Security Council established a group of experts "to examine methods of resolving the present situation in South Africa through full, peaceful, and orderly application of human rights law..."²⁶⁰

Based on subsequent recommendations by the Group of Experts, the Security Council in succeeding resolutions soon strengthened its calls for economic sanctions.²⁶¹ In Resolution 311 (1972) the Security Council expressed its grave concern that the situation in South Africa constituted a breach of the peace²⁶² which established the basis for the UN to take measures against South Africa under Chapter VII of the Charter²⁶³ leading to the mandatory arms embargo.

²⁵⁸S.C. Res. 134, 15 UN SCOR at 1; U.N. Doc. S/INF/15 Rev. 1 (1963).

²⁵⁹S.C. Res. 181, 18 UN SCOR at 7; U.N. Doc. S/INF/18 Rev. 1 (1963).

²⁶⁰19 UN GAOR Supp. (No. 1) at 22; U.N. Doc. A/5801 (1964).

²⁶¹*Idem* at 23.

²⁶²S.C. Res. 311, 27 U.N. SCOR at 10, UN Doc. S/INF/28 (1972).

²⁶³U.N. Charter Ch. VII (Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression).

against the apartheid state.²⁶⁴ But the United States, France, Italy and the United Kingdom, South Africa's principal trading partners, refused to honor the international call for a mandatory and comprehensive arms embargo on the grounds that their "national security" during the cold war era required a strong "western" oriented South Africa.

Unfortunately the voting record of the United States on human rights issues motivated for so many years by cold war foreign policy considerations is an embarrassment to the millions who joined forces to participate in the economic boycott of Apartheid South Africa, to call for the freedom of Nelson Mandela and to pressure the Federal government to reverse its positions on support for the apartheid government.

THE UNITED STATES RECORD ON INTERNATIONAL HUMAN RIGHTS
CONVENTIONS AT THE UNITED NATIONS

<u>Convention</u>	<u>Signed</u>	<u>Ratified</u>
Genocide	12/11/48	11/25/88
Racial Discrimination	9/28/66	10/24/94
Economic, Social & Cultural	10/5/77	-----
Civil & Political Rights	10/5/77	6/8/92
ICCPR Optional Protocol	-----	-----
Discrimination Against Women	7/17/80	-----

²⁶⁴Ahmed Khalifa, Assistance to Racist Regimes in Southern Africa: Impact on the Enjoyment of Human Rights at 8, U.N. Doc. E/ N. 4/Sub 2 383/Rev. 2 U.N. Sales No. E. 79XIV.3 (1979).

The U.S. never signed or ratified the convention on the Suppression and Punishment of the Crime of Apartheid.

The western nations motivated, not by democratic principle, but by narrow economic and political self-interests, empowered the minority regime to wreak havoc and devastation on much of the civilian population of the front-line nations of Southern Africa, using troops, bombs, tanks, economic sabotage, subversion, and assassination from the late seventies. Normal life in the region was disrupted. Many thousands were made homeless and millions more were affected by famine resulting from drought and the destruction and diversion of resources needed to defend these sovereign states from South Africa's assaults. The adverse consequences of these lawless incursions can still be felt in the region.

South Africa had gone to war to protect the apartheid system from what it described as "destabilization of the region." In the name of stabilization Pretoria continued the illegal occupation of Namibia, and the destabilization of the frontline governments, in an effort to destroy the support base of the ANC and SWAPO.²⁶⁵

²⁶⁵See for example United Nations General Assembly Resolution condemning acts of aggression by the apartheid regime against Angola and other independent African States. 36.172, 102nd Plenary Meeting December 17, 1981.

In fact, the apartheid government destabilized the entire region in a fruitless effort to reverse the tide of liberation. These efforts like the introduction of the "new" constitution undertaken while Ronald Reagan, the staunchest U.S. ally the apartheid regime had ever had,²⁶⁶ was still President of the United States.

The U.S. and South Africa became full partners in the war to retain political control in the region and to preserve and insulate the apartheid system. From the time Reagan was elected, his administration made clear its aversion to governments which had chosen socialist paths of development not only in Southern Africa but in Latin and Central America as well.

The Reagan State Department and foreign policy advisers were aware in 1981 that South Africa was close to losing control of the

²⁶⁶In fact the United States violation of the embargo and its voting pattern in respect to apartheid in the Security Council did not support the human rights of the people of South Africa. Often voting alone against the end of apartheid. Its express concern was the loss of access to raw materials in South Africa including manganese, platinum-related materials, gold, diamonds and chromium; and the protection of US companies doing business in South Africa. These concerns were often masked by arguing that they were protecting the regions from a marxist or pro-Soviet government takeover. [See US Policy Toward South Africa: Hearing Before the Subcomms. on International Exonomic Policy and Trade, on Africa and on International Organizations of the House Comm. on Foreign Affairs 96th Cong. 2d Sess 477-657 (1980)].

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 had legal jurisdiction over Namibia, had called for South Africa's immediate withdrawal and free and democratic elections to permit its peaceful decolonization.²⁶⁷ In South Africa itself, the exploited and oppressed majority were increasingly organized, 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.²⁶⁸ Chester Crocker, Assistant Secretary of State for African Affairs, observed that the United States should become actively involved in the region to ensure that any changes would be in the best of interests of the United States. The strategy of "constructive engagement" was then born of two presumptions: change in the region had to be controlled by the U.S.

²⁶⁷See the working paper on Namibia prepared by the Secretariat for the Special Committee on the Situation with Regard to the Implementation of the Declaration on Granting of Independence to Colonial Countries and Peoples, paras. 63-76 (A/AC 109/699).

²⁶⁸Crocker, Chester, "South Africa" Strategy for Change," Foreign Affairs, Winter 1980-81.

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 while the Afrikaner ruling party had to appear to be introducing 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 in Rhodesia). By the summer of 1981, Ronald Reagan had ordered a review of U.S. policy toward Southern Africa, which was conducted in the National Security Council, including representatives of the Central Intelligence Agency and Departments of State and Defense.

By 1981, Ronald Reagan had also covertly approved a 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.²⁶⁹

²⁶⁹See 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 Stat

There is no room in this submission whose primary focus is the crimes of apartheid under international human rights law to enumerate the full extent of various US administration's involvements in Southern Africa in aid of apartheid. But no discussion by a US citizen 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, defended South Africa as it bombed and razed civilian populations in neighboring states, flouted international law by its continuing illegal occupation of Namibia and maintained a police state for the purposes of exploiting the majority peoples and their lands by a reign of terror. "Constructive Engagement" also permitted Pretoria to develop a nuclear capacity (with the collaboration of Israel and some Western states) which threatened the peace and security of the planet.

By the summer and autumn of 1986 broad popular support in the United States and Europe for mandatory sanctions against apartheid

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.

combined with revulsion with South Africa as an international pariah, and the policy of constructive engagement, began to influence US foreign policy.

In February 1986, the Security Council condemned South Africa for threats and acts of aggression against other states in Southern Africa²⁷⁰ and demanded an end to the State of emergency and an end to apartheid. Thirteen members of the Security Council voted in favor, none against the US and the UK abstained.

Despite the Reagan Administration's opposition, the United States Senate and House of Representatives voted to override President Reagan's veto and imposed economic sanctions against South Africa. These sanctions prevented any new U.S. investment in or bank loans to South Africa, banned the import of iron, steel, coal, textiles, uranium, and agricultural products, placed an embargo on oil products, banned all non-emergency landings and take-offs of South African airliners in the United States, and created new economic assistance for South African blacks.²⁷¹

This new United States policy grew out of increased rejection

²⁷⁰S.C. Res. 581, UN SCOR (2662 U Mtg.) at 1, UN Docs. Res/581 1986.

²⁷¹See Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086; N.Y. Times, Sept. 30, 1986 at A1, col. 1; id. Oct. 3, 1986, at A.1, col. 6.

of apartheid, both in South Africa and in world opinion. Attempts at mediation by Commonwealth leaders between Black leaders and the South African government had failed.²⁷² Amid strikes by Blacks in South Africa and thousands of arrests by South African police, Pretoria once again imposed a state of emergency, this time on the tenth anniversary of the Soweto uprising.²⁷³ The government reasserted its legal right to make warrantless searches, control essential services, close businesses, and censor domestic and foreign press. In response to Pretoria's action, Canada and France talked of supporting trade sanctions, and Canada revoked the credentials of four South African diplomats.²⁷⁴ At a UN conference, representatives from a hundred nations turned out to hear Rev. Jesse Jackson urge economic sanctions.²⁷⁵ Jackson's talk was boycotted by the United States, the United Kingdom, and the Federal Republic of Germany all of whom had extensive investments in South Africa.²⁷⁶ When the UN Security Council attempted to impose

²⁷²N.Y. Times, June 7, 1986, at A1, col. 4.

²⁷³See id. June 13, 1986, at A1, col. 4., June 19, 1986, at A1, col. 4, 5.

²⁷⁴See id. June 13, 1986, at A13, col. 1; id., June 15, 1986, at A10, col. 5.

²⁷⁵Id. June 17, 1986, at A10, col. 4.

²⁷⁶Id.

economic sanctions against South Africa for its aggression against Angola, the resolution was vetoed by the United Kingdom.²⁷⁷

Throughout the 1980's the international struggle against apartheid intensified, supported by nation states and their people including most political and economic orientations.

In the United States, the UK, France and Federal Republic of Germany, popular support for the South African liberation movements increased on all levels of these societies. Lawyer groups from throughout the world became particularly active in the ever growing international consensus against apartheid South Africa and in support of the United Democratic Front and other democratic forces of South Africa.

The United States and other western states policy of constructive engagement did not go unnoticed in the General Assembly which condemned "the policies of constructive engagement and active collaboration with the apartheid regime followed by governments of certain western and other states which give encouragement to the racist regime in its repression of the people's legitimate struggle."²⁷⁸

²⁷⁷Id. June 19, 1986, at A10, col. 3.

²⁷⁸G.A. Res. 40/64 A, 40 U.N. GAOR Supp. No. 53 para. 4, UN Doc. A/40/53 (1985).

These discredited policies did much to delay the realization of the non racial, non sexist government of national unity elected during the historic first democratic elections held April 26-29, 1994 under the terms of the interim constitution adopted on November 17, 1993 by the multiparty negotiating process.

The continued exposure by the Truth and Reconciliation Commission of the crimes against humanity practiced by the apartheid regime under a legal system designed to oppress, control and diminish the majority of the people should provide irrefutable reasons why South Africa must protect the human rights of all its citizens and particularly that sector of the population who were the historic victims of apartheid law.

As we observe the 50th Anniversary of the adoption of the Convention Against Genocide and the Universal Declaration of Human Rights, it is the hope of the world that the experience of South Africa's struggle for liberation and the lessons to be learned from its history will assist other societies that have not yet confronted their historic legacies of racist separateness, a legacy of the sour grapes of the forebears which continue to set their children's teeth on edge.²⁷⁹

²⁷⁹Cf. Ezekial 18:2; Isiah 31:29, Old Testament.

